

City of Biddeford
Planning Board
June 21, 2023 6:00 PM City Hall
Council Chambers, & Zoom
<https://biddeford.zoom.us/j/99540850948?pwd=ZlMyQjhya24vaHF4cWFhcWxMTHp0Zz09>
Webinar ID 995 4085 0948; Passcode 737409

STATUS: Planning Board Meeting, Wednesday, June 21, 2023, 6:00 PM City Council Chambers & Zoom

- 1. PLEDGE OF ALLEGIANCE**
- 2. DECLARATION OF QUORUM/VOTING MEMBERS**
- 3. ADJUSTMENTS TO THE AGENDA**
- 4. PLANNER'S BUSINESS**
 - 4.A. Orientation for new & existing Planning Board Members
[Planners Report 6-21-2023 Orientation Memo.pdf](#)
[PB Manual and appendices \(rewrite Feb. 2017\) incls. 2019 Suppl. No. 1 redlined chgs accepted.pdf](#)
[_BIDDEFORD_COMPREHEHNSIVE_PLAN_2023_.pdf](#)
[Rules of Procedure & Code of Ethics.pdf](#)
[roberts_rules_simplified_1.pdf](#)
- 5. CONSENT AGENDA**
 - 5.A. Approve Meeting Minutes for 5-31-23 & 6-7-23
[PB Minutes 053123-DRAFT.pdf](#)
[PB Minutes 060723 DRAFT.pdf](#)
- 6. UNFINISHED BUSINESS**
- 7. NEW BUSINESS**
 - 7.A. 2023.21 Public meeting and take comments regarding a Final Site Plan Conditional Use Application for True Storage to redevelop Building 36 into a self-storage facility at 32 Main Street (Tax Map 71, Lot 10-5) in the MSRD 3 zone.
[2023.21 True Storage Final Report 1 DCMG.pdf](#)
[True Storage FINAL PLAN REVIEW Findings of Fact and COA 6-21-2023 meeting.pdf](#)
[True Storage - Pepperell Mill_Draft Plumbing Plans.pdf](#)
 - 7.B. 2023.33 Review, ask questions and comment on a Sketch Plan application for Beachwood Development Fund LP at 781 Pool Street in the Coastal Residential District as well as Stream Protection and Limited Residential Overlay Zones. The proposal is to create an 8-lot single family residential subdivision.
[781 Pool St. - Staff Review 6_15_2023 nmw.pdf](#)
[Pool Street Subdivision Sketch Plan Application.pdf](#)
 - 7.C. 2021.42 Review and discuss the environmental study by Basswood Environmental for South Street Village LLC, the study was performed on the site of the Hidden Hills Subdivision located on South Street (Tax Map 7, Lot 8) in the RF & SR-1 Zones.
[Hidden Hills PLANNING BOARD REPORT regarding the environmental study](#)

[6-15-2023.pdf](#)

[Pages from Environmental Study.pdf](#)

[Hidden Hills Site Visit report \(final\).pdf](#)

- 7.D. 2023.24 Review amendments made to the proposed Back Lot Ordinance based on comments attained at the last Planning Board Meeting.

[2023.24 Back Lot Planning Board Workshop Memo 6-21-2023 PDF File .pdf](#)

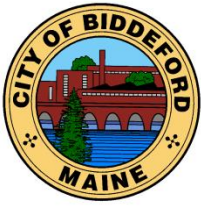
[Back Lot Ordinance PB Memo 6-7-2023 PDF.pdf](#)

[Back Lot Ordinance Planning Board Draft No 3 7-21-23 CLEAN PDF .pdf](#)

8. OTHER BUSINESS

9. ADJOURN

The Board reserves the right to halt official business at 9:30 p.m. Items not heard at tonight's meeting shall be rescheduled to the next meeting of the Board. All materials pertaining to items on the agenda are available for public review at the Biddeford Planning Department, second floor, Biddeford City Hall during normal business hours.



CITY OF BIDDEFORD

Planning and Development Department

David C.M. Galbraith
Deputy Director/City Planner
205 Main Street
P.O. Box 586
Biddeford, ME 04005
(207) 284-9115

David.Galbraith@biddefordmaine.org

PLANNING BOARD MEMORANDUM

TO: Chair Patoine and Members of the Biddeford Planning Board

FROM: David C.M. Galbraith, Deputy Director/City Planner

DATE: June 8, 2023

RE: **Agenda Item #4: Planner's Business**

MEETING DATE: June 21, 2023 at 6:00 PM

OVERVIEW: As the Board is aware, the City continues to make improvements related to transparency, training, and information sharing. As such, the Planning Office is dedicated to providing the Planning Board as much support documentation as needed when reviewing development proposals. We have also been reviewing documents and procedures related to our providing the best service possible to our internal and external clients (Planning Board included). As such, we are creating a packet of orientation documents for new and existing members to better prepare them for the challenging role of a Planning Board member and to make sure we are conforming to adopted Ordinances and policies. We are in the early stages of gathering additional information but below is a list of the information currently available for Board Members. A brief overview of these documents are below:

1. The Manual for Local Planning Boards: A Legal Perspective:

Maine Municipal Association - The Manual for Local Planning Boards: A Legal Perspective. This 456 page document contains a vast amount of useful information regarding, in part:

- A. The Decision-Making Process.
- B. Conflict of Interest.
- C. Bias; Family Relationships.
- D. Selected Statutes Which Might Affect a Project Being Reviewed.

This is an outstanding reference document, so if you haven't had a chance to review it you should.

2. Comprehensive Plan:

A copy of the City Council approved Comprehensive Plan (2023). As mentioned at the Board's June 7, 2023 Planning Board meeting, the Comp. Plan has been approved locally and will now be sent to the State for Plan Certification. The State may adopt the Plan as being complete or, more likely, the State may require additional information, clarification, and will identify items required which don't meet State standards. If the latter scenario is the case, Staff and the Board will need to work through these items and, after Council review and approval, the "Final" document will be returned to the State where the City will seek certification.

Planning Board Meeting: May 3, 2023 at 6:00 PM
Agenda Item #4: Planner's Business – Memorandum

3. Planning Board Code of Ethics: It was recently brought to the Planning Departments attention that Planning Board members are required to review the "Biddeford Planning Board Rules of Procedure and Code of Ethics". The document includes the requirement that each Planning Board member review the document and sign the below stated acknowledgement of review:

I hereby acknowledge receiving, reading and understanding these Planning Board Rules of Procedure and Code of Ethics. I fully understand the provisions contained herein and will perform my duties as a Biddeford Planning Board Member in accordance with these Rules of Procedure and Code of Ethics.

The City's Code of Ethics was adopted on November 7, 2007 and became effective on January 1, 2008. The document is 16-pages long and after reading and each Board member signing, it will bring the Board into full compliance with this requirement. In researching our internal records we could not find any signed acknowledgement for any of our sitting Board members. Therefore, we are requesting that each member read and sign the attached document (Page 16 of 16).

4. Article X Planning Board:

Article X, in the City's Zoning Ordinance provides an overview of powers and duties of the Planning Board. Article X may be found on the City's web site under Code of Ordinances or by following the below link:

<https://ecode360.com/15174512>

5. Robert's Rules of Order:

The Planning Board follows "Robert's Rules of Order" in conducting meetings. Robert's Rules of Order is a parliamentary procedure authored by U.S. Army officer Henry Martyn Robert. Often referred to as simply Robert's Rules, this guide consists of procedural rules that governing bodies or agencies can follow to keep meetings systematic. The first manual was published way back in 1876, which makes the guide more than a century old. Although Robert's Rules can be complicated the majority of the rules are fairly easy to interpret, one of the Board resources, is the attached "Robert's Rules of Order – Simplified" which provides an overview of how to conduct public hearings and various motions Board members may utilize during development application / ordinance review. A copy of "Robert's Rules of Order – Simplified" has been provided in your meeting packets.

Attachments:

1. The Manual for Local Planning Boards: A Legal Perspective.
2. Planning Board Code of Ethics
3. Article X – Planning Board
4. Robert's Rules of Order – Simplified

Maine
Municipal
Association

Manual for Local Planning Boards: A Legal Perspective

Table of Contents

Introduction	xi
Terms and Abbreviations Used in This Manual	xiii
CHAPTER 1 – Creation, Qualifications, and Liability	1
Creation of a Planning Board	1
Boards Created Between 1957 and 1971.....	1
Boards Created After September 23, 1971	2
Boards Created Before 1957	2
Ordinance or Article Wording	2
Elected Board Members	3
Qualifications for Office	3
Age, Residency, Citizenship	3
Oath.....	3
Incompatible Positions.....	4
Vacancy.....	4
Removal	5
Alternate Members of the Board.....	5
Liability of Board Members	6
Nonperformance of Duty	6
Maine Tort Claims Act	6
Maine Civil Rights Act.....	7
Federal Civil Rights Act of 1871	8
Maine Freedom of Access Act (Right to Know Law).....	9
Records Retention and Preservation and Public Access	9
CHAPTER 2 – The Decision-Making Process	11
Forms	11

Bylaws/Rules of Procedure	11
Jurisdiction of the Board/Other Assignments.....	12
Standing to Apply	13
Freedom of Access Act (Right to Know Law).....	14
General.....	14
Notice of Meetings.....	14
Board Member Discussions/Email	15
Executive Sessions.....	15
Common Violations	16
Site Visits	16
Additional Information.....	18
Board Records	18
Conflict of Interest; Bias; Family Relationships.....	19
Financial Conflict of Interest	19
Bias	22
How the Affected Board Member Should Handle a Conflict or Bias.....	23
Conducting the Meeting.....	24
Scheduling a Meeting; Notice Requirements; Agenda.....	24
Attendance by Applicant; Applicant’s Special Needs.....	26
Preliminary Business	26
Procedure.....	29
Public Participation	29
Taking Adequate Time to Make a Decision; Seeking Technical and Legal Advice.....	30
Municipal Attorney Advising More Than One Municipal Board or Official on Same Matter.....	31
Minutes and Record of the Meeting	32
Making the Decision	33
Checklist for Reviewing Evidence.....	33
Basis for the Board’s Decision	33
Reopening the Hearing Process	38
Preserving Objections for Appeal.....	39

Approval and Form of Decision	39
Reviewing Conditional Use/Special Exception Permit Applications.....	45
After Making the Decision; Notice of Decision	46
Reconsideration	46
Effect of Decision; Transfer of Ownership After Approval.....	47
Second Request for Approval of Same Project	47
Vague Ordinance Standards; Improper Delegation of Legislative Authority	47
Sorting Out Which Board or Official Has Jurisdiction Over Which Part of a Project and at What Point in the Process	49
Prior Mistakes by the Board.....	49
Time Limit on Use of Permit.....	49
Selected Statutes Which Might Affect a Project Being Reviewed	50
Subdivision Law	50
Seasonal Conversion Law	50
Entrance Permit	50
Road Setback.....	51
Overboard Discharges	51
Construction or Expansion of Structure Requiring Subsurface Disposal.....	51
Farmland	52
Small Gravel Pits.....	52
Maine Endangered Species Act	52
Regulation of State, Federal, County, and Municipal Projects.....	52
Erosion and Sedimentation Control; Stormwater Management	53
Minimum Lot Size.....	53
Essential Services/Public Utilities	54
Conflict Between Ordinances and the Federal Fair Housing Act Amendments or the Americans With Disabilities Act	54
CHAPTER 3 – Appeals.....	55
Jurisdiction	55
Enforcement Decisions.....	55
Appeal of Failure to Act.....	57

Deadline for Filing Appeal	57
Appeal to Board of Appeals.....	57
Appeal to Superior Court	58
Untimely Appeal; Incomplete Appeal Application	59
Indirect Attempts to Challenge an Appeals Board Decision Without Appealing; Refusal of Other Town Official(s) to Comply With Appeals Board Order	59
Appeal Involving Exempt Gift Lots in a “Family” Subdivision; Appeal Involving Existence of Illegal Subdivision	60
Exhaustion of Remedies	60
Standing	61
“Particularized Injury” Test	61
Actual Participation in Proceedings Required	62
Appeal by Permit Holder	63
Appeal by Municipality.....	63
Nature of Review—<i>De Novo</i> vs. Appellate.....	63
Authority of Appeals Board Regarding Decision Appealed.....	65
Court Review of Appeals Board Decision	65
Preserving Objections for a Court Appeal	66
Status of Original Permit or Approval During Appeal Period or During Period When Appeal Being Reviewed.....	67
Board of Appeals Members Attending Planning Board Meetings.....	67
Authority of Municipal Officers	67
Role of Code Enforcement Officer (CEO) or Planning Board at Appeals Board Meeting.....	68
Second Appeal of Same Decision/Reconsideration by the Board of Appeals	69
Second Appeal.....	69
Reconsideration	69
Authority of the Board to Modify/Revise an Appeal Application	70
CHAPTER 4 – Variances and Waivers.....	71

Authority to Grant Variances or Waivers	71
Zoning Variances	71
Non-Zoning Variances	72
Procedure for Obtaining a Variance	72
Recording Variances/Waivers.....	72
Variance vs. Special Exception/Conditional Use	73
Effect of Variance Decision	73
Shoreland Zoning Variances	74
CHAPTER 5 – Vested Rights, Equitable Estoppel, Pending Applications, and Permit Revocation	77
Revocation of Permit or Approval.....	77
Equitable Estoppel	77
Applicability of New Ordinances to “Pending” Applications or Approved Projects; Expiration and Retroactivity Clauses.....	78
“Pending” Applications	78
Approved Projects; Expiration Clause	79
Retroactivity Clause.....	80
Vested Rights.....	80
Vested Rights in Valid Permit	80
Vested Rights to Proceed with Approved Construction Under Existing Ordinance	80
Vested Rights in Erroneously Approved Permit	81
CHAPTER 6 – Ordinance Interpretation	83
General Ordinance Interpretation Rules	83
General	83
Consistency	83
Object; Context; Common Meaning	83
Ambiguity Construed in Favor of Landowner	84
Natural Meaning of Undefined Terms	84

Similar Uses	84
Legal Nonconforming (“Grandfathered”) Uses, Structures, and Lots	85
Gradual Elimination.....	86
Phased Out Within Legislative Standards	86
Expansion of Nonconforming Use.....	86
Expansion of Nonconforming Structure.....	86
Replacement/Relocation.....	87
Discontinuance/Abandonment	88
Merger of Lots.....	89
Adding Acreage to a Legally Nonconforming Lot; Dividing a Legally Nonconforming Lot	89
Functional Division	90
Change of Use	91
Illegality of Use; Effect on “Grandfathered” Status	91
Meaning of “Permitted Use” or “Allowed Use” in the Context of Nonconforming Uses	91
Lots and Structures Divided by a Zone Boundary.....	92
Definition of Dwelling Unit.....	92
Definition of Structure in the Shoreland Zone	93
Definition of Lot.....	93
Conflict Between Zoning Map and Ordinance; Clarifying Zone Boundaries.....	93
Conflict Between Ordinances	94
Road Frontage; Back Lots	94
Setbacks Within the Shoreland Zone; New Structures and Expansions; Functionally Water-Dependent Uses	95
Water Setback Measurement; Measurements Related to Slope of Land, Calculation of Building Expansion, Percentage of Lot Coverage, and Building Height.....	95
Decks.....	96
Essential Services; Communications Towers; Satellite Dishes; Public Utilities; Wind Energy Projects	96
Accessory Use or Structure.....	96

Home Occupations.....	97
Commercial and Industrial Uses	97
Docks; Related Easements.....	98
Pond.....	98
Quarrying; Rock Crushing; Mineral Extraction; Gravel Pits.....	99
Clearing Vegetation in the Shoreland Zone	99
CHAPTER 7 – Laws Affecting Municipal Ordinance Authority.....	101
Ordinances Generally.....	101
Ordinance Enactment Procedures	101
Amendments.....	102
Form of the Ordinance	102
Scope of the Ordinance	103
Availability	103
Constitutional Issues	103
Standards; Delegation of Legislative Authority	103
Reasonableness; Takings Issue.....	105
Statutes Which Affect Municipal Ordinance Authority	106
Home Rule.....	106
Adoption of Codes or Standards by Reference	107
Subdivisions.....	107
General Zoning Ordinance and Comprehensive Plan	108
Spot Zoning	110
Shoreland Zoning	111
Flood Plain Development	113
Contract and Conditional Zoning	114
Informed Growth Act	115
Manufactured Housing and Mobile Homes	115
Condominium Projects.....	117
Farmland; Agricultural Uses	117

Junkyards, Automobile Graveyards, and Automobile Recycling Businesses.....	118
Minimum Lot Size.....	118
Signs	118
Noise	119
Sport Shooting Ranges	119
Solid Waste, Septage, and Sludge	119
Hazardous Waste; Radioactive Waste	120
Coastal Management Policies	121
Gravel Pits and Other Excavation Activities	122
Pesticide Use	122
Timber Harvesting.....	122
Housing for Individuals with Disabilities	123
Groundwater Protection; Groundwater Extraction; Public Drinking Water Supply	123
Regulation of Water Levels	124
Airports	124
Antennas, Towers, and Satellite Dishes	125
Rental Housing	126
Erosion and Sedimentation	126
Storm Water Management	126
Building and Energy Codes.....	126
Chimneys, Fireplaces, Vents, and Solid Fuel Burning Appliances	127
Moratoria	127
Rate of Growth Ordinances.....	127
Transfer of Development Rights Program.....	127
Impact Fees	127
Religious Institutions and Activities	128
Underground Oil Storage Tanks	128
Utilities in Historic District.....	128
Wind Energy	128
Air Pollution Control; Outdoor Wood Boilers	129
Essential Services; Public Utilities	129
Natural Gas Pipelines and Terminals.....	129
Residence of a Sex Offender	130

Medical Marijuana; Adult Use Marijuana; Methadone Clinics	130
Regulation of State and Federal Projects	131
CHAPTER 8 – Enforcement	133
Appendices	135
Appendix 1 – Planning Board Ordinance and Statute	137
<i>Sample</i> Establishment of Municipal Planning Board Ordinance	139
<i>Sample</i> Language for Use in “Reestablishing” a Board Which was not Legally Established When Created	143
Old Planning Board Statute (30 M.R.S.A. Sections 4952, 4957, 4964)	145
Appendix 2 – Sample Forms, Bylaws and Procedures	149
<i>Sample</i> SMRPC Model Application Form	151
Town of Falmouth Shoreland Zoning Permit Application	155
City of Ellsworth Land Development Permit Application	163
<i>Sample</i> Site Plan for Conditional Use Application–Town of Falmouth	167
<i>Sample</i> Notice of Public Hearing–Planning Board.....	169
Table of Consanguinity	171
<i>Sample</i> Bylaw Provisions.....	173
<i>Sample</i> Rules for the Conduct of Public Hearings	175
<i>Sample</i> Planning Board Rules, November 1989–Town of Gorham.....	181
<i>Sample</i> Board Member’s Affidavit Regarding Missed Meeting	191
<i>Sample</i> Public Water Supplier Notification Form.....	193
Appendix 3 – <i>Sample</i> Minutes and Decisions	195
Town of Scarborough Planning Board Minutes-January 28, 2008	197
Town of Scarborough Planning Board Minutes-Special Meeting & Workshop-February 11, 2008	213
Town of Bar Harbor Planning Board Minutes-November 4, 2009	219
Town of Bar Harbor Planning Board Minutes-December 2, 2009 (as amended December 16, 2009)	225
Town of Bar Harbor Planning Board Minutes-Special Meeting-December 16, 2009.....	231
Town of Turner Planning Board Site Plan Review Decision-March 10, 2010	237
Town of Freeport Planner’s Memo to Design Review Board-May 12, 2010.....	307
Readfield Planning Board-Findings of Fact and Conclusion of Law dtd. May 20, 2004	325
Town of Bar Harbor Planning Board Land Use Ordinance / Site Plan Decision-May 19, 2010	329

<i>Sample</i> Wording for Use in a Permit Issued to a Landowner Where Title to the Land, Boundary Location or Other Title Problem has Been Raised by a Third Party	337
<i>Sample</i> Wording for Use in Approving a Development Plan to Ensure that the Plan will be Developed Exactly as Depicted Unless Revisions are Approved by the Appropriate Authority.....	337
Excerpts from Maine Supreme Court Decisions.....	339
Appendix 4 – Shoreland Zoning	347
“Expanding Non-Conforming Structures Revisited,” “Legal Notes,” <i>Maine Townsman</i> , December 1998	349
Shoreland Zoning News, DEP-Bureau of Land Quality Control-Tracking Expansions of Non-Conforming Structures	351
“News from the 118 th Legislature-Current 30 Percent Expansion Rule” by Geoff Herman, Maine Municipal Association	355
Additional DEP “Shoreland Zoning News” Articles and Interpretations	357
Appendix 5 – Subdivisions.....	367
The Statutory Definition of “Subdivision” for Purposes of Municipal Review and Related Issues by Rebecca Warren Seel (2014)	369
“Task Force to Study Growth Management: Proposals by Subdivision Law/Impact Fee Working Group” (2000)	401
Certificate of Variance or Waiver Approval	407
Hows and Whys and Dos and Don’ts of LOCs and Bonds By Peter Morelli.....	409
<i>Sample</i> Letter of Credit	411
SMRPC Model Subdivision Regulations—Application Fee Provisions.....	413
List of <i>Maine Townsman</i> Legal Notes Discussing Issues Related to Subdivision Review	415
Appendix 6 – Ordinance Drafting, Adoption and Amendment	417
“Ordinance Enactment” Information Packet and Online Ordinance/Charter Collection.....	419
“Ten Common Mistakes in Drafting Land Use Ordinances”	421
<i>Sample</i> SPO Model Site Plan Review Ordinance Fee Provision.....	423
“Application Fees,” “Legal Notes,” <i>Maine Townsman</i> , August/September 1995.....	425
Appendix 7 – Miscellaneous Land Use Materials	427
List of Maine Municipal Association Information Packets and Guides	429
List of Other Land Use Publications	431
“LID Approach Manages Growth, Carefully,” <i>Maine Townsman</i> , August/September 2011 by Lee Burnett ...	433
“Minimum Lot Size for Multi-Family,” “Legal Notes,” <i>Maine Townsman</i> , February 1990.....	439

Introduction

Serving on a municipal planning board is one of the most important contributions that a citizen can make toward shaping the community's future. It can be a very rewarding experience for a person who is interested in trying to help the municipality balance new development against the traditional character and quality of life of the community. But it also can be a frustrating experience—doing battle with the voters at town meetings who oppose a comprehensive plan or ordinance which the board has worked for months to develop, going head to head with an uncooperative subdivision developer or his attorney over information requested by the board, or wondering whether the board has legal authority to approve a particular project.

This manual has been prepared in an effort to lay out the basic legal information which every planning board member should know in order to feel confident in performing the board's responsibilities. It is a general discussion of the planning board's legal authority and duties. While it will apply to most municipalities, an individual municipality may have an ordinance or charter provision which imposes additional requirements for its planning board to follow.

Any person using this manual should always check the exact section numbers and provisions of any statutes, ordinances, or codes mentioned in the manual's text, sample forms or other material. The references included in the manual are intended to provide general guidance to the reader rather than to serve as a substitute for reading the actual law. In this way, a person using these materials can be sure that an applicable law or regulation has not been amended. After reading the whole law or regulation, rather than merely selected excerpts, the reader will have a better idea of whether the law or regulation covers a particular project or whether there are provisions which exempt the project.

This manual is not intended to be a substitute for seeking legal advice from the municipality's private attorney or from the attorneys in MMA's Legal Services Department about how a specific State law, court decision, or local ordinance applies to the facts of a particular case which the board must decide.

The primary author of the various editions of this manual is Rebecca Warren Seel, Esq. Many thanks to Patti Soule and Carol Weigelt for their invaluable assistance in the production of this edition of the manual.

This February 2017 edition replaces the December 2011 edition of the manual and the December 2012 and March 2015 supplements. Work on the original version of the MMA Planning Board Manual was conducted as part of the Coastal Program of the Maine State

Planning Office. Financial assistance for preparation of that document was provided by a grant from Maine's Coastal Program, through funding provided by U. S. Department of Commerce, Office of Coastal Zone Management, under Coastal Zone Management Act of 1972, as amended.

Rebecca Warren Seel
Senior Staff Attorney
Legal Services Department
Maine Municipal Association
February 2017

Terms and Abbreviations Used in This Manual

A.2d or **Me.** refers to the series of Maine Supreme Court cases reported for this State and court region. “A.2d” means the Atlantic region reports, 2nd series. “Me.” means the Maine reports. An example of a case cite is 111 Me. 119 (1913) and 486 A.2d 102 (Me. 1984). The numbers “111” and “579” refer to the volumes of the Maine and Atlantic court reports. The numbers “119” and “58” refer to the pages on which the case begins. The number “1913” refers to the year of the court’s decision. A case cite such as “2011 ME 53” means that the case was decision number 53 in 2011 by the Maine Supreme Court.

Damages means money which must be paid to a person as compensation for personal injury or property loss.

Et seq. means “and following sections.”

Legislative body means the town meeting or the town or city council.

M.R.S.A. means the Maine Revised Statutes Annotated. An example of a reference to the Maine statutes is 30-A M.R.S.A. § 4401. The number “30-A” refers to Title 30-A. The number “§ 4401” refers to section 4401 of Title 30-A. The Maine statutes are now frequently cited as “M.R.S.” rather than “M.R.S.A.” as recognition that an electronic version of the statutes is now frequently used and that version does not include case annotations.

Municipal officers mean the selectpeople or the town or city council.

Rules of Civil Procedure means the rules governing non-criminal cases brought before the Superior Court. The rules cover such matters as who may be named as parties to a court action, the information which must be contained in a complaint, the issues which must be raised, time limits for filing certain court documents, and others. “Rule 80(B)” refers to a rule of Civil Procedure governing appeals from decisions made by local officials.

Supra indicates that the court case has been cited previously.

Tort means an injury to a person or a person’s property which is the result of an action which is not a criminal act and which is not based on a contractual relationship.

Note: Copies of the Maine statutes may be available at the town office or city hall. The statutes, court cases, and court rules of procedure also are available at the State Law Library, University of Maine law school library and possibly at the county courthouse. They are also available online. The website address for the Maine statutes is

www.mainelegislature.org/legis/statutes. To access Maine Supreme Court cases from 1997 to the present, go to www.courts.state.me.us. Some Superior Court cases are available at: <http://webapp.usm.maine.edu/SuperiorCourt/>.

CHAPTER 1 – Creation, Qualifications, and Liability

The powers and duties of local planning boards are governed by the provisions of State statutes, local ordinances and, in some cases, town or city charters. A planning board cannot take any legally enforceable actions unless it has been formally created and unless the action which the board wants to take is specifically or implicitly authorized by a statute, ordinance, or charter provision. *Cf., Clark v. State Employees Appeals Board*, 363 A.2d 735 (Me. 1976). *Compare, Fisher v. Dame*, 433 A.2d 366 (Me. 1981). Board members should be sure that the board was created properly and should be familiar with the ordinances and statutes they will be using before trying to take any official action.

Creation of a Planning Board

The laws pertaining to the establishment of a planning board have been modified several times over the years. In order to determine whether a board was created legally, it is important to know when it was created and how the law read at that time.

Boards Created Between 1957 and 1971

Between 1957 and September 23, 1971, 30 M.R.S.A. §§ 4952 to 4957 of the Maine statutes (Chapter 405 of the 1957 Public Laws) governed how a city or town created its planning board, who could serve on the board, and the board's various powers and duties. (See Appendix 1). According to section 4952(1), the legislative body of the municipality (i.e., the town meeting or town or city council) had the authority to establish a planning board and the municipal officers (i.e., selectpersons or council) made appointments to the board. The board consisted of five members and two associate members serving five year staggered terms who elected a chairperson and secretary from the membership. Associate members could vote only if designated to do so by the chairperson because a voting member was absent or had a conflict of interest. The municipal officers could appoint someone to fill a permanent vacancy for the remainder of the term. A municipal officer could not serve on the board either as a member or an associate.

If a municipality voted at a town meeting to create a planning board under one of the old planning board statutes, the clerk's records should include a vote approving a warrant article similar to the following: "To see if the Town will vote to establish a Planning Board pursuant to 30 M.R.S.A. § 4952."

In 1971, the Legislature repealed or revised the planning and zoning sections of Title 30 (which took effect on September 23, 1971). According to 30-A M.R.S.A. § 4324(2)(A), if a planning board was created pursuant to the repealed provisions of 30 M.R.S.A. § 4952(1), it can continue to function as a legally constituted planning board under that section until the

municipality decides to adopt a new ordinance or charter provision changing the composition of the board or its method of selection.

Boards Created After September 23, 1971

At the same time that the Legislature repealed section 4952 in 1971, it enacted 30 M.R.S.A. § 1917 (now 30-A M.R.S.A. § 3001), known as the “home rule” statute. Section 3001 provides authority for a municipality’s legislative body to adopt a “home rule” ordinance establishing a planning board. A sample ordinance and the procedure for adopting it are included in Appendix 1. This ordinance may be used to establish a new board or to reestablish one which was created under the old statutes, but it should be revised where necessary to meet the particular needs of the town or city adopting it. The Legislature repealed the old planning board statutes to allow municipalities to have more flexibility in creating a planning board which would meet local needs. Such things as the number of members and term of office can now be determined through an ordinance rather than by statute.

A new planning board also may be created in municipalities which have a charter by amending the charter using the home rule charter procedures found in 30-A M.R.S.A. § 2104 and 2105 and Article VIII, part 2, § 1 of the Maine Constitution. Generally, the charter provision would be supplemented by a more detailed ordinance.

Boards Created Before 1957

Boards created before 1957 will need to refer to one of the following public laws, depending on when the board was formed: (1) Chapter 5, § 137 et seq. of the 1930 Revised Statutes; (2) Chapter 80, § 84 et seq. of the 1944 Revised Statutes; or (3) Chapter 91, section 93 et seq. of the 1954 Revised Statutes.

Ordinance or Article Wording

It is important to remember that a planning board has no authority to act as an official arm of municipal government unless it has been legally established by one of the methods described above. After September 23, 1971, a simple article in the warrant, such as “To see if the town will vote to establish a planning board,” is not a sufficient procedure by itself to create a board because it leaves unanswered questions such as the number of board members and their terms of office. Nor is a provision in the town’s shoreland zoning ordinance or other ordinance which simply states that a board is established “as provided in State law” sufficient to create a legal board. Sample ordinances to establish a board and to reestablish one which was improperly created and sample warrant article wording to adopt the ordinance appear in Appendix 1.

Elected Board Members

A number of Maine towns have established elected planning boards. If a municipality has an appointed planning board and wants to change to an elected board, it must enact an ordinance or charter provision which provides that the appointed board will be phased out by replacing the appointed members with elected members as the terms of the appointed members expire. See generally, McQuillin, *Municipal Corporations* (3rd ed. rev.), §§ 12.117-12.119, 12.121. If the positions are to be filled by written ballot election from the floor at an open town meeting, the ordinance or charter provision must be adopted at least 90 days prior to the annual meeting at which the first election will occur. 30-A M.R.S.A. § 2525. If election will be by secret (pre-printed) ballot, then the ordinance or charter provision must be adopted at least 90 days prior to the annual election at which it will take effect. 30-A M.R.S.A. § 2528. The enactment of a charter provision also must conform to 30-A M.R.S.A. §§ 2101-2109. The “90-day” rules described above also apply where an elected board is being changed to an appointed one. In 2017, the Legislature extended the filing deadline for nomination papers from 45 days prior to the date of the election to 60 days prior to the date of the election, which means nomination papers now must be made available 100 days prior to the election (P.L. 2017, ch. 249, § 9). Municipalities should consider holding a vote on whether to change from an appointed to elected board, or vice versa, at least 100 days prior to the annual town meeting at which it will take effect to ensure compliance with the new nomination paper timeframe.

Qualifications for Office

Age, Residency, Citizenship

Title 30-A M.R.S.A. § 2526(3) states generally that a person must be 18 years old, a resident of the State, and a U.S. citizen to hold a municipal office. Most municipal officials, including planning board members, do not have to be registered voters or legal residents of the town or city in order to serve in an elected or appointed position, unless required by local charter; the selectpeople or Council and school board members are the exceptions to this rule under State law.

Oath

Whether a board member is elected or appointed, he or she must be sworn into office by someone with authority to administer oaths, such as the clerk, the moderator (if during open town meeting), a notary public, dedimus justice, or an attorney, before performing any official duties as a board member. 30-A M.R.S.A. § 2526(9). The oath must be taken at the beginning of each new term. It does not need to be administered each year if a member is serving a multi-year term.

Incompatible Positions

A person serving on the planning board may not hold another office which is “incompatible” with the planning board position. Two offices are “incompatible” if the duties of each are so inconsistent or conflicting that one person holding both would not be able to perform the duties of each with undivided loyalty. *Howard v. Harrington*, 114 Me. 443, 446 (1916); McQuillin, *Municipal Corporations* (3rd ed. rev.), § 12.67. An example of incompatible positions would be if one person served on both the planning board and zoning board of appeals, since the same person would be involved in making the initial decision and then deciding whether that decision was correct on appeal. [One Superior Court justice has held that it also is not legal for a husband to serve on the planning board and his wife to serve on the appeals board. *Inhabitants of Town of West Bath v. Zoning Board of Town of West Bath*, CV-91-19 (Me. Super. Ct., Sag. Cty, May 7, 1991).] The positions of an appointed planning board member and selectperson probably are incompatible, since the board of selectpersons has the power to remove an appointed planning board member for just cause under 30-A M.R.S.A. § 2601. For a planning board established under the old planning board statute, 30 M.R.S.A. § 4952 prohibited a municipal officer (a selectperson or councilor) from being a member or associate member of the planning board. The positions of local plumbing inspector and local code enforcement officer also may be incompatible with the position of planning board member if the planning board generally must pass judgment on a decision of the LPI or CEO in the process of making its own decision regarding an application or a violation of the ordinance. Not all attorneys agree that the positions of CEO or LPI are probably incompatible with the office of planning board member. Likewise, not all agree that the offices of selectperson or councilor are incompatible with the office of appointed planning board member where the planning board was created under a home rule ordinance rather than the old planning board statute. There appear to be no Maine court cases directly addressing this incompatibility issue.

The courts have ruled that, in accepting and taking an oath for an office which is incompatible with one already held the person automatically vacates the first office as though he or she had actually resigned it. *Stubbs v. Lee*, 64 Me. 195 (1914); *Howard v. Harrington*, *supra*.

Vacancy

As a general rule, when a permanent vacancy occurs in an appointed planning board position, the municipal officers have the authority to fill the vacancy for the remainder of the term. 30-A M.R.S.A. § 2602. The ordinance or charter provision creating the board should define what constitutes a “permanent vacancy” using § 2602 as a guide and adding other items, such as repeated absences. If a vacancy occurs on an elected planning board, the municipal officers may either appoint someone to fill the vacancy for the remainder of the

term or leave the position unfilled, if there is no ordinance or charter provision to the contrary, but they do not have the authority to fill the position by calling an election. 30-A M.R.S.A. § 2602; *Googins v. Gilpatrick*, 131 Me. 23 (1932).

If the term of office of a board member expires and neither the person holding the office nor another person has been appointed or elected to fill the position, it is arguable that the person who was serving in that position (i.e., the incumbent) may continue to hold office under the previous term until he or she has been reelected or reappointed or until another person has been chosen and sworn in. An incumbent board member who continues to serve under those circumstances would be what is called a “de facto” member of the board. McQuillin, *Municipal Corporations* (3rd ed. rev.), §§ 12.102, 12.105, 12.106. However, the legal basis for this “holdover” theory is stronger where an elected board is involved. To be safe, it is advisable to have an ordinance or charter provision clearly authorizing a board member to continue to serve.

If board members are elected and the municipal officers fail to make a provision in the annual town meeting warrant and on the ballot for the election of a board member whose term was due to be filled at that election, the result would be a “failure to elect” a person for that position, creating a vacancy in that position under 30-A M.R.S.A. § 2602. The municipal officers have the authority to appoint someone to the position in that situation for the balance of the term. *Googins v. Gilpatrick*, *supra*.

Removal

If a planning board position is one which is filled by an appointment made by the municipal officers, then the municipal officers may remove that person for just cause, after notice and hearing. 30-A M.R.S.A. § 2601. “Just cause” means a legally justifiable reason, such as a blatant disregard for the law. It probably does not include a philosophical disagreement with decisions made by the board or personality conflicts. An elected board member cannot be removed from office either by the municipal officers or the voters prior to the expiration of his or her term unless the municipality has adopted a recall provision by charter or by ordinance or unless authorized under the recall provision in state law, which provides a recall process for removal of municipal officials in certain limited circumstances. 30-A M.R.S.A. §§ 2602 and 2505.

Alternate Members of the Board

It is advisable to create one or more alternate or associate member positions by ordinance. Use of alternates can minimize attendance problems which many boards experience. It can also serve as a training ground for future full voting members. Before a person may legally

be designated as an alternate or associate member, the position must be established by vote of the legislative body.

Liability of Board Members

Nonperformance of Duty

Title 30-A M.R.S.A. § 2607 states that a municipal official can be personally liable for a \$100 fine for neglecting or refusing to perform a duty of office. An example of neglect or refusal is where a person files an application with the board and the board refuses to call a meeting or continually tables action without a valid reason in the hope of discouraging the applicant.

Maine Tort Claims Act

- ***Individual Board Members Generally Immune.*** The exceptions to liability found in 14 M.R.S.A. § 8111 generally protect a planning board member from personal liability and having to pay monetary damages to an injured party. The statute provides immunity from liability for an action or failure to act which falls into one of the following categories: “quasi-legislative” (for example, adoption of bylaws or procedures); “quasi-judicial” (for example, granting or denying a permit); “discretionary” (for example, an ordinance provision which gives the board discretion whether to conduct a site visit or whether to conduct a public hearing); or intentional, as long as the board members acted in good faith and within the scope of their authority (for example, where a board member comments at a board meeting about the quality of work submitted by one of the applicant’s experts). The statute also provides immunity from claims based on the performance or failure to perform an administrative enforcement function.
- ***Individual Liability for Negligence.*** Under 14 M.R.S.A. § 8104-D, an individual board member may be personally liable for his/her negligent or intentional act or failure to act if the act is ministerial (not involving any discretion), is an intentional act not undertaken in good faith, or is outside the scope of his/her authority. A possible example of a negligent act is where the board approves a permit for a use which is expressly prohibited by the ordinance governing the board’s review. An example of an action outside the scope of authority of a board member is where a board member is consulted by a member of the public about whether a certain permit is needed for a project, the board member provides advice which is wrong, and the person relies to his detriment on that advice. In order to recover damages as compensation for negligence, the person would have to show that he or she was injured and that the board member’s negligence was the cause of the injury and not something else, such as the person’s own negligence.

- Municipal Liability and Immunity; Defense/Indemnification of Board Members.*** Generally, the municipality will be immune from liability under the Tort Claims Act when a suit is brought against the board based on a decision by the board, since the municipality's liability must be tied to one of the categories in § 8104-A of the statute, all of which relate to negligence in connection with municipal equipment, buildings, pollution, or public works projects. However, § 8112 of the Act generally requires the municipality to provide insurance or to pay attorneys fees and damages on behalf of each of the board members in an amount up to \$10,000 (the statutory limit on personal liability) in cases where a board member is found liable for negligence. Where the members of the board are criminally liable, where they act in bad faith, or where they act outside the scope of their authority, they may be required to pay their own attorney fees and damages; these damages may exceed the \$10,000 cap under the Tort Claims Act and may be beyond the coverage of the town's public officials liability insurance. Generally, a municipality will stand behind its board members and pay such costs either by providing insurance or by appropriating money for that purpose, except where a board member is guilty of conduct in bad faith which is outside his or her authority and which the municipality does not want to condone. Examples of such conduct are physical assault of an audience member or repeated unilateral acts by a board member without majority approval.
- Notice of Suit.*** Board members who are sued under the Tort Claims Act should notify the town or city manager (if any) or the municipal officers immediately, since an insurer may deny defense and coverage for lack of timely notice. Members should refrain from commenting publicly about the suit.

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).

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 for the first violation, \$1,000 for a second violation within four years and \$2,000 for a third violation within four years. 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

Title 5 M.R.S.A. § 95-B requires municipal boards and officials to comply with regulations adopted by the State Archives Advisory Board when destroying or disposing of public records. Those regulations set out specific retention periods for many public records and establish a general rule of indefinite retention for records not expressly covered. They are available on the State of Maine’s website at <http://www.maine.gov/sos/arc/records/local/localschedules.html>. Any person who violates those rules is guilty of a Class D crime. Section 95-B also requires boards and officials to protect the public records in their custody from damage or destruction. An official who leaves public office has an obligation under this statute to turn over any public records in his or her possession to his or her successor.

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. § 408-A. 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 or other designated local official must acknowledge a request to inspect and/or copy public records within 5 working days of receiving the request and may request clarification concerning which public record or records are being requested. 30-A M.R.S.A. § 408-A(3). The record itself must be provided to the requestor for inspection or copying within a reasonable time of receiving the request, which may be longer than the 5 working days timeframe for providing the acknowledgement. Although a request need not be made in writing, the custodian should acknowledge the request in writing if possible. The acknowledgment must include a good faith, non-binding estimate of the time within which the appropriate official will comply with the request.

If an elected planning board member receives an email from a constituent that contains the following personal information, that information is confidential under 1 M.R.S.A. § 402(3)(C-1): personal medical information; credit or financial information; information pertaining to the personal history, general character or conduct of the constituent or member of his/her immediate family; material related to charges or complaints of misconduct or disciplinary action; the person’s Social Security number. Information which would be confidential in the possession of another public agency or official is also confidential if contained in a communication between an elected planning board member and a constituent.

CHAPTER 2 – The Decision-Making Process

The discussion which follows should be used by the planning board as a general guide in dealing with the applications that it must review. There may be provisions in a local ordinance which conflict with these general rules and which would control the board's decision, unless the board's attorney advises otherwise.

Forms

An important first step in establishing good decision-making procedures is the development of good application forms. The forms should let the applicant know what information the board wants and should require the applicant to sign the form once completed. Sample forms are included in Appendix 2. Others may be available from the regional planning commission or council of governments serving the area or from neighboring communities who have developed good systems of their own. Before using sample or borrowed forms, however, the board must review them carefully to be sure that they will fit the board's needs and be consistent with the town or city ordinance which governs the application. Application forms must be consistent with the requirements of the ordinance which governs the project. Application forms do not normally require the approval of the legislative body. The board generally has implicit authority to develop and use forms.

Bylaws/Rules of Procedure

In the absence of a local ordinance or charter provision to the contrary, any administrative board, like a planning board, can (and should) adopt written bylaws to govern non-substantive "housekeeping" matters. Such bylaws generally do not need to be approved by the legislative body. *In Re Maine Clean Fuels, Inc.*, 310 A.2d 736 (Me. 1973); *Jackson v. Town of Kennebunk*, 530 A.2d 717 (Me. 1987). This is because bylaws of this type are not the same as an ordinance. Examples of the kinds of things covered in bylaws are the election of officers, the time and place of meetings, how meetings are called and advertised, agenda items, and the rules of procedure that the board will use to run its regular meetings and public hearings, where not otherwise addressed in a State law, local ordinance or charter. Issues such as the number of members needed to constitute a quorum, the number of votes needed to approve a motion, the number of absences allowed before a position can be declared vacant, and the deadline for filing an appeal generally must be part of an ordinance or charter adopted by the legislative body rather than merely in bylaws approved by the board, unless the board's bylaws are simply stating a rule that already exists by virtue of a local or State law. 1 M.R.S.A. § 71. Sample bylaws and hearing procedures are included in Appendix 2. In adopting bylaws, the board should be careful to avoid conflicts with a local ordinance, charter, or State statute, such as the Maine Freedom of Access Act (1 M.R.S.A.

§ 401 et seq.) (see Appendix 2 for information on how to obtain a copy of MMA's Right to Know Law Information Packet).

A board created prior to 1971 should avoid conflicts between its bylaws and the old planning board statute (30 M.R.S.A. § 4952) (see Appendix 1 for a copy). Even though bylaws do not need the approval of the legislative body in most cases, the board may want to submit them for approval to avoid arguments that any portion of the bylaws exceeds the board's authority. In the absence of written bylaws, or where written bylaws do not address an issue, the board is free to fashion its own procedures, and the courts will defer to the board, as long as the procedure is fair and does not conflict with State, federal or local law. *Jackson v. Town of Kennebunk*, 530 A.2d 717 (Me. 1987).

Jurisdiction of the Board/Other Assignments

In a municipality which has established a planning board, 30-A M.R.S.A. § 4403 requires the planning board to serve as the municipal reviewing authority for subdivisions requiring local approval. Title 30-A M.R.S.A. § 4324 authorizes the municipal officers to appoint the planning board as a comprehensive planning committee, but the planning board does not automatically serve in that capacity. Where a new zoning ordinance or shoreland zoning ordinance or amendment is being proposed, 30-A M.R.S.A. § 4352 (9) and (10) require the planning board to conduct a public hearing on the proposal before it is scheduled for a vote of the legislative body. When property in the shoreland zone may be considered for designation as part of a Resource Protection District, 38 M.R.S.A. § 438-A (1-B) requires notice to be provided to the affected landowners at least 14 days prior to a vote by the planning board setting a public hearing date. Although the statute doesn't expressly require the planning board to send the notice, it is advisable for the board to familiarize itself with the requirements of this statute and coordinate compliance with it.

Most of the authority which the planning board exercises is vested in the board by one or more local ordinances, rather than by State statutes. General zoning or shoreland zoning ordinances, floodplain management ordinances, site plan review ordinances, and minimum lot size ordinances are some of the most common local ordinances requiring the planning board's approval for a variety of land use activities.

In some communities the planning board is asked by the municipal officers to perform other tasks not required of the board by any statute or local ordinance or charter. Planning boards are often asked to take the lead in preparing new ordinances or amendments. Their help also is sometimes enlisted to conduct studies on various issues. These are functions which the board is not legally required to perform, but it may do so if its workload permits.

Standing to Apply

If the ordinance or statute under which an application for a permit or other approval is being submitted does not state who has a sufficient legal interest in the property in question (i.e., “standing”) to apply for approval to conduct the project, the Maine Supreme Court has ruled that the applicant must be a person who has some “right, title, or interest” in the property. *Walsh v. City of Brewer*, 315 A.2d 200 (Me. 1974); *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40 (Me. 1983). This could include a property deed, a lease, a written option or contract to purchase the property. However, whether these documents/interests are sufficient for the purposes of conferring standing to apply for a permit to conduct a particular use will depend on the language of the document/deeded interest. The document/deed must give the applicant a “legally cognizable expectation” of having the power to use the property in the ways that would be authorized by the permit if approved. *Murray v. Town of Lincolnville*, *supra*. For example, where a person who had an easement for ingress and egress to a lake did not have a right to build and use a dock by virtue of the language of that easement, that person lacked standing to apply for a permit. *Rancourt v. Town of Glenburn*, 635 A.2d 964 (Me. 1993). See also, *Badger v. Hill*, 404 A.2d 222 (Me. 1979), and *Picker v. State of Maine Department of Environmental Protection*, AP-01-75 (Me. Super. Ct., Kenn. Cty., April 6, 2002) (restrictive covenant didn’t deprive landowner of standing to apply for permit and prove that he could conduct the proposed use within the restricted areas without violating the deed covenant). A title dispute will not automatically deprive a person of standing to apply for a permit. *Southridge Corp. v. Board of Environmental Protection*, 655 A.2d 345 (Me. 1995). Where property is jointly owned, all owners need not be parties to the application in order for the “standing” test to be met. *Losick v. Binda*, 130 A.537 (NJ 1925). If an applicant relies on a written option to purchase as the basis for standing to apply and then allows the option to lapse, such a lapse would allow the board to find that the applicant no longer has standing. *Madore v. Maine Land Use Regulation Commission*, 1998 ME 178, 715 A.2d 157. The board should reject an application if it determines that the applicant does not have standing to apply. The burden is on the applicant to present written evidence sufficient to satisfy the board. If the person filing the application is acting as the authorized agent of the owner, that person should give the board a written letter of authorization signed by the owner.

This standing test governs people who are seeking approval of an application for a permit, conditional use, variance or other land use approval from a board or official who has the initial authority to grant such a request. The courts have established a different “standing” test for people who want to appeal such a decision. That test is discussed in Chapter 3 of this manual.

Freedom of Access Act (Right to Know Law)

General

Under the Freedom of Access Act (FOAA) (also known as the “Right to Know Law”) (1 M.R.S.A. § 401 et seq.), the public has a right to be present any time the board or a subcommittee of the board (comprised of three or more members) meets, even if the meeting is just a “workshop” or a “strategy meeting.” Any meeting of a majority of the full board at which the members will discuss official business or vote must be preceded by public notice. The same is true for subcommittees of the board comprised of three or more members; some attorneys are of the opinion that a subcommittee of any size is governed by the public notice requirements if the body which has designated the subcommittee is itself comprised of three or more members. *Lewiston Daily Sun v. City of Auburn*, 455 A.2d 335 (Me. 1988). This law also gives the public the right to tape, film, take notes, or otherwise make a record of the meeting without first seeking permission, as long as it is done in a non-disruptive manner. It does not guarantee the public a right to speak. The right to speak generally is guaranteed only where a meeting has been advertised as a public hearing, absent a local ordinance or bylaw to the contrary.

Notice of Meetings

The Freedom of Access Act itself does not require that a meeting agenda be posted and does not specify the form or amount of the notice which must be used to publicize the meeting. The law does require notice of non-emergency meetings to be given in a manner reasonably calculated to inform the public far enough in advance of the meeting to allow the public to make plans to attend. In some communities, this may mean newspaper notice of some sort and in others posting notice around town may be enough. Giving notice of regular meetings and special meetings about a week before the meeting is advisable. If the meeting is an emergency meeting, the Freedom of Access Act requires the board to notify a media representative using the same or faster means as are used to notify board members, rather than giving notice to the public as described above. If no media representative attends, that doesn’t make the meeting illegal. Be sure to document how, when and who from the media was notified. If the meeting in question is a regular board meeting and notice of the board’s regular meeting schedule was given in the annual town report, such notice might be enough for the purposes of the Freedom of Access Act in some towns. However, it probably would be safer to post a notice of regular meetings in a readily-accessible public place, such as the town office public bulletin board or the Post Office or a local store, and leave it up indefinitely. Local ordinance or charter provisions may impose more specific and more stringent notice requirements.

Board Member Discussions/Email

To avoid violations of the Freedom of Access Act (FOAA) and the constitutional right to due process, board members should not have discussions with other board members regarding an application or other substantive board business outside an advertised board meeting. The FOAA requires discussion, deliberation and voting by the board to be done at a public meeting so that the public can hear and observe what is said and done by the board. Discussion between board members about board business outside a public meeting should not occur, whether or not a majority of the board is involved, and whether or not the discussion occurs by phone, by email, at a sports event or grocery store or after the board meeting is adjourned. Any such communications should be limited to non-substantive issues; for example, calling or emailing board members to set a meeting date or agenda items. Delivery of substantive information between meetings by email may be permissible as long as it is a one-way communication and no discussion of the information occurs outside the meeting by email or otherwise. The email should expressly state that the attached information is for discussion at the next board meeting, should invite board members to review and think about it, and should caution board members not to discuss it before the public meeting. The email and attachments should be noted in the record of the next board meeting and all parties should be given access to the information and provided a reasonable opportunity to review it and offer comments. See *Duffy v. Town of Berwick*, 2013 ME 105, 82 A.3d 148, for a case involving these issues.

Title 1 M.R.S.A. § 401 states that the FOAA “does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes” of the FOAA. Best practice is to avoid any substantive discussions of matters presently before the board or anticipated, whether the discussion relates to an application review, ordinance drafting or other substantive board work.

Executive Sessions

One exception to the rule that meetings are open to the public is where the board wants to consult with its lawyer in executive session “concerning the legal rights and duties of the (board), pending or contemplated litigation, settlement offers, and matters where (the attorney/client privilege between the board and its lawyer would be jeopardized) or where premature public knowledge would clearly place the municipality at a substantial disadvantage.” To fall within this exception, the board’s attorney should be at the meeting, either in person or by telephone conference call. Section 405 of the Freedom of Access Act only allows the board to conduct a discussion with its attorney in an executive session and only if the board (1) takes a vote to go into executive session during a public meeting which was preceded by public notice, (2) follows the procedures in Section 405 for making the motion and taking that vote, and (3) does not make any final decisions in executive session. In *Underwood v. City of Presque Isle*, 1998 ME 166, 715 A.2d 148, the court found that the

planning board had conducted impermissible discussions about the merits of the land use proposal which it was reviewing while in executive session with its attorney to receive advice regarding the board's legal rights and duties. The court noted that "it may be difficult at times for a board convening in executive session (with its attorney) to determine when its permissible consultation with counsel has ended and impermissible deliberations on the merits of a matter have begun. We cannot offer any bright line to eliminate that difficulty. We can, however, remind public boards and agencies of the Legislature's declaration in the (Freedom of Access Act) that 'their deliberations be conducted openly,' and that the (law) 'be liberally construed...to promote its underlying purposes.' Consistent with these declarations, any statutory exceptions to the requirement of public deliberations must be narrowly construed. The mere presence of an attorney cannot be used to circumvent the (Freedom of Access Act's) open meeting requirement." Section 405 authorizes other subject matter to be discussed in an executive session, but those other subjects generally are not relevant to planning boards.

Common Violations

Practices which violate the Freedom of Access Act include the following:

- polling board members by telephone to vote on or discuss an application;
- taking an application house to house to have it approved or leaving it at the town office for board members to review and sign individually rather than by a public vote of the board;
- chance meetings between board members and/or with private citizens at the grocery store or a private party at which they discuss an application, especially where a majority of the board is involved in the discussion;
- making decisions in a "closed door" meeting or excluding the public when not authorized by law;
- conducting discussions about board business or making decisions by e-mail.

Site Visits

If a majority of the board is going to visit the site of a proposed project, the board should be aware that such on-site meetings are meetings which must be preceded by public notice and at which the public has a right to be present under the Freedom of Access Act. Site visits conducted by individual board members or by a subcommittee comprised of less than a majority of the full board arguably would be legal and would not be subject to the public notice requirements of the law. However, site visits by individual members or by subcommittees of less than a majority of the full board can raise due process problems

which the board may wish to avoid, especially where the site visit occurs after the board has closed its record to additional public comment and has begun to make its decision. Compare, *City of Biddeford v. Adams*, 1999 ME 49, 727 A.2d 346, and *Fitanides v. Lambert*, CV-92-662 (Me. Super. Ct., York Cty., July 30, 1992), with *Armstrong v. Town of Cape Elizabeth*, AP-00-023 (Me. Super. Ct., Cum. Cty., Dec. 21, 2000). Many private municipal attorneys advise the municipal boards that they represent that site visits conducted by less than a majority of the board should never occur and insist that the board only conduct site visits as a public meeting of a majority of the board. See generally, *Fitanides v. City of Saco*, 684 A.2d 421 (Me. 1996).

During a site visit which is conducted by less than a majority of the board and not as part of a public meeting recorded in board minutes, the individual board members have an obligation not to discuss substantive issues about the site or the application with each other, the applicant, or anyone else. Nor should the applicant or anyone else be conducting demonstrations to prove a point which might be in controversy about the application. Such discussions or demonstrations would constitute illegal *ex parte* communications and would cause due process problems for the parties not present. The individual board members also need to be sure to note for the written record at the next board meeting the fact that a site visit was conducted and what information the visit generated that might affect the visiting board member's vote on the application. If a site visit is conducted by less than a majority of the full board after the board has closed the record to further public comment, the information gathered during the visit cannot be used by the board unless it reopens the record and allows public comment. *Adams, supra*. See generally, *Duffy v. Town of Berwick*, 2013 ME 105, 82 A.3d 148. It is crucial that the ultimate findings and conclusions prepared by the board in making its decision address the evidence from the site visit and that the findings in general are sufficiently detailed to allow a court to determine how the board evaluated all the evidence. *In Re: Villeneuve*, 709 A.2d 1067 (Vt. 1998).

Even if the board members do all of this, an applicant or someone opposing the project still could try to challenge a site visit not conducted as a board as a violation of his/her due process rights if he/she was not at the site to observe whether there were any improper *ex parte* communications. To avoid these due process challenges, the board may want to require that all site visits be done as a board with public notice under the Freedom of Access Act. If a board member is unable to attend a site visit, the board doesn't need to reschedule it. The board can publicly advise an absent member of what was observed during the site visit at the next board meeting and provide an opportunity for rebuttal by the applicant or some other interested person who disagrees with the board's description of the site.

Sometimes a board decides to conduct a site visit and sets a date for the site visit while it is at a public meeting on the application which will be the subject of the site visit. It arguably is enough for the purpose of giving notice under the FOAA for the board to announce the

date, time and place of the site visit without also providing additional public notice by some other means, if the announcement is made at a meeting which itself complied with FOAA notice requirements. However, to be safe, the board also should provide notice to the public in the manner usually followed, for the benefit of the people who were not at the meeting where the site visit is announced.

Site visits conducted as a board meeting by a majority of the board essentially are using that private property as a public meeting space. As such, the protections afforded by the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.) should protect the municipality as well as the landowner, provided the owner has not deliberately created a hazardous situation. If a site visit will occur on certain types of commercial or industrial property that present greater hazards to visitors, it may be wise for the owner and/or board to assign staff to serve as safety monitors and steer board members and members of the public away from dangerous situations.

When the board conducts a site visit as a board with a majority of members present, the board chair should attempt to keep people together during the site visit (both board members and anyone else attending) and should caution board members against talking privately amongst themselves, with the applicant, or with others. The secretary should attempt to take notes of the visit, including any questions asked and responses given. Questions may be asked during the site visit, but it is best for the board to conduct any discussions and deliberations after returning to the meeting room.

Additional Information

For more information about the FOAA, see MMA's "Right to Know Law" information packet online at www.memun.org.

Board Records

All board records are public records under the FOAA, unless a particular record is made confidential by a specific statute or is governed by a court order protecting it from public inspection. 1 M.R.S.A. § 402. This is true regardless of the form in which they are maintained (paper records, audio or video tapes, CDs, electronic files, email) and regardless of whether they are still in "draft" form. Any member of the general public has a right to inspect and copy public records of the board at a time which is mutually convenient. If a person requests a copy of a public record, the municipality may charge a reasonable fee. The law also establishes guidelines under which a municipality may charge for the time involved in researching and retrieving records. 1 M.R.S.A. § 408-A. For more information regarding new requirements governing how to respond to requests for public information, see

1 M.R.S.A. §§ 408-A and 413 and MMA’s “Right to Know Law” information packet (available online at www.memun.org).

When a request for a copy of a record is received, the request must be acknowledged within 5 working days. Within a reasonable time of receiving the request, a good faith, nonbinding estimate of the time it will take to comply with the request must be provided, as well as a cost estimate; a good faith effort must be made to fully respond within the estimated time. If a requested record cannot be provided, a written denial of the request that states the reason for denial must be provided within 5 working days of the receipt of the request for the record. There is no requirement to create a record that does not exist. 1 M.R.S.A. § 408-A. If the board has a list of email addresses that it uses to send non-interactive meeting notices, updates and cancellations, those email addresses are not public records. 1 M.R.S.A. § 402(3). The board should refer any record requests to the municipality’s designated Public Access Officer for a response.

Board records must be protected from damage or destruction. 5 M.R.S.A. § 95-B. Retention periods and legal destruction methods are governed by the rules of the State Archives Advisory Board, which are available in hard copy or on the State’s website at <http://www.maine.gov/sos/arc/records/local/localschedules.html>. A record which doesn’t appear to be covered by one of the categories in the State rules must be retained forever, unless written permission is received from the State to destroy it sooner.

Title 1 M.R.S.A. § 403 requires that boards like the planning board make a record of each public meeting of the board within a reasonable time after the meeting and that the record be open to public inspection. At a minimum, the record must include (1) the time, date and place of the meeting, (2) the members of the body recorded as either present or absent, and (3) all motions and votes taken, by individual member if by roll call. A more detailed record is recommended, especially for a meeting at which the board received information about an application. An audio, video or other electronic recording of a public proceeding is deemed to satisfy this requirement.

Conflict of Interest; Bias; Family Relationships

Financial Conflict of Interest

This section discusses what is legally called a “conflict of interest.” It is a different type of “conflict” than the “incompatibility of office” rule discussed in Chapter 1 of this manual. This type of conflict involves a direct or indirect financial interest.

- ***Statutory Test.*** There are several tests of what constitutes a conflict of interest. One is established by statute in 30-A M.R.S.A. § 2605. The statutory test applies only to a board

member who (1) is an “officer, director, partner, associate, employee or stockholder of a private corporation, business or other economic entity” which is making the application to the board or which will be affected by the board’s decision and (2) is “directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least a 10% interest in the business or other economic entity.” If a board member falls into one of the relationships listed in category 1 but does not have the 10% interest covered by category 2, then that board member does not have a financial conflict of interest as defined in § 2605.

- **Case Law Test.** For a board member whose conflict of interest is not governed by Title 30-A (because that board member does not fall within both categories discussed in the preceding paragraph), there is a common law (case law) standard defining activity which may constitute a conflict of interest. That standard is “whether the town official, by reason of his interest, is placed in a situation of temptation to serve his own personal interest to the prejudice of the interests of those for whom the law authorized and required him to act...” *Lesieur v. Inhabitants of Rumford*, 113 Me. 317 (1915), as cited in *Tuscan v. Smith*, 130 Me. 36 (1931).
- **Examples.** Under the statutory test, if a board member were an employee of a company which had a subdivision application before the board, there would be no legal conflict of interest requiring that board member to abstain unless he or she also had a 10% stock or ownership interest in that company. An example of an indirect conflict of interest controlled by the statute is where a board member owns a company which owns 10% of the stock of a private corporation which is making an application to the board. Under the case law test, a board member who is also the applicant would have a conflict of interest. A court probably would find that a board member also had a conflict of interest under that test where the board member is a real estate agent trying to sell the property which is the subject of the application and his or her commission on the sale hinges on whether the board grants approval of the proposed use. Likewise, if a board member is a secured creditor of the applicant whose security interest will be affected by the board’s decision on the application or an abutting property owner whose property value will be affected by the board’s action, a court might find that the board member has a common law conflict of interest. (Regarding a board member who is an abutter and whether he/she must abstain, see two articles from the May 2007 and June 2007 *Maine Townsman* magazine (“Ethics for Quasi-Judicial Boards” by Douglas Rooks and “Letter to the Editor” by Fred Snow), available on MMA’s website at www.memun.org. If someone from a board member’s family who lives with that board member and contributes to household expenses is employed by the person applying to the board for a permit, a court might find that a common law conflict of interest exists if approval or denial of the application will directly affect that family member’s job. See *Hughes v. Black*, 156 Me. 69, 160 A.2d 113 (1960).

- ***Failure to Abstain.*** If a board member who has a legal conflict of interest fails to abstain from the discussion and from the vote and fails to note the nature of his or her interest in the record of the meeting, a court could declare the board's vote void if someone challenged it. (This abstention and reason must be permanently recorded with the town or city clerk.) But see *Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30, 967 A.2d 702 (court refused to invalidate a 4-1 vote in 2005 in which the board chair had participated, even though the board later forced the recusal of the chair in connection with a 2007 vote).
- ***Appearance of Impropriety.*** Even if no legal conflict of interest exists, a board member would be well advised to avoid even the appearance of a conflict by abstaining from the board's discussion and vote. This practice will help maintain the public's confidence in the board's work. *Aldom v. Roseland*, 42 NJ Super. 495, 127 A.2d 190 (1956); 30-A M.R.S.A. § 2605. However, if abstaining where not legally required would deprive the board of a quorum, then abstaining is not recommended.
- ***Defined by Ordinance or Charter; Authority of Board to Determine.*** A municipality may define what constitutes a conflict of interest by local charter or ordinance. Even without such an ordinance provision, the courts have recognized that a board has general authority to determine whether one of its members has a legal conflict. Such a decision can be made either at the request of the affected board member or on the initiative of the rest of the board.
- ***Former Board Member Representing Clients Before the Board.*** Another conflict issue addressed by § 2605 arises in the situation where a board member who leaves the board attempts to represent a private client before the board. If the board member is trying to represent the client on a matter in which he or she had prior involvement as a board member, the statute establishes certain waiting periods before this representation would be legal. If the matter was completed at least one year before the board member left office, then there is a one year waiting period from the time the board member left. If the matter was still pending at the time the board member left and within one year of leaving, then the board member is absolutely prohibited from representing a client on that matter.
- ***Current Board Member Representing Clients Before the Board.*** Title 30-A M.R.S.A. § 2605 requires that a member of a board refrain from otherwise attempting to influence a decision in which that official has an interest. While it would not be reasonable to interpret this law as prohibiting a board member from abstaining and stepping down as a board member to present his/her own application to the board, it probably does prohibit a board member (including alternate members) from representing another applicant who is seeking the board's approval or some other party to the proceeding.

Bias

This section discusses a type of conflict that is based on a board member's state of mind or family relationship to a party to the application process.

- ***Bias Based on Blood/Marital Relation to Applicant or Other Party.*** Title 1 M.R.S.A. § 71 (6) states that a board member must disqualify himself or herself if a situation requires that board member to be disinterested or indifferent and the board member must make a quasi-judicial decision which involves a person to whom the board member is related by blood or marriage within the 6th degree (parents, grandparents, great-grandparents, great-great grandparents, brothers, sisters, children, grandchildren, great-grandchildren, aunts, uncles, great aunts/uncles, great-grand aunts/uncles, first cousins, first cousins once removed, first cousins twice removed, second cousins, nephews, nieces, grandnephews/nieces, great grandnephews/nieces). (See chart in Appendix 2)
- ***Bias Against a Party Based on State of Mind.*** Various court decisions also have established a rule requiring a board member to abstain from the discussion and the vote if that board member is so biased against the applicant or the project that he or she could not make an impartial decision, thereby depriving the applicant of his or her due process right to a fair and objective hearing. *Gashgai v. The Board of Registration in Medicine*, 390 A.2d 1080 (Me. 1978); *Pelkey v. City of Presque Isle*, 577 A.2d 341 (Me. 1990); *Moore, Inc. v. City of Westbrook*, AP-09-11 (Me. Super. Ct., Cum. Cty, March 23, 2010). [See discussion in *Grant's Farm Associates v. Town of Kittery*, 554 A.2d 799, 801, fn. 1 (Me. 1989) where the developer alleged that proceedings were tainted by the board's predisposition against development of the site, but the court found that there was ample record evidence to support the board's decision to deny approval.] [See also, *Widewaters Stillwater Co. LLC v. City of Bangor*, AP-01-16 (Me. Super. Ct., Pen. Cty., May 30, 2001), where the court refused to find that a letter written in support of a zone change constituted evidence of a board member's bias regarding the application which was being reviewed by the board.] See also *Walsh v. Town of Millinocket*, 2011 ME 99, 28 A.3d 610, where the Maine Supreme Court held that the discriminatory state of mind of one board member tainted the entire proceedings because it was the motivating factor for the board's decision.
- ***Burden of Proof; Examples.*** The burden of proving bias is on the applicant. *In Re: Maine Clean Fuels, Inc.*, 310 A.2d 736 (Me. 1973). If a board member reaches a conclusion based on the application and other information in the record and expresses that opinion to the press before the board has voted, a court probably would not find that the board member was biased against the project. This also would be true where a board member had expressed an opinion regarding the proper interpretation of an applicable

ordinance or statute. Cf., *New England Telephone and Telegraph Co. v. Public Utilities Commission*, 448 A.2d 272, 280 (Me. 1982) and *Northeast Occupational Exchange, Inc. v. Bureau of Rehabilitation*, 473 A.2d 406, 410 (Me. 1984). However, if, for example, the applicant could show (1) that the board member had a personal grudge against him because they were involved in a lawsuit relating to another matter or (2) that the board member in question had repeatedly stated that he personally found all projects of that type to be offensive and had stated further that there was no way that he (the board member) would ever vote to approve any project of that type, or (3) that prior to becoming a board member, the member in question had testified against the application in earlier planning board proceedings, a court probably would view the board member as biased. *Pelkey, supra*.

- ***Investigations Conducted by Board Members; Preparation of Memo for Board's Consideration.*** Sometimes board members want to collect information to help the board make its decision rather than relying solely on information presented by the applicant or other parties. Such a practice could be viewed as evidence of bias on the part of that board member, so probably should be avoided except where publicly authorized by a vote of the board. See, *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202. If a board member does engage in such conduct, he or she should be sure that it is done in an objective way and that any information collected is entered into the board's record. The board should provide an opportunity for the applicant and members of the public to respond. 18 A.L.R.2d 562. See, *City of Biddeford v. Adams*, 1999 ME 49, 727 A.2d 346, *In RE: Villeneuve*, 709 A.2d 1067 (Vt. 1998), and *Duffy v. Town of Berwick*, 2013 ME 105, 82 A.3d 148.

The Maine Supreme Court has held that it is legally permissible and not evidence of bias for a board member to review materials submitted by the parties in advance of the board's meeting and prepare a memo or an outline of issues and potential findings in order to assist the board in consideration of matters that might arise at the board's meeting. *Turbat Creek Preservation, LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489.

- ***Local Ordinance Definition of Bias; Authority of Board to Decide.*** As with conflict of interest, a municipality may attempt to define what constitutes bias through a provision in a local ordinance. In the absence of an ordinance, the board may decide.

How the Affected Board Member Should Handle a Conflict or Bias

What does a board member do if a conflict or bias arises? If a process is spelled out in board bylaws or rules of procedure, the board member should follow that. If none, the member should make full disclosure for the record of his or her financial interest in the matter or any

bias which might prevent him or her from being impartial in the matter before the board. The board member must abstain from any further discussion and voting as a board member on that matter. *Burns v. Town of Harpswell*, CV-90-1083 (Me. Super. Ct., Cum. Cty., July 10, 1991). After making these disclosures, if the board member wants to participate as a member of the public, he/she should leave his/her place at the decision-making table and take a seat in the audience.

If a board member does not believe that he or she has a conflict or bias but other members of the board disagree, the board may vote on that issue; the member with the alleged conflict or bias must abstain. *State Taxpayers Opposed to Pollution v. Bucksport Zoning Board of Appeals (and AES-Harriman Cove, Inc. v. Town of Bucksport)*, CV-91-217 and 92-41 (Me. Super. Ct., Han. Cty., January 21, 1993). If the board finds that a conflict or bias does exist based on the facts, then the board may order the conflicted or biased board member not to participate as a member. If a board member thinks that he or she may have a conflict or bias which would legally disqualify him or her but isn't sure, that board member may ask the rest of the board to consider the facts and vote on the matter. *Adelman v. Town of Baldwin*, 2000 ME 91, 750 A.2d 577.

Participation by a board member with a legal conflict of interest or bias may taint the board's decision and cause a reviewing court to remand for a new hearing. A board should address issues of conflict and bias early on in the process of reviewing an application.

Conducting the Meeting

Scheduling a Meeting; Notice Requirements; Agenda

When the board receives an application, the board chairperson should set up a public meeting at which the applicant can present his or her application and discuss it with the board. If the board does not meet on a regular basis or if the board's next regular meeting will not fall within a specific decision-making deadline established in the board's bylaws or in the ordinance or statute which requires the board to review the project, then the chairperson should arrange a special meeting within a reasonable time. Notice of the meeting time and place should be given to the applicant and to any other people (such as abutters) whom the board may be required to notify by the relevant statute, ordinance or bylaws of the board. For example, the Municipal Subdivision Law requires that abutters receive notice when a subdivision application is filed with the municipality. 30-A M.R.S.A. § 4403. The board also should give reasonable notice to the public and press, as required by the Freedom of Access Act or relevant local ordinance, charter provisions, or other State law.

There are a number of Maine statutes which require that notice of a public hearing be given by publication in a newspaper of general circulation. The Municipal Subdivision Law (30-A M.R.S.A. § 4403), the Junkyard and Automobile Graveyards Law (30-A M.R.S.A. § 3754), and the statute governing zoning ordinance amendments (30-A M.R.S.A. § 4352) are examples. Title 1 M.R.S.A. § 601 governs notices that must be published in the newspaper and establishes the following requirements, unless ordered otherwise by a court:

- The newspaper must be printed in the English language;
- It must be entered as second class postal matter in the United States mail at a post office; and
- It must have general circulation in the vicinity where the notice is to be published.

Any legal notice, legal advertising or other matter required by law to be published in a newspaper must appear in all editions of that newspaper.

There is no statute requiring that notice be given to the municipal code enforcement officer. Public drinking water suppliers must receive notice that an application has been filed in the following situations: (1) a junkyard, automobile graveyard, or auto recycling business which is located within a source water protection area of a particular public drinking water supplier as shown on maps prepared by the Department of Health and Human Services (DHHS) (30-A M.R.S.A. § 3754); (2) an expansion of a structure using subsurface wastewater disposal where the lot is within a mapped drinking water source protection area (30-A M.R.S.A. § 4211(3)(B)); (3) a proposed land use project which is within a mapped source water protection area, is reviewed by the planning board, and notice to abutters is required as part of that review (30-A M.R.S.A. § 4358-A); and (4) a subdivision which is within a mapped source water protection area (30-A M.R.S.A. § 4403(3)(A)). A sample notice form is included in Appendix 2 of this manual. Contact the Public Drinking Water Program at DHHS for more information about their mapping program and what constitutes a “public drinking water supply” (287-2070) or go to www.medwp.com.

Even if the chairperson believes that the board has no jurisdiction over an application that has been submitted for the board’s review and approval, the chairperson still must schedule an initial board meeting on the application in order for the board to make that decision by majority vote. The chair cannot simply refuse to call the meeting, refuse to place the item on the agenda, or require the applicant to withdraw the application.

No State law requires that an agenda be part of any posted or published notice. Whether the agenda must be included in the notice will depend on any applicable local requirements. In any case, it is recommended that a board use a printed agenda to govern its meetings and

that a category called “other business” be included. Where a local ordinance required published notice to include an agenda, one judge has held that the agenda and notice cannot be misleading and therefore the board could not legally entertain an application that was not listed with others on the agenda. *Reardon v. Inhabitants of Town of Machias*, AP-99-014 (Me. Super. Ct., Wash. Cty., July 25, 2000).

In order to ensure compliance with the Americans with Disabilities Act (ADA) and to avoid discrimination based on national origin under Title VI of the Civil Rights Act, the meeting notice should invite people with disabilities or who have difficulties with the English language and who plan to attend the meeting to contact the municipality in advance of the meeting if they need a reasonable accommodation in order to participate, such as an interpreter or a person skilled in American Sign Language. The municipality will then request the information needed to determine exactly what kind of accommodation is necessary and reasonable for a particular individual and a particular meeting location.

Attendance by Applicant; Applicant’s Special Needs

As long as the applicant has received reasonable notice of the meeting at which his or her application will be discussed, it is not legally required that the applicant or an authorized representative of the applicant be present. A board which does not believe that it can make a decision without asking questions of the applicant or his/her agent should table further action until a future meeting and request that the applicant or his/her representative either attend the meeting or provide written answers to specific questions. If the applicant fails to do this or does not provide satisfactory answers, the board then can deny approval for lack of sufficient information relating to specific provisions of the relevant ordinance. The board has no legal authority to force an applicant to attend its meeting or to be represented by someone else.

A municipality should include a provision in its application materials that invites an applicant to notify the board or municipal staff regarding the applicant’s need for reasonable accommodations by the municipality based on a disability or language barriers. The municipality must then determine what is reasonably necessary and reasonably possible after consulting with its attorney.

Preliminary Business

The chairperson presides over all meetings of the board. He or she first calls the meeting to order. After doing so, the chair should follow the checklist below:

- ***Quorum; Rule of Necessity.*** The chair determines whether a quorum is present to do business. Generally, a majority of the total number of regular members of the board constitutes a quorum, unless a relevant ordinance establishes a different quorum

requirement. 1 M.R.S.A. § 71 (3). A member who must abstain due to a conflict of interest or bias may not be counted in determining whether a quorum is present for that issue, absent ordinance language to the contrary. *Fitanides v. City of Saco*, 684 A.2d 421 (Me. 1996); *Corpus Juris Secundum*, “Parliamentary Law,” § 6. However, if so many members are disqualified due to a conflict of interest, bias, or other legal reason that the board will not be able to meet its own quorum requirement, and there is no other body legally authorized to act, those members may be able to participate under a legal theory called “the rule of necessity.” *Northeast Occupational Exchange, Inc. v. Bureau of Rehabilitation*, 473 A.2d 406, 410-411 (Me. 1984); *New England Telephone and Telegraph Co. v. PUC*, 448 A.2d 272, 280 (Me. 1982). The board should consult with its attorney before applying the “rule of necessity” in order to determine whether some other alternative is possible, such as the creation of a special board to hear that particular case. See *Cyr v. Town of Wallagrass*, AP-00-14 (Me. Super. Ct., Aroost. Cty., March 1, 2001 and April 26, 2001), and *Dunnells v. Town of Parsonfield*, CV-95-515 (Me. Super. Ct., York Cty., February 7, 1997).

In order for a board member to participate in the board’s discussion and voting, he or she must be physically present. A board member should not be allowed to vote at a meeting by webcam, conference call, email, text message or similar written or electronic method. Proxy voting also is not legal and should not be permitted. For some legislative history on this issue, see the June 2016 *Maine Townsman* Legal Note “Update: Remote Participation in Board Meetings Not OK”.

- ***Use of Alternate Members.*** If alternate board member positions have been created by the legislative body, and if those positions have been filled, then the chairperson may designate an alternate to take the place of a regular voting member at a particular meeting when a regular member is absent or disqualified due to a conflict of interest or otherwise. (See related discussion later in this chapter entitled “Participation by Board Members Who Miss Meetings.”) An alternate who has not been designated to take the place of a regular member at a particular meeting is not legally a board member for the purposes of that meeting; the alternate is really no different than a member of the public, since he/she has no right to make motions, second them, or vote. It is safest from a due process standpoint to allow alternate members to make comments or ask questions only to the extent that members of the public are allowed to do this. Neither alternates nor members of the public should be allowed to make comments once the board has closed its record and begun its deliberations and decision-making process, unless the board is prepared to reopen its record and allow both comments and rebuttal. By treating alternates as members of the public for the purposes of their ability to participate in the board’s discussion, the board ensures that only voting board members are involved in making the findings and conclusions that are legally required for a decision on an application and will also make it easier for a judge to determine which board members’

comments and votes were legally relevant for the purposes of the final decision if it is appealed.

- ***Required Notices Given.*** The chairperson should indicate whether required notices of the meeting have been given to the press, abutters, or anyone else.
- ***Summarize Application.*** If a quorum exists, then the chairperson should summarize for those present the nature of the application and any documents submitted in support of or in opposition to the application.
- ***Jurisdiction.*** He or she also should indicate to the board which provisions of the applicable ordinance or statute give the board jurisdiction over the application.
- ***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.
- ***Standing.*** If the board decides that it does have authority to review the application, it also must decide whether the applicant has "standing" to apply. (See related discussion in this chapter and in Chapter 3.)
- ***Complete Application Submitted; Fees.*** The board must also determine as a preliminary matter whether the basic application form has been completed properly or whether there is information missing; this is not a substantive review of the information provided to determine whether the applicant has satisfied all the ordinance requirements. As part of this process, the board should determine whether required application fees have been paid. *Breakwater at Spring Point Condominium Assoc. v. Doucette*, AP-97-28 (Me. Super. Ct., Cum. Cty., Apr. 8, 1998). A board cannot impose additional fees to cover its costs after an application is filed, absent clear ordinance authority to the contrary. *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202.

If the board decides that the applicant has met these preliminary requirements, then it can proceed with its substantive review. Should the board determine that it does not have jurisdiction, that a complete application (including required fees) was not

submitted by the required deadline, or that the applicant lacks standing, the board should deny the application, expressly stating the reasons.

Procedure

At this point the chairperson should explain the rules of procedure which the board must follow during its meeting and the extent to which public comments and questions will be allowed. The chairperson, using the procedures adopted by the board or by the town, regulates the conduct of the meeting—recognizing members of the board and audience who want to speak, entertaining motions, ruling on the relevance of questions asked, and otherwise keeping the meeting in order if tempers start to flare, even to the extent of having an unruly person removed by a law enforcement officer. Sample procedures are included in Appendix 2. The Maine Supreme Court has recognized that boards generally have inherent authority to adopt their own rules of procedure. *Jackson v. Town of Kennebunk*, 530 A.2d 717 (Me. 1987). Board procedures do not need to provide an applicant with a full adjudicatory hearing complete with direct cross examination and rebuttals in order to satisfy due process requirements. *Fichter v. Board of Environmental Protection*, 604 A.2d 433 (Me. 1992). The rules should address the effect of a tie vote. *Stevenson v. Town of Kennebunk*, 2007 ME 55, 930 A.2d 1046. Unless an ordinance or the board’s rules say otherwise, the chairperson’s right to vote is not limited to breaking ties.

The Maine Supreme Court has upheld decisions made by planning boards following a vote to reconsider an earlier decision even though the board had not adopted rules of procedure governing reconsideration previously. The key is for the board to be fair and to act quickly before an applicant acquires “vested rights” under the original decision. *Jackson v. Town of Kennebunk*, 530 A.2d 717 (Me. 1987); *Anderson v. New England Herald Development Group*, 525 A.2d 1045 (Me. 1987); *Cardinali v. Town of Berwick*, 550 A.2d 921 (Me. 1988). However, the board must be careful to protect the due process rights of the applicant and other affected parties by giving them advance notice of the meeting at which the board will be discussing whether to change its earlier decision. The board should schedule a separate hearing on the merits with notice to all parties if reconsideration does not occur at the same meeting when the original decision was made.

Public Participation

- **General.** Unless a meeting has been advertised as a “public hearing,” members of the general public may attend and listen but have no statutory right to ask questions or offer comments under the Freedom of Access Act. If the board advertises a meeting as a public hearing, the general public must be given a right to speak. This means residents and non-residents, taxpayers and non-taxpayers. The board may adopt rules that give preference to residents and non-resident property owners, both in the order of presentations and the amount of time allotted. The Freedom of Access Act also allows

the public to take notes, tape record, film or make similar records of the meeting as long as it is not disruptive of the proceedings. No permission is needed from the board or other audience members for a person to do those things. The board may have bylaws or there may be a local ordinance requiring that the public be given at least a limited opportunity to speak at any planning board meeting. If there is no express provision requiring public comment, it still may be to the board's benefit to allow a reasonable amount of relevant comment and questions from the public, despite the fact that a particular meeting has not been advertised as a "public hearing." Besides being a good public relations strategy, it will help ensure that the board has the information it needs to make a sound decision, provided the applicant is given adequate opportunity to address this information. Local ordinances often require special notice to abutters and sometimes indicate how notice to the general public must be given. Several State laws may require notice to public drinking water suppliers for certain types of projects. (See the earlier discussion in this chapter.)

- ***Sequence of Presentations.*** If the board's bylaws do not indicate the sequence in which the chairperson should recognize speakers, the chairperson could use the following as a guide:
 - a. presentation by applicant and his or her attorney and witnesses, without interruption
 - b. questions through the chairperson to the applicant by board members and people who will be directly affected by the project (e.g., abutters) and requests for more detailed information on the evidence presented by the applicant
 - c. presentations by abutters or others who will be directly affected by the project and their attorneys and witnesses
 - d. questions by the applicant and board members through the chairperson to the people directly affected and the witnesses who made presentations
 - e. rebuttal statements by any of the people who testified previously
 - f. comments or questions by other interested people in the audience

Once everyone has had an opportunity to be heard to the extent allowed by the board's procedures, the chairperson should close the hearing. If more time is needed, the board may vote to extend the hearing to a later date. See sample procedures in Appendix 2.

Taking Adequate Time to Make a Decision; Seeking Technical and Legal Advice

Although the board should avoid unreasonable delays in making a decision and should not "string the applicant along," the board should not feel pressured into making a decision at the first meeting. This is especially true where the meeting has been very emotional because of a controversial proposal. The board should take time to visit the site of the proposed project where that would be helpful. (See discussion of site visits in this chapter.) The board

should consider seeking technical advice from its regional planning commission, from a State agency (such as the Department of Environmental Protection), or other experts that the board is authorized to consult, and legal advice from the municipality's lawyer or the legal department at Maine Municipal Association, particularly if the applicant or another party is represented by a lawyer. If the municipality is unwilling to budget money for the board to use to hire its own consultants or lawyer, it may be willing to adopt an ordinance provision that requires an applicant to set aside an amount of money in escrow which can be used by the board to hire consultants to help the board review the application. A sample ordinance provision appears in Appendix 5 and Appendix 6. See *Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30, 967 A.2d 702, for a case in which the court acknowledged reliance by the planning board on a vehicle traffic peer review study paid for by the town. See *Duffy v. Town of Berwick*, 2013 ME 105, 82 A.3d 148 for a case involving peer review related to air emissions paid for by the applicant and issues related to the selection of the company performing the review. If the board anticipates that an application will be controversial and that the board's decision ultimately will be challenged in court, it should consider having its professional technical and legal advisors present at some or all of the meetings at which the application is discussed. The board must be careful to introduce into the record any information provided by its advisors, whether the information is provided orally or in writing, especially if the information is provided outside the public board meeting. See *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202, and *Smith v. Town of Pittston*, 2003 ME 46, 820 A.2d 1200, for a discussion of the utilization by a board of legal advice provided by its attorney.

In at least one Maine Supreme Court case, a board found that an application was complete and then circulated it to paid staff for comments while it began its substantive review. The staff identified problems with the application and after a year of repeated attempts to get more information from the applicant, the staff sent a letter saying that the application was incomplete, spelling out in detail why and what was needed to make it complete. The developer appealed and the court found that his appeal was premature and that there was nothing wrong per se with the staff's and board's process. *Philric Associates v. City of South Portland*, 595 A.2d 1061 (Me. 1991).

Municipal Attorney Advising More Than One Municipal Board or Official on Same Matter

In cases where the municipality's regular attorney has been advising the CEO or planning board in a matter which becomes the subject of an appeal, that attorney probably cannot advise the board of appeals on that matter because of due process considerations. The attorney will make that judgment call. Many attorneys believe that it is legally and perhaps ethically necessary to use a different attorney for the appeal process and others do not, focusing on the fact that it is the municipality that is the attorney's client and not any single board or official. For further discussion of this issue, see *Turbat Creek Preservation, LLC*

v. Town of Kennebunkport, 2000 ME 109, 753 A.2d 489, and *Nergaard v. Town of Westport Island*, 2009 ME 56, 973 A.2d 735; see also material on this issue prepared by James Katsiaficas, Esq. entitled “Multiple Representation by Municipal Attorneys” which appears in the seminar text for a Maine State Bar Association seminar entitled “Land Use and Environmental Regulation: Recent Decisions and Practice Pointers” (November 1, 2002).

Minutes and Record of the Meeting

Title 1 M.R.S.A. § 403(2) requires the board to create a record that contains specific information for all board meetings. The record may be written or may be an audio, video or other electronic recording. At a minimum it must include: date, time and place of the meeting; a list of the board members who are present or absent; and all motions and votes taken, including a list of who voted for or against the motion if the vote is taken by roll call.

It is very important that the board’s secretary take reasonably complete and accurate minutes of meetings at which the board is reviewing and discussing an application, including what was said and by whom and any agreements made regarding procedures or other issues at the board meeting. The minutes, any documents submitted by the applicant or others (such as the application, a report from a professional engineer, a letter from an abutter, plans, maps, photographs or diagrams), and the board’s findings of fact and conclusions regarding whether the applicant has complied with the statute or ordinance in question will comprise the “record” for that case. Any information, in whatever form it is presented to the board as a basis for the board’s decision, must be entered into the official record. Judges find it easier to determine the nature and order of documents entered into the board’s record when the board has marked those documents (for example, Applicant’s Exhibit #1). Tape recording the meeting is not legally required. In taping a meeting (either audio tape or video tape), it is important to use high quality equipment and to make sure that anyone speaking is close enough to a microphone to pick up his/her statements on the tape. A tape which is full of inaudible statements is of no use to the board or a reviewing court. *Ram’s Head Partners, LLC v. Town of Cape Elizabeth*, 2003 ME 131, 834 A.2d 916. There is no law requiring that board minutes contain a verbatim account of the entire meeting. The amount of detail included in the minutes by the board’s secretary will be dictated in part by the desires of a majority of the board and in part by the complexity of the application being reviewed and how likely it is that the board’s decision will be appealed. It may be advisable to seek guidance from the attorney who will defend the board’s decision in court if an appeal seems probable. See Appendix 3 for sample minutes.

Making the Decision

Checklist for Reviewing Evidence

Before the board decides whether to approve or deny the application, it should ask itself the following questions:

- a. Does the board still believe that it has authority to make a decision on the application under the ordinance or statute?
- b. What does the ordinance/statute require the applicant to prove?
- c. Does the ordinance/statute prohibit or limit the type of use being proposed?
- d. What factors must the board consider under the ordinance/statute in deciding whether to approve the application?
- e. Has the applicant met his or her burden of proof, i.e., has the applicant presented all the evidence which the board needs to determine whether the project will comply with every applicable requirement of the ordinance/statute? Is it outweighed by conflicting evidence? Is it credible? Is that evidence substantial? Is it relevant to the ordinance requirements?
- f. To what extent does the ordinance/statute authorize the board to impose conditions on its approval?

Basis for the Board's Decision

- **General Rule.** Once the board has determined the scope of its authority and the applicant's burden of proof, it must determine whether there is sufficient evidence in the record to support a decision to approve the application by comparing the information in the record to the requirements of the ordinance/statute. The board should not base its decision on the amount of public opposition or support displayed for the project. Nor should its decision be based on the members' general opinion that the project would be "good" or "bad" for the community. Its decision must be based solely on whether the applicant has met his or her burden of proof and complied with the provisions of the statute/ordinance. *Bruck v. Town of Georgetown*, 436 A.2d 894 (Me. 1981); *Jordan v. City of Ellsworth*, 2003 ME 82, 828 A.2d 768; *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86. If the board does not believe that the applicant's project meets each of the requirements of the ordinance/statute based on the evidence in the record, the board should deny the application. *Grant's Farm Associates, Inc. v. Town of Kittery*, 554 A.2d 799 (Me. 1989). Where a proposed project complies with all of the relevant ordinance requirements, the board must approve the application. *WLH Management Corporation v. Town of Kittery*, 639 A.2d 108 (Me. 1994). At least one court has expressly warned board members that they must not "abdicate (their) responsibility, ignore the ordinance and approve an application regardless of whether it meets the conditions of the ordinance or not" and that board members who are "philosophically

hostile to zoning should address their concerns to the local and State legislative bodies that adopt zoning regulations and not allow their personal policy preferences to dictate how they make legal decisions under the ordinance.” *Fraser v. Town of Stockton Springs*, CV-88-97 (Me. Super. Ct., Waldo Cty., August 10, 1989).

- ***Ex Parte Communications.*** The board’s decision, whether it approves, denies, or conditionally approves an application, must be supported by substantial evidence in the record. Individual board members should not allow themselves to be influenced by information provided to them outside an official board meeting (i.e., an *ex parte* communication) unless they enter that information into the board’s record and all parties to the proceeding receive notice of the additional information and are given an opportunity to respond to it. The Maine Supreme Court has observed that if the parties are given a full opportunity to respond to such information, the *ex parte* communication may not be egregious enough to cause a court to overturn the board’s decision on due process grounds. *Duffy v. Town of Berwick*, 2013 ME 105, 82 A.3d 148. See also, *Passadumkeag Mountain Friends v. Board of Environmental Protection*, 2014 ME 116, 102 A.3d 1181. A board member who is approached by an individual wanting to provide him or her with information outside a public meeting setting should actively discourage the person from doing so and encourage the person to submit the information to the board in writing or through oral testimony at a board meeting. The board member should explain that, by providing information outside the public meeting, the person may be causing constitutional due process problems with the board’s process and that the board may not legally be able to consider the information the person is trying to present. Under no circumstances should board members meet with someone representing just one side of an issue outside a public meeting setting. *Mutton Hill Estates, Inc. v. Inhabitants of Town of Oakland*, 468 A.2d 989 (Me. 1983). Board members should not even discuss an application with the code enforcement officer outside a public board meeting in order to avoid due process problems. *White v. Town of Hollis*, 589 A.2d 46 (Me. 1991). (But see *Maddocks v. Unemployment Insurance Commission*, 2001 ME 60, 768 A.2d 1023, where the court held that a party who was aware of the *ex parte* communication and failed to object during the Commission hearing waived the due process issue on appeal to court.) For additional discussion of this issue, see “Site Visits” and “Board Member Discussions/Email” earlier in this chapter under “Freedom of Access Act.”
- ***Substantial Evidence.*** “Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” The fact that two inconsistent conclusions can be drawn from the recorded evidence related to a specific performance standard does not mean that the board’s conclusion regarding that standard is not supported by “substantial evidence.” *Glasser v. Town of Northport*, 589 A.2d 1280 (Me. 1991); *Hrouda v. Town of Hollis*, 568 A.2d 824 (Me. 1990); *Silsby v. Allen’s Blueberry Freezer, Inc.*, 501 A.2d 1290, 1296 (Me. 1985). Where the board denies an

application on the basis that the record shows that the “proposed project would have specific adverse consequences in violation of the criteria...for approval,” a court will uphold the decision unless the applicant can demonstrate both that the board’s findings are unsupported by record evidence and that the record compels contrary findings. *Grant’s Farm Associates, Inc. v. Town of Kittery*, 554 A.2d 799 (Me. 1989).

- ***Relevance of Deed Restrictions, Title Disputes, Constitutional Issues, Other Code Violations, and Related Lawsuits.*** The board cannot deny an application because the proposed use would violate a private deed restriction if the use otherwise would be in compliance with the applicable ordinance/statute. *Whiting v. Seavey*, 188 A.2d 276 (Me. 1963); *Our Way Enterprises, Inc. v. Town of Wells*, 535 A.2d 442 (Me. 1988). *Cf.*, *Southridge Corp. v. Board of Environmental Protection*, 655 A.2d 345 (Me. 1995). (But see the discussion of “**Standing to Apply**” earlier in this chapter.) The board has no legal authority to resolve boundary or title disputes as part of its decision on an application. *Rockland Plaza Realty Corp. v. LaVerdiere’s Enterprises*, 531 A.2d 1272 (Me. 1987). (See sample language in Appendix 3 which the board can insert into its decision in a case where a title or boundary issue has been raised to make it clear that the board’s granting of approval in no way resolves the title or boundary problem.) If the board is presented with credible written expert evidence by both the applicant and an opponent which is in direct conflict and which involves a title/boundary issue, the board probably has three options: (1) tabling action pending the resolution of the title or boundary dispute by the parties (either voluntarily or by court order); (2) approving the application on the basis that the applicant has provided substantial, relevant and credible evidence and letting the parties pursue the matter further in court; or (3) denying approval on the basis that the board is unable to find that the applicant has met the required burden of proof. The board also cannot resolve constitutional problems with an ordinance in deciding an application. *Cf.*, *Minster v. Town of Gray*, 584 A.2d 646 (Me. 1990). But see, *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86. The fact that the property involved is already the subject of other code violations would not constitute a basis for denial, absent language in the ordinance to that effect. *Bauer v. Town of Gorham*, CV-89-278 (Me. Super. Ct., Cum. Cty., Nov. 21, 1989). Nor may the board refuse to act on an application or deny approval of a permit because of the existence of a pending lawsuit by the applicant on a related issue, absent language in the ordinance to the contrary. *Portland Sand and Gravel, Inc. v. Town of Gray*, 663 A.2d 41 (Me. 1995). Even if the board cannot legally resolve some of these issues, if a party to the board’s proceedings raises such a challenge, the board should note the challenge and its response in the record of the case so that it is preserved in the event of an appeal.
- ***Overlap with State and Federal Law.*** The planning board may be required by a local ordinance or State law to determine whether any State or federal laws apply to an applicant’s project before the board may grant its approval. The board can draw on the

expertise of the applicable State or federal agency to help it make this determination. Approval of a State or federal permit does not eliminate the need for the landowner to obtain local approval for his or her project, if required. Where a question exists about whether a project complies with State or federal law, one option for the board is to adopt a condition of approval requiring the applicant to obtain either approval from the State or federal agency or a letter from the agency stating that it has no jurisdiction before commencing work under the local permit/approval. The board's condition should require that proof of the State/federal approval or letter be filed with the municipality.

- ***Expert vs. Non-Expert Testimony; Personal Knowledge of Board Members.*** The board may base its decision on non-expert testimony in the record if it finds that testimony more credible than expert testimony presented on the same issue. *Mack v. Municipal Officers of Town of Cape Elizabeth*, 463 A.2d 717 (Me. 1983) (flooding issue); *DeMille v. Town of Cape Elizabeth*, AP-99-45 (Me. Super. Ct., Cum. Cty., December 21, 1999) (traffic safety issue); *Gott and Sons, Inc. v. Town of Lamoine*, CV-11-04 (Me. Super. Ct., Han. Cty., December 5, 2012), citing *Hutz v. Alden*, 2011 ME 27, 12 A.3d 1174, and *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898 (Me. 1992) (impact on property values). If two conflicting expert opinions are offered for the record, the board has the option of making its own independent finding of fact. *Cf., Gulick v. Board of Environmental Protection*, 452 A.2d 1202, 1208 (Me. 1982). In the absence of expert testimony, the board may rely on the testimony of anyone personally familiar with the site and conditions surrounding the application and on its own investigations. *American Legion v. Town of Windham*, 502 A.2d 484 (Me. 1985); *Grant's Farm Associates v. Town of Kittery*, 554 A.2d 799 (Me. 1989); *Goldman v. Town of Lovell*, 592 A.2d 165 (Me. 1991). Board members may rely on their own expertise and experience and that of their professional staff, provided that information is formally entered into the record. *Pine Tree Telephone and Telegraph Co. v. Town of Gray*, 631 A.2d 55 (Me. 1993); *Adelman v. Town of Baldwin*, 2000 ME 91, 750 A.2d 577. See the discussion appearing earlier in this chapter regarding investigations by individual board members.
- ***Staff Interpretations; Role of the Code Enforcement Officer.*** Where a municipal official or staff person whose principal job is to interpret an ordinance offers statements about the proper interpretation of the ordinance and whether the applicant's evidence was sufficient to comply with the ordinance, the court has said that the opinion of that staff person or official is entitled to some deference. *Warwick Development Co., Inc. v. City of Portland*, CV-89-206 (Me. Super. Ct., Cum. Cty., January 12, 1990). See also *Philric Associates v. City of South Portland*, *supra*.

Absent a local charter provision, ordinance or job description to the contrary, the code enforcement officer is not a member of the planning board and has no official role regarding the planning board's proceedings or the custody and care of planning board

records. While the code enforcement officer often has valuable information and insights to share with the board, he/she should offer it for the planning board's official record either in written form or through public testimony offered during a public board meeting at the invitation of the board. This will help ensure that no illegal *ex parte* communications occur. *E.g.*, *White v. Town of Hollis*, 589 A.2d 46 (Me. 1991). For more about the duties of the code enforcement officer, see MMA's *Code Enforcement Officer Manual*.

- ***Testimony by Witnesses Who Are Not Physically Present at the Meeting.*** It probably is legal to allow a person to give testimony by speaker phone. However, the board probably could adopt a rule that does not permit such testimony except where all parties to the proceeding have consented. Depending on the nature of the issue on which the hearing is being conducted, it could be important to observe the demeanor of a witness in order to gauge whether he/she is being truthful; obviously that would not be possible with testimony offered by speaker phone. There also could be times where the board might not be certain as to the identity of the person presenting the information. Testimony offered by speaker phone could be challenged on those grounds in a particular case, even if it is allowed and goes unchallenged in most cases. Probably the best approach is for the board to adopt a rule of procedure which prohibits testimony unless it is offered in person at the meeting or in writing and signed by the witness, but allow an exception to this rule where all parties have agreed for the record to permit testimony by some other method (e.g., speaker phone, webcam, etc.).
- ***Participation by Board Members Who Miss Meetings.*** If a board member has not been able to attend every meeting at which the board discussed substantive evidence regarding a particular application, it is arguable that such a board member cannot participate in making the decision on an application because it would violate due process. *Pelkey v. City of Presque Isle*, 577 A.2d 341 (Me. 1990); *Fitanides v. City of Saco*, 684 A.2d 421 (Me. 1996). One Maine Supreme Court decision, *Green v. Commissioner of Department of Mental Health, Mental Retardation, and Substance Abuse Services*, 2001 ME 86, 776 A.2d 612, is being interpreted by many municipal attorneys as a modification of the "perfect attendance" requirement for board members established in *Pelkey*. The court in *Green* found that "as long as a decision-making officer both familiarizes himself with the evidence sufficient to assure himself that all statutory criteria have been satisfied and retains the ultimate authority to render the decision, he can properly utilize subordinate officers to gather evidence and make preliminary reports." On the basis of *Green*, *supra*, *Lemont v. Town of Eliot*, CV-91-577 (Me. Super. Ct., York Cty, November 11, 1992, and *In Re: Villeneuve*, 709 A.2d 1067 (Vt. 1998), many municipal attorneys are advising board members who miss a public hearing or other board meeting at which substantive discussions of an application occur that they may continue to participate in the decision-making process without violating

due process if they take the following steps: (1) read hearing and meeting minutes, review any documents or other evidence submitted at those meetings, and listen to/watch any audio or video recordings of those meetings, (2) prepare a written statement describing what the board member did to educate himself/herself about what occurred at the missed meeting, (3) sign the statement (preferably in notarized form), and (4) enter it into the record at the next meeting. (See Appendix 2 for sample affidavit form.) If the applicant and other parties to the proceeding agree that this is adequate, then this should be noted in the record too. Some municipal attorneys advise board members who have missed a substantive meeting that they may not participate without the consent of all parties in order to avoid a due process challenge. If an alternate member sits in place of a regular member at a particular board meeting, it may be advisable to let that alternate continue to sit in connection with that particular application and avoid a challenge to the regular member's participation.

If a board member senses when an application is first submitted that it will take many months to review and decide and that he/she will have to miss many of the meetings due to family needs or job-related reasons, it would be advisable for that member to step aside and allow an alternate member to be designated to serve in his/her place in connection with that application, assuming that alternate positions on the board have already been created and filled. If there are no alternate positions and there is not time to have them legally established, then the board member will have to attend when possible and follow the guidelines above for dealing with missed meetings.

In rare cases, there may be such a turnover on a board that it may be advisable for the board to begin its review process again. This is particularly true where a court orders a remand of an appeal back to the local board and a majority of the seats on the board have turned over. (This was apparently what happened in connection with a remand to the board of appeals in *Carroll v. Town of Rockport*, 2005 ME 135, 837 A.2d 148.) The board should consult its private attorney for advice on how to proceed in the event of a large turnover on the board.

Reopening the Hearing Process

In at least once case, the court has upheld a board's right to reopen its hearing process to allow an applicant to submit new evidence to clarify a technical issue and modify its plan without allowing additional public comment. The court found that there had been prior extensive hearings that were more than adequate to afford due process. *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202.

Preserving Objections for Appeal

If a party to the proceedings has any objections to procedures or proposed findings by the board, he or she should raise them at the meeting so that the board has a chance to consider them and address them in its decision. Failure to raise objections before the board will prevent that person or any other party from making those objections in an appeal to the Superior Court. *Pearson v. Town of Kennebunk*, 590 A.2d 535, 537 (Me. 1991); *Wells v. Portland Yacht Club*, 2001 ME 20, 771 A.2d 371; *Oliver v. City of Rockland*, 1998 ME 88, 710 A.2d 905; *Rioux v. Blagojevic*, AP-02-24 (Me. Super. Ct., Pen. Cty., June 24, 2003).

Approval and Form of Decision

- **Majority Vote Rule.** It is the opinion of the attorneys on the MMA Legal Services staff that, in determining whether a motion has been approved by a majority vote of the board, State law requires that calculation to be based on the total number of regular voting members on the board (not including the number of alternate or associate members), whether or not there are vacancies on the board. However, an ordinance provision authorizing “a majority of those present and voting” to approve a motion would be legal and would supersede the statutory rule. 1 M.R.S.A. § 71 (3). *Warren v. Waterville Urban Renewal Authority*, 161 Me. 160 (1965). While many private municipal attorneys agree with this opinion, there are some who do not. To avoid controversy over what rule legally applies, it is advisable to spell it out in the local ordinance which governs a particular decision.
- **Abstention.** In the absence of a State law, local ordinance, or local rules of procedure to the contrary, an abstention is not counted as either a vote in favor of a motion or against it. *Gerrity v. Ballich*, CV-84-646 (Me. Super. Ct., Yor. Cty., June 27, 1985).
- **Tie Votes.** If a motion results in a tie vote, the board has failed to act and another vote should be taken to try to get a definitive decision. *Quinney v. Lambert*, CV-84-435 (Me. Super. Ct., Yor. Cty., July 8, 1985); see also concurring opinion in *Stevenson v. Town of Kennebunk*, 2007 ME 55, 930 A.2d 1046. If the tie cannot be broken, it probably should be treated as having the same effect as a vote to defeat the motion. *Jackson v. Town of Kennebunk*, 530 A.2d 717 (Me. 1987). See generally, *Marchi v. Town of Scarborough*, 411 A.2d 1071 (Me. 1986). See, *Silsby v. Allen’s Blueberry Freezer, Inc.*, 501 A.2d 1290, 1292 (Me. 1985). As previously noted, the effect of a tie vote should be spelled out in the board’s rules of procedure or applicable local ordinance to avoid confusion.
- **Findings and Conclusions.** When taking a final vote, the board must prepare a written statement of the “findings of fact” which appear in the written record and a written explanation of the “conclusions of law” which it has made as to whether the facts show that the project is in compliance with the applicable ordinance/statute. The Maine

Supreme Court has held that it is not enough simply to prepare detailed minutes. *Comeau v. Town of Kittery*, 2007 ME 76, 926 A.2d 189.

“Findings of fact” are statements by the board summarizing the basic facts involved in a particular application. Such a summary of facts would include the name of the applicant and his or her relationship to the property, location of the property, basic description of the project, key elements of the proposal (number of lots, size of lots, frontage, setback, type of structures, type of streets, sewage and solid waste systems, water supply, and other items which relate directly to the dimensional requirements or performance standards in the ordinance), evidence submitted by the applicant beyond what is shown on the plan, evidence submitted by people other than the applicant either for or against the project, and evidence which the board enters into the record based on the personal knowledge of its members or experts which the board has retained on its own behalf.

“Conclusions of law” are statements linking the specific facts covered in the findings of fact to the performance standards/review criteria in the ordinance or statute which the applicant must meet in order to receive the board’s approval. For example, a conclusion of law pertaining to sewage disposal would be: “We conclude that the applicant will provide adequate sewage disposal for the lots in the subdivision as required by 30-A M.R.S.A. § 4404(6). Soils reports have been submitted for each site prepared by a site evaluator showing that at least one spot on each lot could support a subsurface wastewater disposal system which complies with the State Plumbing Code.”

The Maine Freedom of Access Act requires findings to be prepared in cases where an application is being denied or approved on condition. 1 M.R.S.A. § 407. The State law pertaining to subdivisions [30-A M.R.S.A. § 4403(6)] requires that the board make “findings” establishing that the project does or does not meet the requirements of the statute or ordinance. The State’s model shoreland zoning guidelines also require that the board make “findings” when preparing a decision. Rule 80B(e) of the Maine Rules of Civil Procedure, which governs appeals from a local board’s decision filed directly in Superior Court, indicates that as part of the record which the court will be reviewing, the court wants to see the board summarize its findings of fact and conclusions of law.

The practical purpose behind preparing findings and conclusions is that it helps the board ensure that it has considered all the review criteria and that sufficient evidence has been submitted to support a positive finding on each. Another purpose is to provide a written statement of the reason for the board’s decision which is detailed enough to enable the applicant or anyone else who is interested (1) to judge whether they agree or disagree with the board and (2) to decide whether there are sufficient grounds on which to appeal the decision. Probably the most important purpose is to provide a clear

statement for the Superior Court of the facts which were submitted for the board's consideration and the facts on which the board relied in concluding that the review standards were/were not met by the applicant. This is particularly important where the board must choose between conflicting evidence which has been introduced to prove that a particular standard has/has not been met. If the board fails to make written findings of fact and conclusions, it appears now that the court will remand the case to the board for the preparation of findings and conclusions before reaching a decision, rather than reading through the board's minutes and other records to determine the basis for the decision. [E.g., *Peaker v. City of Biddeford*, 2007 ME 105, 927 A.2d 1169; *Carroll v. Town of Rockport*, 2003 ME 135, 837 A.2d 148; *Ram's Head Partners, LLC v. Town of Cape Elizabeth*, 2003 ME 131, 834 A.2d 916; *McGhie v. Town of Cutler*, 2002 ME 62, 793 A.2d 504; *Christian Fellowship and Renewal Center v. Town of Limington*, 2001 ME 16, 769 A.2d 834; *Widewaters Stillwater Co., LLC v. Bangor Area Citizens Organized for Responsible Development*, 2002 ME 27, 790 A.2d 597; *Harrington v. Town of Kennebunk*, 459 A.2d 557 (Me.1983); *Rocheleau v. Town of Greene*, 1998 ME 59, 708 A.2d 660; compare, *Glasser v. Town of Northport*, 589 A.2d 1280 (Me. 1991)]. (See Appendix 3 for excerpts from some of these cases.) The standard of review which governs the Superior Court in deciding whether to uphold the board's decision is the "substantial evidence in the record" test, i.e., is there sufficient credible evidence in the record of the case created by the board to support the board's decision? The court also will determine whether the board applied the proper law and whether the board applied that law correctly or acted arbitrarily or capriciously. *Thacker v. Konover Development Corp.*, 2003 ME 30, 818 A.2d 1013. If the planning board's decision is appealed directly to the court, then the court will review the planning board's decision. If the planning board's decision is appealed to the board of appeals and the board of appeals conducts a *de novo* review of the planning board decision rather than an appellate review, the court will review the board of appeals decision.

- ***Address Each Review Standard.*** It is important for the board to address each standard of review in reaching its decision in case the decision is appealed and the board of appeals or court disagrees with some of the board's conclusions. See generally, *Grant's Farm Associates, Inc. v. Town of Kittery*, 554 A.2d 799 (Me. 1989), *Tompkins v. City of Presque Isle*, 571 A.2d 235 (Me. 1990), and *Noyes v. City of Bangor*, 540 A.2d 1110 (Me. 1988).
- ***Recommended Procedure for Preparing Findings and Conclusions.*** There are a number of ways to handle the process of making findings and voting on an application. Probably the method used by most boards and recommended by most municipal attorneys is as follows: The board should use the ordinance or statute which governs the review of the proposal and the application form as a checklist. The board's chairperson should focus the board's attention on each performance standard/review criteria in the

ordinance, ask the board to vote whether it is applicable, and if they find that it is, ask whether it has been satisfied by the evidence in the record. The board must cite evidence which supports a finding either in favor of the applicant or against the applicant.

If there is conflicting evidence, the board should indicate why it favors one piece of evidence over another, or why it can't make a finding either way. If a review standard has multiple parts, the board's findings must address each part. *Chapel Road Associates v. Town of Wells*, 2001 ME 178, 787 A.2d 137. As the board addresses the ordinance requirements, it should make a motion and vote on one before moving to the next, and that vote and the facts supporting the vote should be recorded in detail by the secretary in the minutes. The statement of facts in support of the motion must be part of the motion on which the board votes, so that it is clear what facts the board found in support of its conclusion. It is not enough simply to let each board member say what he or she thinks are the pertinent facts, record those individual statements in the minutes and then ask each board member to say "yes" or "no" as to whether the applicant has met a particular criterion. *Carroll v. Rockport*, *supra*.

If the board finds that a condition of approval is necessary in order to find in favor of the applicant, the condition should be addressed at that time and supported by findings also. After taking these separate board votes on the individual review criteria, the board should then take a "bottom line" vote to approve or deny the application or approve it with conditions. This vote must be consistent with the votes taken on the individual review criteria. Unless the votes on each review criterion found that each was satisfied, a motion to approve the application would have to be defeated.

It appears from the case law that the same members don't have to vote in favor or against on each standard and on the overall motion to approve or deny the application; as long as there is a majority of members voting one way or the other on each motion, it doesn't have to be the same board members comprising the majority on each vote. *Widewaters*, *supra*. In a case where one or more of the votes on individual review criteria was subject to conditions of approval, the board should reiterate those conditions in the final vote so that there will be no confusion regarding what conditions are applicable; only those conditions which are adopted by a majority vote on an individual review criterion or which are adopted by the majority of the board in the final vote apply. The final vote and any conditions need to be recorded in detail by the secretary in the board's minutes.

The chairperson should explain during the course of discussing and approving findings and conclusions that, if any board member thinks the applicant has not met his or her burden of proof and that some information is missing or not convincing, that board member should state those concerns during the findings and conclusion phase. The final

vote on whether to approve/reject the application is really a formality; the important, binding decisions are those regarding the individual findings and conclusions. If the board members do not cite problems with the evidence at that stage, the board will have no legal basis for denying the application, unless it revisits and modifies its earlier votes on the individual standards.

If the board wants time to think about the evidence submitted in connection with a particular application and wants to wait until another meeting to go through the formal process for voting on each criterion as outlined above, it may do so as long as the members bear in mind any deadline for making a final decision which must be met under the relevant ordinance. This may necessitate calling a special meeting to take a final vote in time to meet the deadline. In the meantime, the individual board members can be thinking about what findings of fact and conclusions of law the board should vote to approve. Board members must not discuss these issues outside the board meeting, however, in order to avoid problems under the Freedom of Access Act. Once the board has reconvened and has discussed each review standard, it can then either take time at that meeting to prepare formal written findings and conclusions and approve a final decision at that meeting or it can conduct a general discussion of each ordinance criterion and the evidence presented and then delegate to one person (i.e., one member of the board, a paid secretary, the board's attorney or similar person) the task of sorting through the individual statements and preparing a set of draft findings and conclusions for the board to discuss in detail and approve at a subsequent meeting held within any required deadline. It is crucial that the board carefully discuss the draft decision in detail in order to make that decision its own before voting whether to approve it. Another approach used by some boards is to invite the parties to submit proposed findings and conclusions for review, discussion and possible adoption by the board. (See *Turbat Creek Preservation, LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489, where the court found that it was legal for a board member to bring a list of issues and draft findings to the meeting for the board's consideration.). If the board takes what it considers a "preliminary vote" to be finalized at a subsequent meeting following the preparation and review of a final draft of its findings, then the board should make this clear for the record. See generally, *Beckford v. Town of Clifton*, 2014 ME 156, 107 A.3d 1124. Several sample written decisions and a number of excerpts from Maine Supreme Court cases indicating the kind of detail that a court expects in a board decision appear in Appendix 3.

Several problems can result if the board delegates the responsibility for developing a tentative draft of findings and conclusions before it has gone through the list of criteria and developed its own. The board runs the risk of "rubber-stamping" a decision that could have been formulated by less than a majority of the board or by a non-board member. *Brown v. Inhabitants of the Town of Bar Harbor*, CV-83-56 (Me. Super. Ct.,

Han. Cty., Jan. 19, 1984). Another risk is that if a subcommittee of the board comprised of three or more members is asked to develop tentative findings and conclusions, the subcommittee members may not realize that they must comply with the notice requirements of the Maine Freedom of Access Act (1 M.R.S.A. § 406). *Lewiston Daily Sun v. City of Auburn*, 455 A.2d 335 (Me. 1988). They also run the risk that someone may try to introduce new information which was not presented at the full board meeting and to which the applicant and other parties may not have had an opportunity to respond, thereby depriving the applicant and those parties of their right to due process under the Constitution. *Mutton Hill Estates, Inc. v. Inhabitants of the Town of Oakland*, 468 A.2d 989 (Me. 1983). Whatever procedure is used by the board to prepare and approve findings and conclusions, it is crucial to their validity that the board carefully review them to make sure that each review standard and subpart of each standard is addressed and that the board clearly adopts all of the findings and conclusions as part of its own decision. *Chapel Road Associates, supra*.

- **Conditions of Approval.** A planning board has inherent authority to attach conditions to its approval of an application. See generally, *In Re: Belgrade Shores, Inc.*, 371 A.2d 413 (Me. 1977). Any conditions imposed by the board on its approval must be reasonable and must be directly related to the **standards** of review governing the proposal. *Kittery Water District v. Town of York*, 489 A.2d 1091 (Me. 1985); *Boutet v. Planning Board of the City of Saco*, 253 A.2d 53 (Me. 1969). There must be a “nexus” and “rough proportionality” between a condition of approval and the impact of the proposed development. *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013). A conditional approval “which has the practical effect of a denial...must be treated as a denial.” *Warwick Development Co., Inc. v. City of Portland*, CV-89-206 (Me. Super. Ct., Cum. Cty, Jan. 12, 1990). Any conditions which the board wants to impose on the applicant’s project must be clearly stated in its decision and on the face of any plan to be recorded to ensure their enforceability. *City of Portland v. Grace Baptist Church*, 552 A.2d 533 (Me. 1988); *Hamilton v. Town of Cumberland*, 590 A.2d 532 (Me. 1991); *McBreairty v. Town of Greenville*, AP-99-8 (Me. Super. Ct., Piscat. Cty., June 14, 2000). (See Appendix 3 for sample language.) If it is the municipality’s intention to render a permit void if the permit holder fails to comply with conditions of approval within a certain time frame, this should be stated clearly in the ordinance. *Nightingale v. Inhabitants of City of Rockland*, CV-91-174 (Me. Super. Ct., Knox Cty., July 1, 1994).

If the board finds that the application could be approved if certain conditions were met, then it must determine what kinds of conditions are needed based on the evidence presented in the record and what kinds the ordinance/statute allows the board to impose. *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223 (Me. 1983); *Chandler v. Town of Pittsfield*, 496 A.2d 1058 (Me. 1985). Before granting approval with certain

conditions attached, as a practical matter, the board should be certain that the applicant has the financial and technical ability to meet those conditions. Otherwise, the board may find itself later on with a situation where the applicant has not met the conditions, forcing the municipality to go to court to convince a judge to enforce the conditions of approval. Unless the board and applicant can reach an agreement on reasonable conditions to impose which are both technically and financially feasible for the applicant and adequate to satisfy the ordinance requirements, the board should not approve the application. *Cf., Warwick Development Co., Inc. v. City of Portland*, CV-89-206 (Me. Super. Ct., Cum. Cty., January 12, 1990).

In a case where an applicant had to prove that his project would not generate unreasonable odors detectable at the lot lines, the court upheld a board's condition of approval requiring that an independent consultant review the design and construction of a biofilter as it progressed and to report back to the board regarding problems. The court found that it was not an unguided delegation of the board's power to the consultant and also found that it was not necessary for the board to require the applicant to provide it with a final filter design before granting approval. *Jacques v. City of Auburn*, 622 A.2d 1174 (Me. 1993).

In *Bushey v. Town of China*, 645 A.2d 615 (Me. 1994), the planning board granted conditional use approval for a kennel subject to a number of conditions, including the installation of a buffer for noise control and the installation of a mechanical dog silencer device; the owners had to fulfill these conditions by a stated deadline. The planning board later found that the conditions were satisfied and a neighbor appealed to the board of appeals, claiming that the conditions had not been effectively satisfied. The board of appeals agreed based on the evidence presented and voted that the permit conditions had not been met and revoked the permit.

The Maine Supreme Court has upheld a condition of approval imposed by a planning board that authorized the City planner to approve minor changes to an approved project plan. *Fitanides v. City of Saco*, 2015 ME 32, 113 A.3d 1088. The court found that the condition did not constitute an improper delegation of legislative authority in violation of the Constitution. The court also found that the condition did not violate any express or implied prohibition against a delegation of administrative authority in the City's zoning ordinance. (For a discussion of the appeal of plan revisions approved by the City planner, see *Desfosses v. City of Saco*, 2015 ME 151, 128 A.3d 648.)

Reviewing Conditional Use/Special Exception Permit Applications

If a general or shoreland zoning ordinance authorizes the planning board to decide whether to approve conditional use or special exception applications, the board should be guided by

the standards of review that the ordinance provides. (Shoreland zoning ordinances usually refer to these as “planning board permits.”) In passing the ordinance and designating certain uses as “conditional uses” or “special exceptions,” the legislative body has made a decision that those uses are ordinarily not injurious to the public health, safety, and welfare or detrimental to the neighborhood, but that they may be detrimental under certain circumstances if restrictions are not placed on how those uses are conducted. *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223 (Me. 1983). It is the board’s job to review the application, decide whether the ordinance allows the proposed use on a conditional basis in that zone, determine whether the application complies with each of the standards of review, and whether to approve or deny the application.

Denials of conditional use and special exception applications have been upheld by the Maine courts. *American Legion, Field Allen Post #148 v. Town of Windham*, 502 A.2d 484 (Me. 1985); *Mack v. Municipal Officers of Town of Cape Elizabeth*, 463 A.2d 717 (Me. 1983); *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898 (Me. 1992). The courts also have overturned denials issued under ordinances that failed to guide the board and the applicant as to the requirements which an application must satisfy. (See discussion regarding “improper delegation of legislative authority” later in this manual.)

Even if the board finds that it can deny an application because it does not comply with one of the standards of review, the board should complete its review to determine whether there are other bases for denial. That way, if the denial is appealed, the likelihood that a court will uphold the board’s decision increases, even if the court disagrees with some of the board’s conclusions. *Noyes v. City of Bangor*, 540 A.2d 1110 (Me. 1988); *Tompkins v. City of Presque Isle*, 571 A.2d 235 (Me. 1990); *Grant’s Farm Associates, Inc. v. Town of Kittery*, 554 A.2d 799 (Me. 1989).

After Making the Decision; Notice of Decision

Once the board has made its decision, the secretary should incorporate the findings and legal conclusions and the number of votes for and against the application into the minutes. A copy of the decision should be sent to the applicant promptly after the decision is made. The board should check the applicable statute or ordinance to see if it states a deadline. The date on which this notice is sent should be included in the record. A copy of the record should be maintained in the official files of the board. The record is a public record under the Maine Freedom of Access Act and can be inspected and copied by any member of the public, whether or not a resident of the municipality.

Reconsideration

There is no statute governing the planning board’s authority to reconsider a decision, as there is for the board of appeals in 30-A M.R.S.A. § 2691. The planning board has the

inherent authority to reconsider a decision. *Jackson v. Town of Kennebunk*, 530 A.2d 717 (Me. 1987); *Cardinali v. Town of Berwick*, 550 A.2d 921 (Me. 1988). However, it is advisable either for the board to adopt rules of procedure governing the reconsideration process or for the municipality to adopt an ordinance provision. An ordinance may be legally required in order to impose a deadline by which a person with standing must request a reconsideration.

Effect of Decision; Transfer of Ownership After Approval

It is commonly assumed that a subsequent purchaser of land for which a conditional use or special exception or site plan review approval was granted previously does not need to return to the board for a new review and approval simply because of the change in ownership. However, at least one Maine Superior Court case has held otherwise. *Inland Golf Properties, Inc. v. Inhabitants of Town of Wells*, AP-98-040 (Me. Super. Ct., York Cty., May 11, 2000), citing a discussion in Young, *Anderson's American Law of Zoning* (4th ed.), § 20.02. Until the Maine Supreme Court rules on this issue, where an original approval was based on the financial or technical capacity of the original applicant, the board probably should require the new owner to offer similar proof to the board before proceeding to complete the project under the original approval. It is advisable to include language in the applicable ordinance which expressly addresses this issue to avoid any confusion.

Second Request for Approval of Same Project

Once an application for a land use activity has been denied, the board is not legally required to entertain subsequent applications for the same project, unless the board finds that “a substantial change of conditions ha(s) occurred or other considerations materially affecting the merits of the subject matter had intervened between the first application and the (second).” *Silsby v. Allen's Blueberry Freezer, Inc.*, 501 A.2d 1290, 1295 (Me. 1985). However, an ordinance may provide a different rule regarding subsequent requests which would govern the board's authority.

Vague Ordinance Standards; Improper Delegation of Legislative Authority

It is very important for an ordinance, especially a zoning ordinance, to include fairly specific standards of review if it requires the issuance of a permit or the approval of a plan. The standards must be something more than “as the Board deems to be in the best interests of the public” or “as the Board deems necessary to protect the public health, safety and welfare.” *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223 (Me. 1983). It also is very important to have language in the ordinance instructing the board as to the action which the board must take. It is not enough merely to say that the board must “consider” or “evaluate” certain information. *Chandler v. Town of Pittsfield*, 496 A.2d 1058 (Me. 1985).

If an ordinance gives the board unlimited discretion in approving or denying an application, it creates two constitutional problems. It violates the applicant's constitutional rights of equal protection and due process because (1) it does not give the applicant sufficient notice of what requirements he or she will have to meet and (2) it does not guarantee that every applicant will be subject to the same requirements. It amounts to substituting the board's determination of what are desirable land use regulations for that of the legislative body (town meeting or town or city council), where it legally belongs. The courts call this an "improper delegation of legislative authority." Legally, only the legislative body can adopt ordinances, unless a statute or charter gives that authority to some other local official or board.

It is not legally permissible to include a review standard in the ordinance which requires a board to find that a project will be "compatible with the neighborhood" or "harmonious with the surrounding environment." Compare *Wakelin v. Town of Yarmouth*, 523 A.2d 575 (Me. 1987), *American Legion, Field Post #148 v. Town of Windham*, 502 A.2d 484 (Me. 1985), *In Re: Spring Valley Development*, 300 A.2d 736 (Me. 1973), and *Secure Environments, Inc. v. Town of Norridgewock*, 544 A.2d 319 (Me. 1988). A standard that requires a board or official to determine whether a development "will conserve natural beauty" has also been declared unconstitutional. *Kosalka v. Town of Georgetown*, 2000 ME 106, 752 A.2d 183. Compare, *Conservation Law Foundation, Inc. v. Town of Lincolnville*, 2001 ME 175, 786 A.2d 616. The court has upheld an ordinance review standard that requires a determination that "the proposed use will not adversely affect the value of adjacent properties." *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898 (Me. 1992). A shoreland zoning ordinance provision requiring a board to find that a proposed pier, dock or wharf would be "no larger than necessary to carry on the activity" has also been upheld, *Stewart v. Town of Sedgwick*, 2002 ME 81, 797 A.2d 27, as has ordinance language requiring a finding that a pier, dock or wharf would not "interfere with developed areas." *Britton v. Town of York*, 673 A.2d 1322 (Me. 1996).

If a court finds that an ordinance does not satisfy the tests outlined in the cases just cited, it generally will hold that a denial of an application by the board under the deficient portions of the ordinance is invalid. The result is that the applicant will be able to do what he or she applied to do in the first place, absent some other law or ordinance which controls the application and provides a separate basis for review and possible denial. *Bragdon v. Town of Vassalboro*, 2001 ME 137, 780 A.2d 299. Therefore, it is important to have local ordinances reviewed by an attorney or some other professional familiar with court decisions and State law to determine whether those local ordinances are enforceable.

Sorting Out Which Board or Official Has Jurisdiction Over Which Part of a Project and at What Point in the Process

The board should look carefully at the administrative procedures and appeals procedures found in the ordinance and statute (if any) governing its review. Often, the steps which an applicant must follow to obtain the necessary planning board approval, building permit from the code enforcement officer (CEO), and variances from the board of appeals before a project can be constructed are not what the board may think. The initial decision as to whether an applicant needs planning board approval or not is sometimes delegated by the ordinance to the code enforcement officer, who may be authorized to make many substantive decisions regarding completeness of the application, the type of use actually being proposed, and the specific performance standards which must be satisfied. *E.g., Ray v. Town of Camden*, 533 A.2d 912 (Me. 1987). Many planning boards incorrectly assume that the ordinance gives them the authority to make those judgments, resulting in an illegal decision and confusion on the part of the board members and the applicant when this is later brought to their attention.

The same is true with regard to projects which need a variance from one or more of the dimensional requirements of the ordinance. Many ordinances require a variance to be sought from the board of appeals as part of an appeal from a denial of an application by the CEO or planning board rather than as a direct request to the appeals board. Those same ordinances often authorize only the CEO to judge an applicant's compliance with specific dimensional requirements; the planning board's review of an application is often limited to a more general list of criteria (e.g., "will not unreasonably pollute water," "will not adversely affect traffic congestion," etc.). Many boards incorrectly assume that they are supposed to review an application for conformance with all the requirements of the ordinance and also incorrectly assume that an applicant may seek and obtain a variance before requesting either the CEO's or planning board's approval. To avoid confusion, ill will and an illegal decision, the planning board and other officials involved should take the time to review and understand the procedures outlined in the ordinance before taking action or advising the applicant.

Prior Mistakes by the Board

The fact that a board or its predecessor made mistakes in the issuance of a permit or the interpretation of an ordinance does not have any legally binding, precedent-setting value. "Past mistakes do not give any administrative board the right to act illegally." *Rushford v. Inhabitants of Town of York*, CV-89-331 (Me. Super. Ct., Yor. Cty., December 13, 1989).

Time Limit on Use of Permit

Generally, once the board has issued a permit or approval, the holder of the permit or approval has an unlimited amount of time within which to complete the work covered by the

approval or permit. However, the board should check the applicable ordinance or statute to be sure. Some ordinances provide that a permit expires if work is not begun within a certain period of time. This sort of time limit has been upheld by the Maine Supreme Court. *George D. Ballard, Builder v. City of Westbrook*, 502 A.2d 476 (Me. 1985); *Laverty v. Town of Brunswick*, 595 A.2d 444 (Me. 1991); *Cobbossee Development Group v. Town of Winthrop*, 585 A.2d 190 (Me. 1991); *City of Ellsworth v. Doody*, 629 A.2d 1221 (Me. 1993) (interpretation of “significant progress of construction” within six months of obtaining a permit); *Peterson v. Town of Rangeley*, 715 A.2d 930 (Me. 1998) (interpreting meaning of “the work authorized...is suspended or abandoned at any time after the work is commenced...”).

Selected Statutes Which Might Affect a Project Being Reviewed

The following are State laws with which a planning board may want to be familiar as it reviews a land use project:

Subdivision Law

Title 30-A M.R.S.A. §§ 4401-4408 (the Municipal Subdivision Law) requires the planning board to review subdivisions using the procedures and performance standards set out in the statute. (If the municipality has not established a planning board, then the municipal officers must perform the review in the absence of some other locally-designated review authority.) The statute also authorizes the board to adopt additional reasonable regulations which are related to the statutory review criteria and procedures where the municipality has not adopted a subdivision ordinance. For a number of other materials related to subdivision issues, see Appendix 5.

Seasonal Conversion Law

Title 30-A M.R.S.A. § 4215(2) requires a permit from the local plumbing inspector (LPI) before a seasonal dwelling can be converted to a year-round dwelling in the shoreland zone. A “seasonal dwelling” is defined in 30-A M.R.S.A. § 4201(4) as “a dwelling which existed on December 31, 1981 and which was not used as a principal or year-round residence during the period from 1977 to 1981.” Listing that dwelling as the occupant’s legal residence for the purposes of voting, payment of income tax, or automobile registration or living there for more than 7 months in any calendar year is evidence of use as a principal or year-round dwelling. Before issuing a conversion permit, the LPI must find that the applicant has met one of three conditions outlined in 30-A M.R.S.A. § 4215(2).

Entrance Permit

Title 23 M.R.S.A. § 704 requires a permit from the Department of Transportation or from the municipal officers for new entrances on a State or State-aid highway. The permit is

issued by the municipal officers if the driveway will be in the “compact” area, which means a section of the highway where structures are nearer than 200 feet apart for at least 1/4 mile. 23 M.R.S.A. § 2.

Road Setback

Title 23 M.R.S.A. § 1401-A requires structures on land adjoining a State or State-aid highway to meet certain setback requirements from the centerline or edge of the right-of-way. Many local ordinances do not clearly state the point from which setbacks must be measured. Title 33 M.R.S.A. § 465 states that a person who owns land abutting a town road owns to the center line of the road, absent a deed or other rule established by 33 M.R.S.A. §§ 466-469 to the contrary. It may be advisable for local ordinances to state that setback will be measured from the centerline rather than from the property line or from the right-of-way edge, which also can be hard to establish.

Overboard Discharges

Title 38 M.R.S.A. § 413 and § 464 generally prohibit the issuance of new overboard discharge licenses and establish standards for the renewal or expansion of existing licenses by DEP. An “overboard discharge” is basically a licensed discharge of treated sewage into a water body (usually saltwater), usually from a treatment system serving one residence or business, as opposed to a discharge from a municipal or quasi-municipal sewage treatment plant. A local building inspector cannot issue a permit for any building required to have an overboard discharge license from DEP under § 413 and § 464 until that license is obtained. 30-A M.R.S.A. § 4103.

Construction or Expansion of Structure Requiring Subsurface Disposal

Title 30-A M.R.S.A. § 4211(3) requires any person erecting a structure requiring subsurface disposal to provide documentation to the municipal officers that the system can be constructed in accordance with the State’s Subsurface Wastewater Disposal Rules. Any person expanding a structure using subsurface disposal must provide documentation to the municipal officers that a legal replacement system can be installed in the event of a future malfunction. Notice of that documentation must be recorded in the Registry of Deeds with copies sent to all abutters. Abutters are then prohibited from installing a well in a location which would prevent installation of the replacement system. The landowner also is prohibited from erecting a structure or conducting an activity which would prevent installation of the replacement system. Notice to the public drinking water supplier is also required if the lot is within the source water protection area mapped by the Department of Health and Human Services Public Drinking Water Program. (See Appendix 2 for a sample notice.)

Farmland

Title 7 M.R.S.A. § 56 generally prohibits a municipal official from issuing a building or use permit which would allow “inconsistent development” on land of more than one acre if the development will be within 100 feet of “farmland” which was registered with the municipality between June 1 and June 15, 1990 or 1991 in accordance with the registration requirements provided in the statute then in effect.

Small Gravel Pits

Title 30-A M.R.S.A. § 3105 requires municipalities to enforce certain minimum standards against “small borrow pits” which do not fall within DEP’s jurisdiction.

Maine Endangered Species Act

Title 12 M.R.S.A. § 12804 authorizes the Department of Inland Fisheries and Wildlife to designate sites which are essential habitat for the conservation of endangered or threatened species and adopt guidelines for their protection. Municipal boards and officials are prohibited from granting any permit or approval for projects that will significantly alter a designated habitat area or violate the Department’s protection guidelines. The Department is required to provide information to municipalities to assist them in their review and may authorize the granting of a variance.

Regulation of State, Federal, County, and Municipal Projects

Title 5 M.R.S.A. § 1742-B requires the State Bureau of General Services in the Department of Administrative and Financial Services to notify the municipality of a proposed State construction project. If the municipality intends to review and issue building permits for the State project, it must notify the Bureau no later than 45 days following receipt of notification from the State. If so requested, the State must comply with local ordinances governing construction and alteration of buildings, if the local codes are as stringent as or more stringent than the State’s code governing State projects. (See later discussion in this manual regarding municipal building codes and the State Uniform Building and Energy Code.)

With regard to zoning ordinances, 30-A M.R.S.A. § 4352(6) requires that State agencies comply with zoning ordinances which are consistent with a comprehensive plan which is consistent with the Growth Management Act in the development of any building, parking facility, or other publicly owned structure. The Governor, or his/her designee, is authorized to waive any use restrictions in a zoning ordinance after giving public notice, notice to the municipal officers, and opportunity for public comment, and making five specific findings relating to the public benefits of the project and available alternatives. Zoning ordinances continue to be advisory to the State if they are not consistent with a comprehensive plan which is consistent with the Growth Management Act. The Maine Supreme Court has held that a private project conducted on land leased from the State may be exempt from

municipal zoning regulations if it is shown that the use of the State's land "furthers a State purpose or governmental function," that there is a "compelling need" for the exemption and that there is State involvement of a substantial nature in the project. *Senders v. Town of Columbia Falls*, 657 A.2d 93 (Me. 1994). Zoning ordinances are not simply advisory when the municipality or county or a quasi-municipal corporation is conducting the project.

According to Title 40 U.S.C.S. § 3312, federal agencies proposing to construct or alter buildings are required to "consider" the requirements of local zoning and other building ordinances and "consult" with the appropriate local officials. They also are required to submit plans for review by local officials and permit local inspections. Municipalities are prohibited from prosecuting a federal agency for failing to comply with local ordinances or failing to follow local recommendations.

Erosion and Sedimentation Control; Stormwater Management

Title 38 M.R.S.A. § 420-C requires any person who will be conducting an activity which involves filling, displacing or exposing soil or other earthen materials to take measures required by the statute and DEP rules to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource. Erosion controls must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken. Where property is subject to erosion because of a human activity involving filling, displacing or exposing soil or other earthen materials before July 1, 1997, special compliance deadlines are established in § 420-C. Agricultural fields are exempt from § 420-C and forest management activities, including roads, are deemed in compliance with § 420-C if they conform to the standards of the Maine Land Use Regulation Commission.

Any person proposing to construct a project that includes one acre or more of disturbed area must receive prior approval from DEP pursuant to 38 M.R.S.A. § 420-D to ensure compliance with stormwater management rules. Certain activities are exempt.

Minimum Lot Size

Title 12 M.R.S.A. § 4807 et seq. establishes a statewide minimum lot size for land use activities which will dispose of waste by means of a subsurface disposal system. The minimum lot size for new single family residential units (including mobile and seasonal homes) is 20,000 square feet. For multi-unit housing and other land use activities, a proportionately greater lot size is required based on a statutory formula. This law is administered and enforced by the Department of Health and Human Services (DHHS). (See Appendix 7 for an explanation of the formula.) Municipalities may establish larger lot size requirements by local ordinance. Many ordinances do not clearly state whether the lot size applies on a per unit, per structure, or per lot basis.

Essential Services/Public Utilities

Title 30-A M.R.S.A. § 4352(4) and a related Public Utility Commission (PUC) rule found in 65-407 CMR Ch. 885 provide a process that a public utility may follow to be exempt from compliance with a local zoning ordinance. The utility must first apply for local permit approval and go through the local review process before seeking an exemption certificate from the PUC.

A utility of any kind may not install services to a lot or dwelling unit in a subdivision or a new structure within the shoreland zone without written authorization from the appropriate local officials attesting to the validity and currency of all local shoreland zoning and subdivision approvals. 30-A M.R.S.A. § 4406(3); 38 M.R.S.A. § 444.

Conflict Between Ordinances and the Federal Fair Housing Act Amendments or the Americans With Disabilities Act

Boards are sometimes asked to grant approval of a land use application on the basis that the municipal ordinance is in violation of the Federal Fair Housing Act Amendments (FFHAA) relating to group homes for individuals with disabilities or that the ordinance violates the Americans with Disabilities Act (ADA). The applicant's position is that the ordinance illegally requires the group home project to undergo a conditional use or special exception review when similar housing for non-disabled individuals and families is not subjected to the same approval process. Often these claims are valid, but they put the board in the position of having to approve something which is contrary to the express language of a local ordinance. Since the municipality could be faced with civil rights liability under federal law if its ordinances do illegally discriminate against people with disabilities, the board should consult with the municipality's attorney when one of these issues is raised. A *Maine Townsman* Legal Note entitled "ADA/Land Use Regulation" (February 1996) can be accessed on MMA's website at www.memun.org.

The same dilemma will also arise under 30-A M.R.S.A. § 4357-A with regard to group homes. Group homes which are operated essentially as single family homes must be treated the same as single family homes for non-disabled people. If the local ordinance is in conflict with this statute, consult with the municipal attorney before making a decision.

CHAPTER 3 – Appeals

Jurisdiction

Generally speaking, if a decision by the planning board is made under a local ordinance, the ordinance will provide for an appeal of the board's decision to the local board of appeals. Where an ordinance or statute does not expressly authorize an appeal to the board of appeals, the person wishing to challenge the planning board's decision must appeal directly to the Superior Court under Civil Rule of Procedure 80B. 30-A M.R.S.A. § 2691; *Lyons v. Board of Directors of SAD No. 43*, 503 A.2d 233 (Me. 1986); *Levesque v. Inhabitants of Town of Eliot*, 448 A.2d 876 (Me. 1982). One exception to this rule is when the appeal is from a decision made under a zoning ordinance. This includes appeals brought under a shoreland zoning ordinance as well as a general zoning ordinance. By statute (30-A M.R.S.A. § 4353) the board of appeals is authorized to hear and decide certain types of zoning appeals, unless otherwise provided in the ordinance. If a zoning ordinance authorizes the planning board to hear special exception or conditional use applications, then the ordinance may provide that appeals from those decisions go directly to Superior Court. 30-A M.R.S.A. § 4353. Title 30-A M.R.S.A. § 2691 states that when an ordinance grants jurisdiction to the board of appeals, it must specify "the *precise subject matter* that may be appealed to the board and the official(s) whose action or non-action may be appealed to the board."

Enforcement Decisions

When an appeal involves an enforcement decision by a code enforcement officer or planning board rather than a decision involving a permit application, the board of appeals will have to study the ordinance provisions and state law carefully to determine whether it has jurisdiction. Until recently, enforcement actions (i.e. notices of violation) were generally advisory and not appealable, unless expressly authorized by local ordinance. Now, state law expressly provides that enforcement decisions may be appealed to a board of appeals and in turn to Superior Court, unless a local ordinance or charter expressly provides otherwise. 30-A M.R.S.A. § 2691(4).

Some ordinances say that "any decision of the code enforcement officer or planning board" may be appealed to the board of appeals. Others say that "decisions in the administration of this ordinance" may be appealed. Some ordinances authorize appeals from "decisions made in the administration and enforcement" of the ordinance. The first and third examples above authorize appeals from decisions regarding the enforcement of the ordinance, while the language of the second example is intended to authorize only appeals from decisions regarding the approval or denial of a permit ("administration"). The following cases

illustrate how the court has interpreted specific ordinance provisions: *Nichols v. City of Eastport*, 585 A.2d 827 (Me. 1991); *Town of Freeport v. Greenlaw*, 602 A.2d 1156 (Me. 1992), and *Town of Boothbay v. Jenness*, 2003 ME 50, 822 A.2d 1169 (where the court found that ordinance language authorized an appeal from an enforcement order issued by the CEO and that failure to appeal limited issues that could be raised as a defense in a land use violation prosecution); *Inhabitants of Levant v. Seymour*, AP-02-26 (Me. Super. Ct., Pen. Cty., June 9, 2003) (where the court interpreted the phrase “administration of this ordinance” to include both decisions on permit applications and enforcement orders/stop work orders); *Seacoast Club Adventure Land v. Town of Trenton*, AP-03-04 (Me. Super. Ct., Han. Cty., June 10, 2003); *Pepperman v. Town of Rangeley*, 659 A.2d 280 (Me. 1995) (where it was held that the appeals board decision was advisory because the enforcement section of the ordinance did not provide for an administrative appeal of an enforcement order and because the administrative appeal section limited the board’s authority to recommending that the CEO reconsider the decision being appealed if the board disagreed with the CEO’s decision); *Herrle v. Town of Waterboro*, 2001 ME 1, 763 A.2d 1159 (where the court concluded that, under the language of the ordinance, the board of appeals decision was purely advisory regarding violation determinations of the CEO and therefore was not subject to judicial review); *Salisbury v. Town of Bar Harbor*, 2002 ME 13, 788 A.2d 598 (holding that a decision to issue or deny a certificate of occupancy was appealable); *Farrell v. City of Auburn*, 2010 ME 88, 3 A.3d 385, and *Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, 9 A.3d 806 (holding that the appeals board’s decision related to the appeal of an enforcement order was advisory and not appealable based on language in the ordinance).

In 2013 the Legislature amended the law governing appeals to a board of appeals to provide that notices of violation and enforcement orders by a CEO under a land use ordinance are appealable to the board of appeals and in turn to Superior Court, unless the ordinance expressly provides that these decisions are advisory or may not be appealed (30-A M.R.S.A. § 2691(4)) This amendment was intended to address the issues in *Eliot Shores* and *Farrell* and to allow appeals of decisions that affect the property interests of landowners [L.D. 1204, Summary (126th Legis. 2013)]. The Maine Supreme Court decision in *Dubois Livestock, Inc. v. Town of Arundel*, 2014 ME 122, 103 A.3d 556, discusses section 2691(4). *Dubois* acknowledges that section 2691(4) was amended and that it expressly authorizes appeals to Superior Court from a board of appeals decision on an appeal of a notice of violation issued by a code enforcement officer. See also, *Paradis v. Town of Peru*, 2015 ME 54, 115 A.3d 610. *Raposa v. Town of York*, 2019 ME 29; 204 A.3d 129. In *Raposa*, the Court held that a CEO’s written decision interpreting a land use ordinance is appealable to the board of appeals, even when the CEO finds that there is no violation of the ordinance. The Court noted a decision that an ordinance has not been violated is a legal determination (not merely advisory), which often determines the use and value of property. Until recently, landowners with property interests affected by these decisions had no remedy. A court will now probably find that these landowners may appeal a notice of no violation to a board of

appeals, unless a local ordinance or charter provides otherwise. To the extent that *Herrle* and other cases cited above hold otherwise, they are overturned. See also, *Richert v. City of South Portland*, 1999 ME 179, 740 A.2d 1000; *Toussaint v. Town of Harpswell*, 1997 ME 189, 698 A.2d 1063. A municipality should be as explicit as possible in its ordinance regarding the extent to which it wants a CEO's notice of violation, stop work order, cease and desist order, or similar type of enforcement notice to be appealable in order to eliminate any confusion. Where a landowner appealed a stop work order by the CEO and the town simultaneously filed a Rule 80K enforcement action in District Court, the Maine Supreme Court has held that the two proceedings were separate and distinct and the District Court was not required to wait until the administrative appeal was finally concluded. *Town of Levant v. Seymour*, 2004 ME 115, 855 A.2d 1159, citing *Town of Boothbay v. Jenness*, 2003 ME 50, 822 A.2d 1169.

Appeal of Failure to Act

Where the basis for an appeal is the alleged failure of the CEO or planning board to act on a zoning permit application by a required deadline, at least one court has held that the board of appeals has jurisdiction over such an appeal based on language in 30-A M.R.S.A. § 4353(1), which states that “the board of appeals shall hear appeals from any failure to act.” *Shure v. Town of Rockport*, AP-98-005 (Me. Super. Ct., Knox Cty., May 11, 1999).

Deadline for Filing Appeal

Appeal to Board of Appeals

If an ordinance or statute does not provide a time limit within which an appeal to the board of appeals must be filed, the court has held that a period of 60 days constitutes a reasonable appeal period. *Keating v. Zoning Board of Appeals of City of Saco*, 325 A.2d 521 (Me. 1974); *Gagne v. Cianbro Corp.*, 431 A.2d 1313 (Me. 1981); *Boisvert v. Reed*, 1997 ME 72, 692 A.2d 921. The Maine Supreme Court has held that in the case of the issuance of a building permit by a building inspector, the appeals period begins to run from the date of issuance of the permit, even though there was no formal public decision-making process comparable to the decision-making process used by a board. *Boisvert v. King*, 618 A.2d 211 (Me. 1992); *Otis v. Town of Sebago*, 645 A.2d 3 (Me. 1994); *Wright v. Town of Kennebunkport*, 1998 ME 184, 715 A.2d 162; *Juliano v. Town of Poland*, 1999 ME 42, 725 A.2d 545 (CEO's issuance of stop work order nearly two years after permit issued by former CEO was deemed an untimely appeal of the original permit decision); *Salisbury v. Town of Bar Harbor*, 2002 ME 13, 788 A.2d 598. An abutter's request for a cease and desist order related to permits that were issued and never appealed has been deemed an untimely appeal of those permits and denied. *Fryeburg Water Company v. Town of Fryeburg*, 2006 ME 31, 893 A.2d 618. In *Ream v. City of Lewiston*, CV-91-209 (Me. Super. Ct., Andro. Cty., July

24, 1991), the court found that the language of the ordinance appeal provision was broad enough to allow an appeal of a code enforcement officer's decision not to revoke a permit, so the deadline for filing an appeal ran from that decision and not the original permit decision.

The deadline for filing an appeal from a planning board decision on a subdivision application is governed by local ordinance, if the appeals board has been authorized to hear such an appeal; it runs from the date of the planning board's written order. *Hylar v. Town of Blue Hill*, 570 A.2d 316 (Me. 1990).

Appeal to Superior Court

An appeal to the Superior Court from a decision of the appeals board must be filed within 45 days of the date of the board's original decision on an application. 30-A M.R.S.A. § 2691. This means within 45 days of the meeting at which the board actually voted on the application, even though the applicant may not have received written notice of the decision. *Beckford v. Town of Clifton*, 2014 ME 156, 107 A.3d 1124; *Vachon v. Town of Kennebunk*, 499 A.2d 140 (Me. 1985); *Carroll v. Town of Rockport*, 2003 ME 135, 837 A.2d 148. A court may allow a time period for an appeal to be extended under Rule 80B if the person filing the appeal can show good cause. *Brackett v. Town of Rangeley*, 2003 ME 109, 831 A.2d 422; *Viles v. Town of Embden*, 2006 ME 107, 905 A.2d 298. But see, *Reed v. Halprin*, 393 A.2d 160 (Me. 1978). For an appeal which must go directly to Superior Court because there is no local appeal by statute or by ordinance, the appeal deadline is governed by Rule 80B and is 30 days; the question is whether that deadline runs from the date of the vote or date of receipt of a written decision, as noted above. In the case of a subdivision decision, the court has ruled that the deadline runs from the date of the planning board's written order. *Hylar, supra*. The 30-day deadline applies even to an appeal of an allegedly illegal condition of subdivision approval. *Sold, Inc. v. Town of Gorham*, 2005 ME 24, 868 A.2d 172. If the applicable local ordinance establishes a deadline for appealing to Superior Court, then that deadline will control. *Woodward v. Town of Newfield*, 634 A.2d 1315, 1317 (Me. 1993). Where the board of appeals has voted to reconsider a decision, an appeal of the reconsidered decision must be filed with the court within 15 days. 30-A M.R.S.A. § 2691.

The Maine Supreme Court addressed the issue of what constitutes a "final decision" that may be appealed to court in *Bryant v. Town of Camden*, 2016 ME 27, 132 A.3d 1183. In this decision, the Court expressed frustration with an ordinance provision that authorized an appeal of "any" municipal land use decision (noting that this results in a process that is "inefficient, time-consuming and expensive") and held that municipalities do not have any home rule authority to override judicial authority to decide when a decision is appealable. In response to this decision, the Legislature amended the laws governing appeals of municipal land use decisions to clarify what constitutes a "final decision" that may be appealed to

court. P.L. 2017, ch. 241, § 3. A final decision is now defined as “when a project for which approval is requested has received all required municipal administrative approvals by the [local appeals] board, planning board, or municipal reviewing authority, a site plan or design review board, a historic preservation review board an any other review board created by municipal charter or ordinance.” 30-A M.R.S.A. § 2691(H). Any denial of a request for approval by the board of appeals is also considered a final decision even if other municipal administrative approvals are required for the project and remain pending.

Local land use decisions that satisfy the definition of “significant municipal land use decision” found in 30-A M.R.S.A. § 4481 may be appealed either by filing a complaint in the general Superior Court docket or in the “Business Court” docket pursuant to 30-A M.R.S.A. § 4482. A party may not file an appeal of a significant municipal land use decision, if the decision is by a board of appeals, until the decision is a final decision pursuant to § 2691, as discussed above. 30-A M.R.S.A. § 4482(3).

Untimely Appeal; Incomplete Appeal Application

In the absence of language in an ordinance to the contrary, the board of appeals has no authority to change an appeal period. When an appeal is filed late, the board of appeals must take a vote as a board at a public meeting of the board finding that the appellant missed the deadline and deny the application on that basis. The person who filed the appeal may then appeal to Superior Court. If the court finds that a flagrant miscarriage of justice would occur if the appeal were not heard, the court may remand the case to the board of appeals. *Wright, supra*; *Keating, supra*; *Gagne, supra*; *Brackett, supra*; *Viles, supra*. As a general rule, the court will dismiss an appeal which was not filed within the applicable time limits.

An appeal to the board of appeals is not timely if it is not filed in accordance with the municipality’s required procedures, including the completion of whatever appeal application form is required by the municipality and payment of any required fee. *Washburn v. Town of York*, CV-92-11 (Me. Super. Ct., Yor. Cty., November 10, 1992); *Breakwater at Spring Point Condominium Assoc. v. Doucette*, AP-97-28 (Me. Super. Ct., Cum. Cty., April 8, 1998). The fact that a permit was void when issued does not have any bearing on the deadline for appealing the issuance of the permit or the board’s jurisdiction. *Wright, supra*. But see *Brackett v. Rangeley, supra*.

Indirect Attempts to Challenge an Appeals Board Decision Without Appealing; Refusal of Other Town Official(s) to Comply With Appeals Board Order

If a decision is not appealed, it cannot be challenged indirectly at a later date by way of another appeal on a related matter. Nor can one town official or board challenge a decision by another town official or board by refusing to issue a permit or approval on the basis that

the other board's or official's decision was wrong. For example, if a board of appeals grants a setback variance which the planning board believes is illegal, the planning board cannot refuse to grant its approval for the structure that was the subject of the variance solely on the basis that the variance should not have been granted. The planning board must "live with" the decision of the appeals board unless the planning board, municipal officers, or other "aggrieved party" successfully challenges the variance in Superior Court. *Fryeburg Water Co. v. Town of Fryeburg*, 2006 ME 31, 893 A.2d 618; *Juliano v. Town of Poland*, 1999 ME 42, 725 A.2d 545; *Milos v. Northport Village Corporation*, 453 A.2d 1178 (Me. 1983); *Fisher v. Dame*, 433 A.2d 366 (Me. 1981). See also *Town of North Berwick v. Jones*, 534 A.2d 667 (Me. 1987), *Fitanides v. Perry*, 537 A.2d 1139 (Me. 1988), *Crosby v. Town of Belgrade*, 562 A.2d 1228 (Me. 1989), *Wright v. Town of Kennebunkport*, *supra*, *DeSomma v. Town of Casco*, 2000 ME 113, 755 A.2d 485, *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644, *Nichols v. City of Eastport*, 585 A.2d 827 (Me. 1991), and *Peterson v. Town of Rangeley*, 715 A.2d 930 (Me. 1998) (dealing with collateral estoppel/res judicata).

Appeal Involving Exempt Gift Lots in a "Family" Subdivision; Appeal Involving Existence of Illegal Subdivision

For a case ruling on the timing of an appeal challenging a code enforcement officer's decision to issue building permits based on a conclusion that the lots were exempt gift lots under 30-A M.R.S.A. § 4401(4) (Subdivision Law), see *Mills v. Town of Eliot*, 2008 ME 134, 955 A.2d 258. For cases involving whether the existence of a subdivision violation was ripe for appeal, see *Marquis v. Town of Kennebunk*, 2011 ME 128, 36 A.3d 861.

Exhaustion of Remedies

If a statute or ordinance requires appeals to be heard first by the board of appeals, a court generally will refuse to decide an appeal which has been filed directly with the court and will remand the case (send it back) to the board of appeals to hold a hearing, create a record, prepare findings and conclusions, and make a decision. If a board has been legally established by the municipality but no members have been appointed or if the board does not have enough members serving to take legal action, the court will order the municipality to make the necessary appointments. The same is true where a municipality is legally required to have a local appeals board by State law to hear certain kinds of appeals (e.g., zoning appeals), but has failed to establish one; the court will order the municipality to take the necessary legislative action to create the board and then appoint the necessary people to fill the positions on the board. The legal concept involved is called "exhaustion of administrative remedies." *Fletcher v. Feeney*, 400 A.2d 1084 (Me. 1979); *Noyes v. City of Bangor*, 540 A.2d 1110 (Me. 1988); *Freeman v. Town of Southport*, 568 A.2d 826 (Me. 1990); *Nichols v. City of Eastport*, 585 A.2d 827 (Me. 1991).

A planning board decision made under a local zoning ordinance must be appealed first to the local board of appeals, unless the ordinance expressly authorizes a direct appeal to court. This is also true for a site plan review decision where the site plan review is part of a zoning ordinance and not a separate ordinance. *Hodson v. Town of Herman*, 2000 ME 181, 760 A.2d 221; *Thomas v. City of South Portland*, 2001 ME 50, 768 A.2d 595.

Standing

The test for standing to appeal as established by the courts is a two-part test, described below. It applies both to local appeals and to appeals filed with a court. A municipality probably has home rule ordinance authority under 30-A M.R.S.A. § 3001 to modify this test.

“Particularized Injury” Test

When a person can demonstrate that he or she has suffered or will suffer a “particularized injury” as a result of a decision by the planning board or CEO, he/she has met one part of the general test for “standing” to file an appeal with the board of appeals, if the board has jurisdiction to hear the appeal by ordinance or statute. To meet the “particularized injury” test, the person must show how his or her actual use or enjoyment of property will be adversely affected by the proposed project or must be able to show some other personal interest which will be directly affected which is different from that suffered by the general public. *Brooks v. Cumberland Farms, Inc.*, 703 A.2d 844 (Me. 1997); *Christy’s Realty Ltd. v. Town of Kittery*, 663 A.2d 59 (Me. 1995); *Pearson v. Town of Kennebunk*, 590 A.2d 535 (Me. 1991); *Anderson v. Swanson*, 534 A.2d 1286 (Me. 1987); *New England Herald Development Group v. Town of Falmouth*, 521 A.2d 693 (Me. 1987); *Leadbetter v. Ferris*, 485 A.2d 225 (Me. 1984); *Lakes Environmental Association v. Town of Naples*, 486 A.2d 91 (Me. 1984); *Harrington v. Town of Kennebunk*, 459 A.2d 557 (Me. 1983). The court has held that “particularized injury for abutting landowners can be satisfied by a showing of the proximate location of the abutter’s property, together with a relatively minor adverse consequence” if the requested approval or permit were granted. *Fryeburg Water Co. v. Town of Fryeburg*, 2006 ME 31, 893 A.2d 618; *Norris Family Associates LLC v. Town of Phippsburg*, 2005 ME 102, 879 A.2d 1007; *Rowe v. City of South Portland*, 730 A.2d 673 (Me. 1999). See also, *Sproul v. Town of Boothbay Harbor*, 2000 ME 30, 746 A.2d 368; *Sahl v. Town of York*, 2000 ME 180, 760 A.2d 266 (defining “abutter” to include “close proximity”); and *Drinkwater v. Town of Milford*, AP-02-08 (Me. Super. Ct., Pen. Cty., April 18, 2003) (son of landowners whose property abutted the applicants’ and who worked on his parents’ land failed to document that he had a future interest in his parents’ land sufficient to give him standing to appeal as an abutter). A person who can show that he/she owns property in the same neighborhood as the applicant’s property, even if not an abutter, generally will be deemed to have a particularized injury. *Singal v. City of Bangor*, 440 A.2d 1048 (Me. 1982). Where a person claims that a project will cause him potential harm

because he drives by the site daily on a public road and will be exposed to greater safety risks due to traffic generated by the project, the court has held that such harm is not distinct from that which will be experienced by many other members of the driving public and therefore was not sufficient for the purposes of the “particularized injury” test. *Nergaard v. Town of Westport Island*, 2009 ME 56, 973 A.2d 735. See also *Nelson v. Bayroot LLC*, 2008 ME 91, 953 A.2d 378, for a case involving the lessee of a lot in an approved subdivision and standing to appeal a subdivision plan amendment related to an undeveloped area of the subdivision.

If an appeal is brought by a citizens’ group or some other organization, the test for the organization’s standing to appeal is whether it can show that “any one of its members would have standing in his/her own right and that the interests at stake are germane to the organization’s purpose.” *Pride’s Corner Concerned Citizens Assn v. Westbrook Board of Zoning Appeals*, 398 A.2d 415 (Me. 1979); *Widewaters Stillwater Co, LLC v. City of Bangor*, AP-01-16 (Me. Super. Ct., Pen. Cty., May 30, 2001); *Fitzgerald v. Baxter State Park Authority*, 385 A.2d 189 (Me. 1978); *Penobscot Area Housing Development Corp. v. City of Brewer*, 434 A.2d 14 (Me. 1981); *Conservation Law Foundation Inc. v. Town of Lincolnville*, AP-00-3 (Me. Super. Ct., Waldo Cty., February 26, 2001); *Friends of Lincoln Lakes v. Board of Environmental Protection*, 2010 ME 18, 989 A.2d 1128.

Actual Participation in Proceedings Required

Anyone wishing to appeal from a planning board decision to the board of appeals or from the board of appeals to Superior Court under Rule 80B must also be able to show actual participation for the record in the applicable local hearing process. It is not enough for a person to express his/her concerns to board members or other officials outside the setting of the public hearing or to speak at a preliminary meeting of the board. Participation must be at the official hearing in person or through someone there acting as the person’s official agent or by submitting written comments for the official hearing record. *Jaeger v. Sheehy*, 551 A.2d 841 (Me. 1989); *Lucarelli v. City of South Portland*, 1998 ME 239, 719 A.2d 534; *Wells v. Portland Yacht Club*, 2001 ME 20, 771 A.2d 371. Under 30-A M.R.S.A. § 4353, the municipal officers and the planning board are automatically made “parties” to the appeals board proceedings, so they would not have to meet the test outlined above in order to file an appeal in Superior Court from an appeals board decision. *Crosby v. Town of Belgrade*, 562 A.2d 1228 (Me. 1989). The same is not true for other officials, like the code enforcement officer, who want to appeal the board of appeals decision; since those other officials are not statutory parties, they would have to satisfy the two-part test for standing. *Tremblay v. Inhabitants of Town of York*, CV-84-859 (Me. Super. Ct., Yor. Cty., October 3, 1985); *Department of Environmental Protection v. Town of Otis*, 1998 ME 214, 716 A.2d 1023.

Appeal by Permit Holder

If the person wishing to appeal is the person who applied for approval from the planning board, that person has automatic standing to appeal, whether or not he/she attended or otherwise participated in the proceedings of the planning board or the appeals board; the written application for the permit or the appeal is sufficient participation. *Rancourt v. Town of Glenburn*, 635 A.2d 964 (Me. 1993). However, where applicants had allowed their purchase and sale agreement to lapse before filing an appeal, the court held that they had no standing to appeal a denial of their permit application. *Madore v. Land Use Regulation Commission*, 1998 ME 178, 715 A.2d 157.

Appeal by Municipality

See *City of Bangor v. O'Brian*, 1998 ME 130, 712 A.2d 517, and *Town of Minot v. Starbird*, 2012 ME 25, 39 A.3d 897, for an example of a case where the municipality challenged a board of appeals decision in Superior Court.

Nature of Review—*De Novo* vs. Appellate

The Maine Supreme Court has held that 30-A M.R.S.A. § 2691 requires a board of appeals to conduct a *de novo* review of an appeal, unless the municipal ordinance explicitly directs otherwise. *Stewart v. Town of Sedgwick*, 2000 ME 157, 757 A.2d 773; *Yates v. Town of Southwest Harbor*, 2001 ME 2, 763 A.2d 1168; *Gensheimer v. Town of Phippsburg*, 2005 ME 22, 868 A.2d 161. In 2017, the Legislature amended § 2691 to codify these decisions. P.L. 2017, ch. 241, § 1. The law now specifically provides that a board of appeals must conduct a *de novo* review of any matter before it, unless the municipality provides otherwise by charter or ordinance. If a charter or ordinance establishes an appellate review process, the board of appeals must limit its review to the record established by the board or official whose decision is the subject of the appeal and to the arguments of the parties. No new evidence may be accepted.

In a *de novo* review proceeding the board of appeals steps into the shoes of the original decision-maker and starts the review process from scratch, holding its own hearings, creating its own record, and making its own independent judgment of whether a project should be approved based on the evidence in the record which the board of appeals created. The record created by the planning board or code enforcement officer is relevant only to the extent that it is offered as evidence for the record of the board of appeals hearing. The board of appeals will weigh that evidence along with any other that it receives. The board of appeals does not use its record to judge the validity of the decision made by the planning board or code enforcement officer. The board of appeals, in effect, must pretend that the planning board or code enforcement officer decision was never made. In a *de novo* proceeding, the board of appeals is not deciding whether the planning board or code

enforcement officer decision was in conformance with the ordinance, whether it was supported by the evidence in the record, or whether it had procedural problems. The board of appeals is deciding only whether the new record which the board of appeals has created supports a finding by the board of appeals that the permit application should be approved or denied. It does this by following the procedures and using the performance standards/review criteria that governed the CEO or planning board in making the original decision. Check the ordinance to see what it says regarding who has the burden of proof. Many ordinances, including the DEP Minimum Shoreland Zoning Guidelines, expressly state that the person filing the appeal has the burden of proof; no distinction is made between *de novo* and appellate review. If the ordinance is unclear, consult the board's attorney for help interpreting the appeals provision. See generally, *Dunlop v. Town of Westport Island*, 2012 ME 22, 37 A.3d 300, *Osprey Family Trust v. Town of Owls Head*, 2016 ME 89, 141 A.3d 1114, and *Fitanides v. City of Saco*, 2015 ME 32, 113 A.3d 64 for a discussion of this issue.

When a local ordinance provides that the board of appeals' role is strictly an appellate review, the board's job is to review the record created by the official or board whose decision is being appealed and decide whether that record supports the original decision and whether the original decision is consistent with the ordinance. The role of the board of appeals is like that of an appeals court. The board is not conducting a hearing to solicit new evidence in order to create its own record. It is not starting from scratch and is not making its own independent decision. Its decision would not be in the form of findings of fact and conclusions of law. That format is used only when the board conducts a *de novo* review of an appeal or is the original decision-maker, according to the court in *Yates, supra*. The board may hear presentations by each of the parties and members of the public, but only for the purpose of summarizing the case or trying to clarify certain points. New evidence or new issues/arguments may not be introduced and may not be considered by the board. The board may consult the municipality's attorney or MMA Legal Services or other experts for guidance in interpreting evidence in the existing record or may ask the parties to submit briefs to assist the board in interpreting the record. If authorized by the applicable ordinance, the board of appeals may remand a case to the original decision-maker to hear new evidence or new issues. See *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86 for a case involving multiple remands by the board of appeals to the planning board to correct procedural problems and clarify its earlier findings and conclusions.

To determine whether the ordinance under which a decision is being appealed creates an appellate review role or a *de novo* review role for the board of appeals, the board should seek advice from the municipality's private attorney or from the Maine Municipal Association's Legal Services Department. In the *Stewart*, *Yates* and *Gensheimer* cases cited above, the court interpreted virtually identical appeal provisions from the Sedgwick, Southwest Harbor and Phippsburg ordinances; the language was basically the same as the language in an earlier version of the DEP model shoreland zoning guidelines. In *Stewart*, the

court found that the language required a *de novo* review, but in *Yates* and *Gensheimer*, the court found that essentially the same ordinance language required an appellate review. There was no explicit reference to appellate review in any of the ordinances; the court reached this conclusion based on its interpretation of the ordinance language. See also *Mills v. Town of Eliot*, 2008 ME 134, 955 A.2d 258, where the court interpreted language as requiring appellate review.

To eliminate any doubt about the type of review required for an appeal application by a particular ordinance, a municipality should decide whether it wants the appeals board to conduct an appellate or a *de novo* review and then amend its ordinance accordingly. For sample language directing the board to conduct a *de novo* or an appellate review of an appeal, see MMA's *Board of Appeals Manual*.

At least one Superior Court case has suggested that there may be times when a board of appeals must entertain testimony during its review of an appeal if the person seeking to offer evidence is entitled to due process, even though the board is conducting an appellate review. The example given by the court involved a permit decision by a code enforcement officer where there was no hearing process at which an abutter could testify. The court suggested that an abutter who wanted to challenge the granting of a permit by the code enforcement officer would be deprived of due process if the board of appeals could not hear testimony from the abutter and was required to make its decision based solely on the record created by the code enforcement officer. *Salisbury v. Town of Bar Harbor*, AP-99-35 (Me. Super. Ct., Han. Cty., January 23, 2001).

A zoning variance application is always reviewed *de novo* by the board. The board of appeals is always the original decision-maker for zoning variances.

Authority of Appeals Board Regarding Decision Appealed

As a general rule, in deciding an appeal, whether *de novo* or in an appellate review capacity, the board of appeals does not have the power to issue a permit. If the board of appeals decides that a permit or approval should be granted, then part of its decision would include an instruction to issue the permit or approval directed to the code enforcement officer, planning board, or whoever had initial jurisdiction over the permit application. However, a different approach may be authorized or required by local ordinance.

Court Review of Appeals Board Decision

If the board of appeals conducted a *de novo* review of an appeal and the board of appeals decision is appealed to Superior Court, the Superior Court will review the board of appeals

decision and board of appeals record in determining whether to uphold or reverse the decision. If the board of appeals acted in an appellate review capacity, then the Superior Court will review the original decision made by the planning board or code enforcement officer and the related record, not that of the board of appeals. *Stewart, supra*.

The court must decide whether the decision-maker “abused its discretion, committed an error of law, or made findings not supported by substantial evidence in the record.” *Shackford and Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102, 104 (Me. 1984); *Juliano v. Town of Poland*, 1999 ME 42, 725 A.2d 545; *Thacker v. Konover Development Corp.*, 2003 ME 30, 818 A.2d 1013; *Hannum v. Board of Environmental Protection*, 2003 ME 123, 832 A.2d 765. It will uphold the decision being appealed unless it was “unlawful, arbitrary, capricious, or unreasonable.” *Senders v. Town of Columbia Falls*, 647 A.2d 93 (Me. 1994); *Kelly & Picerne v. Wal-mart Stores*, 658 A.2d 1077 (Me. 1995); *Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, 712 A.2d 1061. The court will uphold the board’s decision even if conflicting evidence in the record would support a contrary decision, as long as the record does not compel a contrary conclusion. *Herrick v. Town of Mechanic Falls*, 673 A.2d 1348 (Me. 1996); *Two Lights Lobster Shack, supra*; *Grant’s Farm Associates, Inc. v. Town of Kittery*, 554 A.2d 799 (Me. 1989). The court will vacate the decision only if there is no competent evidence in the record to support the decision. *Friends of Lincoln Lakes v. Board of Environmental Protection*, 2010 ME 18, 989 A.2d 1128; *Concerned Citizens to Save Roxbury v. Board of Environmental Protection*, 2011 ME 39, 15 A.3d 1263. If the official or board whose decision is reviewed by the court failed to make required findings and conclusions, the court generally will “remand” (send back) the case to that decision-maker with instructions to make written findings sufficient to allow the parties and the court to know whether or not the applicant satisfied each relevant ordinance standard and why. *E.g., Chapel Road Associates v. Town of Wells*, 2001 ME 178, 787 A.2d 137; *Widewaters Stillwater v. BAACORD*, 2002 ME 27, 790 A.2d 597; and *Ram’s Head Partners LLC v. Town of Cape Elizabeth*, 2003 ME 131, 834 A.2d 916. Detailed minutes are not an adequate substitute for written findings and conclusions. *Comeau v. Town of Kittery*, 2007 ME 76, 926 A.2d 189. Compare those cases with *Bragdon v. Town of Vassalboro*, 2001 ME 137, 780 A.2d 299, and *Wells v. Portland Yacht Club*, 2001 ME 20, 771 A.2d 371.

Preserving Objections for a Court Appeal

If a party to the proceedings has any objections to procedures or proposed findings by the board, he or she must raise them at the meeting so that the board has a chance to consider them and address them in its decision. Failure to raise these objections before the board will prevent that person or any other party from making those objections in an appeal to the Superior Court. *Pearson v. Town of Kennebunk*, 590 A.2d 535 (Me. 1991); *Wells v. Portland Yacht Club, supra*; *Oliver v. City of Rockland*, 1998 ME 88, 710 A.2d 905; *Rioux v. Blagojevic*, AP-02-24 (Me. Super. Ct., Pen. Cty., June 24, 2003).

Status of Original Permit or Approval During Appeal Period or During Period When Appeal Being Reviewed

In the absence of a statute or ordinance provision or a court order to the contrary, the right of the person who received the initial permit or approval to proceed with the approved project is not “stayed” (prohibited temporarily). That person is free to proceed with the project, but does so at his/her peril. If an appeal is filed and decided in favor of the person challenging the permit/approval, the permit holder will have to comply with any final order by a court or appeals board to discontinue the work, remove what was done and restore the area. To avoid this additional expense, it would be in the permit holder’s best interest to wait and see if an appeal is filed and its outcome before proceeding with approved work. *Cayer v. Town of Madawaska*, 2009 ME 122, 984 A.2d 207.

Board of Appeals Members Attending Planning Board Meetings

Whether a board of appeals hears an appeal *de novo* or in an appellate capacity, it probably is not a good practice for board of appeals members to attend planning board meetings on applications which are likely to be appealed to the board of appeals. The board of appeals should be making its decisions based on evidence presented to it as part of its own proceedings. By not attending the planning board’s meetings, the appeals board will minimize bias and due process problems with its own proceedings by ensuring that the only information which will affect its decision on an appeal is what is presented directly to it and of which all participants will be aware. Board members who do learn information outside the board of appeals meetings have an obligation to note that information for the record.

Authority of Municipal Officers

The municipal officers do not have the authority to hear appeals and override a decision of the planning board or board of appeals unless an ordinance provision, statute, or agency rule expressly gives them that authority. However, they do have the authority to appeal a zoning decision of the board of appeals to court and some boards of selectpersons and councils have done so. *E.g., City of Bangor v. O’Brian*, 1998 ME 130, 712 A.2d 517. Such appeals should be reserved for cases of extremely poor decisions, since suing to challenge a board decision is a sure way to eliminate interest in serving on the board. As was noted earlier in this manual, if the board of appeals is appointed by the municipal officers, the municipal officers may remove the appointed board members for cause after notice and hearing if they feel that board members are ignoring the requirements of an ordinance or State law when making decisions.

Role of Code Enforcement Officer (CEO) or Planning Board at Appeals Board Meeting

Some ordinances actually require the code enforcement officer or planning board members to attend board of appeals hearings. Whether or not it is a local requirement, it is a recommended practice and should not be viewed by the appeals board as a threat to its authority. In most cases the appeals board members will find it helpful to have the CEO or a planning board member present to answer questions relating to a particular decision being appealed or the town's ordinances. This will also avoid possible *ex parte* communications problems, since the board members might otherwise be tempted to consult the planning board or code officer outside the public meeting. Finally, this practice may also improve communications among various boards and officials. Each will gain a better understanding of what the other does under the town's ordinances and relevant State laws and will learn what the legal limits are in their respective areas of authority.

Although the code enforcement officer can be a very valuable resource for the board, the CEO has no special legal standing to actively participate at board meetings under general law. In the absence of a local ordinance or policy that requires the board to solicit input from the code officer on appeal or other applications that the board is reviewing, the board has the discretion whether or not to seek input from the CEO. The CEO may request to be recognized by the board if he/she wishes to offer advice or comment about what the board is considering, but the board has no legal obligation to allow the CEO to speak at that point. The exception to this general rule is where the CEO is attempting to offer comments during a public hearing or where the application is an appeal from a decision that the CEO made. In that context, the CEO should be given the same right to present his/her case that the applicant has and the same right to speak as members of the public have.

In some communities the code enforcement officer acts as staff to the board of appeals and actively conducts research for the board, prepares summaries of appeals which they will be hearing, drafts board minutes, and prepares draft findings and conclusions for the board to adopt when deciding an appeal. While this role for the code enforcement officer may not cause legal problems when the appeal involves a planning board decision, it does present some due process concerns if the appeal is from a decision of the code enforcement officer and therefore should be avoided in those cases.

The planning board should request that a copy of its record and decision in the original proceeding be entered into the record of the appeals board proceeding related to that decision. This must be done if the board of appeals will be reviewing the appeal in an appellate capacity, as the board of appeals decision on the appeal must be based on its analysis of the original planning board record and decision. If the board of appeals is

conducting a *de novo* review, it is not reviewing the planning board's record and is not limited to that record, so the only way the appeals board can consider it is if the planning board offers it into evidence.

Second Appeal of Same Decision/Reconsideration by the Board of Appeals

Second Appeal

Unless an ordinance provides otherwise, the Maine Supreme Court has held that an applicant whose appeal or request for a variance was denied has no legal right to request another hearing on the same appeal or variance unless he or she can show a substantial change in the circumstances which provided the basis for the first appeal or variance. *Driscoll v. Gheewalla*, 441 A.2d 1023 (Me. 1982); *Silsby v. Allen's Blueberry Freezer, Inc.*, 501 A.2d 1290 (Me. 1985). See also, *Toomey v. Town of Frye Island*, 2008 ME 44, 943 A.2d 563.

Reconsideration

Title 30-A M.R.S.A. § 2691 authorizes a board of appeals to reconsider a decision within 45 days of its original decision. Whether the board agrees to reconsider and rehear an earlier decision is entirely discretionary, absent language to the contrary in a local ordinance. *Tarason v. Town of South Berwick*, 2005 ME 30, 868 A.2d 230. A request to the board to reconsider a decision must be filed within ten days of the decision that is to be reconsidered and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision; the board is not governed by the 10-day deadline if it decides to initiate a reconsideration. *Toomey v. Town of Frye Island, supra*. The board may conduct additional hearings and receive additional evidence and testimony. An appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.

Before beginning a reconsideration process, the board must give direct notice to the original appellant and/or applicant, *Doggett v. Town of Gouldsboro*, 2002 ME 175, 812 A.2d 256, and to anyone else required by the ordinance or State law to receive special notice of the original proceedings. Notice also must be given to the public in the manner required for the original proceedings. If specific individuals actively participated in the original hearing, the board should also notify them directly of the reconsideration hearing. *Anderson v. New England Herald Development Group*, 525 A.2d 1045 (Me. 1987). If someone has already filed a Rule 80B appeal from the board's original decision, the board should not attempt to reconsider its original decision on its own initiative or at the request of someone else without consulting the attorney who will handle the case for the municipality in court. If a request for reconsideration is received, the board must vote at a meeting preceded by public notice

as to whether it will entertain the request or deny it. Even if the chair thinks that the board will reject the request, the chair must schedule it for action at a board meeting if the person will not withdraw the request. For other cases involving reconsideration issues, see *Jackson v. Town of Kennebunk*, 530 A.2d 717 (Me. 1987), *Cardinali v. Town of Berwick*, 550 A.2d 921 (Me. 1988), and *Gagnon v. Lewiston Crushed Stone*, 367 A.2d 613 (Me. 1976). (*Forbes v. Town of Southwest Harbor*, 2001 ME 9, 763 A.2d 1183 is another case involving reconsideration, but addresses a prior version of section 2691.)

Authority of the Board to Modify/Revise an Appeal Application

If a person submits an application to the planning board or code enforcement officer for a permit and is denied, there may be several bases on which that person can or should appeal to the board of appeals (where a local appeal is authorized). The person may file an administrative appeal seeking to challenge the way the ordinance was administered, the way an ordinance provision was interpreted, or the way the evidence was analyzed in deciding whether the application met the ordinance requirements. Sometimes, as the board is reviewing the appeal, it may conclude that the applicant hasn't requested exactly what he/she needs in order to get the approval that he/she wants for the proposed activity. For example, a person's application may have been denied because the planning board thought his structure needed to satisfy a setback requirement, so he appealed to the board of appeals for a variance. In reviewing the appeal, the board may conclude that the planning board misinterpreted the ordinance and that no variance is needed because the ordinance allows the proposed construction under a nonconforming structure provision. The Maine Supreme Court has held that, in a case such as this, it is not necessary for the board of appeals to deny the appeal and make the person submit a new administrative appeal application seeking an interpretation of the ordinance. *Cushing v. Smith*, 457 A.2d 816, 823 (Me. 1983). According to the court, the board of appeals has the authority to "address all issues raised and to correct plain error." It is not as clear from *Cushing* how the board should handle a situation where the person has filed an administrative appeal but really needs a variance. Since a variance has a totally different set of criteria which the person must satisfy and since abutters may be more interested in an appeal if a variance is being sought, it probably is safest for the board of appeals to require that the applicant fill out a separate variance appeal application and then advertise a new hearing on the variance request.

CHAPTER 4 – Variances and Waivers

Authority to Grant Variances or Waivers

Zoning Variances

As a general rule, any ordinance provision which attempts to authorize the planning board, code enforcement officer, or municipal officers to grant variances from zoning requirements violates 30-A M.R.S.A. § 4353, since that statute gives the board of appeals the sole authority to grant a zoning variance. *Perkins v. Town of Ogunquit*, 1998 ME 42, 709 A.2d 106; *York v. Town of Ogunquit*, 2001 ME 53, 769 A.2d 172. A municipality's home rule authority under 30-A M.R.S.A. § 3001 has been preempted by 30-A M.R.S.A. § 4353 regarding delegation of authority to grant zoning variances.

The Maine Supreme Court in *Hartwell v. Town of Ogunquit*, 2015 ME 51, 115 A.3d 81, found that the planning board's decision to grant a project approval without requiring the applicant to satisfy a building elevation requirement was tantamount to the unauthorized granting of a waiver. The court remanded the case with instructions that the board require the missing building elevation information. (Note: Since the site plan review provisions in this case were part of a zoning ordinance and not a stand-alone ordinance, the town arguably could not grant waiver authority to the planning board; such an ordinance provision might constitute the granting of illegal variance powers to the planning board. See, *Perkins v. Town of Ogunquit*, *supra*.)

In 2005 section 4353 (4-C), last paragraph was amended to allow a zoning ordinance to explicitly authorize the planning board to approve applications that don't meet required zoning dimensional standards in order to promote cluster development, accommodate lots with insufficient frontage or to provide for reduced setbacks for lots or buildings made nonconforming by a zoning ordinance. An approval which falls within these guidelines does not constitute a zoning variance. This authority does not include shoreland zoning dimensional standards. The amendment was enacted in response to the Maine Supreme Court decision in *Sawyer v. Town of Cape Elizabeth*, 2004 ME 71, 852 A.2d 58. See also, *Wyman v. Town of Phippsburg*, 2009 ME 77, 976 A.2d 985 (construing two different buffer provisions in a zoning ordinance and concluding that the planning board decision regarding buffer width wasn't tantamount to the granting of a variance).

In 2013 the Legislature enacted 30-A M.R.S.A. § 4353-A. That statute allows a municipality to enact a zoning ordinance provision which authorizes the code enforcement officer to grant a disability variance as part of a permit to make a dwelling accessible for a person with a disability who resides in or regularly uses the dwelling. Normally, such a variance would be

granted by the board of appeals pursuant to 30-A M.R.S.A. § 4353(4-A)(A) without the need for an ordinance provision.

Non-Zoning Variances

Often a subdivision or site plan review ordinance or other non-zoning ordinance gives the planning board the authority to waive certain requirements of the ordinance if they would cause hardship to the applicant. The definition of “hardship” in that context is not necessarily the same as the definition of undue hardship in § 4353, unless the ordinance expressly refers to that statute. Although the municipality may give the authority to grant these waivers to the board of appeals, there is no conflict with § 4353 if a non-zoning ordinance empowers the planning board to grant waivers. In any case, a non-zoning ordinance which authorizes a board or official to waive certain requirements should set out the standards to use in determining whether an applicant will suffer a hardship without a waiver. However, if the waiver authority granted under a non-zoning ordinance attempts to authorize a board or official to waive dimensional standards or other requirements established under a zoning ordinance, such a waiver provision is beyond the municipality’s home rule authority, unless it falls within the 2005 guidelines set out in section 4353 described above. *Sawyer v. Town of Cape Elizabeth*, 2004 ME 71, 852 A.2d 58. See also *York v. Town of Ogunquit*, 2001 ME 53, 769 A.2d 172.

The Maine Supreme Court in the case of *Jarrett v. Town of Limington*, 571 A.2d 814 (Me. 1990), overturned a number of waivers granted by the planning board from various requirements of the town’s subdivision ordinance. The court found that the board had exceeded the authority granted to it under the language of the ordinance. In *Bodack v. Town of Ogunquit*, 2006 ME 127, 909 A.2d 620, the court found that, while the evidence in the record probably would have supported a waiver decision by the board, the board had failed to make required written findings and conclusions, so the court vacated the board’s decision.

Procedure for Obtaining a Variance

Some ordinances allow an applicant to seek a variance from the appeals board before applying to the code enforcement officer or planning board for a permit or approval. Most require that the applicant apply for the permit or approval first and then seek a variance as an appeal from the denial of the original application. Study the ordinance governing the project to determine the appropriate sequence in your municipality.

Recording Variances/Waivers

State law (30-A M.R.S.A. § 4353 and § 4406) requires the board of appeals and the planning board to prepare a certificate which can be recorded in the Registry of Deeds and provide it

to the applicant for recording whenever they grant a zoning variance or a subdivision variance or waiver. In the case of the planning board waiver, where a subdivision plan will be recorded, the required information must be noted on the plan. A sample subdivision variance form is included in Appendix 5. To be valid, these certificates or plans must be recorded within 90 days of the decision on a zoning variance or within two years of the final approval of a subdivision plan. If they are not recorded within the stated deadlines, they become void. The only way to “reactivate” the variance or waiver in that case is for the person wishing to rely on the variance or waiver to submit a new application on which the board may act. The board’s review would be governed by the ordinance in effect at the time of the new application. The board is not obligated to grant the variance or waiver automatically the second time around; if it determines that it made a mistake the first time, it should deny the new request. *Peterson v. Town of Rangeley*, 715 A.2d 930 (Me. 1998). If the board of appeals is only authorized to hear a variance request as an appeal from a decision by another board or official, then the person who wants the variance would need to reapply for the permit/approval and be denied again in order for the board of appeals to hear the new variance request, absent language in the ordinance to the contrary.

Variance vs. Special Exception/Conditional Use

There is often confusion between variances/waivers and special exceptions/conditional uses. When a board grants a variance or waiver, it is essentially waiving or reducing some requirement of the ordinance which would otherwise prevent a proposed structure or project from being built. Depending on the wording of the local ordinance, variances are sometimes authorized for dimensional requirements (such as lot size, setback, and frontage) as well as to allow uses which are otherwise prohibited by the ordinance. The exact wording of the ordinance governs what variances or waivers may be granted in a particular municipality.

Special exception and conditional use provisions in a zoning ordinance deal with uses which the legislative body generally has decided to permit in a particular area of the community. The purpose of the special exception or conditional use review procedure is to allow the planning board or board of appeals (whichever one is authorized by the ordinance) to determine whether conditions should be imposed on the way the use is conducted or constructed, in order to ensure that the use is consistent with and has no adverse impact upon the surrounding neighborhood. This decision must be guided by specific ordinance standards.

Effect of Variance Decision

When the board of appeals grants a zoning variance, the effect is to waive or modify some requirement(s) of the ordinance which the applicant was unable to meet. Without the variance from the board of appeals waiving or modifying the ordinance requirement, the

planning board or CEO would have had no legal authority under the ordinance to approve the application. The variance itself does not constitute a “permit,” however. Generally, once a variance is granted, the applicant must return to the planning board or some other local official for a permit authorizing the project as a whole. The granting of the variance removes an obstacle to the issuance of the permit or other approval by the planning board or the code enforcement officer.

Once granted, a variance “runs with the land,” meaning that the variance is transferred automatically to a new owner if the property subsequently changes hands. It has an indefinite life unless the municipality has set a time limit by ordinance after which the variance will expire if not used. Young, *Anderson’s American Law of Zoning* (4th ed.) § 20.02, pages 412-416; *Inland Golf Properties v. Inhabitants of Town of Wells*, AP-98-040 (Me. Super. Ct., Yor. Cty., May 11, 2000).

After a variance is granted and a building is constructed or activity conducted based on that variance, the building or activity thereafter should be treated as a legally conforming structure or use for the purposes of deciding which ordinance provisions govern it in the future. *Sawyer Environmental Recovery Facilities, Inc. v. Town of Hampden*, 2000 ME 179, 760 A.2d 257. This probably is true even if the variance was granted illegally, if it is not appealed. *Wescott Medical Center v. City of South Portland*, CV-94-198 (Me. Super. Ct., Cum. Cty., July 15, 1994). The granting of a lot size variance brings the lot into “dimensional conformity” regarding minimum lot size. *Campbell v. City of South Portland*, 2015 ME 125, 123 A.3d 994. A building or activity that is conforming because of the granting of a variance may later become legally nonconforming as a result of an ordinance amendment.

Shoreland Zoning Variances

Title 38 M.R.S.A. § 438-A(6-A) requires the board of appeals to send copies of all shoreland zoning variance applications (and any supporting material) to the Department of Environmental Protection for review and comment at least 20 days before taking action on the application. If the DEP submits comments to the board, they must be entered into the record and considered by the board in making its decision. Shoreland zoning ordinances require that variance decisions be filed with the DEP within 14 days from the date of the decision.

If DEP staff believes that the board has incorrectly interpreted the undue hardship test or otherwise erred in granting a variance, they may ask the board to voluntarily reconsider its decision. However, unless the DEP actually participated in the board of appeals proceedings on the variance application, either by having a staff person attend or by sending written comments for the record, the court has held that DEP cannot appeal the granting of the

variance in court. *Department of Environmental Protection v. Town of Otis*, 1998 ME 214, 716 A.2d 1023. The State does have another option, since it has the authority under 38 M.R.S.A. § 443-A to take enforcement action against a municipality which is not administering and enforcing its shoreland zoning ordinance as required by State law.

The Maine Supreme Court has interpreted 30-A M.R.S.A. § 4353 and 38 M.R.S.A. § 439-A(4) as allowing a municipal board of appeals to grant a dimensional variance to permit an expansion within the shoreland zone as long as the applicant proves undue hardship and the dimensional variance and expansion are not otherwise prohibited by the ordinance. *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930. Section 439-A now includes express language to that effect.

CHAPTER 5 – Vested Rights, Equitable Estoppel, Pending Applications, and Permit Revocation

Revocation of Permit or Approval

Situations may arise in which a property owner obtained municipal approval before doing work, but the official or board who granted the approval believes that it should be revoked. Generally, the official or board should not attempt to revoke the approval on the grounds that the property owner is violating certain conditions of the approval, unless authorized by a court order. However, where the issuing authority discovers that it granted the approval without authority or that the applicant made false statements on the application which were material to the decision, it may have authority to revoke its approval without being authorized to do so by a court order or by ordinance. 83 *Am. Jur.2d*, “Zoning and Planning,” § 645; 13 *Am. Jur.2d*, “Buildings,” §§ 16, 18; McQuillin, *Municipal Corporations* (3rd ed. rev.), §§ 26.212a, 26.213, 26.214. The Maine Supreme Court in *Juliano v. Town of Poland*, 1999 ME 42, 725 A.2d 545, held that a new code enforcement officer’s attempt to revoke a permit that was improperly granted by the prior code enforcement officer constituted an untimely appeal of the former code enforcement officer’s decision and allowed the permit to stand. Before attempting to revoke any permit or approval, the board or official should consult with its municipal attorney to determine whether the permit holder may have acquired vested rights in the permit or approval.

The issue of whether someone has established vested rights is generally one for the courts to decide, not a local board or official. Parties may raise these issues as part of an application or appeal to preserve them for argument before a court later on, however. See the discussion of vested rights later in this chapter.

A person aggrieved by the issuance of a permit or approval cannot bypass an applicable appeal deadline simply by requesting that the official or board in question revoke it and then appealing a decision not to revoke. *Wright v. Town of Kennebunkport*, 1998 ME 184, 715 A.2d 162. However, a court may waive an appeal deadline to prevent a “flagrant miscarriage of justice.” *Brackett v. Town of Rangeley*, 2003 ME 109, 831 A.2d 422; *Viles v. Town of Embden*, 2006 ME 107, 905 A.2d 298.

Equitable Estoppel

Based on the facts of a particular situation, a municipality may be equitably estopped (prevented on grounds of fairness) from revoking a permit because a person has changed his or her position in reasonable and detrimental reliance upon the issuance of a permit or other approval or by the conduct or statement of a public official. *City of Auburn*

v. Desgrosselliers, 578 A.2d 712 (Me. 1990); *F.S. Plummer Co., Inc. v. Town of Cape Elizabeth*, 612 A.2d 856 (Me. 1992); *H.E. Sargent v. Town of Wells*, 676 A.2d 920 (Me. 1996); *Turbat Creek Preservation LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489; *Tarason v. Town of South Berwick*, 2005 ME 30, 868 A.2d 230; *Burton v. Merrill*, 612 A.2d 862 (Me. 1992). A finding of estoppel against a municipality is rare, however. The courts have not found a municipality estopped by oral representations of a code enforcement officer where the ordinance clearly required any official decision or ruling by the CEO to be in writing. *Shackford and Gooch v. Town of Kennebunk*, 486 A.2d 102 (Me. 1984); *Courbron v. Town of Greene*, AP-01-019 (Me. Super. Ct., Andro. Cty., November 19, 2002). In deciding whether a municipality should be estopped, a court will consider the “totality of the circumstances, including the nature of the particular governmental agency, the particular governmental function being discharged, and any considerations of public policy arising from the application of estoppel to the governmental function.” *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996). See also, *Salisbury v. Town of Bar Harbor*, 2002 ME 13, 788 A.2d 598. Where a code enforcement officer provided a copy of what he thought was the ordinance in effect and a landowner did everything he was asked by the code officer to comply, the town was estopped from enforcing the amended, unpublished version of the ordinance that had been adopted by the town many years before. *Bouchard v. Town of Orrington*, CV-90-88 (Me. Super. Ct., Pen. Cty., April 3, 1992).

Applicability of New Ordinances to “Pending” Applications or Approved Projects; Expiration and Retroactivity Clauses

“Pending” Applications

Sometimes a municipality amends an applicable ordinance provision either while an application is being reviewed by the board or after the board has granted its approval but before the landowner has begun any of the work authorized by the board. If an application is “pending” when the ordinance is amended, 1 M.R.S.A. § 302 requires the board to complete its review under the original ordinance, unless the new ordinance contains a retroactivity clause. Such clauses have been upheld by the Maine Supreme Court. *City of Portland v. Fisherman’s Wharf Associates II*, 541 A.2d 160 (Me. 1988). “Pending” means that the application has already undergone some substantive review, absent language in an ordinance to the contrary. 1 M.R.S.A. § 302. Other court cases addressing this issue include: *Littlefield v. Inhabitants of Town of Lyman*, 447 A.2d 1231 (Me. 1982); *Maine Isle Corp. v. Town of St. George*, 499 A.2d 149 (Me. 1985); *Brown v. Town of Kennebunkport*, 565 A.2d 324 (Me. 1989); *Walsh v. Town of Orono*, 585 A.2d 829 (Me. 1991); *Lane Construction Corp. v. Town of Washington*, 2007 ME 31, 916 A.2d 973. Section 302 defines “substantive review” as a “review of that application to determine whether it complies with the review criteria and other applicable requirements of law.” Preliminary review of an application for “completeness” generally does not constitute a substantive review. *Waste Disposal Inc.*

v. Town of Porter, 563 A.2d 779, 781 (Me. 1989). The fact that an application was delivered to the town office or received and receipted by the board's secretary does not make an application "pending," absent a local ordinance to the contrary. *P.W. Associates v. Town of Kennebunkport*, No. CV-88-716 and CV-89-29 (Me. Super Ct., Yor. Cty, Nov. 20, 1989).

The Maine Supreme Court has made it clear that where several ordinances, each with their own application and review process, govern a project, the fact that a person has a "pending application" under one of those ordinances does not make his application "pending" for all purposes. Any ordinance amendments to other ordinances or other totally new ordinances adopted in the meantime would apply to the project. *Larrivee v. Timmons*, 549 A.2d 744 (Me. 1988); *Perrin v. Town of Kittery*, 591 A.2d 861 (Me. 1991).

Approved Projects; Expiration Clause

Generally, once the board has granted project approval, a property owner has an unlimited amount of time within which to complete the work covered by the approval. However, some ordinances provide that a decision granting project approval expires if work is not begun or completed to a certain degree within a certain period of time or a plan is not recorded within a specific period of time. This type of provision has been upheld by the court in Maine. *George D. Ballard, Builder v. City of Westbrook*, 502 A.2d 476 (Me. 1985); *Laverty v. Town of Brunswick*, 595 A.2d 444 (Me. 1991); *Cobbossee Development Group v. Town of Winthrop*, 585 A.2d 190 (Me. 1991); *City of Ellsworth v. Doody*, 629 A.2d 1221 (Me. 1993); *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930. *Nelson v. Bayroot, LLC*, 2008 ME 91, 953 A.2d 378. See 30-A M.R.S.A. § 4408, which establishes a limit on ordinance deadlines related to the recording of an approved subdivision plan.

Where a permit or variance expires and becomes void based on the provisions of an expiration clause in a statute or ordinance, that does not preclude the board of appeals from hearing and deciding a new variance application. The court has held that a legal concept called *res judicata* does not apply in that situation. *Twigg v. Town of Kennebunk*, 662 A.2d 914 (Me. 1995); *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930.

Even in the absence of an expiration clause, it may be possible to apply new ordinances to previously approved projects in certain cases, depending on the facts. For example, where a subdivision plan has been recorded for a number of years and the landowner has not sold the lots or made any substantial expenditures to develop the plan, it may be possible to require the owner to merge some of the lots shown on the plan to bring them into compliance with new lot size and frontage requirements which were adopted after the approval of the plan. *F.S. Plummer, Inc. v Town of Cape Elizabeth*, 612 A.2d 856 (Me. 1992) (purchaser of several unimproved subdivision lots unable to build when town subsequently rezoned lots as resource protection). It is advisable for the board to consult with an attorney before deciding

what to do in such situations. See also, *Thomas v. Zoning Board of Appeals of the City of Bangor*, 381 A.2d 643, 647 (Me. 1978), *Fisherman's Wharf, supra*, and *Larrivee v. Timmons*, 549 A.2d 744 (Me. 1988). Compare those cases with *Littlefield v. Town of Lyman, supra*, *Cardinali v. Planning Board of Town of Lebanon*, 373 A.2d 251 (Me. 1978), and *Henry and Murphy, Inc. v. Town of Allenstown*, 424 A.2d 1132 (NH 1980).

Retroactivity Clause

It is arguable that a new ordinance can be made applicable to an approved but uncompleted project by incorporating appropriate language in a retroactivity clause included in the new ordinance. *Fisherman's Wharf, supra*. However, it is questionable whether 1 M.R.S.A. § 302 permits a municipality to make an ordinance retroactive to a date before the date on which the public first had notice of the proposed ordinance.

Title 30-A M.R.S.A. § 3007(6), enacted during the 2011 legislative session, prohibits a municipality from attempting to “nullify or amend a municipal land use permit by a subsequent enactment, amendment or repeal of a local ordinance after a period of 45 days has passed after (A) the permit has received its lawful final approval and (B) if required, a public hearing was held on the permit.” The validity of a permit expiration clause is not affected by section 3007(6). (This statute apparently was intended to modify the Maine Supreme Court decision in *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, 856 A.2d 1183).

Vested Rights

Vested Rights in Valid Permit

The Maine Supreme Court has suggested that a person who begins substantial work (more than site preparation) in good faith reliance on a validly issued permit may obtain vested rights in that permit. *Thomas v. Bangor Zoning Board of Appeals*, 381 A.2d 643 (Me. 1978).

Vested Rights to Proceed with Approved Construction Under Existing Ordinance

The Maine Supreme Court in *Sahl v. Town of York*, 2000 ME 180, 760 A.2d 266, stated that in order for a right to proceed with construction under the existing ordinance to vest, three requirements must be met: (1) there must be the actual physical commencement of some significant and visible construction; (2) the commencement must be undertaken in good faith with the intention to continue with the construction and to carry it through to completion; and (3) the commencement of construction must be pursuant to a validly issued permit (citing a number of cases from Maine and other states). The court went on to note that rights may not vest solely because a property owner: (1) filed an application for a building permit; (2) was issued a building permit; (3) relied on the language of the existing

ordinance; or (4) incurred preliminary expenses in preparing and submitting the application for a permit (citing a number of Maine cases). In *Sahl* the court found that the landowner had acquired vested rights based on the facts and also found that an expiration clause applicable on its face to permits approved before a certain date did not apply to the project in question.

Vested Rights in Erroneously Approved Permit

In a concurring opinion in the Maine Supreme Court's decision in *Brackett v. Town of Rangeley*, 2003 ME 109, 831 A.2d 422, one of the justices observed that a permit approved and issued in error is totally invalid and cannot serve as a basis for a claim of vested rights; however, that position has not been clearly adopted by a majority of the court. A vested rights test adopted by the Pennsylvania court in relation to an erroneously approved permit in *Department of Environmental Resources v. Flynn*, 344 A.2d 720 (PA Cmwlth. 1975) is as follows:

- Did the applicant exercise due diligence in attempting to comply with the law?
- Did the applicant demonstrate good faith throughout the proceedings?
- Did the applicant expend substantial unrecoverable funds in reliance on the board's approval?
- Has the period during which an appeal could have been taken from the approval of the application expired?
- Is there insufficient evidence to prove that individual property rights or the public health, safety or welfare would be adversely affected by the project as approved?

If a person receives approval for a project, but the board later determines that it has granted the approval in error (such as for a use which is prohibited by the pertinent ordinance or which requires the approval of another board or official), before attempting to treat the approval as invalid or revoke it, the board should seek legal advice regarding whether the person has acquired vested rights in the approval under the facts of that particular situation.

CHAPTER 6 – Ordinance Interpretation

General Ordinance Interpretation Rules

General

If the board is confronted with an ambiguous provision in an ordinance as part of an application review and is unsure about how to apply the provision to a particular project, it should keep the following court-made rules of ordinance interpretation in mind. The board may find it necessary to seek advice from an attorney in many instances in order to determine how these general rules apply to the ordinance involved. When an ordinance authorizes a board or official to decide an application, neither that board or official nor the applicant may bring a request for an ordinance interpretation directly to the board of appeals, unless authorized by ordinance; the board of appeals' authority to interpret an ordinance normally will arise only through the filing of an appeal from some application decision by the code enforcement officer or planning board.

Consistency

To determine the purpose of the ordinance provision, interpret each section to be in harmony with the overall scheme envisioned by the municipality when it enacted the ordinance. The assumption is that the drafter would not have included a provision that clearly was inconsistent with the rest of the ordinance. *Natale v. Kennebunkport Board of Zoning Appeals*, 363 A.2d 1372 (Me. 1976); *Cumberland Farms, Inc. v. Town of Scarborough*, 1997 ME 11, 688 A.2d 914.

Object; Context; Common Meaning

A zoning ordinance must be construed reasonably with regard to the objects sought to be attained and to the general structure of the ordinance as a whole. All parts of the ordinance must be taken into consideration to determine legislative intent. *Moyer v. Board of Zoning Appeals*, 233 A.2d 311 (Me. 1967); *George D. Ballard, Builder v. City of Westbrook*, 502 A.2d 476 (Me. 1985); *Nyczepir v. Town of Naples*, 586 A.2d 1254 (Me. 1991); *Dyer v. Town of Cumberland*, 632 A.2d 145 (Me. 1993); *C.N. Brown, Inc. v. Town of Kennebunk*, 644 A.2d 1050 (Me. 1994); *Buker v. Town of Sweden*, 644 A.2d 1042 (Me. 1994); *Christy's Realty Ltd. v. Town of Kittery*, 663 A.2d 59 (Me. 1995); *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930; *Oliver v. City of Rockland*, 1998 ME 88, 710 A.2d 905; *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996); *Springborn v. Town of Falmouth*, 2001 ME 57, 769 A.2d 852; *Jordan v. City of Ellsworth*, 2003 ME 82, 828 A.2d 768; *Priestly v. Town of Hermon*, 2003 ME 9, 814 A.2d 995; *Isis Development, LLC v. Town of Wells*, 2003 ME 149, 836 A.2d 1285; *Peregrine Developers, LLC v. Town of Orono*, 2004 ME 95, 854 A.2d 216; *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86; *Aydelott v. City of Portland*, 2010 ME 25, 990 A.2d 1024; *Bizier v. Town of Turner*, 2011 ME 116, 32 A.3d 1048.

Ambiguity Construed in Favor of Landowner

The restrictions of a zoning ordinance run counter to the common law, which allowed a person to do virtually whatever he or she wanted with his or her land. The ordinance must be strictly interpreted. Where exemptions appear to be in favor of a property owner, the board should interpret them in the owner's favor. *Forest City, Inc. v. Payson*, 239 A.2d 167 (Me. 1968). (But see the discussion of legally nonconforming uses, structures and lots appearing later in this chapter, where the courts have held that ambiguities should be construed against the landowner in that context.)

Natural Meaning of Undefined Terms

Zoning ordinances must be given a strict interpretation and may not be extended by implication. However, undefined terms must be given their common and generally accepted meaning unless the context indicates otherwise or there is express legislative intent to the contrary. *Jade Realty Corp. v. Town of Eliot*, 2008 ME 80, 946 A.2d 408; *DeSomma v. Town of Casco*, 2000 ME 113, 755 A.2d 485; *Silsby v. Belch*, 2008 ME 104, 952 A.2d 218; *Hrouda v. Town of Hollis*, 568 A.2d 824, 825 (Me. 1990); *Moyer v. Board of Zoning Appeals, supra.*; *George D. Ballard, Builder, Inc. v. City of Westbrook*, 502 A.2d 476 (Me. 1985); *Putnam v. Town of Hampden*, 495 A.2d 785 (Me. 1985); *Camplin v. Town of York*, 471 A.2d 1035 (Me. 1984); *Lewis v. Town of Rockport*, 712 A.2d 1047 (Me. 1998); *Underwood v. City of Presque Isle*, 1998 ME 166, 715 A.2d 148; *Britton v. Town of York*, 673 A.2d 1322 (Me. 1996); *Town of Freeport v. Brickyard Cove Associates*, 594 A.2d 556 (Me. 1991); *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996). Compare with *C.N. Brown and Buker, supra.* Ordinances must be interpreted reasonably to avoid an absurd result. *Lippman v. Town of Lincolnville*, 1999 ME 149, 739 A.2d 842; *Jordan v. City of Ellsworth*, 2003 ME 82, 828 A.2d 768. If the words in an ordinance are clear, there is no need to look beyond the words themselves. Common sense should not be disregarded when interpreting an ordinance. *Fryeburg Trust v. Town of Fryeburg*, 2016 ME 174, ____ A.3d ____; *Estate of Merrill P. Robbins v. Town of Cumberland*, 2017 ME 16, ____ A.3d ____.

Similar Uses

The board of appeals has the ultimate authority at the local level to interpret the provisions of a zoning ordinance under 30-A M.R.S.A. § 4353. Even in the absence of a provision in a zoning ordinance authorizing “uses similar to permitted uses” or words to that effect, the court has held that a zoning appeals board has the inherent authority under 30-A M.R.S.A. § 4353 to interpret whether a proposed use which is not expressly authorized is “similar to” a use which is expressly addressed in the ordinance. In doing so, the board must act reasonably and base its decision on the facts in the record and the provisions of the ordinance. *Your Home, Inc. v. City of Portland*, 432 A.2d 1250 (Me. 1981). It is likely that a court would find that the planning board has similar authority.

Legal Nonconforming (“Grandfathered”) Uses, Structures, and Lots

Provisions dealing with nonconforming lots, structures, and uses legally must be included in a zoning ordinance to avoid constitutional problems with the ordinance. *Inhabitants of the Town of Windham v. Sprague*, 219 A.2d 548 (Me. 1966). Such provisions commonly are called “grandfather clauses.” They typically define a “nonconforming use or structure” as a use or structure which was legally in existence when the ordinance took effect but which does not conform to one or more requirements of the new ordinance. The mere issuance of a permit under a prior ordinance does not confer “grandfathered” status by itself. *Cf., Thomas v. Board of Zoning Appeals of City of Bangor*, 381 A.2d 643, 647 (Me. 1978). The use or structure must be in actual existence (or at least substantially completed) when the new ordinance takes effect in order to be “grandfathered.” *Town of Levant v. Seymour*, 2004 ME 115, 855 A.2d 1159; *Town of Orono v. LaPointe*, 698 A.2d 1059 (Me. 1997). *Cf., Nyczepir v. Town of Naples*, 586 A.2d 1254, 1256 (Me. 1991); *Turbat Creek Preservation, LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489. Where a permit is issued before a new ordinance takes effect and a deadline stated in the existing ordinance for beginning construction or substantially completing construction has not expired, the approved use or structure can legally be completed under the existing ordinance if done within the stated deadline. To be “grandfathered,” a use must “reflect the nature and purpose of the use prevailing when (the ordinance) took effect and not be different in quality or character, as well as in degree, from the original use, or different in kind in its effect on the neighborhood.” *Turbat, supra*. Nonconforming uses and structures generally are allowed to continue and be maintained, repaired and improved. However, the ordinance usually contains language limiting expansion, reconstruction, or replacement. “Nonconforming lots” generally are defined in an ordinance to mean lots which do not conform to the ordinance but which were legal when the ordinance took effect and for which a deed or plan was on record in the Registry of Deeds. Such lots generally don’t meet the lot size or frontage requirements or both of the new ordinance but the new ordinance generally allows them to be used for certain purposes as long as other requirements can be met.

See Appendix 4 for a collection of DEP “Shoreland Zoning News” articles related to a number of nonconforming use and structure issues.

The court in Maine has established the following rules relating to nonconforming uses, structures, and lots. These court-made rules must be read in light of the specific language of the nonconforming use, structure, and lot provision of a given ordinance in order to determine whether the court decisions cited below have any bearing on a nonconforming use, structure, or lot in the municipality.

Gradual Elimination

“The spirit of zoning ordinances is to restrict rather than to increase any nonconforming uses and to secure their gradual elimination. Accordingly, provisions of a zoning regulation for the continuation of such uses should be strictly construed and provisions limiting nonconforming uses should be liberally construed. The right to continue a nonconforming use is not a perpetual easement to make a use of one’s property detrimental to his neighbors and forbidden to them, and nonconforming uses will not be permitted to multiply when they are harmful or improper.” *Lovely v. Zoning Board of Appeals of City of Presque Isle*, 259 A.2d 666 (Me. 1969); *Shackford and Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102 (Me. 1984); *Total Quality, Inc. v. Town of Scarborough*, 588 A.2d 283 (Me. 1991); *Chase v. Town of Wells*, 574 A.2d 893 (Me. 1990); *Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, 712 A.2d 1061.

Phased Out Within Legislative Standards

“Nonconforming uses are a thorn in the side of proper zoning and should not be perpetuated any longer than necessary. Nevertheless, the rights of the parties necessitate that this policy be carried out within legislative standards and municipal regulations.” *Lovely, supra*; *Frost v. Lucey*, 231 A.2d 441 (Me. 1967); *Oliver v. City of Rockland*, 1998 ME 88, 710 A.2d 905.

Expansion of Nonconforming Use

“Where the original nature and purpose of an existing nonconforming use remain the same, and the nonconforming use is not changed in character, mere increase in the amount or intensity of the nonconforming use within the same area does not constitute an improper expansion or enlargement of a nonconforming use,” where the language of the ordinance prohibits the extension or enlargement of a nonconforming use or the change of that use to a dissimilar use. *Frost, supra*; *Boivin v. Town of Sanford*, 588 A.2d 1197 (Me. 1991); *W.L.H. Management Corp. v. Town of Kittery*, 639 A.2d 108 (Me. 1994); *Turbat Creek Preservation, LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489. An increase in the amount of time that a nonconforming use is conducted does not constitute the expansion or extension of the nonconforming use, in the absence of language in the ordinance to the contrary. *Frost, supra*; *Trudo v. Town of Kennebunkport*, 2008 ME 30, 942 A.2d 689.

Expansion of Nonconforming Structure

“Any significant alteration of a nonconforming structure is an extension or expansion. When an ordinance prohibits enlargement of a nonconforming building, a landowner cannot as a matter of right alter the structure, even if the alteration does not increase the nonconformity.” *Shackford and Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102 (Me. 1984). Where a portion of a structure is nonconforming as to setback or height, expanding another portion of the structure to “line it up” or “square it off” constitutes an expansion which increases the nonconformity, absent language in the ordinance to the contrary. *Lewis*

v. Town of Rockport, 1998 ME 144, 712 A.2d 1047; *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644. . (See Appendix 4 for other materials relating to expansion issues.)

In 2013 the Maine Legislature repealed the longstanding “30% expansion rule” governing the expansion of nonconforming structures in the shoreland zone and replaced it with the provisions of 38 M.R.S.A. § 439-A(4). The new statutory rule applies to shoreland zoning ordinances regardless of whether the new rule has been incorporated into a municipality’s local shoreland zoning ordinance. The text of section 439-A(4) can be accessed using the following website address: <http://legislature.maine.gov/statutes/38/title38sec439-A.html>.

For a Maine Supreme Court case reciting the evidence on which a planning board relied to establish the size of an existing nonconforming deck for the purposes of making calculations under the 30% expansion rule, see *Sproul v. Town of Boothbay Harbor*, 2000 ME 30, 746 A.2d 368. For a Maine Supreme Court case involving the enclosure of a screened-in porch and whether the work performed constituted either the expansion of a nonconforming use or the expansion of a nonconforming structure under the town’s ordinance, see *Trudo v. Town of Kennebunkport*, 2008 ME 30, 942 A.2d 689. Ordinances generally prohibit the expansion toward the water of a legal nonconforming structure which is nonconforming as to the required water setback. The court has held that this doesn’t prevent a board of appeals from granting a water setback variance if the applicant proves “undue hardship.” *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930. The current language of 38 M.R.S.A. § 439-A(4) is consistent with that holding.

When the expansion of a nonconforming structure is approved by a local board or official, 38 M.R.S.A. § 439-A(4) requires that the approved plan be recorded in the Registry of Deeds within 90 days of approval. The municipality should keep the original as a public record and provide a notarized copy to the applicant for recording by the applicant.

Replacement/Relocation

There is no inherent right on the part of a landowner to replace an existing nonconforming structure with a newer one of the same or larger dimensions. That right hinges on whether the ordinance expressly allows it. This is true even where the original building was destroyed by fire or natural disaster. *Inhabitants of Town of Windham v. Sprague*, 219 A.2d 548 (Me. 1966). The court also has held that when a unit is moved from an existing mobile home park, the park owner doesn’t automatically have a right to bring in a replacement unit without a permit, absent clear language in the ordinance to the contrary. *LaBay v. Town of Paris*, 659 A.2d 263 (Me. 1995).

For a discussion of the nonconforming structure “replacement” and “relocation” provisions in a shoreland zoning ordinance and how to coordinate review by the planning board when a

project involves both replacement and relocation, see *Osprey Family Trust v. Town of Owls Head*, 2016 ME 89, 141 A.3d 1114.

Discontinuance/Abandonment

Zoning ordinances generally attempt to prohibit a person from reactivating a nonconforming use if it has been “abandoned” or “discontinued” for a certain period of time. Absent language in an ordinance to the contrary, the word “abandonment” generally is interpreted by the courts on the basis of whether the *intent* of the landowner was to give up his or her legal right to continue the existing nonconforming use. The owner’s intent is generally judged on the basis of “some overt act, or some failure to act, which carries the implication that (the) owner neither claims nor retains any interest in the subject matter of the abandonment.” Young, *Anderson’s American Law of Zoning* (4th ed.), § 6.65. Although “discontinuance” or cessation of the use for the period stated in the ordinance does not automatically constitute abandonment, it may be evidence of an intent to abandon if accompanied by other evidence relating to the use or non-use of the property, such as the removal of advertising signs or allowing the building formerly occupied by the use to become dilapidated.

If the ordinance regulates the reactivation of a “discontinued” nonconforming use rather than an “abandonment” of such a use, an analysis of the owner’s intent is not necessary. Cessation of the use for the period of time stated in the ordinance is enough. *Mayberry v. Town of Old Orchard Beach*, 599 A.2d 1153 (Me. 1991). Cf., *Turbat Creek Preservation, LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489.

Where the voluntary removal of a nonconforming structure has the effect of returning the use of the property to a permitted use, some ordinances will not allow a replacement structure because the nonconforming use has been superseded by a permitted use. See *Chase v. Town of Wells*, 574 A.2d 893 (Me. 1990).

Approval of a second permit for essentially the same project doesn’t automatically constitute an abandonment of the first permit obtained for the project, absent language in the ordinance or permit conditions to the contrary. *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644.

Where a house burned and no livable structure thereafter existed on the property and the property had not been used since the fire (for six years), the existence of a foundation and septic system were not enough to defeat a legal conclusion that the nonconforming use of the property for a residence had been discontinued. *Lessard v. City of Gardiner Board of Appeals*, AP-02-27 (Me. Super. Ct., Kenn. Cty., January 14, 2003).

Merger of Lots

Where two or more unimproved, recorded legally nonconforming lots are adjacent and owned by the same person, the State Minimum Lot Size Law (12 M.R.S.A. § 4807-D) and many zoning and other local ordinances require that those lots be merged and considered as one for the purposes of development to the extent necessary to eliminate the nonconformity. In order to require the merger of a developed and undeveloped nonconforming lot of record or two developed nonconforming lots of record which are contiguous and in the same ownership, the Maine courts have said that the ordinance must expressly require such a merger. *Moody v. Town of Wells*, 490 A.2d 1196 (Me. 1985); *Powers v. Town of Shapleigh*, 606 A.2d 1048 (Me. 1992) (where the court interpreted the phrase “not contiguous to any other lot in the same ownership” to mean either built or vacant in the context of the rest of the nonconforming lot section, since that section used the words “vacant” and “built” where it wanted to make that distinction). For other nonconforming lot cases, see *Farley v. Town of Lyman*, 557 A.2d 197 (Me. 1989) and *Robertson v. Town of York*, 553 A.2d 1259 (Me. 1989). If a zoning ordinance establishes a local minimum lot size which is different from and more restrictive than the State’s, the question of merger will be controlled by the ordinance. Where an ordinance requires the merger of lots in the same ownership which have “contiguous frontage” with each other, the court in Maine has held that such a provision does not apply to corner lots. *Lapointe v. City of Saco*, 419 A.2d 1013 (Me. 1980). The court also has held that it does not require the merger of a back lot which is landlocked with an adjoining lot or the merger of adjoining lots which “front” on different streets. *Bailey v. City of South Portland*, 1998 ME 54, 707 A.2d 391. See also, *John B. DiSanto and Sons, Inc. v. City of Portland*, 2004 ME 60, 848 A.2d 618, where the court upheld the board of appeals’ interpretation of the phrase “separate and distinct ownership” as meaning continuously held under separate and distinct ownership from the adjacent lots. For a case interpreting conflicting lot merger clauses in town-wide and shoreland zoning ordinances, see *Logan v. City of Biddeford*, 2006 ME 102, 905 A.2d 293.

The fact that a single deed describes multiple contiguous lots by their external perimeter does not automatically destroy their independent status. *Bailey v. City of South Portland*, 1998 ME 54, 707 A.2d 391; *Logan v. City of Biddeford*, 2001 ME 84, 772 A.2d 1183.

Adding Acreage to a Legally Nonconforming Lot; Dividing a Legally Nonconforming Lot

An issue which doesn’t appear to have been expressly addressed by the Maine courts is whether a legally existing nonconforming lot loses its grandfathered status if land is added to it, with a resulting change in the lot boundaries. It would seem as a policy matter that, if acreage is added to a nonconforming lot, but not enough to make it a conforming lot, such an increase shouldn’t cause the lot to lose its grandfathered status. However, a particular definition of “lot” or “nonconforming lot” in an ordinance might dictate a different result.

The legal status of an adjoining lot from which the acreage was transferred may be affected by the transfer. Ideally, this issue should be addressed by including appropriate language in the ordinance. For a discussion of the meaning of “lot of record,” see *Camplin v. Town of York*, 471 A.2d 1035 (Me. 1984).

The authority to divide an existing legally nonconforming lot is more likely to be addressed in the applicable ordinance. As a general rule, ordinances prohibit an action that makes an existing legally nonconforming situation more nonconforming. A person who has an existing “grandfathered” lot might cause that lot to lose its grandfathered status and become an illegal lot if he/she attempts to convey any portion of it, particularly if it is a developed lot. *Viles v. Town of Embden*, 2006 ME 107, 905 A.2d 298. In *Day v. Town of Phippsburg*, 2015 ME 13, 110 A.3d 645, a merger clause in the town’s shoreland zoning ordinance required two contiguous nonconforming lots to merge. The landowner illegally conveyed one of the original nonconforming lots and then offered to recombine them to restore the grandfathered status of the merged lots. The Maine Supreme Court held that the two lots lost their individual grandfathered status when originally merged and lost their collective grandfathered status when illegally separated. The right to develop the lots would hinge on the owner’s ability to obtain a variance.

Often a minimum lot size requirement is triggered by a proposal to build on a lot rather than by the creation of a lot. A lot which is vacant might be legal at any size under the terms of the applicable town ordinance. If the owner divides and conveys part of the lot and then seeks a permit to build on the portion of the lot that he/she retained, that portion would not qualify as a grandfathered, legally nonconforming lot because it was not a lot of record when the town’s ordinance took effect. Therefore, if the retained lot doesn’t meet the minimum lot size requirement for the building that the owner plans to construct, he/she probably will be unable to get approval. Since the lot is undersized because of the owner’s action, the owner probably will not qualify for a variance either. A person proposing such a division should consider not only whether the division itself is legal but whether the division will limit the legal right to develop the lots at a later date.

Functional Division

Where a single parcel of land had been developed with a number of buildings prior to the effective date of the ordinance and the buildings had all been used for distinct and separate uses prior to that date, the Maine Supreme Court has held that the buildings could be sold separately on nonconforming lots, finding that the land had already been functionally divided. *Keith v. Saco River Corridor Commission*, 464 A.2d 150 (Me. 1983). The court’s holding was based on the specific facts related to the land and buildings in question and the language of the Saco River Corridor Commission Act. While the court found a functional division in *Keith*, it acknowledged that the landowner also needed to comply with other

applicable State, federal, and local laws, including the subdivision law. If the Saco River Corridor Commission Act had the kind of detailed nonconforming lot provisions that many zoning ordinances have today, the court might have reached a different conclusion in *Keith*. The *Keith* decision was based on a nonconforming use provision in the Act and whether the creation and conveyance of lots with existing buildings constituted an expansion or enlargement of a nonconforming use. The court concluded that it did not. It may be advisable for the board to seek legal advice regarding the interpretation of the specific language in its municipality's ordinance before deciding to apply *Keith* to the division of a developed nonconforming lot.

Change of Use

The test to be applied in determining whether a proposed use fits within the scope of an existing nonconforming use or whether it constitutes a change of use is: “(1) whether the use reflects the ‘nature and purpose’ of the use prevailing when the zoning ordinance took effect; (2) whether there is created a use different in quality or character, as well as in degree, from the original use; or (3) whether the current use is different in kind in its effect on the neighborhood.” *Total Quality Inc. v. Town of Scarborough*, 588 A.2d 283 (Me. 1991); *Boivin v. Town of Sanford*, 588 A.2d 1197 (Me. 1991); *Keith v. Saco River Corridor Commission*, *supra*; *Turbat Creek*, *supra*.

Illegality of Use; Effect on “Grandfathered” Status

“As a general rule...the illegality of a prior use will result in a denial of protected status for that use under a nonconforming use exception to a zoning plan. But violations of ordinances unrelated to land use planning do not render the type of use unlawful.” *Town of Gorham v. Bauer*, CV-89-278 (Me. Super. Ct., Cum. Cty, November 21, 1989). In *Bauer* the court held that a failure of the landowner to obtain a State day care license did not deprive an existing day care of nonconforming use status, but the fact that the owner had not obtained the necessary local site plan approval and certificate of occupancy did prevent his use from becoming a legal nonconforming use.

Meaning of “Permitted Use” or “Allowed Use” in the Context of Nonconforming Uses

In *Gensheimer v. Town of Phippsburg*, 2007 ME 85, 926 A.2d 1168, the court held that a “legally existing nonconforming use” was not the same thing as a “permitted use.” Each was subject to separate standards, with those applicable to nonconforming uses being more stringent. The court found that the construction of a road to an existing home was not part of the normal upkeep and maintenance of a nonconforming use and therefore needed its own review and approval as a separate type of permitted use.

Lots and Structures Divided by a Zone Boundary

In some cases, one lot is divided between two or more zones. Absent a provision in a zoning ordinance to the contrary, the requirements of the ordinance for a particular zone apply only to that part of the lot which is located in that zone. *Town of Kittery v. White*, 435 A.2d 405 (Me. 1981). For a Maine Supreme Court decision interpreting an ordinance which extended the provisions relating to one zoning district into an adjoining district in the case of a split lot, see *Marton v. Town of Ogunquit*, 2000 ME 166, 759 A.2d 704. See *Gagne v. Inhabitants of City of Lewiston*, 281 A.2d 579 (Me. 1971) for a case involving a structure divided by a zone boundary.

Section 11 of the DEP model shoreland zoning guidelines states: “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 and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.” In 2013 MMA Legal Services discussed this language with the DEP shoreland zoning unit staff to learn how DEP interprets this provision. DEP staff indicated that where part of a lot is located within the shoreland zone, the lot must meet the dimensional requirements of the shoreland zoning ordinance even if the activity involved will be conducted on a part of the lot that is outside the shoreland zone. The entire lot does not need to be within the shoreland zone in order to satisfy lot size requirements; the total area of the lot should be considered, absent language in an ordinance to the contrary.

Definition of Dwelling Unit

The conversion of seasonal cabins rented on a nightly basis, each with separate heating and electrical systems, bathroom, and kitchen, to condominium ownership has been held by the court as constituting the creation of individual dwelling units which must satisfy the applicable minimum lot size. *Oman v. Town of Lincolnville*, 567 A.2d 1347 (Me. 1990). The court also has upheld a determination by a local code enforcement officer and board of appeals that a detached garage with its own water, heat, septic system, full bathroom, kitchen sink, and refrigerator constituted a “dwelling unit” for the purposes of the town’s lot size requirement. *Goldman v. Town of Lovell*, 592 A.2d 165 (Me. 1991). See also *Wickenden v. Luboshutz*, 401 A.2d 995 (Me. 1979), *Moyer v. Board of Zoning Appeals*, 233 A.2d 311 (Me. 1967), *Hopkinson v. Town of China*, 615 A.2d 1166 (Me. 1992), and *Your Home, Inc. v. City of Portland*, 432 A.2d 1250 (Me. 1981). For a case analyzing whether a guest house addition to a garage constituted a dwelling unit or an accessory structure, see *Adler v. Town of Cumberland*, 623 A.2d 178 (Me. 1993). Whether a living arrangement legally constitutes a “dwelling unit” ultimately depends on the specific definition of that term in the applicable ordinance. *21 Seabran, LLC v. Town of Naples*, 2017 ME 3, _____

A.3d _____. Other cases interpreting the meaning of “dwelling” include: *Jordan v. City of Ellsworth*, 2003 ME 82, 828 A.2d 768 (interpreting whether a proposed structure was a “hotel,” “apartment,” or “multiple dwelling”); *Fitanides v. City of Saco*, 2004 ME 32, 843 A.2d 8 (construing the meaning of “multi-family complex”); *Peregrine Developers, LLC v. Town of Orono*, 2004 ME 95, 854 A.2d 216 (determining whether a proposed project was a “dormitory” or a “multi-family dwelling”); *Malonson v. Town of Berwick*, 2004 ME 96, 853 A.2d 224 (interpreting the definition of “boarding home”); and *Adams v. Town of Brunswick*, 2010 ME 7, 987 A.2d 502 (analysis of terms “household,” “dwelling unit,” and “boarding house”).

Definition of Structure in the Shoreland Zone

Title 38, section 436-A(12) of the Maine statutes was amended in 2014 to revise the definition of “structure” for shoreland zoning purposes. That definition now excludes subsurface wastewater disposal systems, geothermal heat exchange wells, and water wells. This definition is expressly applicable to the calculation of the permissible expansion of a nonconforming structure.

Definition of Lot

In the absence of an ordinance definition of “lot” to the contrary, a parcel which is divided by a public road or a private road serving multiple properties is effectively two lots even though described as a single parcel in the deed. *Fogg v. Town of Eddington*, AP-02-9 (Me. Super. Ct., Pen. Cty., January 3, 2003); *Bankers Trust Co. v. Zoning Board of Appeals*, 345 A.2d 544, 548-549 (CT, 1974). Absent language to the contrary in an ordinance, the land area underlying a road or easement is not included in calculating whether a lot meets the minimum lot area requirements. *E.g., Sommers v. Mayor and City Council of Baltimore*, 135 A.2d 625 (Md. 1957); *Loveladies Property Owners Assoc. v. Barnegat City Service Co.*, 159 A.2d 417 (NJ Super. 1960). For a case analyzing whether a lease may be used to create a new lot in the context of a wind energy project, see *Horton v. Town of Casco*, 2013 ME 111, 82 A.3d 1217.

Conflict Between Zoning Map and Ordinance; Clarifying Zone Boundaries

The courts in Maine have held on several occasions that, absent a rule of construction in the ordinance to the contrary, where a depiction of a zoning district boundary on a map conflicts with the ordinance text description of the type of land which should be included in a particular district, the map depiction is controlling until amended by the legislative body. *Summerwind Cottage, LLC v. Town of Scarborough*, 2013 ME 26, 61 A.3d 698; *Veerman*

v. Town of China, CV-93-353 (Me. Super. Ct., Kenn. Cty., April 13, 1994); *Coastal Property Associates, Inc. v. Town of St. George*, 601 A.2d 89 (Me. 1992). See generally, *Lippman v. Town of Lincolnville*, 1999 ME 149, 739 A.2d 842. See also *Nardi v. Town of Kennebunkport*, AP-00-001 (Me. Super. Ct., Yor. Cty., Feb. 12, 2001).

Where confronted with the kind of conflict described above or where a boundary as depicted on a map is ambiguous due to the manner in which the map was prepared, communities look for a solution which allows a board or official to rule on the boundary location and have that ruling be binding on all parties, without revising the map and submitting it to the legislative body for adoption. Unfortunately, under general law, such a resolution would constitute an improper delegation of legislative authority and would not result in a legally enforceable map. It probably would be possible to delegate such authority through a municipal charter provision, but not by ordinance or administrative policy.

Conflict Between Ordinances

Where a town-wide zoning ordinance prohibited a particular expansion of a nonconforming use but a separate shoreland zoning ordinance permitted it, the court applied the section of the ordinance which governed conflicts between ordinances and ruled that the expansion was prohibited. The court found that a conflict exists when there will be a different result from the application of two separate ordinances. *Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, 712 A.2d 1061. See *Logan v. City of Biddeford*, 2006 ME 102, 905 A.2d 293, for a case involving four contiguous nonconforming lots, one with a principal structure, one with an accessory structure, and two vacant; the town-wide and shoreland zoning ordinances had different merger language and the court held that the more restrictive one controlled and required merger. Where a town-approved shoreland zoning ordinance contained a side line setback requirement and a shoreland zoning ordinance imposed on the town by the Maine Board of Environmental Protection (BEP) did not, the Maine Supreme Court held that the State-imposed ordinance served as a supplement to the town ordinance and did not effectively repeal it. *Bartlett v. Town of Stonington*, 1998 ME 50, 707 A.2d 389.

Road Frontage; Back Lots

Where a town ordinance defined “frontage” as the horizontal distance between the side lot lines as measured along the front lot line, the court held that an interior road which passes through the center of the lot cannot be used to satisfy “road frontage” requirements. *Morton v. Schneider*, 612 A.2d 1285 (Me. 1992). See also *Morse v. City of Biddeford*, AP-01-061 (Me. Super. Ct., York Cty., May 10, 2002) (case involving disputed right to use the road in question); *Fitanides v. City of Saco*, 2004 ME 32, 843 A.2d 8; *Bagge v. Town of Newfield*, AP-05-40 (Me. Super. Ct., Yor. Cty., June 12, 2006) (analysis of whether deeded rights constituted a road or a driveway). For cases interpreting ordinance provisions related to the

creation of a back lot, see *Merrill v. Town of Durham*, 2007 ME 50, 918 A.2d 1203, *Bizier v. Town of Turner*, 2011 ME 116, 32 A.3d 1048, and *Town of Minot v. Starbird*, 2012 ME 25, 39 A.3d 897.

Setbacks Within the Shoreland Zone; New Structures and Expansions; Functionally Water-Dependent Uses

Title 38, section 439-A(4) requires new structures and expansions of existing structures in the shoreland zone to meet the setbacks established in the minimum shoreland zoning guidelines or as provided in section 439-A(4), other than functionally water-dependent uses. The definition of “functionally water-dependent use” in 38 M.R.S.A. § 436-A(6) no longer includes recreational boat storage buildings. For a discussion of shoreland zoning setbacks as they apply to docks, see *Santomenna v. Town of Sweden*, AP-14-01 (Me. Super. Ct., Oxf. Cty., February 4, 2015). Certain walkways and trails are exempt from shoreland zoning setbacks under 38 M.R.S.A. § 439-A(4-C).

Water Setback Measurement; Measurements Related to Slope of Land, Calculation of Building Expansion, Percentage of Lot Coverage, and Building Height

“The general objectives of the shoreland zoning ordinance, the specific objectives of shoreland setbacks, and the customary methods of surveying boundaries all counsel in favor of the use of the horizontal methodology” to measure setback, rather than an “over-the-ground” method of measurement. *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996). For cases interpreting the location of the normal high watermark, see *Armstrong v. Town of Cape Elizabeth*, AP-00-023 (Me. Super. Ct., Cum. Cty., Dec. 21, 2000) and *Nardi v. Town of Kennebunkport*, AP-00-001 (Me. Super. Ct., York Cty., Feb. 12, 2001). See also, *Griffin v. Town of Dedham*, 2002 ME 105, 799 A.2d 1239, and *Mack v. Town of Cape Elizabeth*, 463 A.2d 717 (Me. 1983).

For a case involving measurement of the slope of the land within the shoreland zone, see *Griffin v. Town of Dedham*, 2002 ME 105, 799 A.2d 1239. *Rockland Plaza Realty v. City of Rockland*, 2001 ME 81, 772 A.2d 256, is a case in which the Maine Supreme Court analyzed ordinance provisions related to building height and percentage of lot covered by structures. *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644, provides some guidance regarding taking measurements in connection with the expansion of a nonconforming structure. Regarding expansions toward the water and the point at which the measurement of “toward the water” begins, see *Fielder v. Town of Raymond*, AP-01-16 (Me. Super. Ct., Cum. Cty., October 4, 2001), where the court found that it starts from “the linear setback boundary, not from the structure itself.”

Decks

A deck which is attached to a home becomes “an extension and integral part of the principal structure” and therefore must comply with any setback requirements applicable to principal structures. *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996). The court also has held that a detached deck constitutes a structure which is subject to applicable setback requirements. *Inhabitants of Town of Boothbay Harbor v. Russell*, 410 A.2d 554 (Me. 1980). In the case of *Town of Poland v. Brown*, CV-97-227 (Me. Super. Ct., Andro. Cty., Feb. 11, 1999), a landowner attempted to claim that an illegal deck was not a structure by putting wheels under it and registering it as a trailer while it was still in place on the ground with lattice skirting and outdoor furniture. The court found that “a deck by any other name is still a deck.” Municipalities have the authority to adopt an amendment to a shoreland zoning ordinance that exempts decks from otherwise applicable water and wetland setbacks if the ordinance complies with the specific requirements of 38 M.R.S.A. § 439-A(4-B).

Essential Services; Communications Towers; Satellite Dishes; Public Utilities; Wind Energy Projects

Neither a communications tower nor a radio station qualifies as an “essential service” as typically defined in a local zoning ordinance. *Priestly v. Town of Hermon*, 2003 ME 9, 814 A.2d 995. In *Brophy v. Town of Castine*, 534 A.2d 663 (Me. 1987), the Maine Supreme Court held that a satellite dish was a “structure” for the purposes of the shoreland zoning setback requirements. A Maine Superior Court judge found that a telecommunications tower constituted a “public utility” for the purposes of a particular town’s zoning ordinance. *Means v. Town of Standish*, CV-92-1365 (Me. Super. Ct., Cum. Cty., Oct. 8, 1993). See 30-A M.R.S.A. § 4352(4) and a related Public Utilities Commission (PUC) rule found in 65-407 CMR ch. 885 regarding the applicability of a municipal zoning ordinance to public utilities and ocean wind energy projects. In order for a public utility to be exempt from compliance with a municipal ordinance, the utility must first apply for local approval and go through the local review process before seeking an exemption certificate from the PUC. For a case analyzing the evidence provided by a tower applicant related to the issues of height and visibility, see *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86.

Accessory Use or Structure

“The essence of an accessory use or structure by definition admits to a use or structure which is dependent on or pertains to a principal use or main structure, having a reasonable relationship with the primary use or structure and by custom being commonly, habitually and by long practice established as reasonably associated with the primary use or structure.... (F)actors which will determine whether a use or structure is accessory within

the terms of a zoning ordinance will include the size of the land area involved, the nature of the primary use, the use made of the adjacent lots by neighbors, the economic structure of the area and whether similar uses or structures exist in the neighborhood on an accessory basis.” *Town of Shapleigh v. Shikles*, 427 A.2d 460, 465 (Me. 1981). As is always true with ordinance interpretation, the court’s test must be read in light of the exact language of the applicable ordinance and the facts in a particular case. See *Flint v. Town of York*, CV-95-675 (Me. Super. Ct., York Cty., Sept. 4, 1996) for a case where the court found that the addition of a redemption center to an existing fruit and vegetable stand did not qualify as an accessory use. See *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202, for an analysis of what uses are accessory to a mineral extraction operation.

Home Occupations

A number of Maine court decisions have interpreted local ordinance definitions of “home occupation.” In *Town of Kittery v. Hoyt*, 291 A.2d 512, 514 (Me. 1972), the Maine Supreme Court concluded that a commercial lobster storage and sales business was not a home occupation under a local ordinance which defined the term as a “business customarily conducted from the home.” Similarly, the court held that an auto body shop and used car rental and sales business weren’t a home occupation under an ordinance requiring such businesses to be “operated from the home.” *Baker v. Town of Woolwich*, 517 A.2d 64, 68 (Me. 1987). In *Toussaint v. Town of Harpswell*, 1997 ME 189, 698 A.2d 1063, the court found that a commercial dog kennel with 11 indoor-outdoor runs and boarding capacity for 15 dogs qualified as a home occupation under an ordinance permitting home occupations if “customarily conducted on or in residential property.” The court found this definition broader and more lenient than the ones in *Hoyt* and *Baker*. A Maine Superior Court judge found that a mail order pharmacy business did not qualify as a home occupation, based on language in the town’s ordinance which referred to “stock-in-trade.” *Simonds v. Town of Sanford*, CV-91-710 (Me. Super. Ct., York Cty., July 14, 1992).

Commercial and Industrial Uses

For several Maine Supreme Court cases analyzing whether a use or structure was “commercial,” see *Beckley v. Town of Windham*, 683 A.2d 774 (Me. 1996) (holding that an office/maintenance building which was proposed as part of a boat rental facility was a commercial structure), *Bushey v. Town of China*, 645 A.2d 615 (Me. 1994) (dog kennel as commercial use), and *Silsby v. Belch*, 2008 ME 104, 452 A.2d 218 (holding that an apartment building was a residential use rather than a commercial use). See also, *Your Home, Inc. v. City of Portland*, 432 A.2d 1250 (Me. 1981). See, *C.N. Brown Co., Inc. v. Town of Kennebunk*, 644 A.2d 1050 (Me. 1994), for a case interpreting whether a gasoline filling station constituted a “retail store” as defined in the ordinance. See *Isis Development, LLC v. Town of Wells*, 2003 ME 149, 836 A.2d 1285, for an analysis of whether a self-

storage business constituted “warehousing” or a “service” business. See *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202, for a discussion of what constitutes “light industrial” and “manufacturing.” See *Rudolph v. Golick*, 2010 ME 106, 8 A.3d 684, for an analysis of whether a horse barn/riding arena qualified as “animal husbandry” or a “commercial” use. See *Lakeside at Pleasant Mountain Condominium Association v. Town of Bridgton*, 2009 ME 64, 974 A.2d 893 for a case analyzing whether an easement to a pond retained by a ski resort company and associated use of a dock and float for recreation constituted a “commercial use” or an “accessory use.”

Docks; Related Easements

When a project involves a dock or easement where a number of people hold shared rights to use the area and are not in agreement, the board may find some of the following court decisions helpful. The cases involve the right to apply for construction of a dock, the right to use a dock, the standards of review applicable to dock applications, and the excessive use (“overburdening”) of easement rights: *Stewart v. Town of Sedgwick*, 2002 ME 81, 797 A.2d 27; *Britton v. Department of Conservation*, 2009 ME 60, 974 A.2d 303; *Lentine v. Town of St. George*, 599 A.2d 76 (Me. 1991); *Uliano v. Board of Environmental Protection*, 2009 ME 89, 977 A.2d 400; *Toomey v. Town of Frye Island*, 2008 ME 44, 943 A.2d 563; *Great Cove Boat Club v. Bureau of Public Lands*, 672 A.2d 91 (Me. 1995); *Lamson v. Cote*, 2001 ME 109, 775 A.2d 1134; *Uliano v. Board of Environmental Protection*, 2005 ME 88, 876 A.2d 16; *Lakeside at Pleasant Mountain Condominium Association v. Town of Bridgton*, 2009 ME 64, 974 A.2d 893; *Murch v. Nash*, 2004 ME 139, 861 A.2d 645; *Chase v. Eastman*, 563 A.2d 1099 (Me. 1989); *Britton v. Town of York*, 673 A.2d 1322 (Me. 1996); *Kroeger v. Department of Environmental Protection*, 2005 ME 50, 870 A.2d 566; *Farrington’s Owners’ Association v. Conway Lake Resorts, Inc.*, 2005 ME 93, 878 A.2d 504; *Hannum v. Board of Environmental Protection*, 2006 ME 51, 898 A.2d 392; *Badger v. Hill*, 404 A.2d 222 (Me. 1979); *Rancourt v. Town of Glenburn*, 635 A.2d 964 (Me. 1993). For a case involving the rights of lot owners in a subdivision regarding the use of common roads, see *D’Alessandro v. Town of Harpswell*, 2012 ME 89, 48 A.3d 786. For easements or rights-of-way leading up to or touching a water body established after January 1, 2018, the owner of the easement or right-of-way does not have the right by implication to construct a dock on the easement or use the easement to facilitate the construction of a dock on a water body, unless the easement expressly includes those rights. 33 M.R.S.A. § 459.

Pond

For a case interpreting whether a quarry constitutes a “pond” for the purposes of applicable water setbacks, see *Hollenberg v. Town of Union*, 2007 ME 47, 918 A.2d 1214.

Quarrying; Rock Crushing; Mineral Extraction; Gravel Pits

See *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202, for a case upholding a board's finding that rock crushing was an integral part of the process of mineral extraction and not an accessory use or a distinct process. The case also addresses the status of a bituminous hot mix plant and a concrete batch plant in relation to mineral extraction. For a case discussing whether a gravel pit existed on both sides of a road and that the land on both sides constituted a grandfathered pit under the doctrine of diminishing assets, see *Town of Levant v. Seymour*, 2004 ME 115, 855 A.2d 1159.

Clearing Vegetation in the Shoreland Zone

Title 38, sections 439-A(6) and 439-A(6-A) impose requirements applicable to vegetative clearing in the shoreland zone that apply notwithstanding language to the contrary in an existing shoreland zoning ordinance. These new requirements took effect in 2013.

CHAPTER 7 – Laws Affecting Municipal Ordinance Authority

An ordinance is a local law that usually is adopted by the municipality's legislative body (the town meeting or town or city council, depending on the form of government in that municipality). If properly adopted in conformance with applicable procedures, and if carefully drafted to avoid legal problems, an ordinance generally has the same legal weight as a State statute enacted by the Maine Legislature. Some communities have adopted local ordinances that impose additional requirements on a project which is also regulated by a State law. Other municipalities may have no ordinance governing a particular activity, preferring to enforce a State law where empowered to do so (e.g., junkyards and dangerous buildings) or deferring completely to whatever authority a State agency may have to control an activity.

It is absolutely crucial to the successful administration and enforcement of municipal ordinances that they be properly adopted and drafted to avoid conflicts with case law, State statutes or the Maine and United States Constitution, as well as to avoid internal conflicts or conflicts with other ordinances. The discussions that follow outline some of the legal requirements that ordinances must satisfy.

Planning boards, especially in smaller towns, are often asked by the voters or by the municipal officers to take the lead in the preparation of various types of land use ordinances to address particular problems. After drafting a proposed ordinance, the planning board is often expected (and is sometimes required by State law) to shepherd it through the public hearing and adoption process as well. The following discussion provides an overview of the process for adopting ordinances and the legal limits on municipal ordinance authority.

Ordinances Generally

Ordinance Enactment Procedures

As a general rule, whether a municipality operates under a charter or only under the State statutes, its legislative body must adopt in ordinance form any requirement which the municipality wants to enforce against the general public. The basic procedure for adopting an ordinance at open town meeting is found in 30-A M.R.S.A. § 3002, a detailed discussion of which is included in Maine Municipal Association's "Ordinance Enactment" information packet. (See Appendix 6 for information about how to obtain a copy.) If the municipality is governed by a charter (usually this means a town or city which has a council-manager form of government), ordinance enactment procedures would be spelled out there. In addition to the statutory or charter procedures, there also may be local requirements which the municipality has adopted, such as a requirement that a zoning ordinance be enacted by a 2/3 majority vote of the legislative body.

Special rules governing public hearing requirements for adoption or amendment of zoning ordinances and maps are found in 30-A M.R.S.A. § 4352. See Appendix 6 for a Legal Note discussing these rules. For two cases involving consent decrees and whether they effectively constituted illegal ordinance amendments, see *Pike Industries, Inc. v. City of Westbrook*, 2012 ME 78, 45 A.3d 707, and *Pike Industries, Inc. v. City of Westbrook*, 2014 ME 85, 96 A.3d 73.

Amendments

The rules governing ordinance enactment normally will govern amendments to an ordinance. Some ordinances also will contain their own special requirements for adopting amendments. An example of an ordinance amendment format is included in Appendix 6.

Form of the Ordinance

Although a “one-liner” (for example, “No building may be constructed without a permit.”) may seem like an effective, simple to understand kind of ordinance, it would not contain enough detail to make it easy to administer or legally enforceable. In preparing an ordinance, the planning board should use the following checklist to ensure that the ordinance has all the basic provisions:

- Statement of statutory authority
- Statement of purpose
- Definitions section
- Basic requirements/prohibitions
- Designation of person or board to make decision on applications
- Application fees, if any required (30-A M.R.S.A. § 4355)
- Standards to guide the person or board in deciding whether to issue or deny a permit or other necessary approval; standards to guide imposition of conditions of approval
- Right to appeal, to whom and within what time frame; standards to guide the appeals board in reviewing the appeal and reaching a decision; clear statement regarding the nature of the appeals board review of an appeal (*de novo* vs. appellate)
- Designation of who enforces the ordinance and procedures to follow

- Period after which a permit expires if substantial work has not been completed
- Penalty section
- Severability clause explaining what happens to the rest of the ordinance if part is held invalid by a court
- Section dealing with effect of inconsistent ordinance provisions
- Effective date

Scope of the Ordinance

When developing the basic requirements of the ordinance, the board should try to identify all the possible types of activities which the municipality would want to regulate through the ordinance and all of the problems which might be associated with a particular activity. As difficult a job as this will be, it is very important that an ordinance “cover all the bases,” since the municipality will not be able to control an activity through a given ordinance if it is not covered by the provisions of that ordinance. The board should explore the websites of other municipalities and Maine Municipal Association and contact the regional planning commission or council of governments serving the area and the State Planning Office for examples of the kind of ordinance it wants the municipality to adopt.

Availability

According to 30-A M.R.S.A. § 3005, copies of any ordinance adopted by the legislative body must be on file with the municipal clerk and must be accessible to any member of the general public. Copies also must be made available for a reasonable fee to any member of the public requesting them. The clerk must post a notice regarding the availability of ordinances.

Constitutional Issues

Standards; Delegation of Legislative Authority

It is very important for an ordinance to contain fairly specific standards of review if it is an ordinance which requires the issuance of a permit or the approval of a plan. The standards must be something more than “as the Board deems to be in the best interest of the public” or “as the Board deems necessary to protect the public health, safety and welfare.” *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223 (Me. 1983). It also is very important to have language in the ordinance instructing the board as to the action that it must take in reviewing an application filed under the ordinance. It is not enough merely to say that the board must “consider” or “evaluate” certain information. *Chandler v. Town of Pittsfield*, 496

A.2d 1058 (Me. 1985). If an ordinance gives the board basically unlimited discretion in approving or denying an application, it creates two constitutional problems. It violates the applicant's constitutional rights of equal protection and due process because (1) it does not give the applicant sufficient notice of what requirements he or she will have to meet and (2) it does not guarantee that every applicant will be subject to the same requirements. It amounts to substituting the board's determination of what is desirable land use regulation for that of the legislative body (town meeting or town or city council), where it legally belongs. The courts call this an "improper delegation of legislative authority." Legally, only the legislative body can adopt ordinances, unless a statute or charter gives that authority to some other official or board.

A number of Maine Supreme Court decisions have addressed ordinance review standards that require a board to find that a project will be "compatible with the neighborhood" or "harmonious with the surrounding environment." *Bizier v. Town of Turner*, 2011 ME 116, 32 A.3d 1048; *Wakelin v. Town of Yarmouth*, 523 A.2d 575 (Me. 1987); *American Legion, Field Allen Post #148 v. Town of Windham*, 502 A.2d 484 (Me. 1985); *In Re: Spring Valley Development*, 300 A.2d 736 (Me. 1973); *Secure Environments, Inc. v. Town of Norridgewock*, 544 A.2d 319 (Me. 1988). A standard that requires a board or official to determine whether a development "will conserve natural beauty" has also been addressed by the court in *Kosalka v. Town of Georgetown*, 2000 ME 106, 752 A.2d 183, *Conservation Law Foundation, Inc. v. Town of Lincolnville*, 2001 ME 175, 786 A.2d 616, and *The Lincoln Home Corp. v. Inhabitants of Newcastle*, AP-02-002 (Me. Super. Ct., Linc. Cty., Feb. 25, 2004). Compare, *Uliano v. Board of Environmental Protection*, 2009 ME 89, 977 A.2d 400. The court has upheld an ordinance review standard that requires a determination that "the proposed use will not adversely affect the value of adjacent properties." *Gorham v. Town of Cape Elizabeth*, 625 A.2d 898 (Me. 1992). A shoreland zoning ordinance provision requiring a board to find that a proposed pier, dock or wharf would be "no larger than necessary to carry on the activity" has also been upheld, *Stewart v. Town of Sedgwick*, 2002 ME 81, 797 A.2d 27, as has ordinance language requiring a finding that a pier, dock or wharf would not "interfere with developed areas." *Britton v. Town of York*, 673 A.2d 1322 (Me. 1996).

If a court finds that an ordinance provision is unconstitutional or has other legal problems, it generally will hold that a denial of an application by the board based on the deficient portions of the ordinance is invalid. The result is that the applicant will be able to do what he/she applied to do, absent some other law or ordinance that controls the application and provides a separate basis for review and possible denial. *Bragdon v. Town of Vassalboro*, 2001 ME 137, 780 A.2d 299. Therefore, it is important to have local ordinances reviewed by an attorney or some other professional familiar with court decisions and State law to determine whether those local ordinances are enforceable.

Reasonableness; Takings Issue

Another constitutional limitation to keep in mind when drafting an ordinance is that the ordinance must be a reasonable means to protect the public health, safety and welfare. *Warren v. Municipal Officers of the Town of Gorham*, 431 A.2d 624 (Me. 1981); *Crosby v. Inhabitants of Town of Ogunquit*, 468 A.2d 996 (Me. 1983). An ordinance generally cannot totally prohibit a land use unless the use is “ultra-hazardous” (i.e., cannot be safely regulated). See generally, Young, *Anderson’s American Law of Zoning* (4th ed.), § 9.16; 83 Am. Jur.2d “Zoning and Planning” § 158. If it is a land use regulation, it cannot be so restrictive that a landowner is deprived of all reasonable use of the property being regulated. Otherwise, the ordinance cannot be enforced unless the municipality compensates the landowner. Determining whether an ordinance has crossed the line and effected a “taking” in violation of the 5th Amendment of the U.S. Constitution and Art. I, §§ 6-A and 21 of the Maine Constitution is not an easy task; this issue is for a court to decide, not the planning board. Some State and federal cases addressing the “takings” issue include: *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922); *Just v. Marinette County*, 56 Wisc.2d 7, 201 N.W.2d 761 (1972); *Seven Islands Land Co. v. Maine Land Use Regulation Commission*, 450 A.2d 475 (Me. 1982); *Inhabitants of Town of Boothbay v. National Advertising Co.*, 347 A.2d 419 (Me. 1975); *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 107 S. Ct. 2378 (1987); *Nolan v. California Coastal Commission*, 107 S. Ct. 3141 (1987); *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992); *Dolan v. City of Tigard*, 114 S. Ct. 2309 (1994); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999); *Curtis v. Town of South Thomaston*, 1998 ME 63, 708 A.2d 657; *M.C. Associates v. Town of Cape Elizabeth*, 2001 ME 89, 773 A.2d 439; *Wyer v. Board of Environmental Protection*, 2000 ME 45, 747 A.2d 192; *Drake v. Inhabitants of the Town of Sanford*, 643 A.2d 367 (Me. 1994) [see also the Superior Court decision in a related case regarding the “reasonable return standard” in a variance appeal, *Drake v. Inhabitants of Town of Sanford*, CV-88-679 (Me. Super. Ct., Yor. Cty., November 15, 1990, amended January 9, 1991)]; *Hall v. Board of Environmental Protection*, 528 A.2d 453 (Me. 1987); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Van Horn v. Town of Castine*, 167 F. Supp. 424 (D. Me. 2001); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002); *E. Perry Iron and Metal Co., Inc. v. City of Portland*, 2008 ME 10, 941 A.2d 457; *Murr v. Wisconsin*, 137 S.Ct. 1933 (2017).

The Maine Legislature established a program in 1996 for the mediation of “takings” claims arising from the application of State and local land use laws. The process is outlined in 5 M.R.S.A. § 3341.

Statutes Which Affect Municipal Ordinance Authority

As was noted in the first chapter of this manual, the powers and duties of planning boards are governed generally either by State statute or local ordinance provisions. There is no single list of duties which will apply to all boards. The following brief summary of State land use statutes and local ordinances which a municipality may adopt is intended to give board members an idea of the possible range of their authority and of the range of municipal authority to adopt ordinances regulating land use. A planning board will not have authority to administer and enforce these laws unless there is a specific grant of authority to the board contained in the statute or ordinance in question.

Home Rule

In 1969 the Maine Legislature adopted a statute (30 M.R.S.A. § 1917) which delegated broad “home rule” ordinance powers to towns and cities. This statute was revised and renumbered in 1989 (30-A M.R.S.A. § 3001) to make it clear that the Legislature intended “home rule” to be a very broad grant of authority. In its present form, the “home rule” statute reads as follows:

A municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution, general law, or charter.... The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section, unless the municipal ordinance in question would frustrate the purpose of any State law.

This statute provides a basis for the adoption of local land use ordinances which are neither expressly authorized nor expressly or impliedly prohibited by other statutes. A number of Maine Supreme Court decisions have addressed the issue of whether a subject area has been implicitly preempted by the Legislature. In *Central Maine Power v. Town of Lebanon*, 571 A.2d 1189 (Me. 1990), the court found that a local ordinance relating to herbicide spraying was within the town’s home rule authority because it did not frustrate the State’s regulatory program. The court found no home rule authority to prohibit the disposal of out-of-town waste within the boundaries of the town in *Midcoast Disposal, Inc. v. Town of Union*, 537 A.2d 1149 (Me. 1988), holding that the authority to regulate solid waste disposal did not include the authority to totally prohibit certain activities. In contrast, the court upheld an ordinance which totally prohibited land spreading of septage, finding that other legal options were still available for the disposal and utilization of septage, even though more costly and difficult. *Smith v. Town of Pittston*, 2003 ME 46, 820 A.2d 1200. See *School Committee of Town of York v. Town of York*, 626 A.2d 935 (Me. 1993), *International Paper Co. v. Town*

of Jay, 665 A.2d 998 (Me. 1995), *Perkins v. Town of Ogunquit*, 1998 ME 42, 709 A.2d 106, *Sawyer Environmental Recovery Facilities v. Town of Hampden*, 2000 ME 179, 760 A.2d 257, and *State of Maine v. Brown*, 2014 ME 79, 95 A.3d 82, for other Maine Supreme Court cases analyzing home rule ordinance authority.

One type of ordinance commonly adopted under the authority of home rule is a “Site Plan Review Ordinance,” which is an ordinance used to regulate developments which normally cannot be reviewed as subdivisions. Usually the planning board is authorized by the ordinance to review the projects which the ordinance regulates. The State Planning Office (now part of the Department of Agriculture, Conservation and Forestry) has published a model site plan review ordinance with accompanying commentary which is available on the State of Maine website (www.maine.gov).

A plantation form of government does not have home rule ordinance powers under Maine law. Plantations may only adopt ordinances where expressly authorized by a specific statute. Plantations generally operate under land use regulations adopted and enforced by the Maine Land Use Planning Commission (LUPC). To adopt a locally enforced zoning ordinance, a plantation must comply with 30-A M.R.S.A. §§ 7059 and 4322 and 12 M.R.S.A. § 685-A(4).

Adoption of Codes or Standards by Reference

Title 30-A M.R.S.A. § 3003 establishes certain legal requirements with which a municipality must comply if it wants to adopt a code such as the State Model Uniform Building and Energy Code (MUBEC) by reference or incorporate certain standards (such as traffic engineering standards) by reference into an existing or new ordinance. In order for such a code or standards to be enforceable, it is very important to comply with the provisions of this law.

Subdivisions

Title 30-A M.R.S.A. §§ 4401-4408 (the Municipal Subdivision Law) require the planning board to review subdivisions using the criteria set out in the statute. If the municipality has not established a planning board, then the municipal officers must perform the review in the absence of some other locally designated review authority. It also authorizes the board to adopt additional reasonable regulations which are related to and supplement the statutory guidelines. Some municipalities have gone a step further and adopted a subdivision ordinance approved by the legislative body using home rule authority; in those municipalities, the planning board would not have the legal authority to adopt subdivision regulations. The former State Planning Office (now part of the Department of Agriculture, Conservation and Forestry) published a detailed model subdivision ordinance with commentary prepared by Southern Maine Regional Planning Commission which is available

on the State of Maine website (www.maine.gov). In 2002 the Legislature enacted 30-A M.R.S.A. § 4401(4)(H-1), which prohibits municipalities from adopting new definitions of “subdivision” which are in conflict with the statutory definition, except as expressly authorized by § 4401(4)(H-1). In 2017, the Legislature repealed 30-A M.R.S.A. § 4401(4)(H-1) and replaced it with § 4401(4)(H-2), which still prohibits municipalities from enacting any ordinance that expands the definition of “subdivision” except as provided under the statutory subdivision law. However, now a municipality may not expand the definition of subdivision to include the division of a structure for commercial or industrial use. Instead, the law exempts divisions of a new or existing structure into three or more dwelling units from subdivision review in municipalities where the project is subject to municipal site plan review. 30-A M.R.S.A. § 4402(6). See Appendix 5 for a number of materials relating to the definition of “subdivision” and other subdivision issues.

General Zoning Ordinance and Comprehensive Plan

In 1988 the Maine Legislature enacted a comprehensive Growth Management Act. 30-A M.R.S.A. § 4301 et seq. This law required every municipality to prepare and adopt a comprehensive plan and a town-wide zoning ordinance. Deadlines and substantive requirements for the plan and related ordinances, including public hearing requirements, were outlined in the law. In 1991 the Legislature made adoption of a plan and ordinances discretionary. However, 30-A M.R.S.A. § 4314 establishes deadlines by which existing zoning, impact fee, and rate of growth ordinances must be made consistent with a comprehensive plan adopted in accordance with the Growth Management Act; the ordinances become invalid to the extent they are inconsistent with a plan after those deadlines. If a municipality chooses to prepare and adopt a plan or plan amendment and fails to comply with required procedures, it may be faced with a suit brought by an affected landowner. *Roop v. City of Belfast*, 2007 ME 32, 915 A.2d 966.

Title 30-A M.R.S.A. § 4352 requires all zoning ordinances to be pursuant to and consistent with a comprehensive plan adopted by the legislative body. “Zoning” is defined as a regulation which applies different requirements to different areas of a municipality. 30-A M.R.S.A. § 4301(15-A); *Benjamin v. Houle*, 431 A.2d 48, 49 (Me. 1981); *LaBay v. Town of Paris*, 659 A.2d 263 (Me. 1995); *Bragdon v. Town of Vassalboro*, 2001 ME 137, 780 A.2d 299. Under this definition, ordinances and maps that regulate only aquifers or floodplains would constitute a type of “zoning.” Aquifer protection ordinances would need to be supported by a comprehensive plan. Floodplain management ordinances do not need to be supported by a comprehensive plan because of an exemption from that requirement in 30-A M.R.S.A. § 4314(2); the same statute exempts minimum shoreland zoning ordinances. See 30-A M.R.S.A. § 4352(2) for a list of other ordinances that do not need to be consistent with a comprehensive plan.

With regard to shoreland zoning ordinances, the Maine Supreme Court has held that a town may enforce its shoreland zoning ordinance even if it has no comprehensive plan. However, if the ordinance regulates more area as “shoreland” than required by the State minimum shoreland zoning statute and guidelines, or if the town already had an adopted comprehensive plan in effect at the time of the adoption of its shoreland zoning ordinance, then the ordinance must be consistent with an adopted comprehensive plan to be enforceable. *Enos v. Town of Stetson*, 665 A.2d 678 (Me. 1995); *F. S. Plummer Co. v. Town of Cape Elizabeth*, 612 A.2d 856 (Me. 1987).

Title 30-A §§ 4352 (9) and (10) establish special public hearing and notice requirements for the adoption and amendment of zoning and shoreland zoning ordinances. See MMA’s “Ordinance Enactment” information packet for a discussion of these requirements.

There is little case law in Maine regarding comprehensive plans and the amount of detail required in order to provide a sufficient legal basis for a zoning ordinance. Most of the cases have upheld the zoning provisions against a challenge of inconsistency with the plan. *Baker v. Town of Woolwich*, 517 A.2d 64, 68 (Me. 1987); *LaBonta v. City of Waterville*, 528 A.2d 1261, 1265 (Me. 1987); *Salvatore Vella and Trician Marine Corp. v. Town of Camden*, 677 A.2d 1051 (Me. 1996); *Adelman v. Town of Baldwin*, 2000 ME 91, 750 A.2d 57. Compare the preceding cases with, *Hackett v. City of Auburn*, CV-85-336 (Me. Super. Ct., Andro. Cty, October 29, 1985). See also *Gilliam v. Town of Freeport*, ____ A.2d ____, Decision No. 7077 (Me. 1994). [For a detailed discussion of the facts in *Gilliam*, see the Superior Court decision, CV-92-287 (Me. Super. Ct., Cum. Cty., February 4, 1994).] (Note: The Maine Supreme Court decision in *Gilliam* is a “Memorandum of Decision,” which is not printed in the Atlantic Court Reporter and cannot be used as legal precedent, but it may be helpful in understanding how to determine when an ordinance is not consistent with a plan.) See also *City of Old Town v. Dimoulas*, CV-98-124 (Me. Super. Ct., Pen. Cty., March 28, 2000), in which the court outlined information which it would need to determine whether the plan and ordinance were consistent. (This case was appealed and decided by the Maine Supreme Court in *City of Old Town v. Dimoulas*, 2002 ME 133, 803 A.2d 1018.)

Another important issue related to the adoption and enforcement of a zoning ordinance is the statutory requirement that a map be prepared and adopted as part of the ordinance. 30-A M.R.S.A. § 4352. Failure to adopt a map will render the zoning ordinance unenforceable. *Inhabitants of Town of Camden v. Miller*, CV-89-LU-1 (Me. Dist. Ct. 6, Knox, November 20, 1989). Where a map and the ordinance description of zone boundaries are inconsistent, the depiction on the map will control, absent language in the ordinance establishing a different rule for resolving conflicts. *Coastal Property Associates, Inc. v. Town of St. George*, 601 A.2d 89 (Me. 1992); *Veerman v. Town of China*, CV-93-353 (Me. Super. Ct., Kenn. Cty, April 13, 1994); *Nardi v. Town of Kennebunkport*, AP-00-001 (Me. Super. Ct., Yor. Cty., Feb. 12, 2001). See generally, *Lippman v. Town of Lincolnville*, 1999 ME 149,

739 A.2d 842. Any revisions to an adopted zoning map must be approved by a vote of the legislative body to be effective.

In reviewing a landowner's challenge to the adoption of an ordinance amendment or decision not to amend the ordinance, a court gives great deference to the decision of the local legislative body. The court's review is limited to a "determination of whether the ordinance itself is constitutional and whether the zoning...is in basic harmony with the...comprehensive plan." *Rommel v. City of Portland*, 2014 ME 114, 102 A.3d 1168; *Friends of the Motherhouse v. City of Portland*, 2016 ME 178, _____ A.3d ____; *Bog Lake Company v. Town of Northfield*, 2008 ME 37, 942 A.2d 700; *F.S. Plummer Co, Inc. v. Town of Cape Elizabeth*, 612 A.2d 856 (Me. 1992). The court also will determine whether the procedures required by local and State law have been satisfied. E.g., 30-A M.R.S.A. § 4352(9) and (10) and 38 M.R.S.A. § 438-A(1-B).

Spot Zoning

According to Young, *Anderson's American Law of Zoning* (4th ed.), §§ 5.12 – 5.22, "spot zoning" has been defined by the courts in other states as "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners." It has been called "the very antithesis of planned zoning." In the words of an Oregon court which declared a "spot" zoning amendment to be invalid, "arbitrary or 'spot,' zoning to accommodate the desires of a particular landowner is not only contrary to good zoning practice, but violates the rights of neighboring landowners and is contrary to the intent of the enabling legislation which contemplates planned zoning based upon the welfare of an entire neighborhood."

To determine whether a particular zoning amendment constitutes an act of "spot zoning," a court will consider a number of factors: the size of the area to be rezoned, the classification and the development of adjacent land, the relation of the amendment to existing zoning patterns and objectives, the planning history of the amendment, and the benefits or detriments which may accrue to the owner of the land, his neighbors, and the community, i.e., is it for the exclusive benefit of the landowner making the request, with no relation to the community as a whole? An example of where one court found spot zoning is a zoning amendment which reclassified land to create a small commercial area entirely surrounded by residential use; the court found the amendment to be of benefit to the landowner without any relation to the welfare of the neighborhood or the community at large.

"Spot" zoning also may occur where a small parcel is reclassified to the detriment of the landowner for the purpose of preventing a use which would otherwise be permitted and to which the abutters are objecting.

The reclassification of a small parcel has been upheld where the proposed use is perceived as having a public benefit which outweighs the advantage to the landowner or the potential injury to the immediate neighborhood. For example, a reclassification was upheld where a small parcel was to be used for an apartment building in a medium density residential area where the court found that there was a need for that type of housing in the area. Another example is where a small parcel was rezoned for a small shopping center which the court found necessary to meet the needs of the residents of the surrounding neighborhood, because it was a rapidly developing residential suburban area.

In Maine, State law requires that a zoning ordinance “must be pursuant to and consistent with a comprehensive plan adopted by the municipality’s legislative body.” 30-A M.R.S.A. § 4352. Information should be included in the municipality’s comprehensive plan demonstrating why a particular use should be allowed or prohibited in a particular area. The type of information which must be included in a comprehensive plan is outlined in 30-A M.R.S.A. § 4326.

In deciding whether a particular rezoning request constitutes “spot zoning,” the board must apply the rules outlined above to the facts of that specific situation and review the provisions of the municipality’s comprehensive plan to determine whether the proposed change would be supported by the policies and data contained in the plan. The Maine courts have upheld zoning amendments against challenges based on “spot zoning” in several cases. *Salvatore Vella and Trician Marine Corp. v. Town of Camden*, 677 A.2d 1051 (Me. 1996); *City of Old Town v. Dimoulas*, 2002 ME 133, 803 A.2d 1018; *Gilliam v. Town of Freeport*, ___ A.2d ___ (Me. 1994) (Decis. No. 7077) [For a detailed discussion of the facts, see the Superior Court decision, CV-92-287 (Me. Super. Ct., Cum. Cty., February 4, 1994)]. (Note: *Gilliam* is a ‘Memorandum of Decision’ which is not printed in the Atlantic Court Reporter and should not be cited as precedent. However, the facts and holding may be helpful in understanding spot zoning.) In *Dimoulas*, the court held that spot zoning is illegal only if (1) a single parcel or a limited area is rezoned, usually for the benefit of a specific property owner or special interest, and (2) the rezoning is inconsistent with the comprehensive plan.

Shoreland Zoning

During the early 1970s, most towns and cities in Maine either voluntarily adopted shoreland zoning ordinances or had an ordinance imposed on them by the State Legislature through the Shoreland Zoning Task Force under 12 M.R.S.A. § 4811 et seq. (now 38 M.R.S.A. § 435 et seq.). Shoreland zoning ordinances must regulate lands within 250 feet of the normal high water mark of certain water bodies and wetlands, but they may also regulate land use activities below the normal high water mark if the municipality adopts appropriate amendments. As a general rule, the planning board has authority to review and act upon at

least some of the projects covered by shoreland zoning. The shoreland zoning statute states that the planning board may also be designated to enforce the shoreland zoning ordinance.

The State agency that develops minimum shoreland zoning guidelines and that oversees local administration and enforcement of shoreland zoning ordinances is the Maine Department of Environmental Protection (DEP). Local shoreland zoning ordinances must be at least as restrictive as the State's minimum shoreland zoning guidelines (sometimes called "the model ordinance"). They also must be consistent with the State shoreland zoning statute. As a general rule, it is the town's existing ordinance that the planning board must follow in reviewing applications, even if it does not conform to the State guidelines or statute. However, where the shoreland zoning statute states that "notwithstanding a local ordinance to the contrary" a certain provision of the statute applies, then it is the statutory provision that the planning board must apply. Examples include the statutory provisions pertaining to expansion of a nonconforming structure, timber harvesting, clearing of vegetation, and the exclusion of recreational boat storage buildings from the definition of "functionally water-dependent use."

If a shoreland zoning ordinance and town-wide zoning ordinance are in conflict, the "conflicts" section of the ordinance usually dictates that the more restrictive provision controls the proposed use. *Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, 712 A.2d 1061. Where a town-approved shoreland zoning ordinance included a side line setback requirement and a shoreland zoning ordinance imposed upon the town by the Board of Environmental Protection did not, the Maine Supreme Court held that the State-imposed ordinance served as a supplement to the town ordinance and did not effectively repeal it. *Bartlett v. Town of Stonington*, 1998 ME 50, 707 A.2d 389.

Title 38 M.R.S.A. section 438-A(2) requires shoreland zoning ordinances to be pursuant to a comprehensive plan. However, the Maine Supreme Court has held that an adopted comprehensive plan is not a prerequisite to a valid shoreland zoning ordinance. The court interpreted Maine's Mandatory Shoreland Zoning Law (38 M.R.S.A. §§ 435-449) in *Enos v. Town of Stetson*, 665 A.2d 678 (Me. 1995), and concluded that the Legislature intended municipalities to immediately adopt a shoreland zoning ordinance conforming to the State minimum guidelines regardless of whether a comprehensive plan had already been enacted. The language in 38 M.R.S.A. § 438-A(2) directing that municipalities prepare shoreland zoning ordinances "in accordance with a local comprehensive plan" is "mandatory only if a comprehensive plan is already in existence," in the court's opinion. The court noted, however, that if a town already has a comprehensive plan in effect and enacts a new shoreland zoning ordinance which is inconsistent with that plan, the shoreland zoning ordinance is invalid [citing *F. S. Plummer Co. v. Town of Cape Elizabeth*, 612 A.2d 856, 860 (Me. 1992), and *LaBonta v. City of Waterville*, 528 A.2d 1262 (Me. 1987)].

Any new shoreland zoning ordinance, an amendment to a new or existing ordinance or the repeal of any shoreland zoning provision must be submitted to the Department of Environmental Protection for approval before it becomes effective. The DEP has 45 days within which to act; if it fails to act, the ordinance/amendment is deemed approved. Any application for a shoreland zoning permit submitted to the municipality during the 45-day period is governed by the new ordinance, if approved by the DEP. 38 M.R.S.A. § 438-A.

The adoption of any new shoreland zoning ordinance or amendment to an existing shoreland zoning ordinance or adoption or amendment of a shoreland zoning map must be preceded by a public hearing conducted by the planning board and advertised in accordance with 30-A M.R.S.A. § 4352(9) and (10). If the board is thinking of proposing Resource Protection District classification for land in the shoreland zone, there are additional notice and hearing requirements that the board must satisfy under 38 M.R.S.A. § 438-A(1-B).

DEP periodically publishes “Shoreland Zoning News,” a newsletter devoted to shoreland zoning issues such as expansions of nonconforming structures, changes in the State Shoreland Zoning laws, and other shoreland zoning matters. To receive back issues as well as future issues, contact DEP’s Shoreland Zoning Unit in the Bureau of Land and Water Quality in Augusta. See Appendix 4 of this manual for selected excerpts from past newsletters.

Flood Plain Development

In addition to the regulation of flood plains under a minimum shoreland zoning ordinance, 38 M.R.S.A. § 440 of the Shoreland Zoning Act authorizes municipalities to extend their shoreland zoning ordinances and maps to areas beyond 250 feet of the normal high water mark in order to control problems associated with flood plain development. These ordinances do not have to be part of a general zoning ordinance. The board may have some role to play in the permit system, if authorized by the ordinance. Some municipalities also have adopted flood hazard building ordinances and federal flood hazard maps under the federal Flood Disaster Protection Act of 1973 in order to enable local residents to participate in the Federal Flood Insurance Program. Again, planning boards may be authorized to administer these ordinances and generally are involved in reviewing the maps to determine their accuracy.

Typically, shoreland zoning ordinances zone the 100-year flood plain as a resource protection district, although these ordinances may exclude developed areas from the district. The shoreland zoning performance standards governing structures in the flood plain generally require them to be elevated a certain number of feet above flood level. Generally, new principal structures are not allowed at all. Flood hazard building permit ordinances also

tend to impose severe restrictions or prohibitions on new and replacement construction in designated flood areas.

Contract and Conditional Zoning

Title 30-A M.R.S.A. § 4352(8) establishes public hearing and notice requirements in connection with the preparation and adoption of conditional and contract zoning provisions.

“Conditional zoning” is the process whereby the municipal legislative body rezones property to allow its use subject to conditions not generally applicable to other properties with similar zoning. The conditions are imposed by the legislative body as a condition of the rezoning and become part of the ordinance; there is no separate written agreement.

“Contract zoning” is the process involved when a property owner agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned property in return for the rezoning of his/her property. To use contract zoning, there should be an ordinance provision in the zoning ordinance establishing a process for contract zoning which provides the springboard for the specific contract zoning agreement entered between the municipality and the property owner. The agreement is approved by the legislative body and should be attached to the zoning ordinance as a type of appendix; the agreement itself does not become part of the ordinance, but rather provides the basis for rezoning a particular parcel of land and depicting the new zone on the official map.

Section 4352(8) lists three factors that must exist in order for the conditional or contract zoning to be legal. This type of zoning is best suited to unique properties or unusual projects with mixed uses. Some communities have chosen not to use it due to concerns that it could be abused or perceived as favoritism for some landowners. Some communities include a provision in the conditions or agreement stating that the property reverts to its original zoning status if conditions of rezoning are violated. Other communities require a “public benefit” in order to consider approving conditional or contract zoning. A contract zone agreement/conditional zoning provision could require payment of money to allow the municipality to hire a professional consultant to assist the municipality in monitoring compliance with the rezoning conditions. Some require performance guarantees and phasing of the project. It is important to work with the municipality’s private attorney to ensure that the rezoning conditions or contract zone agreement provisions are legal. Having a strong professional staff with the time and expertise to monitor compliance with the agreement or conditions greatly increases the effectiveness of this approach to rezoning.

For samples of contract zoning agreements and ordinance provisions related to conditional or contract zoning, contact Maine Municipal Association’s Legal Services Department or the following municipalities: Kennebunk, Yarmouth, Scarborough, Portland, Saco and

Bangor. Maine court decisions related to contract or conditional zoning include: *ALC Development Corp. v. Town of Scarborough*, CV-03-498 (Me. Super. Ct., Cum. Cty., Feb. 15, 2005); *McMillan v. City of Portland*, CV-04-784 (Me. Super. Ct., Cum. Cty., Nov. 22, 2005); *Crispin v. Town of Scarborough*, 1999 ME 112, 736 A.2d 241; *Hathaway v. City of Portland*, 2004 ME 47, 845 A.2d 1168; *Golder v. City of Saco*, 2012 ME 76, 45 A.3d 697; *Pike Industries, Inc. v. City of Westbrook*, 2012 ME 78, 45 A.3d 707; *Pike Industries, Inc. v. City of Westbrook*, 2014 ME 85, 96 A.3d 73; *Rommel v. City of Portland*, 2014 ME 114, 102 A.3d 1168.

Informed Growth Act

Title 30-A M.R.S.A. §§ 4365-4372, the “Informed Growth Act” (IGA), allows a municipality to apply the requirements of the Act, including the requirement that a developer provide a “comprehensive economic development impact study” as part of an application for a “large scale retail development” (i.e., a “Big Box” store), provided the municipality has adopted the provisions of 30-A M.R.S.A. §§ 4365-4372 by reference. Section 4365-A expressly acknowledges the home rule authority of a municipality to adopt ordinances on the same subject matter as the IGA.

Manufactured Housing and Mobile Homes

A number of Maine statutes authorize municipal ordinances regulating mobile homes, mobile home parks, and manufactured housing but place certain restrictions on the nature and extent of those local regulations, including 30-A M.R.S.A. § 3001 (“home rule”), 30-A M.R.S.A. 4401 (subdivision law), 30-A M.R.S.A. § 4352 (zoning), 30-A M.R.S.A. § 4358 (manufactured housing), and 10 M.R.S.A. § 9006(2) and § 9042(3) (Manufactured Housing Act). “Manufactured housing” as defined in 10 M.R.S.A. § 9002(7) is exempt from the provisions of the State Model Uniform Building and Energy Code (“MUBEC”). 10 M.R.S.A. § 9724(5).

Title 10 M.R.S.A. § 9006 (2) reads: “Manufactured housing which is manufactured, sold, installed or serviced in compliance with this chapter (10 M.R.S.A. chapter 951) shall be exempt from all state or other political subdivision codes, standards or regulations which regulate the same matters.” Section 9042 (3) of Title 10 imposes the following limitations on local ordinances: “Notwithstanding the provisions of Title 25, § 2357 and Title 30-A § 4358, new manufactured housing that is manufactured, brokered, distributed, sold, installed or serviced in compliance with this chapter is exempt from all state and other political subdivision codes, standards, rules or regulations that regulate the same matters. A building permit or certificate of occupancy may not be delayed, denied or withheld on account of any alleged failure of new manufactured housing to comply with any code, standard, rule or regulation from which the new manufactured housing is exempt under this subsection.” “Manufactured housing” is defined in 10 M.R.S.A. § 9002(7) and includes new and old

mobile and modular homes that meet certain criteria. To determine whether a particular local ordinance or code is preempted by § 9006 (2) or § 9042 (3), it is necessary to compare the ordinance or code with Title 10, chapter 951 and the provisions of the rules adopted by the Manufactured Housing Board to see if they “regulate the same matters.” Title 10 M.R.S.A. § 9042(5) authorizes municipalities to deny a certificate of occupancy for State-certified manufactured housing under certain conditions.

Title 30-A M.R.S.A. § 4358 (2)(A) prohibits municipal ordinances which require manufactured housing on individual lots to be greater than 14 feet wide, but it allows ordinances which establish “design criteria, including, but not limited to, a pitched shingled roof, a permanent foundation and exterior siding that is residential in appearance,” as long as the requirements do not have the effect of circumventing the purpose of § 4358. Section 4358(1)(D)(1) defines “permanent foundation” for HUD-certified mobile homes constructed after June 15, 1976 (i.e., “newer” mobile homes) to mean “a foundation that conforms to the installation standards established by the Manufactured Housing Board.” Subsection (1)(D) (2) defines “permanent foundation” for modular homes as one that “conforms to the” 1990 edition of the BOCA National Building Code. Subsection 4358(2)(D) allows municipalities to apply reasonable safety standards to any manufactured home built before June 15, 1976 (i.e., “older” mobile homes) or not built in accordance with certain national standards (i.e., not HUD-certified). It also authorizes municipalities to apply the design standards permitted by § 4358(2)(A) to all manufactured housing, regardless of its date of manufacture. However, 30-A M.R.S.A. § 4358(2)(A)(2) prohibits municipalities from applying design standards to a manufactured home on an individual lot that was legally sited in the municipality as of August 4, 1988 if the design standards would prevent the relocation of that manufactured home, regardless of its date of manufacture.

Section 4358 (2)(E) provides that any “modular home” as defined which meets construction standards for State-certified manufactured homes adopted pursuant to 10 M.R.S.A. § 9042 must be allowed in all zones where other single family homes are allowed. This is an exception to the general rule stated in the opening paragraph of § 4358 (2), which requires only that a municipality allow manufactured housing to be located in a number of locations on undeveloped lots where single-family dwellings are allowed.

Section 4358 also establishes limitations on regulations which a municipality may adopt governing mobile home parks. Restrictions on ordinance authority include lot size requirements, buffer strips, setback requirements, and road construction standards, among others. For an interpretation of § 4358 by the Maine Supreme Court regarding a municipality’s obligation to allow existing mobile home parks to expand in their current location, see *Bangs v. Town of Wells*, 2000 ME 186, 760 A.2d 632. The court found that the right to expand included both density and physical area.

Condominium Projects

Generally, new condominium projects must be reviewed as subdivisions under the Municipal Subdivision Law (30-A M.R.S.A. § 4401). If existing dwelling units are converted to a condominium form of ownership, the change in ownership by itself does not trigger the need for subdivision review. Any local ordinance regulating condominiums must not conflict with the Maine Condominium Act (Title 33, Chapter 31). That statute deals primarily with how condominiums are created and managed, provides certain protections for purchasers, and establishes rules for the conversion of existing buildings to condominiums. Local ordinances may not prohibit the condominium form of ownership.

Farmland; Agricultural Uses

Title 7 M.R.S.A. §§ 51-59 establishes a process that allows a landowner to register “farmland” as defined with the Department of Agriculture, Conservation, and Forestry. Abutting landowners are prohibited under section 56 from undertaking or allowing “inconsistent development” or “incompatible uses” as defined on their land within 100 feet and 50 feet respectively of properly registered farmland. Municipalities are prohibited from issuing building or use permits for “inconsistent development” or “incompatible uses.” Certain abutting lands are exempt from the prohibition. Section 57 authorizes the board of appeals to grant a variance in limited situations.

Another statute, 7 M.R.S.A. §§ 151-163, protects a “farm operation” and “agricultural composting operations” as defined from being prosecuted by a municipality as a public nuisance or for an ordinance violation if it is a permitted use and is operated in conformity with “best management practices,” as defined by the Maine Department of Agriculture, Conservation, and Forestry. It also cannot be considered a violation of a local ordinance if it is located in an area where agricultural activities are permitted, as long as the method of operation constitutes a “best management practice,” as defined by the Department.

Any proposed municipal ordinance which would impact “farm operations” or “agricultural composting operations” must be submitted to the Department of Agriculture, Conservation and Forestry by the municipal clerk or his or her designee at least 90 days before the meeting of the legislative body or the public hearing at which adoption will be considered. 7 M.R.S.A. § 155. The Commissioner of Agriculture must review the ordinance and advise the municipality if the ordinance would restrict or prohibit the use of “best management practices” as defined by the Department.

In *Dubois Livestock, Inc. v. Town of Arundel*, 2014 ME 122, 103 A.3d 556, the Maine Supreme Court considered whether the Maine Agriculture Protection Act in 7 M.R.S.A. §§ 151-163 preempts other local ordinances regulating agricultural uses. The court found

that the Arundel Land Use Ordinance was not preempted by the Act and that the Act “does not affect municipal authority to enact ordinances” under section 155.

Junkyards, Automobile Graveyards, and Automobile Recycling Businesses

Title 30-A M.R.S.A. §§ 3751-3760 impose an obligation on municipalities (through the municipal officers) to license “junkyards,” “automobile graveyards,” and “automobile recycling businesses,” as defined in the statute, each year and to enforce the law against people who are in violation. These activities also are regulated by the DEP under the Site Location of Development Act (38 M.R.S.A. § 481 et seq.) and to a lesser extent by the Secretary of State (29 M.R.S.A. §§ 1101-1112). MMA’s Legal Services Department has prepared an information packet discussing the Title 30-A provisions, which is available on MMA’s website at www.memun.org.

Section 3755(4) authorizes municipal ordinances that impose additional standards with which proposed “junkyards,” “automobile graveyards,” and “automobile recycling businesses” must comply in order to receive a permit from the municipal officers. Without such an ordinance, the municipal officers can consider only the statutory requirements. *Spain v. City of Brewer*, 474 A.2d 496 (Me. 1984); *Polk v. Town of Lubec*, 2000 ME 152, 756 A.2d 510. The municipality may restrict the location of these businesses through properly enacted zoning ordinances, which often require planning board review and approval for new or expanded activities. Planning board review and approval would be independent of the approval required under Title 30-A from the municipal officers.

Minimum Lot Size

Title 12 M.R.S.A. § 4807 et seq. establishes a statewide minimum lot size for land use activities which will dispose of waste by means of a subsurface disposal system. The minimum lot size for new single family residential units (including mobile homes and seasonal homes) is 20,000 square feet. For multi-unit housing and other land use activities, a proportionately greater lot size is required based on a statutory formula. In addition to the statutory requirements, the Department of Health and Human Services has adopted agency rules. Municipalities may establish larger minimum lot sizes by ordinance under home rule. 30-A M.R.S.A. § 3001. An article discussing this law appears in Appendix 7 of this manual.

Signs

Municipalities which want to regulate off premise signs must comply with minimum guidelines administered by the Department of Transportation under 23 M.R.S.A. § 1901 et seq. Sign ordinances must also comply with the First Amendment of the U.S. Constitution. They generally may not establish categories of regulations that are based on the content of the sign. *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015). For further discussion of this issue, see MMA’s “Sign Regulation” information packet.

Noise

Title 38 M.R.S.A. § 484 (3)(C) authorizes municipalities to adopt noise regulations which are stricter than those adopted by DEP under the Site Location Act. See also 30-A M.R.S.A. § 3011 regarding local regulation of sport shooting ranges.

Sport Shooting Ranges

Municipal ordinance authority to regulate sport shooting ranges is addressed in 30-A M.R.S.A. § 3011. Issues covered in that statute include a limit on or elimination of existing sport shooting ranges, expansion of shooting ranges, and their maintenance and improvement.

Solid Waste, Septage, and Sludge

Solid waste, septage, and sludge disposal and storage are generally regulated by DEP pursuant to Title 38 of the Maine statutes and rules adopted by DEP. Municipalities are prohibited from enacting stricter standards than those contained in Title 38 and in the DEP solid waste management rules “governing the hydrogeological criteria for siting or designing solid waste disposal facilities or governing the engineering criteria related to waste handling and disposal areas of a solid waste disposal facility.” Local ordinances regulating solid waste facilities may include reasonable standards regarding other issues such as: “conformance with state and federal rules; fire safety; traffic safety; levels of noise that can be heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protection; and compatibility of the facility with local zoning and land use controls, provided the standards are not more strict than those contained in [Title 38, chapter 13 (solid waste law) and Title 38, chapter 3, subchapter I, articles 5-A and 6 (Natural Resources Protection Act and Site Location Act)] and the rules adopted thereunder.” Local ordinances must use definitions consistent with those adopted by DEP. Municipal authority to regulate State and regionally-owned solid waste facilities is also restricted. Any ordinance adopted by a municipality regulating solid waste facilities must be filed with the DEP within 30 days. 38 M.R.S.A. § 1310-U. As noted earlier, a municipal ordinance may not totally prohibit privately operated solid waste facilities or the disposal of out-of-town waste. *Midcoast Disposal, Inc. v. Town of Union*, 537 A.2d 1149 (Me. 1988). Nor may a local ordinance totally ban new or expanded solid waste facilities. *Sawyer Environmental Recovery Facilities v. Town of Hampden*, 2000 ME 179, 760 A.2d 257. The Maine Supreme Court reached a different conclusion regarding home rule authority to ban septage spreading. In *Smith v. Town of Pittston*, 2003 ME 46, 820 A.2d 1200, the court found that under 38 M.R.S.A. § 1305(6), an ordinance banning septage spreading did not frustrate the purpose of the State law because other methods for disposing of septage were still available, even though more costly and difficult. The court noted, without deciding, that a total ban on all methods of septage disposal might have exceeded the town’s home rule authority. The Maine DEP has prepared a guidance document to assist municipalities in drafting these

types of ordinances. For a case invalidating an ordinance banning the spread of composted biosolids on town-owned land, see *Town of Brunswick v. New England Organics*, CV-07-71 (Me. Super. Ct., Cum. Cty., May 29, 2007).

Prior to approving an application for land application or storage of sludge, the DEP is required by 38 M.R.S.A. § 1305(9) to consult with the municipal officers of the municipality in which the sludge will be stored or spread. If DEP doesn't impose conditions on a permit that have been suggested in writing by the municipal officers, DEP must provide a written explanation to the municipal officers. If a generator requests a change in the terms or conditions of a permit, the DEP is also required to consult with the municipal officers. The municipality may ask for a review of the generating facility's testing protocol for sludge and if the Commissioner agrees, he or she may order the applicant to conduct an additional test at the applicant's expense. A copy of the test results must be provided to the municipal officers. Title 38 M.R.S.A. § 1310-N(2-G) establishes setback requirements for sludge land application sites and sludge storage sites and facilities which are near certain kinds of water bodies and also a setback from abutting property boundaries.

Title 38 M.R.S.A. § 1305(6) of the Maine statutes requires an applicant for a septage disposal permit to obtain approval from both DEP and the municipality in which the site will be located, unless the site is in a Resource Protection District under the jurisdiction of the Maine Land Use Planning Commission (LUPC). The municipality (presumably through the municipal officers) may decide whether the applicant must seek DEP or local approval first. The municipal officers hold a hearing and then conduct a review of the application. If they find that the site complies with local ordinances, they must approve it. If the municipality lacks applicable ordinances, then the municipal officers' approval must be based on a finding of compliance with the siting and design standards in the DEP septage management rules. For a discussion of which DEP standards the municipal officers may apply, see *Hutchinson v. Cary Plantation*, 2000 ME 129, 755 A.2d 494.

Hazardous Waste; Radioactive Waste

Title 38 M.R.S.A. § 1319-P authorizes municipal ordinances regulating hazardous waste disposal, storage and generation as long as those ordinances are not less stringent than the statutes and agency rules administered and enforced by DEP. However, provisions governing "commercial hazardous waste facilities" cannot be more restrictive than or duplicative of State law. The DEP is required to incorporate all applicable local requirements to the fullest extent possible in conducting an application review. Municipalities are authorized to enact an ordinance levying a fee on a commercial hazardous waste facility. 38 M.R.S.A. § 1319-R. "Commercial" facilities are defined as "a waste facility for hazardous waste which handles wastes generated off the site of the facility; or a facility which in the handling

of a waste generated off the site, generates hazardous waste.” See also 38 M.R.S.A. §§ 1497 and 1464 relating to radioactive waste disposal.

Coastal Management Policies

According to 38 M.R.S.A. § 1801, all coastal municipalities on tidal waters, in regulating, planning, developing, or managing coastal resources, are required to conduct their activities affecting the coastal area consistent with the following policies to:

- **Port and harbor development.** Promote the maintenance, development and revitalization of the State’s ports and harbors for fishing, transportation and recreation;
- **Marine resource management.** Manage the marine environment and its related resources to preserve and improve the ecological integrity and diversity of marine communities and habitats, to expand our understanding of the productivity of the Gulf of Maine and coastal waters and to enhance the economic value of the State’s renewable marine resources;
- **Shoreline management and access.** Support shoreline management that gives preference to water-dependent uses over other uses, that promotes public access to the shoreline and that considers the cumulative effects of development on coastal resources;
- **Hazard area development.** Discourage growth and new development in coastal areas where, because of coastal storms, flooding, landslides or sea level rise, it is hazardous to human health and safety;
- **State and local cooperative management.** Encourage and support cooperative state and municipal management of coastal resources;
- **Scenic and natural areas protection.** Protect and manage critical habitat and natural areas of state and national significance and maintain the scenic beauty and character of the coast even in areas where development occurs;
- **Recreation and tourism.** Expand the opportunities for outdoor recreation and encourage appropriate coastal tourist activities and development;
- **Water quality.** Restore and maintain the quality of our fresh, marine and estuarine waters to allow for the broadest possible diversity of public and private uses; and

- **Air quality.** Restore and maintain coastal air quality to protect the health of citizens and visitors and to protect enjoyment of the natural beauty and maritime characteristics of the Maine coast.

This means that local ordinances affecting land use in coastal areas must contain review standards which will promote these coastal policies.

Gravel Pits and Other Excavation Activities

Title 30-A M.R.S.A. § 3105 requires municipalities to incorporate certain minimum standards into any local ordinance regulating borrow pits that do not fall within the jurisdiction of DEP. If there is no local ordinance, the statute authorizes the municipal officers to enforce the statutory standards. Title 38 M.R.S.A. 490-I(1) expressly acknowledges municipal home rule ordinance authority relating to the regulation of borrow pits and removal of clay, topsoil and silt.

Pesticide Use

Title 22 M.R.S.A. § 1471-U requires a municipality to give notice and a copy of the proposed ordinance to the State Board of Pesticide Control at least seven days prior to the date of the meeting at which the adoption of an ordinance regulating pesticide storage, use or distribution will be considered. Once adopted, the clerk has 30 days to notify the Board of that fact. Ordinances already in existence also must be filed with the Board. Failure to file and/or comply with the notice requirements makes the ordinance invalid to the extent that it regulates the storage, distribution and use of pesticides.

Timber Harvesting

Any municipality attempting to regulate timber harvesting activities must use definitions of forestry terms in their ordinances which are consistent with those found in 12 M.R.S.A. § 8868 and those adopted by the Commissioner of the Department of Agriculture, Conservation and Forestry. A municipal timber harvesting ordinance adopted before September 1, 1990 must meet this requirement by January 1, 2001. Municipal ordinances may not be less stringent than the minimum standards established by the statute and agency rules. A municipality may not adopt a new timber harvesting ordinance or amend an existing one unless it follows the procedures outlined in 12 M.R.S.A. § 8869 and § 8867-B for the development and review of the ordinance. This includes:

A licensed professional forester must participate in the development of the ordinance; A meeting must take place in the municipality during the development of the ordinance between representatives of the Department and municipal officials involved in developing the ordinance. Discussion at the meeting must include, but is not limited to, the forest practices goals of the municipality;

The municipality shall hold a public hearing to review a proposed ordinance at least 45 days before a vote is held on the ordinance. The municipality shall post and publish public notice of the hearing in accordance with 30-A M.R.S.A. § 4352(9) (zoning ordinance hearing notices); and

It also must mail notices to all landowners at least 14 days before the hearing unless the ordinance will only apply to certain areas, in which case only the landowners in or immediately abutting those areas receive mailed notice. Mailed notice isn't required where the purpose of the amendment is to conform an existing ordinance to the minimum guidelines required by 38 M.R.S.A. § 439-A or the definition in 12 M.R.S.A. § 8868.

See § 8869 for additional requirements regarding notice to and comments by the Department and a procedure for reimbursement of municipal costs of providing notice to landowners. After the legislative body has adopted the ordinance, the municipal clerk must file a copy of the ordinance with the Department within 30 days.

Regarding timber harvesting within the shoreland zone generally and within the Resource Protection District specifically, 38 M.R.S.A. § 439-A requires municipalities to regulate timber harvesting in the shoreland zone and prohibits local standards which are less restrictive than those outlined in § 439-A(5). For rules governing shoreland zoning ordinance timber harvesting provisions, see 38 M.R.S.A. § 438-B.

Housing for Individuals with Disabilities

Title 42 U.S.C. §§ 3600-3620 (Federal Fair Housing Act) preempt local land use regulations which illegally discriminate on the basis of disability or family status. Local ordinances which attempt to regulate group homes for people with physical or other disabilities in a manner different from comparable housing for non-disabled people may be in violation of this federal law. Consult with an attorney to determine whether an ordinance violates this law in order to avoid potential federal civil rights liability. Title 30-A M.R.S.A. § 4357-A defines a "community living arrangement" as a State-approved housing facility for eight or fewer persons with disabilities and states that such a facility is a single-family use for zoning purposes. For an article discussing the relationship between the Americans with Disabilities Act (ADA) and local ordinances, see a February 1996 *Maine Townsman* Legal Note available on MMA's website at www.memun.org.

Groundwater Protection; Groundwater Extraction; Public Drinking Water Supply

Title 38 M.R.S.A. § 401 expressly acknowledges municipal home rule authority to "enact ordinances...to protect and conserve the quality and quantity of groundwater." As was noted in the discussion of "zoning" ordinances earlier in this chapter, separate groundwater

protection or aquifer protection ordinances may constitute a type of zoning ordinance that must be supported by a comprehensive plan. In addition, the municipal officers have some limited authority to regulate surface uses of a public water supply and uses of the land overlying public water supply aquifers and their recharge areas. 22 M.R.S.A. § 2642.

Title 38 M.R.S.A. §§ 1391-1399 establish a “wellhead protection zone” program enforced by the DEP. The zones surround public and private drinking water wells in which certain activities are prohibited. For private wells, the protected zone is 300 feet from the well. For public wells, the protected area is the greater of 1,000 feet from the well or the area of a mapped “source water protection area.” (Contact the Public Drinking Water program at the Department of Health and Human Services for more information about source water protection area maps.) Section 1399 authorizes municipalities to adopt siting restrictions that are more stringent than the prohibitions in the wellhead protection statute and agency rules.

For a detailed discussion of municipal ordinance authority to regulate groundwater extraction, see a July 2009 *Maine Townsman* article by Leah Rachin, Esq. entitled “Large-Scale Water Extraction,” which is available on MMA’s website (www.memun.org). For Maine court cases interpreting some of those ordinances and local decisions made pursuant to those ordinances, see: *Nestle Waters North America, Inc. v. Town of Fryeburg*, 2009 ME 30, 967 A.2d 702; *Griswold v. Town of Denmark*, 2007 ME 93, 927 A.2d 410; *Fryeburg Water Co. v. Town of Fryeburg*, 2006 ME 31, 893 A.2d 618; *Buker v. Town of Sweden*, 644 A.2d 1042 (Me. 1994). See also *Rangeley Crossroads Coalition v. Maine Land Use Regulation Commission*, 2008 ME 115, 955 A.2d 223.

Title 22, section 2642 of the Maine statutes authorizes the municipal officers to adopt regulations governing surface uses of sources of public water supply and land overlying ground water aquifers and their recharge areas used as sources of public water supply located within the municipality. Regulations adopted by the municipal officers become void after one year from adoption unless ratified before expiration by vote of the legislative body.

Regulation of Water Levels

Title 30-A M.R.S.A. § 4455 expressly authorizes municipal ordinances which regulate water levels or minimum flow on an impounded body of water. The ordinance must include certain provisions and be reviewed and approved by the Commissioner of DEP.

Airports

Title 6 M.R.S.A. §§ 241-246 authorize municipalities to zone areas surrounding an airport in order to regulate uses, height of structures, and permissible vegetation. The statute expressly addresses nonconforming uses, variances, permit procedures, and appeals. See 30-A

M.R.S.A. § 4402(4) regarding the applicability of the Municipal Subdivision Law to airport plans. (A copy of the Subdivision Law appears in Appendix 5.)

Antennas, Towers, and Satellite Dishes

Certain municipal ordinance provisions regulating satellite dishes, wireless communications towers, and amateur radio towers have been preempted by federal statute and agency rules adopted by the FCC. For a detailed discussion of this issue, see MMA's "Telecommunications Facilities" information packet, which is available on MMA's website at www.memun.org.

Title 30-A M.R.S.A. § 3012 provides that "(a) municipality may not adopt or enforce any ordinance or regulation that is preempted by a Federal Communications Commission regulation that states that local regulations that involve placement, safety or aesthetic considerations must be crafted to reasonably accommodate amateur radio communications and to represent the minimum practicable regulation to accomplish the municipality's legitimate purpose."

The Maine Supreme Court has held that a satellite dish is a "structure" for the purposes of shoreland zoning setback requirements. *Brophy v. Town of Castine*, 534 A.2d 663 (Me. 1987). A Superior Court decision interpreting a specific municipal zoning ordinance upheld an appeals board finding that a 180-foot cellular telecommunications tower was a "public utility" which required approval as a special exception subject to certain conditions since it would exceed the general 35-foot height restriction for structures under the town's ordinance. *Means v. Town of Standish*, CV-92-1365 (Me. Super. Ct., Cum. Cty., October 8, 1993). For other court cases involving local board decisions regarding tower applications, see: *Adelman v. Town of Baldwin*, 2000 ME 91, 750 A.2d 577; *Banks v. Maine RSA #1*, 1998 ME 272, 721 A.2d 655; and *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86.

A federal law called the "Middle Class Tax Relief and Job Creation Act of 2012 (26 USC § 6419) imposes some restrictions on a municipality's authority to deny approval for a wireless tower or base station. It states in part: "Local governments may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." It defines "eligible facilities request" as a request to modify an existing wireless tower or base station that involves (A) co-location of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment.

Effective September 19, 2019, notwithstanding any zoning or land use ordinance to the contrary, small wireless facilities must be a permitted use within the public right of way. 30-A M.R.S.A. § 4362. These facilities, however, may be subject to permitting requirements

and duly adopted, nondiscriminatory conditions otherwise applicable to permitted uses within the municipality that are consistent with state and federal law, including Title 35-A, chapter 25.

Rental Housing

Title 14 M.R.S.A. § 6021(6) expressly authorizes municipal ordinances which establish standards for the habitability of rental dwelling units, as long as the local standards are more stringent than the specific standards for habitability included in § 6021. Section 6021 deals primarily with the temperature of the dwelling unit. Unless a municipality has an ordinance regulating rental housing, a municipality probably will be unable to help a tenant resolve a problem with a rented dwelling unit. The statutes and court-made rules governing the rights of tenants are enforceable in a civil lawsuit by the tenant against the landlord. Low income tenants may be able to obtain assistance from such legal aid groups as Pine Tree Legal Assistance or the Legal Aid Clinic at the University of Maine, School of Law.

Erosion and Sedimentation

Title 38 M.R.S.A. § 420-C expressly acknowledges municipal home rule authority to adopt ordinances which establish stricter standards relating to erosion and sedimentation control than those contained in § 420-C.

Storm Water Management

Title 38 M.R.S.A. § 420-D expressly provides that the storm water management standards found in that section do not preempt local home rule ordinances which attempt to establish stricter standards.

Building and Energy Codes

Title 10 M.R.S.A. § 9724 expressly limits a municipality's home rule ordinance authority regarding building and energy codes. Municipalities with a population over 4,000 must now administer and enforce the State's Model Uniform Building and Energy Code (MUBEC) if the municipality had adopted a local building code by August 1, 2008. After July 1, 2012, all municipalities with a population over 4,000 must administer and enforce the model code. No local adoption of the model code by those municipalities is required. In municipalities with a population of 4,000 and under, no State building code is automatically in effect. The model code must be adopted by reference by the municipal legislative body in order to govern activity in those municipalities. The municipality may choose not to adopt any building or energy code and if that is the case, then there will be no building or energy code regulating activity in that community. If the municipality chooses to adopt a code, it may not adopt a building or energy code that differs from the State model code, except as authorized by State law. Municipalities with a population of 4,000 and under may adopt only the model building

code, only the model energy code, or both. At present, the model code has not replaced various State fire safety, electrical, plumbing, and other codes listed in 10 M.R.S.A. § 9725. In addition the model code does not apply to specific activities listed in 10 M.R.S.A. § 9724(5)(A) and (B).

Chimneys, Fireplaces, Vents, and Solid Fuel Burning Appliances

Title 25 M.R.S.A. § 2465(5) expressly acknowledges that a municipal ordinance regulating the materials, installation, and construction of chimneys, fireplaces, vents, and solid fuel burning appliances may exceed the requirements of rules adopted by the Commissioner of Public Safety.

Moratoria

Title 30-A M.R.S.A. § 4356 establishes minimum requirements for a municipal ordinance which proposes a moratorium on certain types of land use activity while the municipality develops ordinances to regulate those activities. The Maine Supreme Court has held that an ordinance that limits the number of building permits that may be issued each year for residential development does not constitute a “moratorium” for the purposes of § 4356. *Home Builders Association of Maine, Inc. v. Town of Eliot*, 2000 ME 82, 750 A.2d 566. A “Moratorium” information packet is available on MMA’s website at www.memun.org.

Rate of Growth Ordinances

Title 30-A M.R.S.A. § 4360 requires a municipality that adopts a rate of growth ordinance to review and update it at least every three years. The ordinance may distinguish between rural and growth areas. Title 30-A § 4314 requires rate of growth ordinances to be supported by a comprehensive plan. For recent Maine court cases discussing this type of ordinance, see: *Inland Golf Properties, Inc. v. Inhabitants of Town of Wells*, AP-98-040 (Me. Super. Ct., York Cty., May 11, 2000); *Home Builders Assoc. of Maine v. Town of Eliot*, 2000 ME 82, 750 A.2d 566; *Currier Builders v. Town of York*, 146 F. Supp.2d 71 (D. Me. 2001); and *York v. Town of Limington*, U.S. District Court Docket No. 03-99-P-H, decided October 7, 2003 and November 13, 2003.

Transfer of Development Rights Program

Title 30-A M.R.S.A. § 4328 authorizes the adoption of a transfer of development rights program within the municipality’s boundaries and also between municipalities if they have entered an interlocal agreement.

Impact Fees

Title 30-A M.R.S.A. § 4354 establishes minimum guidelines which a municipal ordinance must meet if the municipality wants to establish development “impact fees.” Impact fees are

used by municipalities as a way to recover some of the infrastructure costs incurred to meet the needs of the new development (roads, sewers, schools, recreation, etc.). Several *Maine Townsman* articles discussing impact fees can be accessed on MMA's website at www.memun.org: "An Update on the Use of Impact Fees" (October 2007) and "Impact Fees" (July 2000).

Religious Institutions and Activities

The federal Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq., prohibits any governmental entity from enacting or enforcing any land use regulation that imposes a "substantial burden" on the exercise of religion by any person, including religious assemblies and institutions, unless the government can show that the regulation furthers a "compelling governmental interest" and is the "least restrictive means" of furthering that interest.

Underground Oil Storage Tanks

Title 38 M.R.S.A. § 570-C expressly acknowledges the home rule authority of municipalities to adopt siting standards for underground oil storage tanks, provided the ordinance is not in direct conflict with Title 38, chapter 3, subchapter 2-B or any rule or order of the DEP or Board of Environmental Protection.

Utilities in Historic District

Title 35-A M.R.S.A. § 2312 provides that, when a municipality has designated an historic district by ordinance, the "governing body" (i.e., the municipal officers) may demand that a utility connect its facilities at the rear of a structure, if access is reasonably available, or underground.

Wind Energy

Wind energy projects of various sizes are regulated by the Maine DEP pursuant to 38 M.R.S.A. § 484 and 35-A M.R.S.A. § 3454 and by the Maine Land Use Planning Commission (LUPC) pursuant to 12 M.R.S.A. § 685-B and 35-A M.R.S.A. § 3454 in the unorganized territories. Municipal ordinance authority over wind energy projects is expressly acknowledged in PL 2007 chapter 661, Part E, § E-1: "This Act is not intended to limit a municipality's authority to regulate wind energy development." Municipal ordinance authority over ocean energy projects is limited by 30-A M.R.S.A. § 4361. Municipal ordinances may not prohibit siting of renewable ocean energy projects and their associated facilities. A local ordinance may only regulate such a project unless the project is located within the boundaries of the municipality as established by its charter prior to the effective date of § 4361 (April 7, 2010). Municipalities that want to follow the status of projects being reviewed by DEP and LURC may find information on the websites for those agencies. For

an overview of the types of ordinances that a municipality may adopt to regulate wind power, see “Municipal Regulation of Wind Power” by James Katsiaficas, Esq. in the March 2010 *Maine Townsman*. For more information, see the “Wind Energy” information packet on MMA’s website at www.memun.org.

For a case discussing the “tangible benefits” and “community benefits package” and “community benefit agreement” provisions in the statutes regulating wind energy projects, see *Friends of the Boundary Mountains v. LURC*, 2012 ME 53, 40 A.3d 947. The issues of noise level and visual impact of a wind project are addressed in *Friends of Maine’s Mountains v. Board of Environmental Protection*, 2013 ME 25, 61 A.3d 689. For a case involving municipal review of a wind energy project under a local ordinance, see *Beckford v. Town of Clifton*, 2014 ME 156, 107 A.3d 1124.

Air Pollution Control; Outdoor Wood Boilers

Title 38 M.R.S.A. § 597 expressly authorizes municipalities to study air pollution and adopt and enforce air pollution control and abatement ordinances, if the ordinances are not less stringent than State or federal standards. This authority includes the local regulation of outdoor wood boilers, though they are also regulated by the DEP pursuant to 38 M.R.S.A. § 610-B and agency rules found in 06-96 CMR ch. 150.

Essential Services; Public Utilities

Title 30-A M.R.S.A. § 4352(4) and a related agency rule in the Code of Maine Rules adopted by the Maine Public Utilities Commission (PUC) (65-407 CMR ch. 885) establish a procedure pursuant to which a public utility may seek an exemption from compliance with a local zoning ordinance.

Natural Gas Pipelines and Terminals

Municipal ordinance authority over the siting, construction, expansion, and operation of liquefied natural gas (LNG) terminals and related pipelines is severely limited by provisions of the federal Energy Policy Act of 2005, the Natural Gas Act, and regulations adopted by the Federal Energy Regulatory Commission (FERC). If such projects are proposed within a municipality, the officials should consult with the municipality’s private attorney to determine what aspects of the project may be subject to municipal regulation and what aspects are subject only to the FERC review process. To the extent that the project is subject only to FERC review, it is important for the municipality to participate in the FERC process in order to ensure that its concerns regarding safety and other issues are addressed. In some cases, the developer will voluntarily undergo some State and/or local review to demonstrate its environmental responsibility and its intention to be a “good neighbor.” For a discussion of the FERC review process, see “Natural Gas Pipelines” by Geoff Herman, *Maine Townsman*, September 1996, available on MMA’s website (www.memun.org).

Residence of a Sex Offender

Municipalities are authorized by 30-A M.R.S.A. § 3014(2)(B) to adopt an ordinance regulating the places where a sex offender may reside. The ordinance may prohibit a sex offender from living closer than 750 feet from the real property that comprises a public or private elementary, middle or secondary school; a municipally owned or state-owned park, athletic field or recreation facility that is open to the public where children are the primary users; or a municipally owned or state-owned property that is leased to a nonprofit organization for a park, athletic field or recreation facility that is open to the public where children are the primary users.

Medical Marijuana; Adult Use Marijuana; Methadone Clinics

Under the Maine Medical Use of Marijuana Act, municipalities have home rule authority to regulate registered caregivers, registered caregiver retail stores, registered dispensaries, medical marijuana testing facilities and medical marijuana manufacturing facilities. 22 M.R.S.A. § 2429-D. Municipalities may, by ordinance, regulate the location and number of medical marijuana establishments, enact performance standards and licensing or permitting requirements (including fees) on medical marijuana establishments, but may not enact any ordinance that prohibits or limits the number of registered caregivers operating within the municipality. 22 M.R.S.A. § 2429-D(1). As of December 13, 2018, the law prevents the operation of any new registered caregiver retail stores, registered dispensaries, testing facilities and manufacturing facilities within a municipality unless the municipality has acted through a vote of its legislative body to “opt-in” to allow the operation of these facilities. However, any registered caregiver retail store, dispensary, testing facility or manufacturing facility operating with municipal approval prior to December 13, 2018 is grandfathered and may continue to operate even if the municipality does not vote to opt-in. A municipality does not need to vote to opt-in for registered caregivers to operate within the municipality, but may impose reasonable regulations on registered caregivers, as noted above.

Adult use marijuana (or recreational marijuana) is governed by the Adult Use Marijuana Act. 28-B M.R.S.A. 101 to 1504. Under this law, no adult use marijuana establishment may obtain a license from the state unless the municipality’s legislative body has voted to “opt-in” to allow the specific type of establishment to operate within the municipality. 28-B M.R.S.A. § 402(1)(A). A municipality may enact additional local requirements on establishments the municipality has voted to allow to operate in the municipality by ordinance. For example, a municipality may limit the number, restrict the location, impose performance standards or establish permitting or licensing requirements on some or all types of establishments approved to operate within the municipality. The “opt-in” requirement does not apply to home cultivation, which is the cultivation of marijuana for personal use. Under the law, a person over the age of 21 may cultivate up to 3 mature marijuana plants

and 12 immature marijuana plants and an unlimited number of seedlings for personal use on land they own or are domiciled or on land that is owned by someone else so long as the owner agrees in writing to allow the person to cultivate adult use marijuana for personal use on the parcel. 28-B M.R.S.A. § 1502(1). A municipality may regulate home cultivation by ordinance, but may not generally prohibit home cultivation, restrict the areas within the municipality in which home cultivation is allowed or charge a licensing fee or other fee for home cultivation. 28-B M.R.S.A. § 1502. If a municipality has not enacted an ordinance prohibiting the cultivation of marijuana on property where the individual is not domiciled, the use of single parcel by multiple non-domiciled individuals for home cultivation may require subdivision review.

For more information see MMA’s “Medical Marijuana” and “Adult Use Marijuana” Information Packets on MMA’s website at www.memun.org.

Regarding methadone clinics, municipalities may not totally ban them, as that generally would violate the Constitution and the Americans with Disabilities Act. Municipalities may adopt reasonable local zoning or other land use regulations permitting the activity subject to certain performance standards, just as they do with other types of medical facilities. *Fuller-McMahan v. City of Rockland*, 2005 U.S. Dist. LEXIS 13956 (D. Me. July 12, 2005).

Regulation of State and Federal Projects

- **Applicability of Building Codes to State Projects.** Title 5 M.R.S.A. § 1742-B requires a municipality to notify the State Bureau of Public Improvements if the municipality intends to require State compliance with its building code. If so requested, the State must comply, if the local code is as stringent as or more stringent than the State’s building code governing State projects.
- **Applicability of Zoning Ordinances to State, County, Municipal and Quasi-Municipal Projects.** With regard to zoning ordinances, 30-A M.R.S.A. § 4352(6) requires State agencies to comply with zoning ordinances that are consistent with a comprehensive plan that is consistent with the Growth Management Act in the development of any building, parking facility, or other publicly owned structure. The Governor, or his/her designee, is authorized to waive any use restrictions in a zoning ordinance after giving public notice, notice to the municipal officers, and opportunity for public comment as required by § 4352(6) and making five specific findings relating to the public benefits of the project and available alternatives. Zoning ordinances continue to be advisory to the State if they are not consistent with a comprehensive plan that is consistent with the Growth Management Act. Zoning ordinances are not merely advisory when the municipality or county or a quasi-municipal corporation is conducting the project.

- **Project on Land Leased from the State.** The Maine Supreme Court has held that a private project conducted on land leased from the State may be exempt from municipal zoning regulations if it is shown that the use of the State’s land “furthers a state purpose or governmental function,” that there is a “compelling need” for the exemption, and that there is state involvement of a substantial nature in the project. *Senders v. Town of Columbia Falls*, 657 A.2d 93 (Me. 1994).
- **Federal Projects.** According to Title 40 U.S.C.S. § 3312, federal agencies proposing to construct or alter buildings are required “to consider” the requirements of local zoning and other building ordinances and “consult” with the appropriate local officials. They also are required to submit plans for review by local officials and permit local inspections. Municipalities are prohibited from prosecuting a federal agency for failing to comply with local ordinances or failing to follow local recommendations.

CHAPTER 8 – Enforcement

If the planning board has been named as the board responsible for enforcing a particular ordinance or statute, the board members should obtain a copy of MMA's *Manual for Municipal Code Enforcement Officers: A Legal Perspective* for a general discussion of code enforcement procedures, issues, and forms. To determine whether the board has authority to enforce a particular ordinance or statute, the members must look at that ordinance or statute to see who is authorized to send notices to people in violation of the law or take similar preliminary enforcement steps. If no one is specifically authorized to give notice of violation, the person authorized to approve projects or issue permits under the ordinance or statute probably has implicit preliminary enforcement power.

Planning boards should be aware that if they have been given the power to enforce an ordinance, State law (30-A M.R.S.A. § 4451) requires the board members to be certified by the Department of Economic and Community Development in their area of enforcement responsibilities. Since this is something that most board members would not want to undertake, a board which has been given enforcement powers should talk to the municipal officers about having the ordinance amended to transfer that power to the local code enforcement officer.

Appendices

Appendix 1 – Planning Board Ordinance and Statute.....137

Appendix 2 – Sample Forms, Bylaws and Procedures.....149

Appendix 3 – *Sample* Minutes and Decisions.....195

Appendix 4 – Shoreland Zoning.....347

Appendix 5 – Subdivisions.....367

Appendix 6 – Ordinance Drafting, Adoption and Amendment417

Appendix 7 – Miscellaneous Land Use Materials.....427

Appendix 1 – Planning Board Ordinance and Statute

<i>Sample Establishment of Municipal Planning Board Ordinance.....</i>	139
<i>Sample Language for Use in “Reestablishing” a Board Which was not Legally Established When Created.....</i>	143
Old Planning Board Statute (30 M.R.S.A. Sections 4952, 4957, 4964)	145

Sample Establishment of Municipal Planning Board Ordinance

[Warrant article should read:

“Shall an ordinance entitled ‘Establishment of _____ Planning Board’ be enacted?” (must either be followed by text of proposed ordinance or a separate copy must be attested and posted next to warrant)]

1. Establishment. Pursuant to Art. VIII, pt. 2, Section 1 of the Maine Constitution and 30-A M.R.S.A. § 3001, the Town of _____ hereby establishes a Planning Board.
2. Appointment.
 - A. Board members shall be appointed by the municipal officers and sworn by the clerk or other person authorized to administer oaths. (Note: This section may be modified to provide for the election of board members.)
 - B. The board shall consist of _____ 5 _____ members and _____ 2 _____ associate members.
 - C. The term of each member shall be _____ 3 _____ years, except the initial appointments which shall be (1 for 1 year, 2 for 2 years, and 2 for 3 years) _____ respectively. The term of office of an associate member shall be _____ 3 _____ years.
 - D. When there is a permanent vacancy, the municipal officers shall within 60 days of its occurrence appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member fails to attend four (4) consecutive regular meetings, or fails to attend at least 75% of all meetings during the preceding twelve (12) month period. When a vacancy occurs, the chairperson of the board shall immediately so advise the municipal officers in writing. The board may recommend to the municipal officers that the attendance provision be waived for the cause, in which case no vacancy will then exist until the municipal officers disapprove the recommendation. The municipal officers may remove members of the planning board by unanimous vote, for cause, after notice and hearing. (Note: This section may be modified, in the case of elected board members, to indicate that the person appointed by the municipal officer serves only until the next annual meeting (or some other time specified).)
 - E. A municipal officer may not be a member or associate member.

3. Organization and Rules.

- A. The board shall elect a chairperson and vice chairperson from among its members. The board may either elect a secretary from among its members or hire a non-board member to serve as secretary. The term of all offices shall be 1 year(s) with eligibility for re-election.
- B. When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the chairperson, the chairperson shall designate an associate member to sit in that member's place.
- C. An associate member may attend all meetings of the board. He/she may ask questions or offer comments only when members of the public are allowed to do so and may make and second motions and vote only when he or she has been designated by the chairperson to sit for a member.
- D. Any question of whether a member is disqualified from voting on a particular matter shall be decided by a majority vote of the members except the member who is being challenged.
- E. The chairperson shall call at least one regular meeting of the board each month, provided there is business to conduct. Special meetings may be called at any time by the chairperson or by a majority of the members. Notice of regular, special and emergency meetings shall be given in accordance with the Maine Freedom of Access Act.
- F. No meeting of the board shall be held without a quorum consisting of 3 members or associate members authorized to vote. The board shall act by majority vote of the full board/of the members present and voting (choose one).
- G. The board shall adopt rules for transaction of business and the secretary shall keep a record of its resolutions, transactions, correspondence, findings and determinations. All records shall be deemed public and may be inspected at reasonable times.

4. Duties; Powers

- A. The board shall perform such duties and exercise such powers as are provided by ordinance and the laws of the State of Maine.

B. The board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

C. (Other) _____

Sample Language for Use in “Reestablishing” a Board Which was not Legally Established When Created

1. Establishment; Reestablishment. Pursuant to Art. VIII, Pt. 2, Sec. 1 of the Maine Constitution and 30-A M.R.S.A. § 3001, the Town of _____ hereby establishes a planning board. The board which has been acting as a planning board is hereby reestablished as the legal planning board. The members currently serving may continue to do so until the end of the term for which they were (elected/appointed) without the need to be (reelected/reappointed) or to take a new oath of office. The actions which that board took prior to the adoption of this ordinance are hereby declared to be the acts of the legally constituted planning board of the Town of _____.

(NOTE: This language would be adopted as an amendment to an existing ordinance or as part of a new ordinance.)

Old Planning Board Statute (30 M.R.S.A. Sections 4952, 4957, 4964)

Section 4952 Planning Board

1. Establishment. A municipality may establish a planning board.
 - A. Appointments to the board shall be made by the municipal officers.
 - B. The board shall consist of 5 members and 2 associate members.
 - C. The term of office of a member is 5 years, but initial appointments shall be made for 1, 2, 3, 4, and 5 years, respectively. The term of office of an associate member is 5 years.
 - D. A municipal officer may not be a member or associate member of the board.
 - E. When a member is unable to act because of interest, physical incapacity,—(absence from the State—deleted in 1969), or any other reason satisfactory to the chairman, the chairman of the planning board shall designate an associate member to act in his stead. When there is a permanent vacancy, the municipal officers shall appoint a person to serve for the unexpired term. (Amended PL 1969, c,334, § 1)
 - F. An associate member may attend all meetings of the board and participate in its proceedings, but may vote only when he has been designated by the chairman to act for a member.
 - G. The board shall elect a chairman and secretary from its own membership.
 - H. (Repealed PL 1965, c. 513, § 67) 1961, c. 395, § 32; 1963, c. 123
 - I. In the event that the total number of legally appointed members and associate members is reduced by resignation, death or expiration of terms, a total of 4 legally appointed members and associate members shall constitute a legal body to conduct the business of the board, pending appointments by the municipal officers. The municipal officers shall fill such vacancies within 60 days of their occurrence. (Added by PL 1971, c. 309)
2. Plans. The board shall prepare, adopt and may amend a comprehensive plan containing its recommendations for the development of the municipality.

- A. Among other things, the plan may include the proposed general character, location, use, construction, layout, extent, size, open spaces and population density of all real estate, and the proposed method for rehabilitating blighted districts and eliminating slum areas.
 - B. The board shall hold a public hearing on its tentative proposals, before it adopts the plan or an amendment of it.
 - C. Once adopted by the board, the plan becomes a public record. It shall be filed in the office of the clerk.
 - D. After the board has adopted the plan, an ordinance or official map authorized by this subchapter may not be enacted, adopted or amended; and public property may not be established or modified in location or extent, until the board has made a careful investigation and reported its pertinent recommendations which are consistent with the plan. The board shall make its official report at the next meeting of the legislative body which is held not less than 30 days after the proposal has been submitted to the board. The failure of the board to issue its report constitutes approval of the proposal. A proposal which has been disapproved by the board may be enacted only by a 2/3 vote of the legislative body.
3. Appropriations. A municipality which has a planning board may raise or appropriate money and may contract with the State and Federal Governments for the purpose of the comprehensive planning authorized by this subchapter.
4. Personnel and services. The board may hire personnel and obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose. 1957, c. 405, § 1; 1961, c. 395, § 32; 1963, c. 123.

Section 4957. Savings Provision

In a municipality which does not have a planning board, an ordinance enacted under repealed sections 137 to 144 of chapter 5 of the Revised Statutes of 1930 as amended, and repealed sections 93 to 97 of chapter 91 of the Revised Statutes of 1954, remains effective, and may be amended in accordance with those sections until it is repealed or superseded by an ordinance authorized by this subchapter. In a municipality which has a planning board, an ordinance enacted under the repealed sections which is consistent with this subchapter remains effective and an ordinance which is inconsistent with this subchapter is void. (1957, c. 405, § 1; 1963, c. 193)

Section 4964. Savings Provisions

Any planning board or district established and any ordinance or map adopted under a prior, inconsistent and repealed statute shall remain in effect until abolished, amended, or repealed.
(eff. 9/22/71)

Appendix 2 – Sample Forms, Bylaws and Procedures

<i>Sample SMRPC Model Application Form</i>	151
Town of Falmouth Shoreland Zoning Permit Application	155
City of Ellsworth Land Development Permit Application	163
<i>Sample Site Plan for Conditional Use Application–Town of Falmouth</i>	167
<i>Sample Notice of Public Hearing–Planning Board</i>	169
Table of Consanguinity	171
<i>Sample Bylaw Provisions</i>	173
<i>Sample Rules for the Conduct of Public Hearings</i>	175
<i>Sample Planning Board Rules, November 1989–Town of Gorham</i>	181
<i>Sample Board Member’s Affidavit Regarding Missed Meeting</i>	191
<i>Sample Public Water Supplier Notification Form</i>	193

Sample SMRPC Model Application Form

Town of _____ Subdivision Application

Subdivision Name: _____

Application Number: _____

APPLICANT INFORMATION

Name of Property Owner: _____

Address: _____

Telephone: (____) _____ - _____

Name of Applicant: _____

Address: _____

Telephone: (____) _____ - _____

If applicant is a corporation, check if licensed in Maine ☐ Yes ☐ No and attach a copy of State's Registration.

Name of applicant's authorized agent: _____

Address: _____

Telephone: (____) _____ - _____

Name of Land Surveyor, Engineer, Architect or others preparing plan:

Address: _____

Telephone: (____) _____ - _____ Registration # _____

Person and Address to which all correspondence regarding this application should be sent:

What legal interest does the applicant have in the property to be developed (ownership, option, purchase and sales contract, etc.)? _____

What interest does the applicant have in any abutting property? _____

LAND INFORMATION

Location of Property (Street Location) _____

(from County Registry of Deeds): Book _____ Page _____

(from Tax Maps): Map _____ Lot(s) _____

Current zoning of property: _____

Is any portion of the property within 250 feet of the high water mark of a pond, river or salt water body?

☐ Yes

☐ No

Total Acreage of Parcel: _____

Acreage to be developed: _____

Indicate the nature of any restrictive covenants to be placed in the deeds:

Has this land been part of a prior approved subdivision? ☐ Yes ☐ No

Or other divisions within the past 5 years? ☐ Yes ☐ No

Identify existing use(s) of land (farmland, woodlot, etc.) _____

Does the parcel include any water bodies? ☐ Yes ☐ No

Does the parcel include any wetlands? ☐ Yes ☐ No

Is any portion of the property within a special flood hazard area as identified by the Federal Emergency Management Agency? ☐ Yes ☐ No

List below the names and mailing addresses of abutting property owners and owners across the road:

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

GENERAL INFORMATION

Proposed name of development: _____

Number of lots or units: _____

Anticipated date for construction: _____

Anticipated date of completion: _____

Does this development require extension of public infrastructure? ☐ Yes ☐ No

_____ roads	_____ storm drainage	_____ other
_____ sidewalks	_____ water lines	
_____ sewer lines	_____ fire protection equipment	

Estimated cost for infrastructure improvements \$ _____

Identify method of water supply to the proposed development:

- _____ individual wells
- _____ central well with distribution lines
- _____ connection to public water system
- _____ other, please state alternative

Identify method of sewage disposal to the proposed development:

- _____ individual septic tanks
- _____ central on site disposal with distribution lines
- _____ connection to public sewer system
- _____ other, please state alternative

Identify method of fire protection for the proposed development:

- _____ hydrants connected to the public water system
- _____ dry hydrants located on an existing pond or water body
- _____ existing fire pond
- _____ other, please state alternative

Does the applicant propose to dedicate to the public any streets, recreation or common lands?

street(s)	☐ Yes	☐ No	Estimated Length _____
recreation area(s)	☐ Yes	☐ No	Estimated Acreage _____
common land(s)	☐ Yes	☐ No	Estimated Acreage _____

Does the applicant intend to request waivers of any of the subdivision submission requirements? If yes, list them and state reasons for the request.

To the best of my knowledge, all the above stated information submitted in this application is true and correct.

(signature of applicant)

(date)

Town of Falmouth Shoreland Zoning Permit Application

GENERAL INFORMATION

1. APPLICANT	2. APPLICANT'S ADDRESS	3. APPLICANT'S TEL. #
4. PROPERTY OWNER	5. OWNER'S ADDRESS	6. OWNER'S TEL. #
7. CONTRACTOR	8. CONTRACTOR'S ADDRESS	9. CONTRACTOR'S TEL. #
10. LOCATION/ADDRESS OF PROPERTY	11. TAX MAP/PAGE & LOT # AND DATE LOT WAS CREATED	12. ZONING DISTRICT
13. DESCRIPTION OF PROPERTY INCLUDING A DESCRIPTION OF ALL PROPOSED CONSTRUCTION, (E.G. LAND CLEARING, ROAD BUILDING, SEPTIC SYSTEMS, AND WELLS - PLEASE NOTE THAT A SITE PLAN SKETCH IS REQUIRED ON PAGE 3).		
14. PROPOSED USE OF PROJECT	15. ESTIMATED COST OF CONSTRUCTION	
<u>SHORELAND AND PROPERTY INFORMATION</u>		
16. LOT AREA (SQ. FT.)	17. FRONTAGE ON ROAD (FT.)	

18. SQ. FT. OF LOT TO BE COVERED BY NON-VEGETATED SURFACES	19. ELEVATION ABOVE 100 YR. FLOOD
20. FRONTAGE ON WATERBODY (FT.)	21. HEIGHT OF PROPOSED STRUCTURE
22. EXISTING USE OF PROPERTY	23. PROPOSED USE OF PROPERTY

Note: Questions 24 & 25 apply only to expansions of portions of existing structures which are less than the required setback.

24. A) TOTAL FLOOR AREA OF PORTION OF STRUCTURE WHICH IS LESS THAN REQUIRED SETBACK AS OF 1/1/89: _____ SQ. FT. B) FLOOR AREA OF EXPANSIONS OF PORTION OF STRUCTURE WHICH IS LESS THAN REQUIRED SETBACK FROM 1/1/89 TO PRESENT: _____ SQ. FT. C) FLOOR AREA OF PROPOSED EXPANSION OF PORTION OF STRUCTURE WHICH IS LESS THAN REQUIRED SETBACK: _____ SQ. FT. D) % INCREASE OF FLOOR AREA OF ACTUAL AND PROPOSED EXPANSIONS OF PORTION OF STRUCTURE WHICH IS LESS THAN REQUIRED SETBACK SINCE 1/1/89: (% INCREASE = $\frac{B+C}{A} \times 100$) _____ %	25. A) TOTAL VOLUME OF PORTION OF STRUCTURE WHICH IS LESS THAN REQUIRED SETBACK AS OF 1/1/89: _____ CUBIC FT. B) VOLUME AREA OF EXPANSIONS OF PORTION OF STRUCTURE WHICH IS LESS THAN REQUIRED SETBACK FROM 1/1/89 TO PRESENT: _____ CUBIC FT. C) VOLUME OF PROPOSED EXPANSION OF PORTION OF STRUCTURE WHICH IS LESS THAN REQUIRED SETBACK: _____ CUBIC FT. D) % INCREASE OF VOLUME OF ACTUAL AND PROPOSED EXPANSIONS OF PORTION OF STRUCTURE WHICH IS LESS THAN REQUIRED SETBACK SINCE 1/1/89: (% INCREASE = $\frac{B+C}{A} \times 100$) _____ %
--	---

NOTE: IT IS IMPERATIVE THAT EACH MUNICIPALITY DEFINE WHAT CONSTITUTES A STRUCTURE, FLOOR AREA, AND VOLUME AND APPLY THOSE DEFINITIONS UNIFORMLY WHEN CALCULATING EXISTING AND PROPOSED SQ. FT. AND CU. FT.

SITE PLAN

PLEASE INCLUDE: LOT LINES; AREA TO BE CLEARED OF TREES AND OTHER VEGETATION; THE EXACT POSITION OF PROPOSED STRUCTURES, INCLUDING DECKS, PORCHES, AND OUT BUILDINGS WITH ACCURATE SETBACK DISTANCES FROM THE SHORELINE, SIDE AND REAR PROPERTY LINES; THE LOCATION OF PROPOSED WELLS, SEPTIC SYSTEMS, AND DRIVEWAYS; AND AREAS AND AMOUNTS TO BE FILLED OR GRADED. IF THE PROPOSAL IS FOR THE EXPANSION OF AN EXISTING STRUCTURE, PLEASE DISTINGUISH BETWEEN THE EXISTING STRUCTURE AND THE PROPOSED EXPANSION.

NOTE: FOR ALL PROJECTS INVOLVING FILLING, GRADING, OR OTHER SOIL DISTURBANCE YOU MUST PROVIDE A SOIL EROSION CONTROL PLAN DESCRIBING THE MEASURES TO BE TAKEN TO STABILIZE DISTURBED AREAS BEFORE, DURING AND AFTER CONSTRUCTION (see attached guidelines).

SCALE: _____ = _____ FT.

FRONT OR REAR ELEVATION

SIDE ELEVATION

DRAW A SIMPLE SKETCH SHOWING BOTH THE EXISTING
AND PROPOSED STRUCTURES WITH DIMENSIONS

ADDITIONAL PERMITS, APPROVALS, AND/OR REVIEWS REQUIRED

CHECK IF REQUIRED:

- ☐ PLANNING BOARD REVIEW APPROVAL
(e.g. Subdivision, Site Plan Review)
- ☐ BOARD OF APPEALS REVIEW APPROVAL
- ☐ FLOOD HAZARD DEVELOPMENT PERMIT
- ☐ EXTERIOR PLUMBING PERMIT
(Approved HHE 200 Application Form)
- ☐ INTERIOR PLUMBING PERMIT
- ☐ DEP PERMIT (Site Location,
Natural Resources Protection Act)
- ☐ ARMY CORPS OF ENGINEERS PERMIT
(e.g. Sec. 404 of Clean Waters Act)

OTHERS:

- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

NOTE: APPLICANT IS ADVISED TO CONSULT WITH THE CODE ENFORCEMENT OFFICER AND APPROPRIATE STATE AND FEDERAL AGENCIES TO DETERMINE WHETHER ADDITIONAL PERMITS, APPROVALS, AND REVIEWS ARE REQUIRED

I CERTIFY THAT ALL INFORMATION GIVEN IN THIS APPLICATION IS ACCURATE. ALL PROPOSED USES SHALL BE IN CONFORMANCE WITH THIS APPLICATION AND THE _____ SHORELAND ZONING ORDINANCE.

I AGREE TO FUTURE INSPECTIONS BY THE CODE ENFORCEMENT OFFICER AT REASONABLE HOURS.

APPLICANT'S SIGNATURE

DATE

AGENT'S SIGNATURE (if applicable)

DATE

APPROVAL OR DENIAL OF APPLICATION
(For Office Use Only)

_____ MAP _____ LOT #

THIS APPLICATION IS: _____ APPROVED _____ DENIED

IF DENIED, REASON FOR DENIAL:

IF APPROVED, THE FOLLOWING CONDITIONS ARE PRESCRIBED:

NOTE: IN APPROVING A SHORELAND ZONING PERMIT, THE PROPOSED USE SHALL COMPLY WITH THE PURPOSES AND REQUIREMENTS OF THE SHORELAND ZONING ORDINANCE FOR THE TOWN OF _____

CODE ENFORCEMENT OFFICER

DATE

INSPECTION CHECK LIST	
☐	Prior to Clearing and Excavation
☐	Prior to Foundation Pour
☐	Prior to Final Landscaping
☐	Prior to Occupancy

PERMIT #
FEE AMOUNT

NOTE: THIS CHECKLIST IS INTENDED TO ASSIST THE CEO IN TRACKING A SHORELAND ZONING PERMIT THROUGH THE REVIEW PROCESS

Appendix 1

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

1. A copy of this permit must be posted in a visible location on your property during development of the site, including construction of the structures approved by this permit.
2. This permit is limited to the proposal as set forth in the application and supporting documents, except as modified by specific conditions adopted by the Planning Board or Code Enforcement Officer in granting this permit. Any variations from the application or conditions of approval are subject to prior review and approval by the Planning Board or Code Enforcement Officer. Failure to obtain prior approval for variations shall constitute a violation of the ordinance.
3. A substantial start (30% of project based on estimated cost) of construction activities approved by this permit must be completed within one (1) year of the date of issue. If not, this permit shall lapse, and no activities shall occur unless and until a new permit is issued.
4. The water body and wetland setbacks for all principal and accessory structures, driveways, and parking areas must be as specified in the application, or as modified by the conditions of approval.
5. In the event the permittee should sell or lease this property, the buyer or leasee shall be provided with a copy of the approved permit and advised of the conditions of approval.
6. Once construction is complete, the permittee shall notify the Code Enforcement Officer that all requirements and conditions of approval have been met. Following notification, the Code Enforcement Officer may arrange and conduct a compliance inspection.

City of Ellsworth Land Development Permit Application

April 11, 2011 revision

TYPE OF DEVELOPMENT/APPLICATION: (Check all that apply)

☐ Pre-app/Sketch ☐ Preliminary Subdivision Plan ☐ Final Plan ☐ Revisions
☐ Minor Subdivision ☐ Minor Conditional Use ☐ Campground
☐ Major Subdivision ☐ Major Conditional Use ☐ Mobile Home Park

APPLICATION INFORMATION:

Development Name: _____

Development Address: _____

Property Owner: _____

Property Owner Address: _____

Applicant: _____

Applicant Address: _____

Applicant Telephone: (_____) _____ Email: _____

Is applicant a corporation? _____ Yes _____ No. If yes, licensed in which state? _____ *

** If the corporation license is outside of Maine, please attach a copy of the registration.*

Applicant's Authorized Agent: _____

Agent Address: _____

Agent Telephone: (_____) _____ Email: _____

Design Professional: _____ Title: _____

Preparer's Address: _____

Preparer's Telephone: (_____) _____ Registration # _____

Name and Address of person to receive all correspondence with regard to this application:

Application Contact: _____

Contact Address: _____

Contact Telephone: (_____) _____ Email: _____

LAND INFORMATION: (You may attach additional information if more space is needed)

1. The proposal is located on which City Tax Map/Lot #(s)? _____
2. How large is the subject property (in acres or square feet)? _____
3. What is the current zoning of the property to be developed? _____
4. What are the existing use(s) of the property? _____
5. Is the property in the designated Ellsworth Downtown Area? _____ In the Urban Core? _____
6. What water bodies does the parcel abut? _____
7. Is any portion of the property within 250' of the normal high-water mark of a pond, river, or salt water body? Yes _____ No _____ ; or in Stream Protection? Yes _____ No _____
8. Is any portion of the property within a special flood hazard area as identified by the Federal Emergency Management Agency (FEMA): _____ Yes _____ No _____
9. What legal interest does the applicant have in the subject property? (*Attach evidence thereof*)
_____ ownership, _____ option, _____ purchase and sales contract, _____ other = _____
10. What legal interest does the applicant have in any abutting property? _____

➔ **Attach a list of the owners of all properties that abuts the subject property.**

11. When was the last time that the subject property was subdivided? _____
12. What was the nature of the last subdivision? _____ building units _____ division of land
13. Indicate if property is in the following classifications for property tax assessment purposes:
_____ Tree Growth, _____ Farm Use, _____ Open Space _____ Working Waterfront

NOTE: Contact the City Assessor prior to receiving subdivision approval or change of use approval to determine if there will be a withdrawal penalty from any of the above programs.

DEVELOPMENT INFORMATION: (Attach additional information if more space is needed)

Definitions of terms used herein may be found in the Ellsworth Land Use Ordinance.

14. Proposed use(s) of development: _____
15. Number of existing lots _____ Number of lots to be developed: _____
Number of existing buildings _____ No. of buildings to be developed: _____
Number/type of existing units _____ No./type of units to be developed: _____
16. Existing structure footprint area: _____ Proposed structure footprint area: _____
Existing building gross floor area: _____ Proposed building gross floor area: _____
Existing impervious surface area: _____ Proposed impervious surface area: _____
Existing developed surface area: _____ Proposed developed surface area: _____
Size of disturbed area to be produced during project construction _____

DEVELOPMENT INFORMATION: (continued)

17. Does the proposed building area include 75,000 s. f. or more of retail? _____ Yes _____ No

If "yes" above, the Informed Growth Act (Sec. 1 30-A M.R.S.A. c. 187, sub-c.3-A.) regarding large-scale retail development may apply and a Comprehensive Impact Analysis must be submitted with the final application. Contact the City Planner with any questions.

18. What is the estimated cost of the proposed development or changes? _____

19. What is the intended start and completion dates of the proposal? _____ to _____

20. Does the development require extension of public infrastructure? _____ Yes _____ No

21. What is the estimated cost for public infrastructure improvements needed to serve the project?
Water \$ _____ Wastewater \$ _____ Stormwater \$ _____ Other (_____) \$ _____

22. Identify method of water supply for the proposed development:

_____ Individual wells _____ Central well with distribution lines
_____ Connection to public water _____ Other = _____

23. Identify method of sewage disposal for the proposed development:

_____ Individual septic systems _____ Central on-site disposal with distribution lines
_____ Public sewer connection _____ Other = _____

24. What is the design flow increase for public water and/or sewer usage? _____

25. Identify method of fire protection for the proposed development:

_____ Building Sprinklers _____ Hydrants connected to the public water system
_____ Existing fire pond _____ Dry hydrants located on existing water body
_____ Other = _____

26. Does the applicant propose to dedicate to the public any streets, recreation areas, or common land:

_____ Yes _____ No. If answered yes, please specify all applicable:
Description of Street(s) _____ Est. length: _____
Description of Recreation Area(s) _____ Est. acreage: _____
Description of Common Land(s) _____ Est. acreage: _____

27. Indicate the nature of any restrictive covenants to be placed in the deeds:

28. Does the applicant intend to request permissible waivers of any City ordinance provisions?

_____ Yes _____ No (*If yes, please list requests and state reasons for the request*)

PERFORMANCE CRITERIA NARRATIVES: Please provide descriptions of how the proposal will meet the following ordinance provisions: (Attach more paper if space is needed)

29. **Preserve natural, historic and/or visual elements** of the site and its vicinity in compliance with LUO § 12.08 A, F, G, H, M, N, O, R & T and/or Subdivision Ord. § 1.1 & 1.8.

30. **Conserve soil, minimize erosion, manage stormwater and protect from flooding** in compliance with LUO § 12.08 F & I and/or Subdivision Ordinance § 1.4, 1.13, 1.16 & 1.18.
See also Chapter 56, Article 10 Stormwater and Article 33 Floodplain Management.

31. **Protect drinking water quality and supply** within the site and its vicinity in compliance with LUO § 12.08 J & K and/or Subdivision Ordinance § 1.1, 1.2, 1.3, 1.11, 1.12, 1.14, 1.15, 1.17 & 1.18.
See also Chapter 55 Public Water Supply Protection regarding Branch Lake.

32. **Provide safe vehicular & pedestrian access to, circulation within and adequate parking** in compliance with LUO § 12.08 B, C, D & Q, Ch. 56, Art. 9 & 11 and/or Subdivision Ord. § 1.5 & 1.19. See also Chapter 56, Article 9 Streets and Article 11 Parking.

33. **Provide solid waste and wastewater disposal** in compliance with LUO § 12.08 L & S and/or Subdivision Ordinance § 1.6 & 1.7.

34. **Provide exterior lighting** for the site in compliance with Chapter 56, § 812 Exterior Lighting, LUO § 12.08 P, § 12.09 and/or Subdivision Ord. § 13.7.C.

35. **Comply with Ch. 54 Development Fee Ordinance** if in Beckwith District. [Sub.O. § 1.9]

36. **Demonstrate Financial and technical ability** to meet these requirements. [Sub.O. § 1.10]

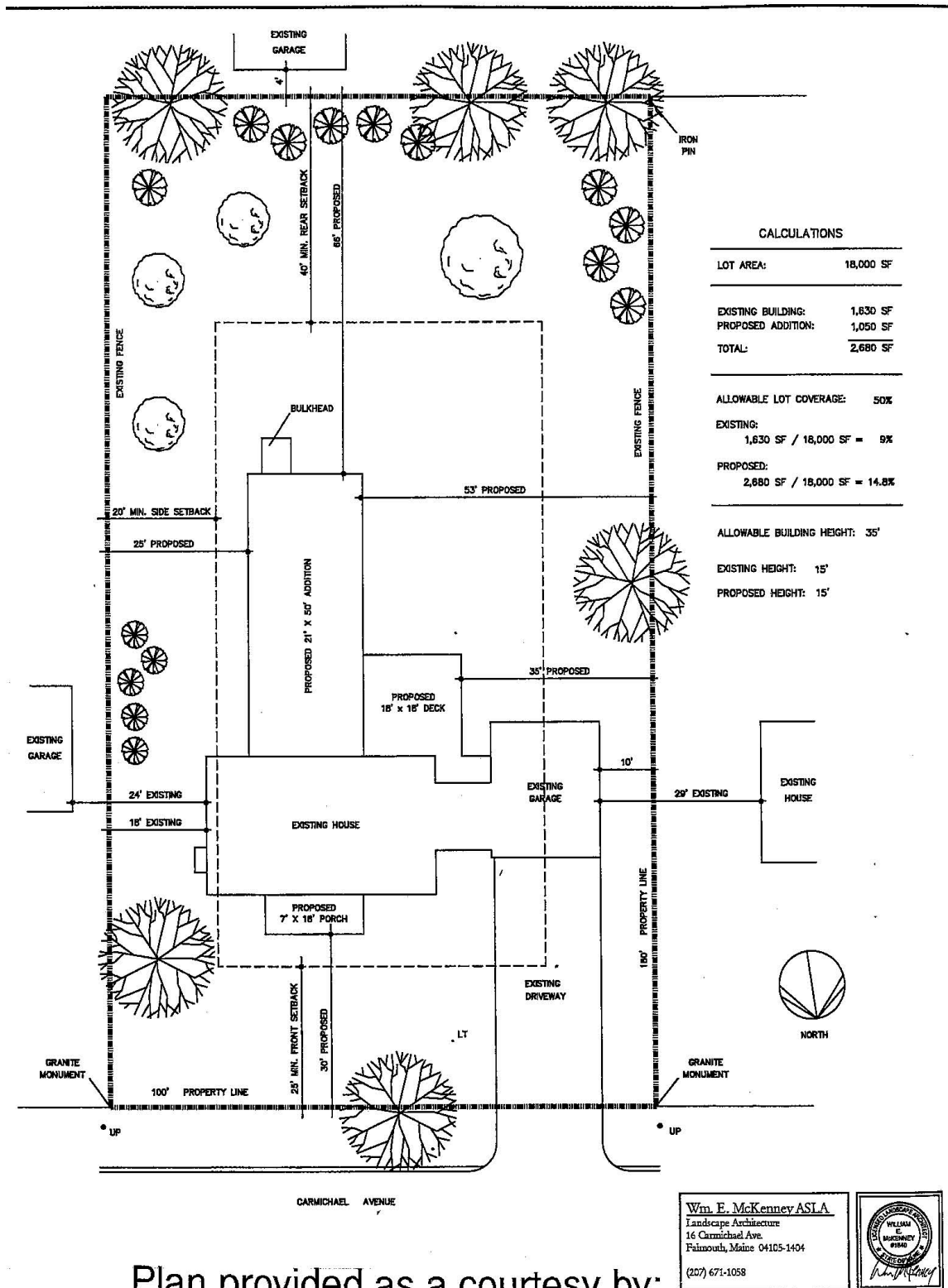
To the best of my knowledge, all of the information submitted in this application is true and correct.

Printed Name

Signature of Applicant's Authorized Agent

Date

Sample Site Plan for Conditional Use Application–Town of Falmouth



Sample Notice of Public Hearing—Planning Board

Town of _____

The _____ Planning Board will hold a
(town)
public hearing on an application for a (state type of land use approval sought) as requested by

(insert applicant's name and address)

Date of Public Hearing: _____

Time: _____

Place: _____

The application requests that (insert specifics): _____

Chairperson, Planning Board

(For Newspaper Use Only)

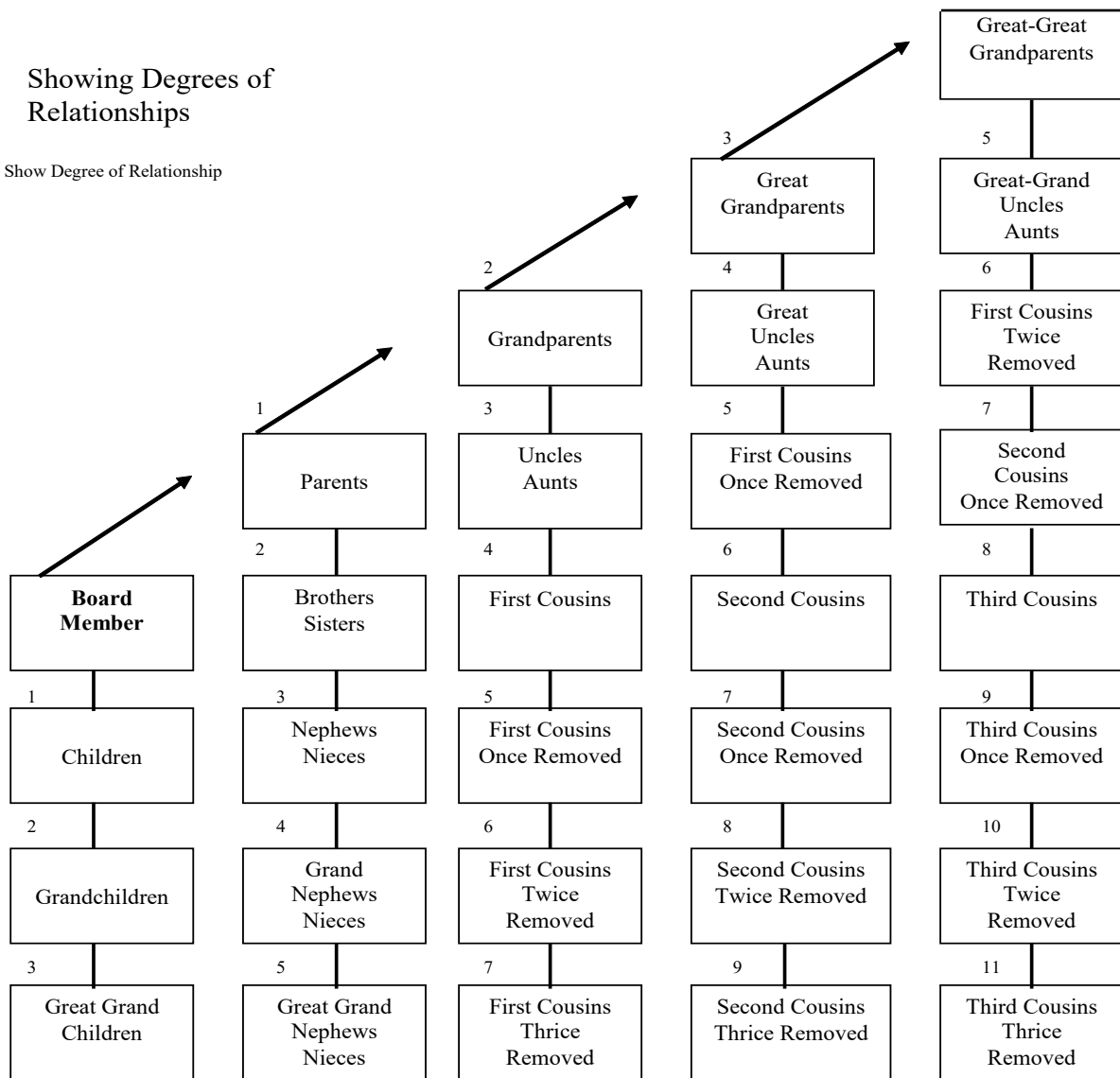
Publish the above notice on the following dates:

and charge to:

Table of Consanguinity

Showing Degrees of Relationships

Figures Show Degree of Relationship



Each Number equals one "degree" of blood or marital relationship.

Sample Bylaw Provisions

1. Meetings

- A. The regular meeting of the board shall be held once every other month or as necessary.
- B. The annual organizational meeting of the board shall be the first regular meeting of the year.
- C. Special meetings of the board may be called by the chairperson. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the board, the selectpeople, the planning board and the code enforcement officer.
- D. The chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three members of the board, which request shall specify the matters to be considered at such special meeting.
- E. The order of business at regular meetings of the board shall be as follows: (a) roll call; (b) reading and approval of the minutes of the preceding meeting; (c) action on held cases; (d) public hearing (when scheduled); (e) other business; (f) adjournment.
- F. All meetings of the board shall be open to the public, except executive sessions. No votes may be taken by the board except in public meeting. The board shall not hold executive sessions except as permitted by the Right to Know Law.

2. Voting

- A. A quorum shall consist of _____ (specify a number) members of the board. (Note: If the number is something other than a majority of the total number of regular members of the board, then this provision will require the approval of the legislative body.)
- B. No hearing or meeting of the board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date.
- C. All matters shall be decided by a show of hands vote. Decisions on any matter before the board shall require the affirmative vote of a majority (of the total number of regular members of the board) (of those members present and voting). (Note: Choose one and delete the other. If the “present and voting” rule is chosen, the legislative body must adopt it as part of an ordinance.)

- D. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.
- E. If a member has a conflict of interest, that member shall not be counted by the board in establishing the quorum for the matter in which he or she has a conflict.
- F. If the board has associate members, the chairperson shall appoint an associate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from a substantial portion of the hearing due to late arrival. The associate member will act for the regular member until the case is decided.
- G. If the board has no associate members, no regular member shall vote on the determination of any matter requiring public hearing unless he or she has attended the public hearing thereon; however, where such a member has familiarized himself or herself with the matter by reading the record and listening to or watching any audio or video recording of the meeting(s) from which the member was absent and represents on the record that he or she has done so, that member shall be qualified to vote on that matter.

3. Reconsideration

- A. The board may reconsider any decision. The board must decide to reconsider any decision, notify all parties and make any change in its original decision within _____ days of its prior decision. The board may conduct additional hearings and receive additional evidence and testimony.
- B. Reconsideration should be for one of the following reasons:
 - 1. The record contains significant factual errors due to fraud or mistake regarding facts upon which the decision was based; or
 - 2. The board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

Sample Rules for the Conduct of Public Hearings

The _____ Board of the Town of _____

I. Scope of Rules

These rules govern the practice, procedure and conduct of public hearings held by the _____ Board for the Town of _____ (hereinafter referred to as the “Board”). These rules shall be liberally construed so as to enable the Board to accomplish its duties and responsibilities in a just, speedy and inexpensive manner. Where good cause appears, the Board may permit deviation from these rules insofar as it may find compliance to be impracticable or unnecessary.

II. Notice of Public Hearings

Notice of all public hearings shall be published in the _____ (name of newspaper), the date of publication to be at least seven (7) days before such hearing and the notice shall be posted in at least three (3) prominent places at least seven (7) days before such hearing. The notice shall set forth the nature of the hearing, the time, date and the place of the hearing.

(**Note:** This needs to be consistent with applicable land use ordinances and statutes, such as 30-A M.R.S.A. § 4403 regarding subdivisions, and with 1 M.R.S.A. § 601.)

III. Presiding Officer

The Presiding Officer shall, at all public hearings, either be the Chair or Vice-Chair of the Board or a member of the Board who is selected by those members present at the hearing. The Presiding Officer shall have authority to:

1. Rule upon issues of evidence;
2. Regulate the course of the hearing;
3. Rule upon issues of procedure;
4. Take such other actions as may be ordered by the Board or that are necessary for the efficient and orderly conduct of the hearing, consistent with these rules and applicable statutes.

IV. General Conduct of the Public Hearing

A. Opening Statement

The Presiding Officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

B. Record of Testimony

The Board shall make a record of the hearing by appropriate means. If a sound recording is made, any person shall have the opportunity to listen to the recording at such reasonable times and at such a place as may be designated by the Board.

C. Witnesses

Witnesses shall be required to state for the record their name, residence address, business address, business or professional affiliation, the nature of their interest in the hearing, and whom they represent.

D. Continuance

All hearings conducted pursuant to these rules may be continued for reasonable cause and reconvened from time to time and from place to place as may be determined by a majority of the Board members present. Continuances may be granted at the request of any person participating in such hearing if it is determined that a continuance is necessary. This provision shall not be interpreted in such a fashion as to cause unreasonable or needless delay in any hearing.

All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The Board or the Presiding Officer shall notify interested persons and the public in such manner as is appropriate to insure that reasonable notice will be given of the time and place of such reconvened hearing.

E. Regulation of Filming and Taping

The placement and use of television and video cameras, still cameras, motion picture cameras, microphones, or other sound or video recording devices or equipment at Board hearings for the purpose of recording the proceedings may be regulated by the Chair or the Presiding Officer so as to avoid interference with the orderly conduct of the hearing.

F. Order of Business and Testimony

The order of business at a public hearing shall be as follows:

1. The Chair calls the hearing to order.
2. The Chair determines whether there is a quorum.
3. The Chair gives a statement of the case and reads all correspondence and reports received.
4. The Board determines whether it has jurisdiction over the application.
5. The Board decides whether the applicant has the right to appear before the Board.

6. The applicant or his or her representative and witnesses are given the opportunity to present his or her case without interruption.
7. The Board and interested parties may ask questions of the applicant through the Chair.
8. The interested parties are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.
9. The applicant may ask questions of the interested parties and Board witnesses through the Chair.
10. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
11. The board shall receive comments and questions from all observers and interested citizens who wish to express their views.
12. The Board shall receive and retain copies of any written statements and documents offered to the Board by the interested parties and by other parties.
13. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.
14. Written testimony may be accepted by the Board for seven days after the close of the hearing.

G. The Board may waive any of the Above Rules if Good Cause is Shown.

V. Evidence

A. Generally

The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.

B. Official Notice

The Board may, at any time, take notice of judicially cognizable facts, generally recognized facts of common knowledge to the general public and physical, technical or scientific facts within the specialized knowledge of the Board.

C. Documentary and Real Evidence

All documents, materials and objects offered as evidence shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies of excerpts if the original is not readily available. The Board or the Presiding Officer shall require that any party offering any documentary or photographic evidence shall provide the Board with an appropriate number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably

susceptible of reproduction. All documents, materials and objects accepted into evidence shall be made available during the course of the hearing for public examination and explanation and shall become part of the record of the proceedings.

D. Objections

All objections to rulings of the Presiding Officer regarding evidence or procedure shall be made during the course of the hearing.

If after the close of the hearing and during its deliberations the Board determines that any ruling of the Presiding Officer was in error, it may reopen the hearing or take other action as it deems appropriate to correct the error.

VI. Conclusion of Hearing

At the conclusion of the hearing, no further evidence or testimony will be allowed into the record except as provided below.

VII. Leaving the Record Open

Upon such request made prior to or during the course of the hearing, the Presiding Officer may permit persons participating in any hearing pursuant to these regulations to file proposed findings, determinations, or other written statements with the Board for inclusion in the record after the conclusion of the hearing within such time and upon such notification to the other participants as the Presiding Officer may require.

VIII. Other

At any time prior to a final decision, the Board or the Chair may reopen the record for further proceedings consistent with these Rules, provided, however, that the Chair shall give notice of such further proceedings to the participants and the public in such manner as is deemed appropriate.

IX. Miscellaneous

A. Record

The record of the hearing shall consist of the recording of the hearing, all exhibits, all briefs, proposed findings and rulings thereon, and any proposed findings of fact and conclusions of the Presiding Officer. Such record shall be reported to the Board for its decision.

B. Copies of Records

Any participant or other member of the public may obtain a copy of the record from the Board upon payment of the cost of transcription, reproduction, and postage.

Sample Planning Board Rules, November 1989–Town of Gorham

Amended August 3, 1992

Amended May 5, 1997

SECTION I – ESTABLISHMENT

Pursuant to Article IV of the Planning Board Ordinance of the Town of Gorham there is hereby created Rules of the Gorham Planning Board for which purpose they shall serve to enable the Planning Board to work clearly, effectively and impartially in carrying out the intent of said Ordinance. Officers of the Board shall consist of Chairman, Vice Chairman, and nonmember Clerk. The terms “Chairman,” “he,” “his,” and similar words are to be interpreted as gender-neutral.

SECTION II – MEETINGS

A. REGULAR

The Board shall meet regularly on the first Monday of each month, unless the date falls on a holiday, in which case the meeting will be held the next following Monday. If warranted by the number of pending or newly submitted applications or by other business of the Board, a second regular meeting for the month may be called, typically for the third Monday of the month.

The meetings shall be held in the Council Chambers or such other time and place as the Board or Municipal Officers may designate.

B. SPECIAL

Special meetings may be called by the Chairman or when requested to do so by four members of the Board or by the Municipal Officers. Written notice of such meeting shall be served in person or left at the residence of each member of the Board at least seventy-two (72) hours before the time for holding said meeting unless all members of the Board sign waiver of said notice. The call for said special meeting shall set forth the matters to be acted upon at said meeting, and nothing else shall be considered at such special meeting. In accordance with State Law, the press shall be notified of any special meetings in the same manner as Board members.

C. WORKSHOP

Informal workshop meetings shall be held regularly immediately prior to regular meetings and may be called as special meetings from time to time. Such meetings shall be held at the same location at which the Planning Board meeting is held. The purpose of this type of meeting is to discuss business which may appear on the agenda of an immediate or future regular meeting of the Board or to discuss matters of Board administration or procedure. All workshop meetings shall be open to the public in accordance with State Law.

D. SITE WALK

Site walk meetings may be called by the Chairman or a majority of the Board for the purpose of allowing the Board and interested public to inspect the site of a pending proposal. Site walks are encouraged for all applications before the Board. The Vice Chairman is responsible for minutes of site walks. To ensure full and fair disclosure of Board actions to all members of the public, no formal motions shall be made nor votes taken at a site walk. Whenever possible, the time and place of site walks shall be set following adjournment of the meeting. Public notice shall be given of all site walks.

E. PUBLIC HEARING

Public hearings shall be held prior to amending or adopting the Comprehensive Plan or the Land Use and Development Code. Notice of hearings shall be by the same manner as provided in Section 213 of the Council-Manager Charter of the Town of Gorham (attached).

F. NOTICE

Notice of meetings shall be in writing and contain the items of business (agenda). The Town Planner shall prepare the agenda and send notice upon approval of the Chairman.

G. QUORUM

A quorum shall consist of at least four members of the Board for the transaction of business. A smaller number of members may be appointed by at least four members of the Board to a particular ad-hoc committee from time to time.

SECTION III – CONDUCT OF MEETINGS

A. GENERAL

1. The Chairman shall take the chair at the time appointed for the meeting, call the members to order, cause the roll to be called and identify those members absent. A quorum being present, the Chairman shall cause the Minutes of the preceding meeting to be discussed and accepted by the Board, with or without amendments, and proceed to business. Copies of the Minutes will be available prior to the meeting.
2. The latest edition of Robert's Rules of Order shall be used as the procedural authority for the conduct of meetings, except as otherwise provided by State Law, Town Ordinance, or these rules. In cases of procedural uncertainty, all such questions shall be resolved by the Chairman in a manner that most affords all members of the public a fair opportunity to be heard. All decisions of the Chairman are subject to a majority vote of the Board.
3. The Chairman shall declare all votes, but if any member doubts a vote, the Chairman shall cause a recount of the members voting in the affirmative and in the negative without debate. A record of all votes will be kept by the Clerk of the Board.
4. When a question is under debate, the Chairman shall receive motions that shall have preference in the following order:
 - a. adjourn
 - b. for the previous question
 - c. to lay on the table
 - d. to postpone to a day certain
 - e. to refer to a committee or some administrative official
 - f. to amend
 - g. to postpone indefinitely
5. The Chairman shall consider a motion to adjourn as always in order except on immediate repetition; and that motion, and the motion to lay on the table, or to take from the table, shall be decided without debate.
6. Voting shall be conducted only on items included on the agenda of the meeting, except as allowed for reconsideration of all previous votes. A motion shall be passed only by the affirmative vote of a majority of Board members present and voting, except as otherwise provided in these rules, the Town's Planning Board ordinance, or

Maine statutes. [Note: A “present and voting” majority vote rule must be adopted by the legislative body by ordinance.]

7. After a vote is taken, it shall be in order for any member who voted in the majority, or in the negative on a tie vote, to move a reconsideration thereof at the same, or the next regular meeting, but not afterwards; and when a motion of reconsideration is decided, that vote shall be final and the matter may not be considered further. (In instances where a super majority vote is needed to pass a motion, a vote to reconsider must come from a member who voted on the prevailing side of the issue.)
8. When the previous question is moved and seconded, there shall be no further amendment or debate; but pending amendments shall be put in their order before the main question. If a motion for the previous question fails, the main question and any pending amendments remain open for debate. To maintain the clarity of a question, each main question shall be limited to two amendments.
9. No debate shall be allowed on a motion for the previous question. No motion for the previous question shall be amended. All questions of order arising incidentally thereon must be decided by the Chairman without discussion.
10. Full public disclosure of the nature of any potential conflict of interest shall be made before discussion of each agenda item. The affected Board member should indicate in public to the Board whether he believes that he can hear and vote on the matter impartially. To a limited extent, members of the public shall also be allowed to comment on this matter at this time. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members present, except the member who is being challenged. In this determination the Board shall consider whether the alleged conflict is such that it:
 - a. may reasonably interfere with the affected member’s ability to hear and act on the item impartially; and
 - b. whether it would give the appearance to the public of an inappropriate conflict of interest so as to undermine public confidence in the fairness of the meeting.
11. No agenda item will be taken up at a meeting after 10:00 p.m. The lateness rule may be waived for just cause by consent of the majority of Board members present.

B. MOTIONS

1. Every motion shall be reduced to writing by the Clerk.
2. Any member may require the division of a question when it makes sense to do so.
3. All questions relating to the order of agenda items shall be decided without debate.

C. DECORUM AND ORDER

The Chairman shall preserve decorum and decide all questions of order and procedure, subject to appeal to the Board. When a member is about to speak, he shall respectfully address the Chairman, confine himself to the question under debate and avoid personalities. No member speaking shall be interrupted by another, but by a call to order or to correct a mistake.

D. PUBLIC

Persons wishing to address the Board on an item which appears on the agenda shall wait until the Board considers such item. The Chairman may recognize a member of the public to speak to a particular question of the item under consideration. When a person is recognized by the Chairman he shall address the Board, shall state his name and address in audible tone for the record, and shall limit his remarks to the particular question under discussion. All remarks and questions shall be addressed to the Board as a whole and not to any individual member thereof. No member of the public shall interrupt the person having the floor.

E. RECORDS OF PROCEEDINGS

The votes for and against the passage of a motion shall be taken and entered upon the record of the Proceedings of the Board by the Clerk. Minutes of all regular and special meetings of the Board, except workshop meetings and site walks, shall be kept by the Clerk and shall take effect upon acceptance by the Board. An amendment by the Board of the minutes of a previous meeting shall not affect a previous vote of the Board.

SECTION IV - AGENDA PROCEDURE¹

A. The following procedures shall be followed in establishing the agenda for Planning Board meetings.

1. To be placed on the Agenda for a Planning Board meeting, the applicant must submit the following materials to the Planning Department:
 - a. Twelve (12) copies of the completed application form and supporting documents, with the signed original application on top,
 - b. Twelve (12) copies of the site plan and all supporting plans, stapled and folded together,
 - c. A letter of authorization, if the applicant is represented by an agent, and
 - d. The required application fees and consulting escrow deposit.
2. All information shall be organized in packets containing one copy of all submitted material. The application form shall be the first item in the packet. Supporting documents should follow and all plans and other oversized material shall be folded to 9' x 12', with title displayed. Multiple plan sheets shall be stapled together.
3. Only complete applications for which all required information (as set forth in the Land Use and Development Code) is submitted will be considered for placement on an upcoming Planning Board Agenda, and only after completion of the staff review.
4. The staff will review all complete applications and advise the applicant of any staff questions or concerns about the project and the number of revised plans and supporting material needed. (The staff review will take between 15 and 30 days, depending upon the complexity of the submissions.)
5. Incomplete applications will be returned for resubmission at a later date. The revised set of materials must address all questions or concerns raised by the staff during its initial project review.
6. Applications will qualify for agenda slots only when the Town has received a complete application following the Staff review. Space on an agenda may not be reserved by a call, letter, or partial submission. Public Hearings are placed at the beginning of the Agenda. Items tabled at previous meetings will generally receive scheduling priority over new applications, in order of how long each has been

¹ As amended June 5, 1995

pending, and new applications will be placed on the Agenda on a first-come, first-served basis.

7. No new or revised documentary information shall be presented at the meeting.
8. Consent Agenda. Certain administrative or noncontroversial items of business considered routine may be placed on the Consent Agenda if it is anticipated that there is no need for Board discussion and there will be no public comment on the item. Staff recommended conditions of approval that might be attached by the Board should be available in advance. Any item on the Consent Agenda can be taken off the Consent Agenda and discussed as a regular item at the request of any member of the Board or any member of the public. Individual items on the Consent Agenda should be removed from the Consent Agenda by formal vote. The items on the Consent Agenda should be approved by a single motion and vote. Items which have been removed from the Consent Agenda should be discussed immediately following the approval of the Consent Agenda, in the order in which they appeared on the Consent Agenda.
 - a. Minor amendment to previously Board-approved application.
 - b. Routine reapproval of previously Board-approved application.
 - c. Town comments upon application under review by the Maine Department of Environmental Protection or other State agency.
 - d. Routine business relating to Planning Board administration.
 - e. Site plan review of new non-residential use in a single or multi-unit, non-residential building, if such building has previously been granted site plan review approval by the Board.
 - f. Street Acceptance Reports.
 - g. Final approval of items considered by the Board at the previous meeting if the Board, by affirmative vote at that meeting, rules that the items should be placed on the Consent Agenda for final review of conditions or revised plans.
9. Old business pending from previous meetings will receive scheduling priority over new business generally in order of the length of time each application has been pending. New final subdivision plan applications shall be considered new business. Certain business will always be afforded agenda priority over all other business, as follows:
 - a. Advertised public hearings.
 - b. Business tabled at the previous meeting because of lateness.
 - c. Requests for reconsideration of action taken at previous meeting.

10. New complete applications will be placed on the agenda on a first-come, first-serve basis. If more items qualify for scheduling than can be considered by the Board at a single meeting because of the number or complexity of previously scheduled items, then excess items will be carried over to be scheduled on the next regular meeting. Space on an agenda may not be reserved by a call, letter or partial submission. Applications will qualify for agenda slots only when the Town has received a complete application. Applications or projects of special significance to the Town of Gorham may receive scheduling priority on the Planning Board agenda at the discretion of the Town Council.
11. The final recording mylar for any subdivision, site plan or private way plan may be signed by the Planning Board at the close of the meeting only if the mylar and three (3) paper copies have been filed with the Planning Department by noon on Monday one (1) week prior to a Planning Board meeting.

SECTION V – MISCELLANEOUS

- A. Absence or disability of Board Chairman - In the temporary absence or disability of the Board Chairman, the Vice Chairman of the Board shall be and is hereby designated as Board Chairman Pro Tempore.
- B. The rules of the Board shall not be dispensed with or suspended unless at least four members of the Board consent thereto, except as otherwise specified herein.
- C. No rule of the Board shall be amended or repealed without the Board giving notice of such action through the minutes, at the preceding meeting. Such amendment or repeal shall require the consent of at least four members of the Board.
- D. A Board member shall be counted absent from a meeting only for those items of business for which he is not present.
- E. Public availability of application materials - All written materials submitted to the Town for Planning Board review are public documents and, as such, are available for public inspection in the Planning Department during normal business hours. At least one copy of each plan or document shall always be available for public inspection. Arrangements can be made to provide for photocopying of documents twenty-five pages or less at the Town's normal photocopying charge. Photocopies of longer documents or larger plans will have to be made by special arrangements with the Town staff. The Town will do everything reasonably possible to accommodate such requests subject only to maintaining

at all times at least one copy of each submission document in the Planning Department file.

- F. New member mentoring/training - The Town Planner shall provide a packet of orientation materials for new Board Members and shall be available as necessary to assist new members in understanding the procedural and substantive duties of the Board.

ATTACHMENT

(to Sec. II, E.)

COUNCIL-MANAGER CHARTER OF THE TOWN OF GORHAM:

Sec. 213. Public hearing on ordinances. At least one public hearing, notice of which shall be given at least (7) days in advance by publication in a newspaper having a circulation in said town and by posting a notice in a public place, shall be held by the Council before any ordinance shall be passed. The passage of such ordinance shall not be effective until 30 days after such publication.

Sample Board Member's Affidavit Regarding Missed Meeting

Now comes (insert board member's name), who, being duly sworn, deposes and says:

1. I am a member of the planning board of the town/city/plantation (choose one) of (insert name of the municipality).
2. The board is in the process of hearing and deciding an application submitted by (insert name of applicant) and dated (insert date of application) seeking approval of (describe subject matter of the application).
3. On (insert date of missed meeting) I was unable to attend the board meeting at which this application was discussed.
4. Since that meeting I have done the following in an effort to familiarize myself with the information presented and discussed at that meeting: (provide a summary of what documents, cassette tapes, video tapes, etc. have been reviewed by the board member and when this was done).
5. Having reviewed the above-described material, I believe that I have become sufficiently knowledgeable about the information presented and discussed at that board meeting to allow my continued participation in the proceedings related to this application in an informed and objective manner.
6. Accordingly, I make this affidavit as a record of the facts recited in it.

Date: _____

(Signature of Board Member)

(Printed name of Board Member)

State of Maine

Date: _____

_____, ss.

Then personally appeared before me the above-named affiant, (insert name of board member), who swore that the facts recited in the foregoing affidavit are true of his/her own knowledge, and who executed the same in my presence.

Notary Public/Attorney at Law

(Printed name of notary/attorney)

My commission expires: _____

Sample Public Water Supplier Notification Form

Municipality of _____

Date: _____

To: _____

Public Water Supplier Name

Public Water Supplier Address

Public Water Supplier phone/fax/e-mail

The municipality has received a proposal from _____
(Name of Applicant)

To: (Please check all that apply)

- ☐ Change zoning or land use district ★
- ☐ Develop or subdivide ★ property *(please describe)* _____
- ☐ Expand an existing use/structure ★ *(if structure uses subsurface wastewater disposal)*
- ☐ Install a subsurface wastewater disposal system
- ☐ Build a new ☐ single family ☐ multi family home
- ☐ Operate a ☐ business ☐ home occupation ☐ industrial facility
- ☐ Operate a junkyard, automobile graveyard or auto recycling business ★
- ☐ Store or use fuel or other chemicals
- ☐ Extract gravel, topsoil, or other resources
- ☐ Harvest timber
- ☐ Farm or keep livestock
- ☐ Grade or fill land
- ☐ Discharge, manage, or impound storm water
- ☐ Install utilities (power, water, sewer)
- ☐ Other *(please describe)* _____

Located (where) _____, Tax Map _____ Lot _____,

☐ in ★ ☐ near the source water protection area of your water supply.

A copy of the proposal is available for inspection _____
(where)

by contacting _____.

The municipality ☐ will ☐ will not hold a public hearing on this proposal.

The public hearing will be held on _____
(date)

at the _____ at _____
(place) (time)

For additional information, please contact _____.

Sent by: _____ Telephone: _____.

★ *Required notification under PL 1999 c.761. Notice is also required for land use projects reviewed by the municipality that require notification of abutters. Please check the statute and local ordinances.*



Appendix 3 – *Sample* Minutes and Decisions

Town of Scarborough Planning Board Minutes-January 28, 2008.....	197
Town of Scarborough Planning Board Minutes-Special Meeting & Workshop-February 11, 2008.....	213
Town of Bar Harbor Planning Board Minutes-November 4, 2009	219
Town of Bar Harbor Planning Board Minutes-December 2, 2009 (as amended December 16, 2009)	225
Town of Bar Harbor Planning Board Minutes-Special Meeting-December 16, 2009	231
Town of Turner Planning Board Site Plan Review Decision-March 10, 2010	237
Town of Freeport Planner’s Memo to Design Review Board-May 12, 2010	307
Readfield Planning Board-Findings of Fact and Conclusion of Law dtd. May 20, 2004	325
Town of Bar Harbor Planning Board Land Use Ordinance / Site Plan Decision-May 19, 2010.....	329
<i>Sample</i> Wording for Use in a Permit Issued to a Landowner Where Title to the Land, Boundary Location or Other Title Problem has Been Raised by a Third Party	337
<i>Sample</i> Wording for Use in Approving a Development Plan to Ensure that the Plan will be Developed Exactly as Depicted Unless Revisions are Approved by the Appropriate Authority.....	337
Excerpts from Maine Supreme Court Decisions.....	339

Town of Scarborough Planning Board Minutes-January 28, 2008

Members Present

Mr. Callahan
Mr. Chamberlain
Mr. Fellows
Mr. Maynard
Mr. Paul
Mr. Shire

Staff

Mr. Bacon, Town Planner
Mr. Chace, Assistant Town Planner
Mrs. Logan, Recording Secretary
Mr. Vaniotis, Town Attorney

1. Call to Order

Mr. Paul called the meeting to order at 7:00 P. M.

2. Roll Call

The Recording Secretary called the roll; Ms. Littlefield was absent. Mr. Paul authorized Mr. Shire to vote.

3. Approval of Minutes (January 10, 2008)

Mr. Callahan moved to approve the minutes of January 10, 2008; Mr. Fellows seconded.

Voted 5-0

4. The Planning Board will hold a public hearing to receive input regarding an amendment to the Contract Zone to add 53 acres to the Larrabee Farms Wetland Mitigation Project off Beech Ridge Road

Mr. Bacon stated that there were no staff comments at this stage; he stated that the Town Engineer would make comments before the Town Council's second reading and the Board would then review the site plan and the Town Attorney would review the revised contract. He stated that there was a memo from Tom Gorrill, of Gorrill-Palmer, dated January 24, 2008, with recalculated impact fees.

Mr. Rich Jordan, of Boyle Associates, gave a Power Point presentation and a brief history of the site. He stated that there were two mitigation projects now completed on the site, the Cabela's project and the DOT Gorham Bypass project. Mr. Jordan showed their site at Beech Ridge Road and Route 114 and stated that most of the site was near the Nonesuch River and in the preservation area. He stated that the Grondin property was 268 acres with an added 53 acres from Scarborough Fish and Game; he stated that this had been farmland, mineral extraction, forestry and then an informal dump prior to being acquired by the Grondins.

Mr. Jordan explained that the original plan was for extraction and residential development but the site was now used for a wetland creation mitigation site; he explained that wetland mitigation replaced impacted wetlands on other sites. He stated that they started the Contract Zone process in 2001/2002 and received approval in 2006.

He stated that Contract Zone 8, on the new 53 acres, would allow wetlands mitigation, associated work and passive recreation. He displayed the overall site plan showing wetlands, uplands and mitigation areas. He stated that this new area was for the Haigis Parkway project for which they had submitted an application to the DEP. Mr. Jordan explained that the DOT mitigation project consisted

of wetland creation, uplands and vernal pools and that they had provided a culvert for drainage of Sweetbrier Lane. He stated that the Cabela's mitigation site was a total of 31 acres.

Mr. Jordan stated that they had nine amendments and wanted to deal with them all at once; he stated that there were three changes to the contract and six changes to the site plan. He stated that they wanted to add 53 acres that were currently owned by Inland Fish and Game, and wanted to allow aggregate material processing and importation of mineral materials such as stone, which would allow trucks to enter the site and leave the site full. Mr. Jordan stated that they would amend the language in the contract to allow Grondin to complete the project in 10 years rather than the original 20 years; he stated that they would amend the traffic impact with more peak time truck flow on Payne Road and place an informational sign at the entrance. He stated that they wanted permission to have a Quonset hut for storage of dry materials. Mr. Jordan stated that they wanted to combine two areas on the wetlands plan to one area. He stated that the traffic requirements from the original plan would remain.

Mr. Paul opened the public hearing and asked people to keep their comments to five minutes; he stated that if someone wanted to speak a second time, he or she should limit those comments to three minutes.

Mr. Randy Thibault, of 6 Marr Farm Road, asked how many acres of standing timber would be cut; Mr. Jordan replied that there would be only one acre of timber cut near the road. Mr. Ken Grondin stated that the area was toward the southwest and over the hill from Marr Farm Road; he stated that he would be happy to show the area to the neighbors. Mr. Thibault stated that he could hear the gunshots from the Fish and Game site and was concerned that the sound barrier of the trees would be removed. He stated that their concern was their backyard impact and quality of life. He asked whether it would be in writing that only one acre would be cut. Mr. Grondin replied that every acre of creation had a certain area of preservation and in that area only one acre of trees would be cut. Mr. Jordan showed the protection areas around the completed projects and stated that the conservation easements spelled out what could and could not be done. Mr. Thibault asked whether there would be blasting or quarry work; Mr. Grondin stated that there would be no blasting with the 53 acre area. He stated that the plans had stayed the same since the beginning. Mr. Thibault stated that they hear a lot of backing up of trucks.

Ms. Shari Edgecomb, of 17 Barley Lane, stated that her concern was that the other side of Clover-leaf Estates would be impacted by this new section; she stated that her concern was the humming of trucks that echoed throughout and the tailgates clanging as well as the blasting. She stated that her dishes rattle and the blasting scared her children; she stated that she had an issue with the frequent trucks on Holmes Road and this would bring more trucks. Mr. Grondin stated that they made their own gravel onsite for the large projects; he stated that in three years the blasting would end. He stated that they alleviated blasting issues by not blasting on cloudy days when sound stayed close to the ground. He stated that they would call people two hours in advance if they wanted to be on a list. Ms. Edgecomb stated that hers was a quality of life issue.

Mr. David Bergeron, of 19 Barley Lane, stated that he agreed with Ms. Edgecomb that blasting was the major issue and asked whether the amount of blasting would change if the length of the project were 10 years instead of 20. Mr. Grondin stated that the cubic yards of material removed would speed

up the activity and shorten the lifespan; he stated that there would be no ledge removal from the new parcel. He stated that they would not expand the blasting but the process would be sped up by removing more. Mr. Bergeron asked about the Payne Road Impact Fee and whether there would be an impact fee for Holmes Road or Beech Ridge Road. Mr. Grondin stated that they were required to turn right only onto Beech Ridge Road but if they had local deliveries in the Dunstan area they were allowed to use Holmes Road but their trucking associated with the new project had nothing to do with this Contract Zone. He stated that they would access the 53 acres for a preservation project with vernal pools and very little trucking would be associated with it. Mr. Paul stated that part of the Contract Zone commitment when the site was complete was that the road would be resurfaced. He noted that impact fees were dedicated to certain roads and Holmes and Beech Ridge Roads were not included. Mr. Bergeron stated that he hoped they would not lose any sound protection barrier. Mr. Jordan reiterated that there would be no cutting or blasting in the Haigis Parkway mitigation area, which was now an existing habitat.

To a question from Ms. Tracy Palm, of 3 Marr Farm Way, Mr. Grondin replied that a reassessment could be done on their home to determine whether the blasting had done any harm. To a question from Ms. Palm, Mr. Jordan replied that the Town owned the land across the street. Mr. Bacon explained that as part of the Contract Zone, 20 acres of land was given to the town for a possible school or recreation use; he stated that the Town Manager could be contacted for more information on that parcel.

Mr. Kevin McKee, of 15 Independence Way, noted that the pavement quality was poor at the intersection of Route 114 and Beech Ridge Road; Mr. Grondin stated that they had completed widening the intersection but did have to grind and pave 28 feet of Beech Ridge Road to the intersection from their entrance. To a question from Mathew Thees, of 21 Barley Lane, Mr. Jordan replied that the land near his lot was in forest preservation where no work would be done. Mr. Jordan stated that he would like to invite the Planning Board, the Town Council and the neighbors to a site walk in the spring.

Mr. Bergeron asked the future use of the property; Mr. Jordan replied that the Army Corps of Engineers and the DEP approvals guaranteed that this property would remain in preservation in perpetuity. Mr. Jordan stated that ten years after the project was finished, it would be monitored and the land would be transferred to the town or the Scarborough Land Trust. To a question from Mr. Bergeron, Mr. Grondin replied that they had already been building roads within the site and the noise would be less than previously because they would be working 20 to 30 feet lower.

Ms. Palm asked whether Marr Farm Road would be used for access; Mr. Grondin replied that, because of the large project which was now complete, they would not have to use Marr Farm Road; he stated that the Fish and Game access would be used for the lower area. Mr. Thibault asked whose job it was to determine how much land was being cleared; Mr. Bacon replied that the DEP, the Army Corps and the Code Enforcement Officer would inspect the site in terms of wetland creation and clearing. Mr. Grondin stressed that creating a 320 acre preserve was bound to cause a few ripples in the construction stage and the abutters now used the site for passive activities; he stated that he was before the Board tonight for their annual review which was a requirement of the Contract Zone. Mr. Grondin stated that they were adding 53 acres with very low impact.

Mr. Paul closed the public hearing.

Mr. Fellows stated that he appreciated the applicant's willingness to work with the neighbors. He asked the size of the sign; Mr. Grondin replied that it was a 3 by 5 foot sign and he would include a rendering in the contract. Mr. Callahan stated that allowing onsite processing made sense for better efficiency in transporting material. Mr. Chamberlain asked how much wetland mitigation would be involved with the 53 acre section; Mr. Jordan replied that three vernal pools did more than just preservation because more credit was given for an area that was enhanced in some way. Mr. Chamberlain asked where there was access to the open areas; Mr. Jordan replied that South Coast Community Church had parking and trails that connected to this site and there was parking at the end of Larrabee Farm Road. Mr. Chamberlain stated that it made a lot of sense when development disturbed wetlands, it could acquire property for mitigation in one contiguous piece. To a question from Mr. Chamberlain, Mr. Jordan replied that there were two completed projects and the future Haigis Parkway project and there were two areas, one of three acres and the other 20 acres remaining for mitigation. Mr. Grondin stated that they were almost half completed with the site because of the two large clients.

Mr. Paul asked about construction times; Mr. Jordan replied that they were allowed to work from 7:00 A. M. to 5:30 P. M., Monday through Saturday. Mr. Grondin stated that they were abiding by those hours, but they could access the site for sand at night in the event of an emergency. Mr. Paul noted that there would be another public hearing with the Town Council.

5. Darling Bedworks, David Darling requests site plan amendment for site at 582 U.S. Route One

Mr. Bacon stated that this amendment was for outside display and a follow-up to the approval for filling the land. He stated that there were signed drainage and maintenance easements from the previous approval, but Mr. Wendel needed a performance guarantee. Mr. Bacon stated that there was a staff report indicating that the Board should consider what constituted accessory outside display and the amount of landscaping and screening the site should have along Route One.

Mr. Darling stated that he wanted to expand the parking area slightly and make it safer; he stated that he would add landscaping and trees as shown on the site plan. Mr. Darling stated that he would also like to expand the outdoor display area. He stated that when he purchased the property in May 2002 there was outdoor display being done by the previous owner. Mr. Darling stated that he wanted to expand his outdoor display from the current 3,000 square feet to 10,000 square feet for the display of play sets. He stated that they did not sell play sets from the display area and they were ordered from a catalog.

Mr. Darling stated that the performance guarantee needed only to be finalized by Mr. Wendel, who would accept a letter of credit. Mr. Darling displayed the site plan and stated that he wanted to change the angled parking to 90° and add five spaces for overflow and employee parking. He showed the foundation plantings and the trees along Route One. Regarding outdoor display, Mr. Darling stated that Section 9.D. of the Performance Standards indicated that, "In any district a retail sales or service business, which operates principally within a building, may display merchandise or render services outside the building, provided such display or service is incidental and secondary to the business

conducted within the building.” Mr. Darling stated that the business operated within the building and the display is incidental.

To a question from Mr. Callahan, Mr. Darling stated that he had the letter of credit but it was not yet signed. Mr. Chamberlain stated that the issue was whether or not outdoor display was incidental; he stated that he had a problem with this because increasing the display area threefold did not seem incidental. He stated that he would like to see a lot more than three trees in front of the display.

Mr. Paul read definitions of the word “incidental,” including the words “subordinate, inessential, casual and chance, secondary, second in range, value or occurrence, bring to a later stage of development, coming after the primary.”

Mr. Darling stated that he wanted to challenge whether outdoor display was allowable; he noted that the Ordinance stated that if the approval was prior to 1994 the outdoor display was allowed as long as another site plan was not required. Mr. Paul noted that a site plan had to be submitted to expand the parking. Mr. Darling stated that he did not change the site. Mr. Darling reiterated that the sale of play sets took place inside the building, not outside.

To a question from Mr. Paul, Mr. Darling replied that catalogs were handed out inside the building and ordering was done at the computer inside the building. Mr. Fellows stated that he shared the concern that size did not necessarily equal importance. He stated that it was hard to reconcile the applicant asserting that it was not of primary importance when he was proposing to expand it significantly. Mr. Fellows stated that it missed the point when the applicant said the business occurred inside and that did not negate what took place outside. Mr. Fellows asked whether the photos presented represented the landscaping; Mr. Darling replied that he planted immature plants that were shown in the photos. Mr. Fellows stated that the Board should see a true landscaping plan showing how the site would look.

Mr. Darling stated that the overall site was two acres with a 3,600 square foot building and a 10,000 square foot mulched display area and he did not feel he was asking for anything extra in relation to other businesses that have outdoor display. Mr. Fellows stated that it would be helpful to see an improved area instead of the existing topography. To a question from Mr. Shire, Mr. Darling replied that the photos showed the landscaping at the sign. Mr. Shire stated that the Board should see the actual proposal of plantings and signage.

Mr. Maynard asked why the applicant wanted to make the display area larger; Mr. Darling replied that there were about 50 different models of play sets and he would like to show more than a few of them. Mr. Maynard stated that this looked like a flat spot with stuff on it and asked whether it could be made to look nicer with landscaping. He stated that it was not offensive but it was also not attractive and this was a prime piece of property. Mr. Darling stated that he had struggled with the ditch and did not want to do anything substantial before the ditch was put in. He stated that Route One was to be widened and he did not want to have to tear any landscaping out.

Mr. Paul noted that the applicant indicated the building would be “essentially unchanged;” Mr. Darling stated that it would not be changed at all. Mr. Darling stated that he had thought about a

cupola and wanted to paint the building but would come back to the Board for that. Mr. Paul stated that if the building were to be changed, the Board would like to deal with it all at once and not piecemeal. Mr. Darling stated that he had no plans to change the building at this time. Mr. Paul stated that he did not agree with the notion that a display area three times the size of the building where the business was conducted could be secondary or was incidental. He stated that he was struggling with the fact that the area was to be increased three times; he stated that the Board had talked about shielding the display area or placing it behind the building so it would be less noticeable from Route One. Mr. Paul stated that the size was a problem for him and asked that if the applicant returned to the Board with the landscaping plan, he should provide more detail on the display area with regard to traffic and pedestrian safety. Mr. Darling stated that Pinkham & Greer provided a traffic statement and customers would cross the driveway which was seldom used. Mr. Paul stated that the Board should see that on the site plan. Mr. Paul stated that he did not think the Ordinance gave the right to expand the display threefold.

Mr. Callahan noted that the Board had dealt with outdoor display with a couple of large projects and the Ordinance allowed outdoor displays as long as their locations were shown on the site plan. Mr. Paul noted that they were not three times the size of the buildings but were secondary.

Mr. Bacon stated that, on site plans approved since 1994, outdoor display was allowed only in locations designated by the Planning Board. He stated that the Board was concerned that this needed to be incidental and size was an issue here because the other displays were much smaller than the buildings with which they were associated. Mr. Callahan noted that it did help to see a product before it was purchased and this was the nature of the business. Mr. Darling stated that it helped when the children could play on the play sets.

To a question from Mr. Chamberlain, Mr. Bacon replied that outdoor display was allowed on Route One if it met all the standards, but the Board discouraged it. Mr. Darling stated that to get an accurate representation of the products, he needed the larger display area to be effective and it gave customers the chance to visualize the play sets in their yards. He stated that people would buy only what they saw. Mr. Paul stated that the concern was the visual corridor on Route One and the display should not be visible.

Mr. Paul called a recess at 9:00 P. M.; the meeting resumed at 9:10 P. M.

6. Marie Brazil requests determination by the Planning Board that the setback requirement is met to the greatest practical extent for renovations to her home at 12 Virdap Street in the Shoreland Zone. Mr. Bacon stated that it was a provision of the Shoreland Zoning Ordinance that when expanding or raising a foundation in the Shoreland Zone the Planning Board needed to make sure the renovations met the setback requirements to the greatest practical extent. He stated that there were no staff issues.

Ms. Rebecca Dillon, of Gawron Architects, stated that Ms. Brazil wanted to elevate her structure three feet and put in a new foundation. She displayed the existing setbacks where the structure met three of them with a small portion over the fourth setback line. Ms. Dillon stated that the house could not go closer to the east because of the wetlands; she stated that they would remove some of the building but would still have a nonconforming section on the rear of the garage.

Mr. Fellows stated that he appreciated the fact that the structure would be slightly less non-conforming and had no issues. Mr. Maynard and Mr. Chamberlain had no issues. To a question from Mr. Callahan, Ms. Dillon replied that the house would be put on pillars which would allow water to flow through. Mr. Paul stated that he thought they were doing as much as possible to not impose on the Shoreland Zone; he stated that the applicant should coordinate with the Code Officer.

Mr. Paul moved to approve the request for a determination that the setbacks were met to the greatest practical extent; Mr. Shire seconded.

Voted 5-0

7. Eastern Village, Ballantyne Development LLC requests final subdivision approval for traditional neighborhood development off Commerce Drive and Old Eastern Road

This item was tabled at the request of the applicant.

8. McDonald's requests site plan approval for 4,000 square foot restaurant on Lot 9 at Scarborough Gallery

Mr. Bacon stated that there were comments in response to the peer review comments regarding the ponding of water near the property line; he stated that a formal grading plan was needed. He stated that there were comments from the staff regarding the Fire Department's concern about the turning radius at the entrance; he stated that there was a new site plan for the Fire Department but he did not yet have a copy.

Mr. John Kucich, of Bohler Engineering, stated that they now showed 60° parking spaces at the front but the spaces on the Spring Street side would remain at 75° because people would not want to turn the wrong way to exit because it would be longer around the building. Mr. Kucich stated that they added landscaping between the building and the sidewalk at the Spring Street side. He stated that they had made a sidewalk connection to Gallery Boulevard and the crosswalks would have Duro Therm striping. Mr. Kucich showed the identification sign. He stated that they had lost two parking spaces by changing the configuration and would now have 41 spaces.

Mr. Kucich stated that they had stopped the contour lines because the Wal-Mart site was not finished and the contours were not connected to those plans. He stated that they had changed the plan slightly to accommodate the Fire Department's request for a 50 foot outside radius which required the building to be two feet closer to Spring Street, made the walkway three feet, rather than five feet wide, and the drive-through lane would be 11 feet rather than 12 feet, which would cause no impact on the landscaping. Mr. Kucich stated that the walkway along the drive-through lane would be eliminated but there would still be full pedestrian access to the side door from Gallery Boulevard.

Mr. Kucich stated that they had added brick along the drive-through windows and a trellis. He stated that they had added a raised parapet on the front and around the sides of the building to add prominence to the front of the building; he stated that all the colonial features would remain. He showed the elevation and stated that they were proud of the building and thought it would fit in quite well with the theme of the development; he stated that this was a one-of-a-kind McDonald's building.

Mr. Callahan confirmed that the original sidewalk along the outside of the drive-through lane would disappear; he asked how one would access the building. Mr. Kucich replied that it would be a straight shot into the side door from across Gallery Boulevard. Mr. Chamberlain stated that he felt the building had been enhanced; he stated that the current height limit on light poles was 16 feet but the applicant showed 20 foot poles. Mr. Kucich stated that the sidewalk poles were 16 feet high but they did not want more than four light poles in the parking lot so they made them taller. Mr. Chace stated that the Ordinance indicated that the maximum height shall not exceed 25 feet and shall be reduced to 16 feet where sidewalks are present. To a question from Mr. Chamberlain, Mr. Kucich replied that the drive-through would be open 24 hours but the restaurant itself would not be open all night.

Mr. Chamberlain and Mr. Fellows stated that they appreciated the changes made to address the Board's concerns. Mr. Fellows stated that the revised architecture was an improvement. He asked about the sight line from Spring Street; Mr. Kucich replied that at the corner of Spring Street there was no room for a berm and they proposed a thick row of shrubs in that area. Mr. Shire thanked the applicant for making a serious effort with the building. Mr. Maynard stated that he was not convinced that the design was what the Board was looking for; he stated that his problem was what to tell the next developer who presented a square building.

Mr. Paul also thanked the applicant for listening to the Board. To a question from Mr. Paul, Attorney Robert Danielson replied that Wal-Mart had not responded to their correspondence regarding the sidewalk and they had no control over that site. Mr. Paul asked the rationale for the 75° parking spaces at Spring Street; Mr. Kucich replied that that angle was McDonald's standard and they were bound with a lease agreement for a certain number of parking spaces and would lose more spaces if they put in 60° spaces.

Mr. Paul stated that he would like to move this project along but would like to make the site slightly better with the following suggestions. 1. That the updated grading plan be submitted. 2. That the Fire Department and staff approve the site plan. 3. He stated that he was concerned about pedestrian traffic through the site, especially from Wal-Mart; he stated that the area reduced from five to three feet could become a four foot wide sidewalk by reducing the 28 foot drive aisle. Mr. Kucich stated that they wanted to have a pass-by lane for the one way driveway, hence the 28 foot wide aisle. Mr. Bacon stated that the other sidewalk could be reduced from six feet to five feet. Mr. Kucich stated that the issue there was the well lighting which could not be done on a slope. He stated that they could create 19 foot long parking spaces if the town allowed a parking overhang and the building could be pulled closer to Spring Street. 4. Mr. Paul stated that he would like to see more trees on Spring Street. Mr. Kucich stated that they could provide four more trees but wanted to maintain visibility to the building.

Mr. Paul stated that he understood the concern about a pitched roof and if this building were on Route One he would be 100% behind the pitch roof. He stated that this building had been brought a long way toward conformance with the design standards and he felt the Board was trying to uphold the standards to the highest extent possible to make projects work; he stated that some diversity was good. To a question from Mr. Callahan, Mr. Bacon replied that all comments from SYT Design had been addressed except for the grading plan.

Mr. Paul moved to approve the site plan with the following conditions:

1. That the updated grading plan and how it would match the rest of the development be approved by staff;
2. That the Fire Department and staff approve the site plan with respect to the turning radius;
3. That there be a four foot walkway between the drive-through area and the parking area on the Wal-Mart side of the building, with its associated crosswalk;
4. That there be four additional trees planted along Spring Street;
5. That a waiver for 19 foot long parking stalls be allowed on the Spring Street side;
6. That the traffic impact fee as indicated in Mr. Bray's memo of January 5, 2008 be paid;

Mr. Chamberlain seconded the motion.

Voted 5-0

9. Scarborough Donuts LLC, continued site plan review and final action for 5,000 square foot building, to include Dunkin' Donuts, at 560 U. S. Route One

At 9:55 P. M., Mr. Paul moved to go into executive session, pursuant to 1 M.R.S.A. Section 405(6)(E), for consultation with the Town Attorney concerning the legal rights and duties of the Board with respect to the site plan application of Scarborough Donuts, LLC and with regard to the pending litigation of David Parker vs. Town of Scarborough. Mr. Chamberlain seconded.

Voted 5-0

The meeting was reconvened at 10:20 P. M.

Mr. Paul stated that the two new Board members could participate, but should refrain from voting on this item because they did not have all the background information.

Mr. Bacon explained that this was a pending item on the December 10, 2007 agenda but was tabled because the subdivision which would have enabled a site plan was denied at that meeting. He stated that, given pending litigation on this item, staff recommended that it be put back on the agenda. He stated that there was a letter from Attorney Dan Desmond, of Lambert Coffin, requesting a reconsideration of the Board's vote on the subdivision plan.

Attorney Paul Bolger, of Lambert Coffin, stated that he would be representing both the subdivision applicant and Cafua and Scarborough Donuts LLC. He stated that Mr. Bacon had requested additional information regarding the contract between the parties. He stated that he was before the Board on procedural matters; he stated that there could not be a site plan approval with no subdivision or the site plan could be conditioned on subdivision approval. He stated that the site plan approval could be tabled until the matter was remanded back to the Board from the court. Mr. Bolger stated that he agreed the site plan should be tabled until the court made a decision, in which case there would be no sense in going forward this evening; he noted that they were not prepared for an architectural review. He stated that they did not want to withdraw the application but wanted action on it pending the appeal.

Mr. Bolger stated that, under the Board's rules, "When a vote is passed, it shall be in order for any members who voted in the majority, or in the negative on a tie vote to move a reconsideration thereof at the same or the next regular or special meeting, but not afterwards; and when a motion of reconsideration is decided, that vote shall not be reconsidered." Mr. Bolger stated that there were complications with the previous decision because no written decision was available until January 9, 2008 so, in fairness, it would be appropriate to make a request for reconsideration.

Mr. Paul stated that at this point there was no item on the agenda for reconsideration and it was the Board's desire to stick with the agenda. Mr. Bolger stated that, in accordance with the rules, a party could move to request a new decision; he stated that there would be a conundrum whether this matter was reconsidered or the proceedings were stayed with respect to the site plan review. He stated that they would need to return with architectural drawings. He stated that if the Board was not prepared to reconsider the vote, he would like to table this matter until the court made its decision.

Mr. Paul stated that a member of the Board who voted against the subdivision plan had to make a motion to reconsider and he was that person since the other two who voted against the item were no longer Board members. He stated that he spoke strongly against approval in terms of safety issues and those concerns had not been alleviated so he did not anticipate reconsideration. Mr. Bolger stated that since the Board had changed, he would ask that it be carefully considered to have the new Board reconsider rather than litigate a decision that could be made by the Board.

Mr. Vaniotis stated that because there is an appeal pending, the Board could not take action to reconsider without an order or remand. He noted that there was a process for getting on the Planning Board agenda and this request did not come in and was not on the agenda. Mr. Vaniotis stated that the time had passed for reconsidering and the Board would have to vote to waive that rule. He stated that he thought it was fair to let the applicant know the chairman was not willing to make the motion and the issue for the Board was what to do with the site plan application. Mr. Vaniotis stated that he would have concerns tabling this item indefinitely pending the outcome of the appeal which could be a year or more.

Mr. Bolger stated that he had discussed this with Mr. Vaniotis and suggested that all of this could be avoided by consideration by the new Planning Board; he stated that he had concerns about the manner in which the decision was made with a lot of hand wringing without specific findings of fact. Mr. Bolger stated that he would rather save the time and have the Board make a reconsideration this evening or at an appropriate time. He stated that boards were permitted to make their own rules of procedure and the only guiding principle was fair play. Mr. Bolger stated that the findings of fact and decision were not available when he had to file the appeal and he could have asked for reconsideration at that point if he had the findings of fact.

Mr. Paul stated that he understood the concern, but it was clear the denial was specifically related to this site with the implication of traffic and trip ends as the driving issues. He stated that the record showed the Board talked with the applicant regarding the concerns and indicated that low volume traffic generators would be very desirable and would most likely lead to approval. He stated that the Board's concern about subdivision approval clearly had to do with the traffic being driven by Dunkin' Donuts.

Mr. Bolger reiterated that they were prepared to review the site plan but did not have the architectural renderings. Mr. Bacon stated that the application submitted prior to the December meeting was complete regarding traffic and the Board's issues were site access and safety which was a big component of the site plan, and the Board and the staff found the application to be sufficient on December 10, 2007; he stated that he did not think the design had changed since then.

Mr. Bolger stated that the MDOT had issued a permit for the right turn in and out access and for the three-quarter access. He stated that they had submitted William Bray's traffic study which was found to be complete by the town's peer reviewer, Tom Gorrill. He stated that the applicant's traffic engineer was at the December 10, 2007 meeting but no questions were asked of him.

Mr. Vaniotis stated that the Board needed to make the determination of whether or not to go ahead with review; he stated that he thought Mr. Bolger was requesting tabling until the architectural plans were submitted. Mr. Vaniotis stated that, assuming the Board had the same concerns about traffic, they should go ahead tonight and make a decision about traffic as with the subdivision, or wait until next month. Mr. Paul asked what the next steps would be for the Board or the applicant if the Board proceeded with a discussion of traffic and it was the consensus of the Board to have the same traffic concerns.

Mr. Vaniotis stated that if the Board felt the application did not meet traffic standards, a motion could be made or the Board could express its view but not make a decision until all information was submitted. He stated that the practical issue was whether the Board dealt with traffic or the applicant did more work and came back to the Board. Mr. Paul stated that it would be prudent to have the discussion on traffic to get it out in the open to see where everyone stood. He stated that he would not want the applicant to spend the money on architectural renderings if there were problems because of traffic. Mr. Bacon noted that the submission on November 26, 2007 included architectural renderings and a landscape plan. Mr. Paul suggested hearing the item.

Mr. Jim Fisher, of Northeast Civil Solutions, stated that he would focus on the Board's questions. He stated that traffic was the only significant issue still outstanding. He stated that they were requesting full access in the beginning but the Board was not amenable, especially with southbound traffic turning left into the site. He stated that they had met with the DOT repeatedly and were allowed the three-quarter and right turn in and out accesses. He stated that they returned to the Board with that design and it was determined that turning left would be a problem even though the DOT thought it would work. He stated that they went back to the drawing board and presented a right in and right out only access for which they had the DOT permit. Mr. Fisher stated that they added a deceleration lane to pull the traffic off the highway to pull enter the site; he stated that they also showed an acceleration lane for the right turn out. He stated that the deceleration lanes were well received by the DOT. He stated that the studies and reports and permits had never changed with regard to the volume of traffic in the two and a half years they had been working on the project so he would ask the Board to realize that they had done everything they could to get the traffic into the site and had gone twice as far as required to make it safe.

Mr. Chamberlain stated that it may be subjective, but the Board saw what happened in the traffic corridors where it may work on paper but people cut across traffic all the time to turn left and there

was no turning lane in this area for safety. He stated that he was talking from practical observation. He stated that the deceleration lanes were a huge attribute but people would make U-turns or cross to turn left. He stated that he saw a lot of unnecessary turning lanes and people doing a lot of things they should not be doing; he stated that he was challenged by human nature.

Mr. Fisher stated that he understood subjective opinions, but his quandary was where to go from here. He stated that there was a statute indicating what had to be done and they had met and gone beyond those statutes, but the Board was still not comfortable. He asked what more they could do if they had met the letter of the law. He stated that it made it impossible to meet the criteria. Mr. Fisher stated that Dunkin' Donuts commissioned their own state-wide traffic study which showed a preponderance of traffic as pass-by traffic, so the stores were not traffic generators. He stated that the majority of the traffic was already on the road and they were not creating traffic.

Mr. Paul stated that it was more than that; he stated that he believed the traffic study presented to the Board, which had peer review, was a quantitative study which looked at statistics, but if one looked at the Site Plan Ordinance he would find it to be qualitative; he read Section IV. B. "Vehicle access to and from the site shall be safe and convenient, shall minimize conflict with the existing flow of traffic, and shall be from roads that have adequate capacity to accommodate the additional traffic generated by the development." He stated that that was a qualitative statement and the concerns of the Board were qualitative, though he was not disputing the quantitative findings of the engineers. He stated that the Board's concern was the fact that people do what they were not supposed to do and in this area that put a lot of people at risk. Mr. Paul stated that other locations in town may not create that same concern. He stated that the study was quantitative based on a 35 MPH speed limit and it would be safer if people actually did that speed; he stated that he continually saw vehicles going into right-out-only exits. He stated that the concern was that speed was a problem in this area and people would take U-turns and cut across lanes as well as back into Route One trying to go in the opposite direction and there was a variety of safety issues that go well beyond the quantitative study that the MDOT was approving. He stated that some common sense needed to be imposed in terms of what was safe and convenient.

Mr. Fisher stated that he agreed, but as an engineering company they needed to meet the standards and if there were no standards they did not know what to do. He noted that Mr. Bacon indicated the site would be more acceptable if there were low volume users, but there is no definition of low volume traffic. Mr. Paul stated that statutes could not be written to meet every situation so that had to be addressed; he stated that the Board needed to do its best to make the qualitative decision for which they were being asked and to uphold the ordinance. He stated that the Board had to make the best decision on each individual site.

Mr. Vaniotis stated that the ordinance was not an engineering ordinance so the standard is not an engineering standard but what Mr. Paul read above from Section IV. B.; he stated that the last phrase was answered by the engineers but the issue for the Board was a judgment call from their own knowledge and common sense for safety. Mr. Vaniotis stated that the courts had indicated that Planning Boards may apply their knowledge of the site and other case law. He stated that the Board was not bound to accept the decision of the experts on traffic safety.

Mr. Fellows stated that if the Board were compelled to go with what the experts said, there would be no need for a Planning Board and one of the reasons for the Board was that we can use our own perspective on such issues. He stated that the Board was not dismissive of the experts and valued their input which was factored into the decision making process, but the Board was not compelled to do what they said. Mr. Fellows stated that he understood the frustration but it was inherent in the process that there was turnover on the Board as well as subjective and qualitative analysis, but no one had done so in an arbitrary or capricious way. He stated that his opinion had not changed since the vote.

Mr. Maynard stated that the one comment not addressed by the experts was that people would do whatever they needed to do to get into a Dunkin' Donuts; he stated that tourist traffic had to be added in; he stated that the people problem was much larger than the traffic problem and he had a tough time with this.

Mr. Paul stated that he believed there was a consensus that traffic was a stopper and he saw real difficulties and would hate to see the applicant continue to spend money to have a project that may not fly. Mr. Paul stated that he thought it should be put to a vote to see where the Board stood. Mr. Bacon stated that, given the past decision, he worked with Mr. Vaniotis to draft findings and conclusions and the Board should go through them as part of a motion. Mr. Vaniotis stated that a simple motion to approve or deny based on traffic was satisfactory and the Board could then go through the findings and determine whether they addressed the reasoning. He stated that the draft findings had been written for denial based on the decision on the subdivision plan.

Mr. Bolger stated that he heard many comments from the Board but noted that the court indicated an applicant for a permit was entitled to know how he was to obtain approval and he had no idea how to get approval. He stated that low trip users were desirable. He stated that he had heard a lot of complaints about how people drove throughout this community and he thought it was discriminatory and unfair to single out this site. He stated that the ordinance should change but there were the existing ordinance standards and the applicant had bent over backwards to meet them for the past three years.

Mr. Bacon noted that the 2006 Comprehensive Plan called for alternative zoning and drive-through restaurants would not to be appropriate for this stretch of Route One and that zoning has been changed since November 2007 and did not allow high traffic users so the town was taking steps to address the issues along Route One. Mr. Bolger reiterated that this project had been in process for three years. Mr. Vaniotis stated that the standard in the ordinance said "...shall be safe..." and the Planning Board could make a determination whether a proposal was safe or not. He stated that this was not an engineering standard and the court said that the ordinance standard was an adequate standard so the question was whether this access was safe.

Mr. Paul moved to deny the site plan for a 5,000 square foot building to include Dunkin' Donuts, based on the issue of traffic safety at the site; Mr. Chamberlain seconded.

Voted 4-1 - to deny

To a question from Mr. Paul, Mr. Vaniotis stated that the findings of fact were a draft so the Board could make changes; he suggested putting the findings of fact on the next agenda so the Board would have time to review them and then vote to accept them. Mr. Paul stated that there was a workshop on February 11, 2008 and the Board could address them at that time.

10. Administrative Amendment Report

Mr. Chace stated that Texas Roadhouse requested an amended site plan to locate a Central Maine Power Co. transformer within a landscaped area which would eliminate one tree that would be planted elsewhere on the site. He stated that the Chairman had approved this administratively.

11. Town Planner's Report

Mr. Bacon stated that he had provided the Board with a letter on behalf of Hannaford Bros. who had purchased the Orion Center and wanted a transfer of approval on that site. He stated that their intent was to follow through on the original approval and they had until August 2008 to do so; he stated that the performance guarantee needed to be renewed in May 2008. He stated that the plan had been extended once and that was all the Ordinance allowed, so Hannaford would have to return for review and re-approval if construction was not begun by August 2008.

Mr. Bacon noted that there was a workshop tentatively planned for Tuesday, February 26, 2008 with the Town Council to consider a new Contract Zone application for an elderly housing project off Elmwood Avenue. Mr. Bacon stated that another workshop was planned for Monday, February 11, 2008 with the Town Attorney to focus on Planning Board's legal duties and rights.

12. Planning Board Comments

Mr. Paul noted that the Board often received a mailing of information at the last minute that the Board was being asked to review. He suggested that, in an effort to provide a vehicle for staff to help prevent that in the future, the Board adopt a policy that would allow applicants to submit material that was not ready for the original package because an item was tabled at the previous meeting or for answers to questions or peer review. Mr. Bacon stated that he did not want to discourage applicant from revising their plans and did want to encourage responses, but did want to discourage handouts at meetings.

Mr. Paul read the following policy regarding plan submissions subsequent to Planning Board discussion: "The Planning Board hereby establishes the policy that in order to be in a position to approve a development project, all revisions to the site plans and architectural plans requested by the Planning Board are required to be provided to the Town Planner by the Tuesday prior to the Planning Board. The Planning Board may waive this requirement for minor site plan revisions submitted in response to planning staff and peer review comments."

Mr. Vaniotis stated that anything mailed to the Board should be addressed to Mr. Bacon, with copies to the Board members. Mr. Fellows stated that this policy gave the Board a leg to stand on. Mr. Maynard stated that he wanted any mail to come from the staff and not directly from the applicant. The Board agreed.

Mr. Paul moved to adopt the above policy; Mr. Fellows seconded.

Voted 5-0

13. Adjournment

The meeting was adjourned at 11:55 P. M.

Town of Scarborough Planning Board Minutes-Special Meeting & Workshop-February 11, 2008

Members Present

Mr. Shire
Mr. Callahan
Mr. Chamberlain
Mr. Fellows
Mr. Maynard
Ms. Littlefield
Mr. Paul

Staff

Mr. Bacon, Town Planner
Mr. Chace, Assistant Town Planner
Mr. Vaniotis, Town Attorney

1. Call to Order

Mr. Paul called the meeting to order at 7:00 P. M.

2. Roll Call

Mr. Bacon called the roll; all members were present.

3. Scarborough Donuts LLC, discussion and approval of the findings and conclusions for the denial of the site plan review application for a 5,000 sq. ft. building to include a Dunkin Donuts at 560 US Route One.

Mr. Paul led the discussion on the draft findings and conclusions provide by staff and the Town Attorney. Mr. Callahan, Ms. Littlefield and Mr. Fellows all expressed that the findings and conclusions were thorough and appropriate. Mr. Paul proposed three amendments to the findings and conclusions, under findings 1 and 6 and under conclusion 1.

The Board then discussed the letter from Lambert Coffin attorneys at law dated February 11, 2008. Mr. Chamberlain asked if the applicant had explored a traffic signal or other improvements within the Route One right-of-way. Mr. Bacon replied that a traffic signal had not been mentioned by the applicant or MDOT as a potential.

Mr. Paul moved the Findings, Conclusions and Decision as amended. Mr. Fellows seconded.

Voted 5-0 in favor

The Findings, Conclusions and Decision as amended reads:

FINDINGS

1. Applicant Scarborough Donuts LLC has applied for approval under the Scarborough Site Plan Review Ordinance to develop and operate a Dunkin Donuts shop with drive-through window on property located at 560 U.S. Route One, Tax Map U35, Lot 2. The proposal is to construct a 5,000-square-foot building, with about half the building to be leased for general office space and half to be occupied by Dunkin Donuts.

2. The property which the applicant seeks to develop is currently owned by David Parker, and the applicant proposes to develop only a portion of the Parker property.
3. The portion which the applicant seeks to develop is identified as Lot 3 on a proposed three-lot subdivision plan submitted by David Parker to the Scarborough Planning Board. On December 10, 2007, the Planning Board voted to deny preliminary approval for the Parker subdivision plan on the grounds that the proposed subdivision would cause unreasonable highway congestion and unsafe conditions. See Scarborough Subdivision Ordinance Section 4.E and 30-A M.R.S.A. § 4404(5). Mr. Parker has appealed that decision to the Cumberland County Superior Court.
4. In his application for subdivision approval, Mr. Parker made it clear that the intended use of Lot 3 was for a Dunkin Donuts shop and drive-through window to be operated by Scarborough Donuts LLC, which had filed its site plan application roughly contemporaneously with the filing by Mr. Parker of the subdivision plan.
5. Materials submitted by Mr. Parker, including traffic studies and traffic analysis, all assume the use of Lot 3 by Scarborough Donuts LLC.
6. The subdivision proposed only one driveway for public access into the subdivision, located on Lot 3, which would be the access point for the Dunkin Donuts shop and drive-through window. An existing driveway would be gated and used only for private deliveries to Lot 2.
7. The property is located on the easterly side of U.S. Route One. The entrance point to the Dunkin Donuts shop and drive-through would be located on a four-lane stretch of the highway, with no median and no center turning lane, and at a point where the speed limit for southbound traffic has just been reduced from 50 miles per hour to 35 miles per hour and where northbound traffic tends to increase speed as it approaches the 50-mile-per-hour zone.
8. Early on in the subdivision review process, the Planning Board, in consultation with the traffic engineers engaged by the Town to review the project, Gorrill-Palmer Consulting Engineers, Inc., advised the applicant that the location of the proposed entrance was such that left turns into the site and left turns out of the site would be a problem.
9. Accordingly, the proposed Parker preliminary subdivision plan and the Scarborough Donuts LLC site plan were designed to discourage such left turns, with the access designed to accommodate right turns in and right turns out only.
10. In a memorandum to the Planning Board dated December 5, 2007, the Town Planner expressed reservations that the proposed entrance design would create unsafe conditions and impede the flow of traffic on Route One. The Planner commented:

Planning staff have concerns about the right-in, right-out only design to access the site and its effect on surrounding properties and intersections. The Dunkin Donuts, the existing business on lot 2 and the future use on lot 1 will draw customers and employees arriving via Route One southbound and leaving to travel Route One southbound despite these turning restrictions. With this design, motorists will either inappropriately take left turns in and out -or- will travel beyond the site to turn around at a surrounding property or intersection to travel in the needed or desired direction. This side effect has the potential to create unanticipated conflicts at other driveways, curb cuts and intersections in this area that are not easily quantified.

11. In his memo, the Planner also noted that the entrance design does not meet the standards of the Scarborough Fire Department for access to the property because it is less than 20 feet wide, and the proposed delta island in the entrance could not be mounted by emergency vehicles.
12. In addition, the Planner relayed the comments of the Public Works Department that the design of the proposed right-turn slip lane and its termination at the delta island create a hazard for plowing operations.
13. During the subdivision review, members of the Planning Board expressed concerns about sudden lane changes that could occur as motorists attempted to negotiate into or around the proposed entrance to the site, and Board members commented that traffic in the area routinely exceeded the speed limit, making sight distances at the entrance to the property questionable.
14. Members of the Planning Board also expressed the concern that attempting to limit motorists to right-turn-in and right-turn-out only would prompt motorists to make u-turns, creating a traffic hazard, particularly in light of the very heavy trip generation predicted from a Dunkin Donuts shop with a drive-through window.
15. Considering those problems with the proposed subdivision plan, the Planning Board concluded that the subdivision plan did not meet the traffic review standard of the Scarborough Subdivision Ordinance and state subdivision statute.
16. The site plan now before the Board presents exactly the same configuration for access to the property as did the preliminary subdivision plan which was denied by the Board.
17. In order to approve the site plan application, the Board must find that “[v]ehicle access to and from the site shall be safe and convenient, shall minimize conflict with the existing flow of traffic, and shall be from roads that have adequate capacity to accommodate the additional traffic generated by the development.” Scarborough Site Plan Review Ordinance, Section IV.B.

18. In considering that site plan review standard, the Board finds that the site plan of Scarborough Donuts LLC presents the same traffic flow and traffic safety problems as the preliminary subdivision plan which the Board denied and, in fact, is the primary cause of those problems.
19. The Board recognizes that the subdivision applicant attempted to address those problems through traffic engineering and that both the subdivision applicant's traffic engineer and the Town's consulting traffic engineer concluded that the proposed right-in, right-out only configuration could meet quantitative traffic engineering criteria.
20. Nevertheless, the Board finds that, from a practical, qualitative perspective, serious traffic flow and traffic safety issues remain unresolved.
21. The Board is familiar with this heavily utilized stretch of Route One and with the behavior of motorists utilizing this stretch.
22. Members of the Board have observed that southbound traffic approaching this site, having just come across the Scarborough Marsh at speeds of 50 miles per hour and greater, does not reduce speed immediately at the 35-mile-per-hour sign and typically is traveling by this site at a much higher rate than the posted speed.
23. Members of the Board have also observed that northbound traffic headed by the site is speeding up as it approaches the 50-mile-per-hour zone on the Scarborough Marsh and is typically proceeding past this site at greater than the posted speed.
24. The Board is not convinced that the right-in, right-out design will deter motorists from making illegal maneuvers to enter and exit the site.
25. The Board is concerned that southbound motorists who wish to patronize the Dunkin Donuts store will ignore signage and make a left turn in. Because of the width of Route One, such a left-turn maneuver – amounting essentially to a U-turn across Route One – will be physically possible, but extremely hazardous.
26. Similarly, the Board is concerned that motorists exiting the Dunkin Donuts site and wanting to proceed south on Route One will also ignore the right-turn only configuration and cut across oncoming traffic to make a left turn and head south.
27. In addition, southbound motorists who do obey the no-left-turn signage (whether entering or exiting the Dunkin Donuts site) will need to find other ways to reverse direction in order to patronize the site. Because this area of Scarborough is not laid out in a grid pattern of lots, motorists will not have the option of simply going around the block in order to reverse direction. Therefore, southbound motorists who wish to patronize Dunkin Donuts are most

likely to make illegal U-turns or to utilize private driveways or parking lots of other businesses to reverse direction.

28. The Board anticipates that the attempt to limit access for a high traffic volume business to northbound traffic only is likely to create dangerous confusion, as motorists trying to figure out how to get into the site slow unexpectedly or make sudden lane changes when they discover that driveway design is at odds with their expectations of being able to access the site.
29. The Planning Board also finds that the attempt to encourage right-in, right-out only has resulted in an entrance design which does not meet the requirements of the Scarborough Fire Department for a 20-foot-wide travel lane and an island which can be traversed by emergency vehicles.
30. The Planning Board further finds that the proposed design creates a hazard for plowing operations and is not acceptable to the Director of Public Works.

CONCLUSIONS

1. Based on the foregoing findings, the Board concludes that vehicular access to and from the site will not be safe and convenient and will not minimize conflict with the existing flow of traffic, but rather will create conflicts with existing flow of traffic.
2. The Board concludes that the risk of motorists ignoring the right-in, right-out limitations coupled with the risk of unpredictable maneuvers by confused motorists create a safety hazard which the Board considers unacceptable.
3. The Board therefore concludes that the site plan application does not meet the standard of Section IV.B of the Site Plan Review Ordinance that “[v]ehicle access to and from the site shall be safe and convenient” and “shall minimize conflict with the existing flow of traffic....”

DECISION

For the foregoing reasons, the site plan application of Scarborough Donuts LLC is denied.

Dated: February 11, 2008

SCARBOROUGH PLANNING BOARD

4. Workshop with the Town Attorney to focus on the Planning Board’s legal duties and rights. The Town Attorney and Board discussed this item for which no minutes were taken.
5. Adjournment The meeting adjourned at 9:20PM

Town of Bar Harbor Planning Board Minutes-November 4, 2009

**Council Chambers – Municipal Building
93 Cottage Street**

I. CALL TO ORDER — 6:00 p.m.

Members Present: Kevin Cochary, Chair; Buck Jardine, Secretary. Also present: Anne Krieg, Planning Director; Brian Madigan, Staff Planner; Lee Bragg, Town Attorney.

II. EXCUSED ABSENCES

Mr. Jardine moved to excuse Ms. Williams. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

III. ADOPTION OF THE AGENDA

Mr. Cochary stated that he would like to amend Agenda item A under Regular Business to discuss his upcoming absence.

Mr. Jardine moved to amend the Agenda and make a discussion of Kevin's upcoming absence as Item A under Regular Business. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

IV. APPROVAL OF MINUTES

October 21, 2009 Minutes

Review of the October 21, 2009 minutes was deferred to the November 18, 2009 Planning Board meeting.

V. REGULAR BUSINESS

Mr. Cochary stated he would be absent for the next two and one half months due to job related commitment which will require him to be out of the state. Ms. Krieg stated the Planning Department will look into teleconferencing or video conferencing as a means to allow Mr. Cochary to continue to participate in the meetings.

Ms. Steven-Rosa stated she felt it would be important for Mr. Cochary to continue to participate in the meetings. Mr. Jardine stated he had concerns regarding Mr. Cochary's ability to review project related information that is presented visually during meetings. Ms. Meader stated there would be no legal issues which would preclude Mr. Cochary from continuing to participate via teleconference or video provided that Mr. Cochary is able to achieve the same level of participation as if he were present. Ms. Krieg stated that the Planning Department will work on a resolution.

A. Continuation of Public Hearing – SP-09-02 – West Street Hotel Project Location:

West Street, Bar Harbor Tax Map 104, Lots 113-118, 122, 123, 143, 144, 146, 147, 149

Applicant: North South Construction Inc.

Application: Hotel and Accessory Uses

Mr. Salvatore introduced John Theriault, the traffic engineer who prepared the traffic study associated with this project. Mr. Theriault provided an overview of how he conducted the traffic study and arrived at the conclusions stated in the report. He reviewed the intersection turning counts and trips generated both under the current conditions (a no-build scenario) and with the addition of the hotel (build scenario). He stated that because the proposed hotel will replace existing businesses, the actual number of trips added as a result of the hotel is quite low. Mr. Theriault then reviewed his analysis of the intersection and turning movement counts. The level of service at all intersections would operate at Level of Service B or better even with the addition of the proposed hotel.

Mr. Theriault and Mr. Hamilton then discussed the relevant traffic review standards that apply from the Land Use Ordinance. Mr. Theriault stated that in his opinion, the project would comply with the Land Use Ordinance. He added that another positive result of the project would be the elimination of three curb cuts on West Street which would increase safety for pedestrians.

Ms. Krieg reviewed the results of the October 28, 2009 Parking and Traffic Committee meeting. She stated that at this meeting the committee amended a previous motion which recommended Rodick Street be a partial two-way street. The motion was amended to recommend that Rodick Street be kept a one-way street. Ms. Krieg stated that the traffic study should be modified to analyze a scenario where Rodick Street will remain a one-way street with the addition of the hotel. Mr. Hamilton stated that he does not believe the Planning Board is in the position to take this recommendation because Ms. Krieg made the motion at the Parking and Traffic Committee meeting. He stated that he believes that the fact Ms. Krieg made the motion presents a fundamental bias.

Ms. Krieg stated that as a professional planner, she cannot recommend making Rodick Street a partial two-way street. She added that this is not good planning practice and stated that she has many concerns with the safety of a partial two-way street. Ms. Krieg reiterated that she is trying to help the project move forward through the review process as ultimately the change in direction proposed by the applicant would need to go before the Parking and Traffic Committee. She added that if the Planning Board would like a second opinion, the Board is empowered to request a peer review of the traffic study.

Mr. Cochary and Ms. Stevens-Rosa iterated their support for Ms. Krieg and her role as Planning Director.

Mr. Hamilton reiterated concern for Ms. Krieg's duality of office in this matter.

Mr. Theriault read a verbal response to the Parking and Traffic Committee's comments he received at the October 28, 2009 meeting. Mr. Theriault stated that he would submit a written copy of his statement tomorrow.

Ms. Krieg and the Board discussed the regulatory permitting process involved with making changes to Town right-of-way and the role of the Planning Board, Parking and Traffic Committee, and Town Council.

Mr. Jardine asked Mr. Theriault to explain "peak hour" and its importance in relation to this review. Mr. Jardine asked if there is a peak hour for hotels and if that coincides with the peak hour Mr. Theriault found for this particular project. Mr. Theriault said he analyzed both peak hour with the development and peak hour for the town to present a conservative estimate.

Mr. Cochary commented that he had concerns with traffic queuing on to West Street. Mr. Salvatore stated that additional parking added at the rear of the hotel would alleviate the possibility of cars stacking on to West Street.

Mr. Cochary asked if the traffic study accounts for the arrival of a bus and the impact this would have on traffic. Mr. Salvatore stated that if a bus is checking in, then other cars checking in would have to use bypass lane. Mr. Walsh commented on the merits of the project. He stated that he feels he has done all he can do to meet the concerns of the Town.

Mr. Cochary asked the Board to comment on the need for third-party review of the traffic study. Ms. Stevens Rosa stated she is comfortable with the explanation received. Mr. Jardine agreed.

Mr. Moore provided his interpretation of the definition of a front yard, side yard, and rear yard. He stated that it is important to consider that a yard extends across a lot. He added that every part of the yard that is in front of the building should be considered as the front yard. He described his reasoning for counting the greenspace areas within the "nooks and crannies" of the façade. Ms. Meader rebutted stating that she stands behind her interpretation of the definition of a front yard.

Mr. Jardine moved to continue the project to the November 18, 2009 Planning Board meeting. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

B. Continuation of Public Hearing – SP-09-05 – Proposed Verizon Wireless Telecommunications Facility

Project Location: 854 State Highway 3, Bar Harbor Tax Map 202, Lot 061

Applicant: Verizon Wireless

Application: Construct a wireless telecommunications facility at 854 State Highway 3 (also known as the Sweet Pea Farm)

Mr. Anderson, the project representative, provided an overview of the status of the project. He noted that the applicant submitted a proposed branch layout and that they had followed up with John Kelly at the Park Service on his requests. Mr. Anderson gave an explanation of the branch diagram that was submitted to the record. He also explained the terms of the lease agreement which describes a “no cut zone” around the tower.

Mr. Anderson noted that he has worked in good faith to complete the tasks asked by the Board and Mr. Kelly. He asked that the Board make a decision on the project.

Mr. Kelly, Planner for Acadia National Park, read a statement of support for the proposed tower into the record. He added that he hopes the proposed tower design will serve as a model for the rest of Bar Harbor.

Ms. Krieg stated that she would be comfortable with granting a modification of standard with respect to the driveway width because it would be used so infrequently. Mr. Cochary asked the Planning Department to develop a category in LUO for infrequently used driveways.

Ms. Stevens-Rosa moved to allow the modification of standards requested to address the particular site characteristics. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

Mr. Anderson stated he would like the detail of the tower base to be made a condition of approval.

Ms. Krieg reviewed the ordinance provisions that apply to the proposed project from Section 125-69(T) of the Land Use Ordinance.

Mr. Jardine moved to close the public hearing. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

Ms. Stevens Rosa moved to conditionally approve the project with the modification standards already granted and provided the applicant submits performance guarantees and a monitoring plan to the Code Enforcement Officer. Mr. Jardine added a detail of the tower base also be made a condition of the motion. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

C. Continuation of Public Hearing – SD-08-04 – Vicki Hall Subdivision

Project Location: Eagle Lake Road (near the entrance of MDI High School),
Bar Harbor Tax Map 224, Lot 15

Applicant: Vicki Hall

Application: Project proposes to divide one lot into two parcels.

Mr. Cochary recused himself and exited the chambers.

Mr. Musson, the project representative, gave an explanation of the proposed project. He stated that he had spoken with the Park about their concerns on the project. Mr. Musson stated that he revised the proposed buildable area and removed a portion of the buildable area from development. Mr. Musson also presented a proposed shared driveway agreement to further maintain wetland areas.

Mr. Jardine asked what would happen if the culvert were not maintained. Mr. Musson stated the wetlands would cease to connect via the culvert. Mr. Jardine asked Mr. Musson to further explain the buildable area limitations. Mr. Musson stated that the recorded deed would reflect that the small area on the second lot that is buildable from a setback stand point, would no longer be buildable due to its proximity to the wetland.

Mr. Kelly stated the definition of a wetland and argued that without the driveway the wetlands would be connected. Ms. Krieg stated that the building envelope would be part of the Board's approval. The CEO would then have to make sure the structures are put inside those building envelopes.

Ms. Stevens-Rosa moved to close the public hearing. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion. Ms. Stevens-Rosa moved to approve the application with the revised driveway agreement added to the plan. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

D. Continuation of Completeness Review – SP-09-07 – Proposed AT&T

Mobility Wireless Telecommunications Facility

Project Location: 286 State Highway 3, Bar Harbor Tax Map 209, Lot 106

Applicant: AT&T Mobility

Application: Construct a wireless telecommunications facility at 286 State Highway 3.

Since the Applicant had not had sufficient time to prepare his proposal following the Site Visit, Mr. Jardine moved to continue the completeness review to the November 18 Planning Board meeting. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

E. OTHER BUSINESS

a. June 2010 Land Use Ordinance amendment update and discussion.

Ms. Krieg stated that she will be looking for some agenda time to review the streets ordinance in December. Mr. Madigan stated he would be reviewing the Village Residential and Village Historic Districts with the Board at their November 18, 2009 meeting.

F. PLANNING DIRECTOR'S REPORT

a. Follow up on status of joint meeting with Planning Board and Town Council for Town Hill Mini Plan.

Ms. Krieg stated that she has scheduled the joint workshop with the Council and Planning Board for December 9.

G. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

H. ADJOURNMENT

Ms. Stevens Rosa moved to adjourn the meeting. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion. The meeting was adjourned at 8:25pm.

Minutes prepared by Staff Planner Brian Madigan for Planning Board Review at their November 18, 2009 meeting

Signed as approved:

Clyde L. Jardine, Jr., Secretary
Planning Board, Town of Bar Harbor

Date

Town of Bar Harbor Planning Board Minutes-December 2, 2009 (as amended December 16, 2009)

**Council Chambers – Municipal Building
93 Cottage Street**

I. CALL TO ORDER — 6:00 p.m.

Members Present: Lynn Williams, Vice Chair; Buck Jardine, Secretary; Kay Stevens-Rosa, Member. Also present: Anne Krieg, Planning Director; Brian Madigan, Staff Planner; Lee Bragg, Town Attorney.

II. ADOPTION OF THE AGENDA

Ms. Stevens-Rosa moved to adopt the agenda. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

III. APPROVAL OF MINUTES

November 18, 2009 Minutes

Mr. Jardine moved to approve the minutes from the November 18, 2009 meeting. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

IV. REGULAR BUSINESS

A. Continuation of Public Hearing – SP-09-02 – West Street Hotel

Project Location: West Street, Bar Harbor Tax Map 104, Lots 113-118, 122, 123, 143, 144, 146, 147, 149

Applicant: North South Construction Inc.

Application: Hotel and Accessory Uses

Mr. Hamilton, the applicant's attorney, described the dwelling unit lease agreement and deed covenants. Mr. Bragg commented that the documents submitted do not yet meet all the applicable requirements of Section 125-69(R).

Ms. Krieg then reviewed the outstanding issues that need resolution prior to a decision, or will be required as conditions of approval.

Mr. Hamilton reviewed the applicant's position regarding the Town's assertion that the project review now requires subdivision review. Mr. Hamilton stated that he would object to the subdivision review process if it would add additional time to the lengthy review process the project has already been subjected to. Mr. Bragg clarified that the additional

findings required for subdivision review would not in itself add to the applicant's review time.

Ms. Stevens-Rosa provided an overview of her interpretation of the applicant's height argument. She stated that she spent time reviewing facts with respect to height and habitable space. While she did not believe the Board had any qualms with the applicant's interpretation of mean original grade, she stated that she personally has several issues with the applicant's logic with respect to the height of the building. Ms. Stevens-Rosa questioned why the applicant had changed the name of the bottom level of the hotel from first floor to basement. Mr. Salvatore responded that in reading the definition of basement, he believed the bottom floor should in fact be termed as a basement instead of a first floor. Mr. Jardine added that the building is clearly five stories, and that he would not support the applicant's assertion that the building is four stories plus a basement instead of five stories as the architectural plans indicate.

Ms. Stevens-Rosa and Mr. Hamilton debated the definition of habitable space at length. Mr. Hamilton stated that he objected to the fact that Ms. Stevens-Rosa had done research outside the Bar Harbor Land Use Ordinance and International Building Code. Ms. Stevens-Rosa reviewed the definition of "inhabit" and "habitable" as defined in the dictionary. She stated that she referred to the dictionary definition because she felt the IBC definition is silent on what a gym area might be defined as. She added that she had spoken verbally to the State Fire Marshall to gain his opinion of habitable space and she gave no reference to a specific project. She stated that the Fire Marshall indicated that he would consider gym space as habitable because people will ultimately occupy the space.

Mr. Hamilton emphatically objected to Ms. Stevens-Rosa's logic as well as the fact that she had done what he termed as "research outside of the Bar Harbor Land Use Ordinance and IBC."

Due to the escalating tension associated with the discussion between Ms. Stevens-Rosa and Mr. Hamilton, Mr. Bragg reminded the Board that they could go into deliberations to discuss these issues without interruption from the applicant, and then reopen the public hearing at a later time.

Mr. Jardine and Ms. Williams stated that they supported Ms. Stevens-Rosa actions as well as her logic. Mr. Jardine added that Board members are empowered to interpret the Ordinance as well as the Comprehensive Plan and the relationship between the two.

Mr. Moore stated that when reading the ordinance as a whole the term “dwelling unit” affirms the IBC definition of habitable space as a place where cooking and sleeping must take place.

Mr. Bragg suggested the Board deliberate on the definition of habitable space. He noted that this definition is important because it informs the calculation of space dedicated to dwelling units. Mr. Bragg added that it is fair for the Board to refer to dictionary definitions and for them to investigate the intent of the language outside of the Bar Harbor Land Use Ordinance and IBC. He added that common sense interpretation is also adequate to support the Board’s understanding of issues.

Ms. Krieg described the intent of the ordinance at the time it was drafted. She stated that the Board’s intent at the time was to provide an incentive to developers so that residential units would be added to the core business district of Bar Harbor. She added that the ordinance did not anticipate a fourth floor would be below 35 feet, or that a fifth floor would even be possible.

Mr. Bragg commented on the applicant’s floor area calculation of square footage devoted to dwelling space. He asked the Board to consider the following: If the Board concluded that the 5th floor is not habitable space, could the applicant still use the floor area of the 5th level as the basis for the square footage of dwelling space needed? Or, would they drop to the 4th level and this square footage as the basis for dwelling space area? Mr. Bragg raised the point that if the height of the fourth floor was below 35 feet, and the application sought approval for four levels that rose to a height of 43 feet, but the floor area of the fourth level was 32 or 33 feet high, the applicant’s logic would lead to a nonsensical resolution. This is because there would be no floor area above 35 feet to measure the space that should be dedicated to dwelling units. Therefore, no dwelling space would be required as is illustrated in the ordinance.

Mr. Hamilton stated that he believes the Board has not provided reasonable or definitive feedback to the applicant throughout the review process. He stated that no matter the applicant’s changes to the plan and their attempt to comply with the Board’s requests, the Board continues to find reasons to deny the project.

Ms. Krieg stated that staff would prepare draft findings for the Board to review at their next meeting. She then reviewed the list of outstanding items the applicant needs to provide, or that will be included as conditions of a decision.

Ms. Krieg stated that the applicant needs to supply an approval from DEP with respect to wastewater. She reminded the applicant that he needs to also supply an access easement

to show the abutting property owner accepts that cars will pass over his property. Furthermore, the loading zone and land swap issues should be resolved with the Leiser's as part of the decision. She stated that the Public Works Director has indicated he will not sign the Capacity Statement due to the Town's loss of right-of-way as defined by prescriptive easement on Lennox Place. She also asked the applicant to revise the traffic study to show that there will not be cars exiting Lennox Place in a build scenario. Ms. Krieg added that it is up to the Board to require the project obtain approval from the Fire Marshall.

Ms. Krieg requested a Planning Board meeting on December 16, 2009 to hear the West Street project and various zoning amendments.

Mr. Jardine moved to have special Planning Board meeting on December 16th for West Street and proposed ordinance amendments. Ms. Stevens Rosa seconded the motion and the Board voted unanimously to approve the motion.

Mr. Bearor commented that common sense needs to prevail when reviewing this application. With respect to Exhibit 9.1.7 he commented that the applicant is counting parking spaces toward queuing and toward its parking requirement and is therefore "double dipping." He stated concern that parking spaces could not be used by guests if they were also used by the valet. He encouraged the Board to review his interpretation of habitable space. Mr. Bearor also stated that the dwelling lease terms should be for more than 90 days and long term residents.

Mr. Bearor requested that the traffic report supply the truck traffic turning movements.

Mr. Jardine moved to continue the project to their December 16th special meeting. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

V. OTHER BUSINESS

Conservation Commission Work Plan Review

Ms. Weber, the chair of the Conservation Commission, gave an overview of the tasks the Commission planned to work on during this fiscal year. Ms. Weber stated that this year the Commission was focusing on solid waste reduction. She also stated that the commission would be working on the open space plan identified as midterm project in the Comp Plan. Mr. Jardine stated that he believes the minimum lot size should be increased in certain areas of town to preserve greenspace.

June 2010 Land Use Ordinance amendments

Ms. Krieg stated that she would review ordinance amendments at the December 16, 2009 meeting.

VI. PLANNING DIRECTOR'S REPORT

Request for Special Meeting December 16, 2009

A motion in favor of this meeting was made during the Board's discussion of the West Street Hotel.

VII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

There were none.

VIII. ADJOURNMENT

Mr. Jardine moved to adjourn the meeting and Ms. Stevens-Rosa seconded the motion. The Board voted unanimously to adjourn the meeting at 8:00pm.

Minutes prepared by Staff Planner Brian Madigan, and Secretary Clyde Jardine for Planning Board Review at their December 16, 2009 meeting

Signed as approved:

Clyde L. Jardine, Jr., Secretary
Planning Board, Town of Bar Harbor

Date

Town of Bar Harbor Planning Board Minutes-Special Meeting-December 16, 2009

**Council Chambers – Municipal Building
93 Cottage Street**

I. CALL TO ORDER — 4:00 p.m.

Members Present: Kevin Cochary, Chair; Lynne Williams, Vice Chair; Buck Jardine, Secretary; Kay Stevens-Rosa, Member.

Others Present: Anne Krieg, Planning Director; Lee Bragg, Town Attorney; Brian Madigan, Staff Planner.

II. ADOPTION OF THE AGENDA

Ms. Williams moved to reverse the order of Item A and Item B on the agenda. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

Ms. Williams moved to adopt the amended agenda. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

III. APPROVAL OF MINUTES

November 4, 2009 Minutes

The Board had no changes on these minutes.

December 2, 2009 Minutes

Ms. Stevens-Rosa clarified that on page two of four she in fact stated she, “Asked the Fire Marshall his opinion of habitable space, and that she gave no reference to a specific project.”

Mr. Cochary abstained from the vote but noted he had watched the DVD’s from all meetings in his absence.

Ms. Williams moved to approve the minutes from November 4, 2009 and December 2, 2009 meetings with the amendments noted above. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

IV. REGULAR BUSINESS

A. Continuation of Public Hearing – SP-09-02 – West Street Hotel

Project Location: West Street, Bar Harbor Tax Map 104, Lots 113-118, 122, 123, 143, 144, 146, 147, 149

Applicant: North South Construction Inc.

Application: Hotel and Accessory Uses

Mr. Cochary emphasized that all exchanges between the Board and the applicant need to be made through the chair.

Mr. Hamilton, the applicant's attorney, stated that he and Mr. Moore are in the process of revising plans and documents to comply with some of the outstanding items noted in the Draft Decision. In light of this, Mr. Hamilton requested that the Board review several items from the Draft Decision that they disagree with, or wish to clarify with the Board.

Starting on page two, Item C of the draft Decision, Mr. Hamilton stated he feels the proposed plan meets the height requirement of the ordinance.

Mr. Moore stated that he did not feel the greenspace credits should be removed from the site plan. Ms. Krieg clarified that the Board never offered a formal opinion on these credits. She also stated that in order to settle the greenspace credit issue, the Board would need to return to the definition of a front lot line.

Mr. Moore stated that he does not agree with Item E, Parking areas and driveways, but will revise the site plan to comply with this requirement.

Mr. Salvatore stated that he is working with abutting landowner Rick Leiser to resolve the outstanding property issues.

Mr. Theriault, the applicant's traffic engineer, noted several corrections to the previously revised traffic study. Mr. Theriault responded to item C page 7 of the Draft Decision. He stated that he performed an updated analysis for the build scenario and determined that the Level of Service (LOS) for West Street and Lennox Street would continue to perform as A. He also noted that Rodick Street would perform at LOS A. Only the intersection of Rodick and West Street would operate at LOS C, which is still an acceptable LOS under the Land Use Ordinance. Mr. Theriault submitted a revised report detailing these results.

The applicant requested planning staff clarify its basis for finding that Lennox Place has the potential to create queuing issues on West Street. Mr. Hamilton noted there is no evidence from the traffic study to support this finding.

Regarding Finding Q, Mr. Salvatore and Mr. Moore stated that they felt that washing streets once a day was an excessive and unnecessary requirement.

Mr. Hamilton requested that staff relay a copy of the Downtown Master Plan and Comprehensive Plan references used to support Finding FF. He also stated that he feels the court's ruling in the "Nestle Waters Case" would not support this finding.

Mr. Hamilton also requested the Board provide a clear ruling of its understanding of the definition of habitable space.

Mr. Hamilton and Mr. Moore stated that they disagree with Finding MM. Both stated that they do not feel this finding was applied appropriately because it is intended to apply to more rural areas. Ms. Krieg stated that if the Board does not agree they can make that finding. Ms. Stevens-Rosa stated that she felt the shadow created by the addition of the building could be grounds to support the finding. Mr. Cochary stated that he did not find a strong connection.

Mr. Hamilton and Mr. Salvatore took issue with Item 3B under Additional Considerations. Mr. Hamilton stated that he did not feel it was appropriate for the Planning Board to micromanage the project at this level. He added that the Code Enforcement officer should be the responsible party in making this determination.

Mr. Salvatore stated that Additional Finding 2B is incorrect and that there is adequate space between the pool and fourth level. Mr. Salvatore added that the elevator to the roof labeled as a penthouse is not a mistake.

Ms. Krieg clarified that Mr. Reeves, the Public Works Director, has not signed the capacity statement because of reduction in right of way width on Lennox Place.

Ms. Krieg clarified that the applicant will need to go to Council after a decision is rendered by the Planning Board to gain Council approval of the changes proposed to the right's-of-way. She stated that if the Council rejects the road alignments proposed, the project would have to come back to the Planning Board.

Mr. Bearor stated that at some point the applicant needs to present a plan that the Planning Board can act on.

Ms. Rasmussen, an abutter to the proposed project, stated that she feels the Board and applicant accomplished a great deal at the last two meetings. She stated that she had reviewed the draft decision and was concerned with Finding FF because it is difficult to plan a project when it is not always clear if it complies with the intent of a previously adopted plan.

Ms. Williams moved to continue the public hearing to the January 6, 2010 meeting. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

B. Completeness Review – SD-09-01 – Robert R. Rechholtz

Project Location: 25 White Spruce Road, Tax Map 110 Lot 038

Applicant: Robert R. Rechholtz

Application: Subdivision

Mr. Cochary reviewed the application.

Ms. Stevens Rosa moved to find application complete and schedule public hearing on January 6, 2010. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

V. OTHER BUSINESS

A. June 2010 Land Use Ordinance amendments

The Board had no comments on this item. However, Ms. Krieg reminded the Board that they will be holding a Public Workshop on January 6, 2010 to discuss various Land Use Ordinances for the June Town Meeting.

B. Town Hill Mini-Plan discussion

Ms. Krieg stated that the Council decided to keep the maximum footprint square footage at 15,000 square feet with the stipulation that buildings with a footprint above 15,000 square feet be required to submit to a commercial PUD permitting process. The Council recommended that the PUD process include requirements for monument signage, LEED Certification, good neighbor planning, and include uses that Town wants to see out in this area such as arts and recreation.

The Board requested Ms. Krieg outline the scope of a wastewater feasibility study. The Board suggested this study consider the current water quality issues that face Town Hill, and what problems greater density might create.

Several members of the public presented their concerns with the Council's recommendations. Their concerns focused around maximum building square footage and footprint.

Ms. Williams moved to ask Town Council to reconsider its vote in recognition that the Planning Board had understood its motion was to regulate a commercial PUD for total square footage of 15,000 square feet, and not just for footprint size. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

C. Scheduling Meetings for 2010

Ms. Krieg noted that under the presented schedule, the Board will not hold a second meeting in February and April.

Mr. Jardine moved to approve the meeting schedule presented. Ms. Williams seconded the motion and the Board voted unanimously to approve the motion.

VI. PLANNING DIRECTOR'S REPORT

Ms. Krieg had no comments.

VII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

There were none.

VIII. ADJOURNMENT

Ms. Williams moved to adjourn the meeting. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion. The meeting was adjourned at 6:38pm.

Minutes prepared by Staff Planner Brian Madigan, and reviewed by Secretary Jardine, for Planning Board Review at their January 6, 2010 meeting

Signed as approved:

Clyde L. Jardine, Jr., Secretary
Planning Board, Town of Bar Harbor

Date

Town of Turner Planning Board Site Plan Review Decision-March 10, 2010

**11 Turner Center Road
Turner, Maine 04282**

* **Findings of Fact**
* **&**
* **Conclusion of Law**

* **Hannaford Bros. Co.**
* **Hannaford Supermarket &**
* **Pharmacy**

Project Overview

The applicant proposed to construct a 36,000 square foot supermarket and pharmacy in Turner, Maine. The project site is approximately 7.8 acres in size and comprised of Lots 21, 26 and 27 as depicted on Tax Map 40. Approximately 5.6 acres of the project site will be altered for structures, access, parking, stormwater systems, subsurface wastewater disposal and landscaping. The project site is currently comprised of undeveloped forest land, pasture, two residential structures with associated lawns and a barn. Existing structures on the site will be removed to allow for development.

Access to the development will be via the Snell Hill Road which is a paved town road. There will be a primary entrance/exit located approximately 210' west of the Route 4/Snell Hill Road intersection and a pharmacy drive up window and delivery entrance approximately 420' west of the Route 4/Snell Hill Road intersection. The project is forecast to generate 107 trip ends in the AM peak hour, 416 trip ends in the PM peak hour and 456 trip ends during the Saturday peak hour.

The proposed building would be 220' x 160' with a flat roof except on the east elevation. The maximum height of the building would be 24' at the entrance area and 21' all other sides. The east and portions of the south roof lines will have pitched roofs. The pitch of the two main roof slopes (covered walkway and entry) would be 14/12 and the front gables roof pitches would be 6/12. Gable elements have been designed into the colonnade. There will be pitched roof over the drive through pharmacy window. Werzalit clapboards will be used on all sides of the building with bricks on a portion of the east elevation. The horizontal siding will be painted Sherwin Williams Downing Straw, trim and columns will be painted Sherwin Williams Roycroft Suede, exterior exit doors will be painted Sherwin Williams Downing Straw, window frames to be medium bronze, entrance door brushed aluminum, brick wainscot Morin Brick-Hannaford Smooth (red) and pitched roofs are to be covered by asphalt Certainteed Woodscape Shingles/Driftwood.

***Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law***

Off-site improvements associated with the development include the installation of a traffic signal at the intersection of Route 4 and Snell Hill Road, a south bound turning lane on Route 4 to the Snell Hill Road, a turning lane on Snell Hill Road onto Route 4 south and Snell Hill Road improvements.

The Planning Board received a sketch plan on May 13, 2009 and conducted an onsite inspection on May 27, 2009. On July 8, 2009 the Planning Board received the Site Plan Review Application. Public hearings were conducted on July 9, 2009 and October 7, 2009, and the Planning Board continued to receive both written and oral public comment at subsequent meetings. On August 18, 2009 the applicant signed an Agreement to Extend the Site Plan Review Period to October 14, 2009. The Planning Board voted to find the Site Plan Review application complete on October 14, 2009. The applicant verbally agreed to extend the site plan review period beyond the October 14, 2009 time period on October 14, 2009.

On February 10, 2010 the Planning Board completed its preliminary review of the standards contained in Section 5.E and F. of the Town of Turner, Maine Zoning Ordinance.

On March 10, 2010 the Planning Board considered the standards contained in Section VII of the Town of Turner, Maine Street Construction Ordinance. On that same date the planning Board voted to approve the Site Plan Review application with conditions.

Findings and Conclusions

General Review Standards/Section 5.E Town of Turner Zoning Ordinance

Standard

1. Preservation of Landscape. The landscape will be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas. If the site contains a scenic site and/or view as identified in the Town of Turner Comprehensive Plan, special attempts should be made to preserve the natural environment of the skyline and view.

Environmentally sensitive areas which include wetlands, significant wildlife habitat, areas of two or more contiguous acres with sustained slopes greater than 20 percent, unique natural features and archaeological sites as identified in the Town of Turner Comprehensive Plan shall be conserved to the maximum extent.

The Board shall assess the proposed activities impact upon scenic areas and views as identified in the Town of Turner Comprehensive Plan. Where the Board finds that the proposed activity would have an undue adverse effect on identified scenic views, the Board shall require the applicant to minimize such effects.

Findings/Minimizing Tree and Soil Removal, Retaining Existing Vegetation and Grade Changes

The project site is approximately 7.8 acres in size. The site is currently comprised of undeveloped forest land, pasture, two residential structures with associated lawns and a barn. At the present time the site contains approximately 0.2 acres of impervious surface, 3.0 acres of lawn/pasture and 4.6 acres of woodland. Existing structures on the site will be removed to allow for site development. The applicant proposes to utilize 5.6 acres of the overall site for project development. This would include approximately 3.2 acres of impervious area for the buildings, parking and in internal site movement and 2.4 acres of lawn and stormwater systems. Approximately 2.7 acres of forest land would be removed to provide for site development. Portions of the site located within 250 feet, horizontal distance, of the Nezinscot River within the Resource Protection District are proposed to be preserved.

The project site will require filling to prepare it for development. The amount of fill ranges from 2' to 5' in the location of the building and from 5' to 8' in the parking lot area.

Conclusion

Based on the above information and information in the record the Planning Board finds that the landscape will be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, retaining existing vegetation where desirable, and keeping any grade changes in character with the general appearance of neighboring areas.

Vote: Yes 6 No 0 Abstain 0

Findings/Wetlands

The applicant proposes to fill approximately 27,700 square feet of forested wetlands. The filled area is to be used for parking and access drives. The filled area of wetlands represents approximately 27% of the new impervious surface area needed for access and parking.

The applicant engaged Stantec Consulting (Stantec) to delineate wetlands and conduct vernal pool surveys. Wetlands were determined using the technical criteria established by the Army Corps of Engineers and the Maine Department of Environmental Protection. The applicant

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

submitted, as supplemental information, the NRPA Permit-By-Rule Application and NRPA Tier 2 Wetland Permit Application dated July 2009, including an Alternatives Analysis describing the applicant's efforts to avoid and minimize wetland impacts on the site. Stantec described the wetlands to be filled as a palustrine forested wetland with well-developed shrub and herbaceous layers.

The applicant provided information that the Maine Department of Inland Fisheries and Wildlife and the Maine Department of Environmental Protection determined that wetlands to be filled did not meet the criteria to be designated as Wetlands of Special Significance.

In the NRPA Tier 2 Wetland Permit application the applicant initially proposed to compensate wetland filling by paying \$95,348.00 to the Maine Department of Environmental Protection under the Department of Environmental Protection's In Lieu Fee Compensation Program. The money paid to the Department of Environmental Protection would be used in some other location for wetland mitigation.

In supplemental information dated September 23, 2009 the applicant proposed as an alternative to the in lieu fee to secure the rights to purchase and preserve a 20-acre parcel in Buckfield adjacent to Jersey Bog and conserve approximately 0.5 acres of land on the project site through deed restrictions prohibiting future development. The Buckfield parcel would be transferred to the Androscoggin Land Trust. This proposal will replace the compensation plan filed with the original application and the NRPA Tier two Wetland Permit application. The 0.5 acres proposed to be conserved on the project site is currently zoned Resource Protection.

At the October 7, 2009 public hearing the applicant was asked to consider the impact to the wetland area that lies north of the proposed parking lot and east of the stormwater pond's outlet control structure. Comments question whether this wetland area could be affected by a reduction of water to maintain wetland characteristics.

In supplemental information dated October 14, 2009 the applicant provided additional information on the potential impact on this portion of the wetland. In that information Stantec reported that the wetland is primarily groundwater fed and impacts to up gradient wetland area should not significantly affect the hydrology of the wetland.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To permit development and other land use activities only upon or in soils which are suited for such use, unless technological advances remove the possibility of any environmental harm and such activities which are permissible under the Department of Environmental Protection criteria.

To conserve the integrity of wetlands so that their overall benefits and values are maintained.

To maintain wildlife travel corridors, along streams, rivers, ponds and wetlands.

Conclusion

Based on the above information and information in the record the Planning Board finds that wetlands will be conserved to the maximum extent.

Vote : Yes 6 No 0 Abstain 0

Findings/Significant Wildlife Habitat

Based on the material submitted by the applicant, four vernal pools were identified and mapped that are located in the area to be disturbed by the project. These vernal pools were identified and assessed by Stantec to determine if they met the criteria for designation as significant vernal pools. Significant vernal pools are considered significant wildlife habitat. Stantec reported that three of the vernal pools were man-made and one was a natural pool. Using the criteria included in the Natural Resource Protection Act for determining if a vernal pool is a significant vernal pool, Stantec reported none of the four pools met that criteria.

The Maine Department of Inland Fisheries and Wildlife has identified high/moderate waterfowl and wading bird habitat within 250', horizontal distance, of the Nezinscot River. This is considered to be significant wildlife habitat. Land owned by the applicant includes areas within 250', horizontal distance, of the Nezinscot River. The portion of the applicant's property within 250', horizontal distance, from the River is designated Resource Protection under the Town of Turner Zoning Ordinance, and is proposed by the applicant to be preserved.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To maintain wildlife resources through habitat conservation and/or enhancement.

To maintain wildlife travel corridors, along streams, rivers, ponds and wetlands.

Conclusion

Based on the above information and information in the record the Planning Board finds that the area of site development does not contain significant wildlife habitat.

Vote: Yes 6 No 0 Abstain 0

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Findings/Unique natural features and archaeological sites

The review of the Town of Turner Comprehensive plan resulted in no identification of unique natural features or archaeological sites within the project area.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To assure that before archaeological sites/areas are disturbed their values are fully assessed and preserved where appropriate.

Conclusion

Based on the above information and information in the record the Planning Board finds that this criteria is not applicable.

Vote: Yes 6 No 0 Abstain 0

Findings/Sustained slopes greater than 20 percent.

Based on the review of site plans provided as part of the application there are no areas of two or more contiguous acres with sustained slopes greater than 20 percent.

Conclusion

Based on the above information and information in the record the Planning Board finds that this criteria is not applicable.

Vote: Yes 6 No 0 Abstain 0

Findings/Scenic Views

Based on the initial review of the Town of Tuner Comprehensive Plan as adopted on April 8, 2006 the proposed project site was determined to be not located in a scenic view location.

In a letter dated September 30, 2009 and testimony received at the October 7, 2009 public hearing the Turner Village Preservation Committee questioned if the project site is in fact located in a scenic view location.

Based on the reexamination of the Scenic Areas Map as contained in the Turner Comprehensive Plan the project site is within a scenic view area. Based on a preliminary visual

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

inspection by John Maloney on September 24, 2009 the proposed structure would not be visible from Lower Street from the scenic view area.

In supplemental information dated October 14, 2009 the applicant provided information that the proposed project would not impact the scenic view.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To recognize identified scenic views as a significant natural resource.

To minimize the loss of the values of significant scenic areas and sites by encroaching development.

Conclusion

Based on the above information and information in the record the Planning Board finds that the proposed activity would not have an undue adverse effect on identified scenic views

Vote: Yes 6 No 0 Abstain 0

Standard

2. Relation of Proposed Buildings to Environment. Proposed structures should be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed structures so as to have a minimally adverse effect on the environmental and aesthetic qualities of the developed and neighboring areas. The Planning Board shall consider the following criteria.

Criteria

Architectural style is not restricted. Evaluation of the appearance of a project should be based on the quality of its design and relationship to surroundings.

Findings

The applicant proposes to construct a 36,000 square foot building to house a supermarket and pharmacy drive-through. The proposed building was initially proposed to be 220' x 160' with a flat roof. The maximum height of the building would be 29' at the peak of the vestibule roof on the east elevation. The east elevation that faces Route 4 will be 220' wide and have an 80' x 15' vestibule. The vestibule will contain entrance doors and four windows. The remainder of the

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

east elevation will have one window and a door. The vestibule will have a gable roof. The south elevation visible from both Route 4 and the Snell Hill Road will be 160' wide and contain the pharmacy drive-up window and door. The west elevation will contain service entrances and the north elevation will have a door.

In supplemental information dated December 21, 2009 the applicant proposed changes to the exterior design of the building. The changes included a redesign of the east and south roof lines similar to a pitched roof. The pitch of the two main roof slopes (covered walkway and entry would be 14/12 and the front gables roof pitches would be 6/12. Gable elements have been designed into the colonnade. A pitched roof has been added over the drive through pharmacy window. As described above, the revised design includes horizontal clapboards on all sides of the building, with bricks on a portion of the east elevation, and a historic color palette. Pitched roofs are to be covered by asphalt shingles.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That the architectural design of new commercial development and characteristics of advertising features including signs are compatible with the community and surrounding area.

Conclusion

Based on the above information and information in the record including that the applicant revised the exterior design of the structure in response to the Planning Board's requests to minimize the visual impression of a "Big Box Store" the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Criteria

Buildings should have good scale and be in harmonious conformance with permanent neighboring development.

Findings

The applicant proposes to construct a 36,000 square foot building to house a supermarket and pharmacy drive-through. The proposed building was initially proposed to be 220' x 160' with a flat roof. The maximum height of the building would be 29' at the peak of the vestibule roof on the east elevation. Buildings in the vicinity of the proposed site on the Snell Hill Road west of

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Route 4 include: a 40' x 28' raised ranch structure currently used as an insurance office and six residential structures approximately 40' x 28' with typical residential accessory structures. Buildings in the vicinity of the proposed site on the east side of Route 4 include the following. B & A Variety is a 70' x 50' one and one half story structure with gas pumps. This building is used as a convenience store. It has a gable roof with asphalt shingles and is sided with residential style clapboards. Village Crossing, a commercial structure, is an L-shaped single story structure 60' x 54' at the widest points with a total floor area of 3,300 square feet. The exterior is covered by shingle/clapboard type siding earth tone in color. The structure has gable type roof with a 6/12 pitch covered with asphalt architect series shingles. The Village Farm is a single story gable roof structure with residential type siding 50' x 30' in size with accessory structures. RJB & Son includes a single family home and structures for automobile repair and sales. Structures have gable and gambrel roofs and siding is of residential character.

In supplemental information dated December 21, 2009 the applicant proposed changes to the exterior design of the building. The changes included a redesign of the east and south roof lines similar to a pitched roof. The pitch of the two main roof slopes (covered walkway and entry) would be 14/12 and the front gables roof pitches would be 6/12. Gable elements have been designed into the colonnade. A pitched roof has been added over the drive through pharmacy window. As described above, the revised design includes horizontal clapboards on all sides of the building, with bricks on a portion of the east elevation, and a historic color palette. Pitched roofs are to be covered by asphalt shingles.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That the architectural design of new commercial development and characteristics of advertising features including signs are compatible with the community and surrounding area.

Conclusion

Based on the above information and information in the record including that this standard does not establish a size standard, that the applicant attempted to create harmony by use of exterior siding, colors and roof design and that the character of the area will not be destroyed the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Criteria

Materials should have good architectural character and shall be selected for harmony of the building with adjoining buildings.

Findings

Primary materials on the east and south elevations, those elevations primarily visible from public roads, were initially proposed to include horizontal composite siding with 8" exposure and ivorene in color, vertical composite siding with 6" exposure and bone white in color and concrete masonry medium mortar pigment. The vestibule roof will be standing seam metal roofing and mushroom cap color. The west and north elevations will be covered with vertical concrete panels.

In supplemental information dated September 23, 2009 the applicant proposed to cover all sides of the structure with composite clapboard siding.

In supplemental information dated December 21, 2009 the applicant proposed changes to the exterior materials of the building. Werzalit clapboards will be used on all sides of the building with bricks on a portion of the east elevation. The horizontal siding will be painted Sherwin Williams Downing Straw, trim and columns will be painted Sherwin Williams Roycroft Suede, exterior exit doors will be painted Sherwin Williams Downing Straw, window frames to be medium bronze, entrance door brushed aluminum, brick wainscot Morin Brick-Hannaford Smooth (red) and pitched roofs are to be covered by asphalt Certainteed Woodscape Shingles/Driftwood.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That the architectural design of new commercial development and characteristics of advertising features including signs are compatible with the community and surrounding area.

Conclusion

Based on the above information and information in the record including that the applicant attempted to create harmony by use of exterior siding and colors and roof design the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Criteria

Materials should be selected for suitability to the type of buildings and the design in which they are used. Buildings shall have the same materials, or those that are architecturally harmonious, used for all building walls and other exterior building components wholly or partly visible from public ways.

Findings

Primary materials on the east and south elevations, those elevations primarily visible from public roads, were initially proposed to include horizontal composite siding with 8" exposure and ivorene in color, vertical composite siding with 6" exposure and bone white in color and concrete masonry medium mortar pigment. The vestibule roof will be standing seam metal roofing and mushroom cap color. The west and north elevations will be covered with vertical concrete panels. The water supply building will utilize the same siding and colors as the supermarket building.

In supplemental information dated September 23, 2009 the applicant proposed to cover all sides of the structure with composite clapboard siding.

In supplemental information dated December 21, 2009 the applicant proposed changes to the exterior materials of the building. Werzalit clapboards will be used on all sides of the building with bricks on a portion of the east elevation. The horizontal siding will be painted Sherwin Williams Downing Straw, trim and columns will be painted Sherwin Williams Roycroft Suede, exterior exit doors will be painted Sherwin Williams Downing Straw, window frames to be medium bronze, entrance door brushed aluminum, brick wainscot Morin Brick-Hannaford Smooth (red) and pitched roofs are to be covered by asphalt Certainteed Woodscape Shingles/Driftwood.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That the architectural design of new commercial development and characteristics of advertising features including signs are compatible with the community and surrounding area.

Conclusion

Based on the above information and information in the record including use of same materials on all wall elevations and extensive use of landscaping the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Criteria

Materials should be of durable quality.

Findings

The applicant provided information on exterior building components. No specific specifications for those components were submitted.

At the October 7, 2009 public hearing the applicant provided the Planning Board with samples of the materials proposed for exterior finishes.

In supplemental information dated December 21, 2009 the applicant proposed changes to the exterior materials of the building. Werzalit clapboards will be used on all sides of the building with bricks on a portion of the east elevation. The horizontal siding will be painted Sherwin Williams Downing Straw, trim and columns will be painted Sherwin Williams Roycroft Suede, exterior exit doors will be painted Sherwin Williams Downing Straw, window frames to be medium bronze, entrance door brushed aluminum, brick wainscot Morin Brick-Hannaford Smooth (red) and pitched roofs are to be covered by asphalt Certainteed Woodscape Shingles/Driftwood.

Conclusion

Based on the above information and information in the record the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Criteria

Building components, such as windows, doors and eaves, should have good proportions and relationships to one another.

Findings

The five windows on the east elevation are of the same size, design and proportions. Metal doors and frames are similar.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

In supplemental information dated December 21, 2009 the applicant proposed changes to the exterior building design. The five window systems on the east elevation are located under dormers. Window frames to be medium bronze in color. Exterior exit doors will be painted Sherwin Williams Downing Straw.

Conclusion

Based on the above information and information in the record the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Criteria

Colors should be harmonious and shall use compatible accents.

Findings

The applicant provided an exterior materials finish schedule for the east elevation of the building. Primary colors for that elevation were initially proposed to include ivorene, bone white and mushroom cap.

In supplemental information dated December 21, 2009 the applicant proposed changes to the exterior materials of the building. Werzalit clapboards will be used on all sides of the building with bricks on a portion of the east elevation. The horizontal siding will be painted Sherwin Williams Downing Straw, trim and columns will be painted Sherwin Williams Roycroft Suede, exterior exit doors will be painted Sherwin Williams Downing Straw, window frames to be medium bronze, entrance door brushed aluminum, brick wainscot Morin Brick-Hannaford Smooth (red) and pitched roofs are to be covered by asphalt Certainteed Woodscape Shingles/Driftwood.

Conclusion

Based on the above information and information in the record the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Criteria

Mechanical equipment or other utility hardware on roof, ground or buildings shall be screened from public view with materials harmonious with the building, or they shall be located so visibility from any public way is minimized.

Findings

Mechanical equipment to be located on the roof of the supermarket building includes exhaust fans, condensing units and fluid coolers. At the rear of the supermarket building will be located a trash compactor, LP gas tanks, and standby generator. The applicant initially proposed to erect a 10' high solid wooden fence along the entire westerly side of it property. This fence will screen the site from the residential properties located along Jordan Lane. The applicant proposes to erect an 8' high wood fence at its southwest property line for approximately 30' easterly along Snell Hill Road. Exposed machinery installations, service areas, truck loading areas, utility buildings setback range from 100' to 190' from the centerline of the Snell Hill Road. Sheet C-5.0 of the application indicates the proposed plantings that include three balsam fir tree 6'-7' in height and three red sunset red maple 2.5"-3" in cal. along the Snell Hill Road side of the property in the area of exposed machinery installations, service areas, truck loading areas, utility buildings. There is proposed a berm along the Snell Hill Road that is approximately three feet higher than the final grade of the area where exposed machinery installations, service areas, truck loading areas, utility buildings will be located. The applicant did not provide information as to the visibility of roof mounted mechanical equipment from public ways.

In supplemental information dated September 23, 2009 the applicant revised screening of the truck loading and utility areas from the Snell Hill Road. The revised landscape plan includes staggered rows of evergreen trees 6' to 7' feet in height and Red Maples. There will be a 6' high solid wooden fence around the above ground LP tanks. The applicant stated roof top screening would be provided to screen fluid coolers at the rear of the building. The screening panels would be the same color as the siding on the building. In supplemental information dated December 21, 2009 and February 10, 2010 the applicant revised the buffering plan on the westerly and northerly portions of the project site. Rather than a 10' high solid wood fence along Jordan Lane the applicant proposed an 8' wooden fence on a 2' berm along Jordan Lane and along the property line north of the stormwater retention pond. Within the area in front of the fence area white cedar, hemlock, white pine and spruce trees ranging in height from 5' to 7' would be planted to screen the wooden fence.

In supplemental information dated December 21, 2009 the applicant revised the plans to add a building screen to the left corner of the structure to provide further screening of the vendor

receiving area and the location of the transformer and generator was moved adjacent to the water supply building.

Condition(s)

Exposed machinery installations, truck loading areas, utility buildings and structures, and similar accessory structures shall be screened as to prevent them from being incompatible with the existing or contemplated environment and the surrounding properties in all seasons of the year.

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Criteria

Exterior lighting shall be part of the architectural concept. Fixtures, standards and all exposed accessories shall be harmonious with building design.

Findings

The applicant proposes to install both pole-mounted and building-mounted lighting fixtures. All fixtures will be of full cutoff design. The parking area will be illuminated with five back-back 400-watt high pressure sodium fixtures placed on 30' tall poles. The primary entrance, the pharmacy entrance and southwest portion of the site will be illuminated with single 250-watt high pressure sodium fixtures placed on 20' tall poles. The exterior of the structure will have nine wall mounted 70-watt high pressure sodium fixtures placed at 18' above the finished grade. The truck loading area will have one wall mounted 250-watt high pressure sodium fixtures placed 18' above the finished grade.

The applicant indicated that pole mounted lights except at the primary entrance will be turned off one hour after store closing.

The applicant provided a Site Lighting Photometric Plan dated June 18, 2009 prepared by Hubbell Lighting, Inc. That Plan indicates foot-candles produced by the proposed lighting on and adjacent to the project site. That Plan indicates no new foot-candles on adjacent residential properties.

In supplemental information dated January 11, 2010 that applicant indicated that recessed light cans with 100-watt high pressure sodium light fixtures at 20' intervals would be located beneath the front canopy to provide downward illumination of the side walk.

Conclusion

Based on the above information and information in the record the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Criteria

Refuse and waste removal areas, service yards, storage yards, and exterior work areas shall be screened from view from public ways, using materials as stated in criteria for equipment screening.

Findings

The applicant initially proposed to erect a 10' high solid wooden fence along the entire westerly side of it property. This fence will screen the site from the residential properties located along Jordan Lane. The applicant proposes to erect an 8' high wood fence at its southwest property line for approximately 30' easterly along Snell Hill Road. Exposed machinery installations, service areas, truck loading areas, utility buildings setbacks range from 100' to 190' from the centerline of the Snell Hill Road. Sheet C-5.0 of the application indicates proposed plantings that include three balsam fir tree 6'-7' in height and three red sunset red maple 2.5"-3" in caliper along the Snell Hill Road side of the property in the area of exposed machinery installations, service areas, truck loading areas, utility buildings. There is proposed a berm along the Snell Hill Road that is approximately 3' higher than the final grade of the area where exposed machinery installations, service areas, truck loading areas, utility buildings will be located.

In supplemental information dated September 23, 2009 the applicant revised screening of the truck loading and utility areas from the Snell Hill Road. The revised landscape plan includes staggered rows of evergreen trees 6' to 7' feet in height and Red Maples. There will be a 6' high solid wooden fence around the above ground LP tanks. The applicant stated roof top screening would be provided to screen fluid coolers at the rear of the building. The screening panels would be the same color as the siding on the building.

In supplemental information dated December 21, 2009 and February 10, 2010 the applicant revised the buffering plan on the westerly and northerly portions of the project site. Rather

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

than a 10' high solid wood fence along Jordan Lane the applicant proposed an 8' wooden fence on a 2' berm along Jordan Lane and along the property line north of the stormwater retention pond. Within the area in front of the fence area white cedar, hemlock, white pine and spruce trees ranging in height from 5' to 7' would be planted to screen the wooden fence.

In supplemental information dated December 21, 2009 the applicant revised the plans to add a building screen to the left corner of the structure to provide further screening of the vendor receiving area and the location of the transformer and generator was moved adjacent to the water supply building.

Conclusion

Based on the above information and information in the record the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Criteria

Monotony of design in single or multiple building projects shall be avoided. Variation of detail, form and siting shall be used to provide visual interest. In multiple building projects, viable siting or individual buildings may be used to prevent a monotonous appearance.

Findings

The applicant initially proposed an 80' x 15' vestibule on the east elevation of the building. The three remaining elevations will be similar except the west and north elevations will have vertical concrete panel siding.

In supplemental information dated December 21, 2009 the applicant proposed changes to the exterior design of the building. The changes included a redesign of the east and south roof lines similar to a pitched roof. The pitch of the two main roof slopes (covered walkway and entry would be 14/12 and the front gables roof pitches would be 6/12. Gable elements have been designed into the colonnade. A pitched roof has been added over the drive through pharmacy window.

Conclusion

Based on the above information and information in the record including that the applicant redesigned the exterior of the building to break up design monotony and provide landscaping, the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Overall Conclusion:

Based on the above information and information in the record the Planning Board finds that proposed structures will be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed structures so as to have a minimally adverse affect on the environmental and aesthetic qualities of the developed and neighboring areas.

Vote: Yes 6 No 0 Abstain 0

Standard [those applicable]

3. Vehicular Access: The proposed development shall provide safe vehicular access to and from public and private streets. When conflicts exist between this section and a Driveway Permit or Entrance Permit onto Route 4 issued by the Maine Department of Transportation, the most stringent or restrictive shall apply.

Overview

The applicant proposes to construct a 36,000 square foot building to house a supermarket and pharmacy drive-through on a site located at the corner of Route 4 and the Snell Hill Road. The project is forecast to generate 107 trip ends in the AM peak hour, 416 trip ends in the peak PM hour and 456 trip ends during the Saturday peak hour. The applicant first proposed three points of access to the site. These were a right-in and a right-out from Route 4 approximately 260' north of the Route 4/Snell Hill Road intersection, a 27' wide entrance and exit approximately 210' west of the Route 4/Snell Hill Road intersection and a 50' wide entrance and exit approximately 420' west of the Route 4/Snell Hill Road intersection. As the result of action by the Maine Department of Transportation associated with the issuance of the Traffic Movement Permit and the Turner Planning Board not granting a waiver to Section 5.E.3.g of the Town of Turner Zoning Ordinance the right-in and right-out access from Route 4 was eliminated from the proposal. The other two access points remain the same.

The applicant retained Gorrill-Palmer Consulting Engineers, Inc to prepare a Traffic Impact Study. That analysis considered among others trip generation, trip distribution, trip composition, trip assignment, study area (Route 4 at Snell Hill Road, Route 4 at Route 117 and Main Street at Route 117), capacity analysis, queuing analysis, traffic signal warrant analysis, crash data, sight line analysis.

Based on the results of the Traffic Impact Study the applicant proposed to install a fully actuated traffic signal at the Route 4/Snell Hill Road intersection, construct a separate right-turn lane for south bound traffic on Route 4 at the intersection with Snell Hill Road, construct a dedicated left turn lane on Snell Hill Road eastbound at the Route 4 intersection, improvement to the Snell Hill Road for access to the project site and signage.

Due to the traffic volumes associated with the project a Traffic Movement Permit issued by the Maine DOT is required. On August 11, 2009 the Maine DOT issued that Permit and on August 25, 2009 a revised Permit was issued that eliminated Route 4 access. The Maine DOT permit required off-site mitigation measures including fully actuated traffic signal at the Route 4/Snell Hill Road intersection, the construction a 170' southbound right turn lane on Route 4, provide a dedicated right turn lane on the eastbound approach of the intersection, provide a through/left turn lane for the eastbound approach of the intersection and pay an impact fee of \$35,000 toward a future improvement of the Route 4 and 117 intersection.

The Turner Village Preservation Committee provided for the record a report prepared by William Bray, P.E. that addressed traffic issues related to the project.

In supplemental information dated September 23, 2009 the applicant provided further information on the reasons for the design of the westerly entrance to the project site as well as the easterly entrance. The applicant also provided information concerning the impact of the project on the movement into and out of the B&A Convenience Store. It was the opinion of the applicant that the benefits of the traffic signal to B&A customers far outweigh any perceived inconvenience to B&A customers that currently use the Route 4 curb cut to enter and/or exit the store.

In supplemental information dated October 2, 2009 the Turner Village Preservation Committee provided information on traffic movement and entrance design.

In addition to receiving testimony on September 9, 2009 from Maine DOT Traffic Engineer Gene Uhuad, the Planning Board retained the services of Sebago Technics to conduct a peer review of the applicant's Traffic Impact Study. In a letter dated November 23, 2009 Sebago Technics reported that the level of service standards will be met for post development for all intersections studied, that the queue analysis provided by the applicant is correct, that

expected queues on the Route 4 north bound approach to Snell Hill Road intersection will block the B & A Convenience Store access to Route 4 at times, that the Route 4/117 intersection does not warrant a traffic signal at this time and would not likely be warranted in the future, and that increase traffic on Main Street as the result of the project would not likely be significant.

In supplemental information dated December 8, 2009 the applicant provided additional information on the traffic impact of the project on the B & A Convenience Store's driveways. Based on a SimTraffic analysis the level of service for both B & A driveways would be A for post development. The average queue for the peak PM north bound traffic would reach the B & A Route 4 driveway. The 95th percentile queue would extend the Route 4 B & A driveway. The applicant reported blockage at the Route 4 B & A driveway would be about 15% of the time during the PM peak hour and 8% during the Saturday peak hour and that it is anticipated to operate acceptable without any reassignment.

Standard

The applicant for a development to be located on a parcel of land of ten (10) acres or greater or five hundred (500) feet or more of frontage on a public street shall file a conceptual Access Master Plan with the Planning Board. The conceptual Access Master Plan shall address the overall use of the parcel, the overall vehicular circulation system within the parcel, and the coordination of access into and out of the site. The conceptual Access Master Plan shall demonstrate how the requirements for access as contained in this section will be met.

Findings

The project site is less than 10 acres but does have approximately 560' of frontage on the Snell Hill Road. Sheet C-2.0 of the application indicates the overall use of the parcel, vehicular circulation system within the parcel and the coordination into and out of the site.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 5 No 1 Abstain 0

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Standard

Vehicular access to the site shall be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on major access routes to the site within one half (1/2) mile of any entrance road which are functioning at a Level of Service of C or better prior to the development must function at a minimum at Level of Service C after development. If any intersection is functioning at a Level of Service D or lower prior to the development, the project must not reduce the current level of service.

Findings

All access to the project site will be via the Snell Hill Road a town maintained paved road with a travel width of approximately 24'. Snell Hill Road intersects with Route 4, a State highway, with a pavement width of approximately 45'. Direct access to the site will be from a 27' wide entrance and exit approximately 210' west of the Route 4/Snell Hill Road intersection and a 50' wide entrance and exit approximately 420' west of the Route 4/Snell Hill Road intersection. Intersections on major access routes within ½ mile of the entrance road include Snell Hill Road/Route 4, Route 4/117 and Route 4/Main Street south. The applicant provided Level of Service Analysis for three intersections, Route 4/Snell Hill Road, Route 4/117 and Main Street/Route 117. The Route 4/Main Street south intersection was not analyzed as the result of discussion at the Maine DOT Traffic Movement Permit Scoping meeting at which participants agreed that the proposed project would not significantly impact that intersection.

The analysis conducted by the applicant indicates that all the intersections studied, with the installation of a traffic signal at the Route 4/Snell Hill Road intersection, will function overall at a Level of Service of C or better under post development conditions.

The Route 4/Route 117 intersection is considered as a High Crash Location by Maine DOT based on the most recent reporting period (2006-2008). The Route 4/Snell Hill Road intersection had six crashes in the 2006-2008 period, but is not considered a high crash location because the threshold of eight crashes was not reached. Verbal communications with Maine DOT found that the Route 4/Route 117 intersection is approaching warranting the placement of a traffic signal. If placed it would result in two traffic signals within 2,000' along Route 4. Additional verbal communications with Maine DOT found that it would allow for the placement of a second signal at this intersection. In a letter dated December 7, 2009 from Gene Uhuad, P.E. Maine DOT Region 3 Traffic Engineer to Peter Hedrich, P.E., Gorrill-Palmer, Uhuad stated that Maine DOT would support the granting of a waiver for the minimum spacing requirement between traffic signals.

A 95th Percentile Queues Analysis submitted by the applicant indicates that with the signalization of the Route 4/Snell Hill Road intersection that left in and left out traffic movement to the B & A Varsity Store will be impacted during peak hour periods.

In supplemental information dated December 8, 2009 the applicant provided additional information on the traffic impact of the project on the B & A Convenience Store's driveways. Based on a SimTraffic analyses the level of service for both B & A driveways would be A for post development. The average queue for the peak PM north bound traffic would reach the B & A Route 4 driveway. The 95th percentile queue would extend the Route 4 B & A driveway. The applicant reported blockage at the Route 4 B & A driveway would be about 15% of the time during the PM peak hour and 8% during the Saturday peak hour and that it is anticipated to operate acceptable without any reassignment.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

Require the developers of new or redeveloped projects which will exceed existing public roadway and intersection capacity to make improvements necessary for anticipated traffic volumes.

That new development or redevelopment does not create or aggravate high crash locations.

That new developments or redevelopments along Routes 4, 117 and 219 and other important travel corridors will maintain traffic carrying functions and minimize congestion and crash potential.

Condition(s)

Within a time period no sooner than six months and no later than 12 months from the date of store opening, the applicant shall conduct traffic counts at the intersection of Main Street and Route 117. Should such traffic counts indicate that the intersection functions at a Level of Service of less than C due to increased traffic as the result of the overall Hannaford project, the Planning Board reserves the right to reopen the application for the reconsideration of this standard.

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that this standard will be met.

Vote: Yes 5

No 1

Abstain 0

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Standard

The geometrics of intersections that will serve the proposed development shall be of such design to provide for safe turning movements.

Any exit driveway or driveway lane shall be so designed in profile and grading and so located as to provide the following minimum sight distance measured in each direction.

Posted Speed Limit	Sight Distance (Standard Vehicle)	Sight Distance (Larger Vehicle)
35 mph	305'	455'

Findings

All exits from the project site will be onto the Snell Hill Road that has a posted speed limit of 35 MPH. The project site will provide for two exits. The primary exit will be approximately 220' west of the Route 4/Snell Hill Road intersection and secondary exit will be approximately 420' west of the Route 4/Snell Hill Road intersection. The sight distance to the west exceeds the required distances. The sight distance to the east from the secondary exit exceeds the required distances. The speed of vehicles at the primary exit will be less than 35 MPH.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That new development or redevelopment does not create or aggravate high crash locations.

That new developments or redevelopments along Routes 4, 117 and 219 and other important travel corridors will maintain traffic carrying functions and minimize congestion and crash potential.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Standard

The grade of any exit driveway or proposed street for a distance of fifty (50) feet from its intersection with any existing street shall be a maximum of three (3) percent.

Findings

The grades of all exit drives for 50' from their intersection with the Snell Hill Road are less than 3%.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That new development or redevelopment does not create or aggravate high crash locations.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

The intersection of any access drive or proposed street must function at a Level of Service of C following development if the project will generate 400 or more vehicle trips per 24-hour period or a level which will allow safe access into and out of the project if less than 400 trips are generated.

Findings

The analysis conducted by the applicant indicates that all the intersections studied, with the installation of a traffic signal at the Route 4 Snell Hill Road intersection, will function at an overall Level of Service of C or better under post development conditions.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Require the developers of new or redeveloped projects which will exceed existing public roadway and intersection capacity to make improvements necessary for anticipated traffic volumes.

That new development or redevelopment does not create or aggravate high crash locations.

That new developments or redevelopments along Routes 4, 117 and 219 and other important travel corridors will maintain traffic carrying functions and minimize congestion and crash potential.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

Projects generating 400 or more vehicle trips per 24-hour period must provide two or more separate points of vehicular access into and out of the site.

Findings

The proposed project will generate more than 400 vehicle trips per 24-hour period. Two separate points of vehicular access into the site have been provided.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

Where a proposed development is to be located at the intersection of Route 4, and a minor or collector road, entrance(s) to and exit(s) from the site shall be located only on the minor or collector road provided that this requirement maybe waived where the applicant demonstrates that existing

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

site conditions preclude the location of a driveway on the minor or collector road, or that the location of the driveway on the minor or collector road would interfere with a predominately residential neighborhood.

Findings

The project site has frontage on both Route 4 and the Snell Hill Road. Snell Hill Road is considered a minor or collector road. All entrance and exits from the project site will be from the Snell Hill Road.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That new developments or redevelopments along Routes 4, 117 and 219 and other important travel corridors will maintain traffic carrying functions and minimize congestion and crash potential.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

Curb cuts or access points shall be limited to one per lot for all lots with less than 200 linear feet or less of road frontage. For lots with greater than 200 feet of frontage, a maximum of one curb cut per 200 feet of frontage shall be permitted to a maximum of three, provided the Planning Board makes a finding that (a) the driveway design relative to the site characteristics and site design provides safe entrance and exit to the site and (b) no other practical alternative exists.

Findings

The project site has approximately 580' of frontage on the Snell Hill Road. The applicant has proposed two curb cuts.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

No medium or high volume traffic generator shall have more than two two-way accesses or three accesses in total onto a single roadway.

Findings

The proposed project is a high volume traffic generator. The project does not have more than two two-way accesses or three accesses in total onto a single roadway.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That new developments or redevelopments along Routes 4, 117 and 219 and other important travel corridors will maintain traffic carrying functions and minimize congestion and crash potential.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

Curb cut widths and design shall conform to the following standards:

Median volume driveways with more than 50 vehicle trips/day but fewer than 200 peak hour vehicle trips, based on the latest edition of the Institute of Traffic Engineers' Trip Generation Report, as the same may be amended from time to time, and generally including all land uses not in the low or high volume groups, shall:

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

have either two-way or one-way operation;

intersect the road at an angle as close to 90 degrees as site conditions permit, but at no less than 60 degrees;

not require a median;

slope upward from the gutter line on a straight slope of 3 percent or less for at least 50 feet and a slope of no more than 6 percent thereafter, with the preferred grade being a 4 1/2 percent, depending on the site; and

comply with the following geometric standards:

NOTE: The Planning Board may vary these standards due to unique factors such as a significant level of truck traffic.

Item	Desired Value (ft.)	Minimum Value (ft.)	Maximum Value (ft.)
<u>ONE WAY</u>			
R1 (radius)	30	25	40
R2 (radius)	5	5	10
W (drive width)	20	20	24
<u>TWO WAY</u>			
R	30	25	40
WD	26-36*	24	30-40*

*Where separate left and right exit lanes are desirable.

Findings

The pharmacy drive through and delivery/service entrance is considered a medium volume driveway. The proposed driveway will provide two-way operation in that it is expected the most delivery/service vehicles will exit from it. Based on Sheet C-2.0 of the application it appears that the driveway has an angle of less than 60 degrees. The grade of the driveway for 50' from their intersection with the Snell Hill Road is less than 3%. The width of the driveway is approximately 45'. Because of the truck traffic that will use this driveway the 45' width is acceptable. Because of the truck traffic that will use this driveway the radii are acceptable which is allowed by the note above. [NOTE: Section 5.E.3.j.2 of the Town of Turner Zoning Ordinance states: The Planning Board may vary these standards due to unique factors such as a significant level of truck traffic.]

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That new development or redevelopment does not create or aggravate high crash locations.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

High volume driveways defined as driveways with more than 200 peak hour vehicle trips shall:

have two-way operations separated by a raised median of 6 to 10 feet in width and a 50 to 100 feet length depending upon necessary storage length for queued vehicles;

intersect with the road at an angle as close to 90 degrees as possible, but at no less than 60 degrees;

be striped for 2 to 4 lanes with each lane 12 feet wide;

slope upward from the gutter line on a straight slope of 3 percent or less for at least 75 feet and a slope of no more than 5 percent thereafter;

have a “STOP” sign control and appropriate “Keep Right” and “Yield” sign controls for channelization; signalization may be required. Level of service and traffic signal warrants should be conducted for all high volume driveways; and comply with the following geometric standards:

NOTE: The Planning Board may vary these standards due to unique factors such as a significant level of truck traffic.

Item	Desired Value (ft.)	Minimum Value (ft.)	Maximum Value (ft.)
<u>W/O</u> <u>CHANNELIZATION</u>			
R (Radii)	50	30	50
R (Width of Access lanes)**	24	20	26
W (Median width)***	6	6	10
<u>W/CHANNELIZATION</u>			
R	100	75	100
WD	24	20	26
M	6	6	10
WR	20	16	20

* For industrial developments with a high percentage of truck traffic maximum values are required.

***Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law***

**** The table contained in Section 5.E.3.j.3, R should be W meaning lane width.
[JAM 01.08.2010]**

***** The table contained in Section 5.E.3.j.3, W should be M meaning median width.
[JAM 01.08.2010]**

Findings

The primary driveway is considered to be a high volume driveway. The proposed primary driveway will be of two-way operation with a total width of 27' with two 13.5' travel lanes. A 4" solid yellow line would separate the entrance and exit lanes. This design does not comply with Section 5.E.3.j.3) of the Zoning Ordinance. The proposed design does not have two-way operations separated by a raised median of 6' to 10' in width.

In supplemental information dated December 21, 2009 the applicant revised the design of the primary driveway. The driveway width is 40' with a 17.5' wide entrance lane, a 6' wide raised median island and a 15' wide exit lane. The primary driveway has a throat length of 65'. In supplemental information dated January 8, 2010 the applicant provided additional information concerning the primary driveway design. The applicant indicated that the primary driveway will meet all design criteria except for the driveway width standard which is 20' minimum and 26' maximum. The applicant proposes a 17.5' wide entrance lane, and a 15' wide exit lane.

Section 5.G of the Town of Turner Zoning Ordinance allows the Planning Board to waive certain standards based on the following. Where the Board makes written findings of fact that due to special circumstances of a particular application, certain required improvements or standards of this section are not necessary to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed development, it may waive the requirement for such improvements, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan or this ordinance and further provided the performance standards of this ordinance have been or will be met. In granting waivers, the Planning Board shall require such conditions as will assure the purpose of these regulations are met. On January 13, 2010 the Planning Board voted to waive the 20' wide lane width standard. In voting to waive that standard the Planning Board found that most vehicles will enter and exit the project site from single directions and separate right and left turning lanes in the entrance and exit lanes are not required for safety and the applicant provided diagrams of Autoturn Vehicle Path Simulation that indicated acceptable vehicle movement into and out of the project site utilizing the 17.5' entrance and 15' wide exit. Additionally in voting to waive the 20' minimum lane requirement the Planning Board found that the reduced lane widths would reduce traffic conflicts, the standards of the Ordinance would be met, the public, health,

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

safety and welfare would be protected, and the intent of the Comprehensive Plan would be met and the performance standards of the ordinance have been or will be met.

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that this criteria will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

Driveway Spacing: Distance from edge of driveway corner (point of tangency) to edge of intersection corner (point of tangency) by type of driveway should be as follows:

Driveway	Minimum Corner Clearance (feet)	
	Intersection Signalization	Intersection Unsignalization
Medium Volume >50-100 trips/day <200 trips/hour	150	50
High Volume >200 trips/hour	500	250

Findings

The applicant proposed to locate a high volume primary driveway on the Snell Hill Road 130' as measured from the edge of that driveway corner (point of tangency) to edge of the Route 4 intersection corner (point of tangency). The standard is 500'. Hannaford requested, in a letter dated July 7, 2009 to John Maloney, that Section 5.E.3.k of the zoning ordinance be waived to reduce for a minimum corner clearance from 500' to 130' from the primary driveway on the Snell Hill Road as measured from the edge of the driveway corner (point of tangency) to edge of intersection corner (point of tangency). Section 5.G of the Town of Turner Zoning Ordinance allows the Planning Board to waive certain standards based on the following. Where the Board makes written findings of fact that due to special circumstances of a particular application, certain required improvements or standards of this section are not necessary to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed development, it may waive the requirement for such improvements, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan or this ordinance and further provided the performance standards of

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

this ordinance have been or will be met. In granting waivers, the Planning Board shall require such conditions as will assure the purpose of these regulations are met. On August 12, 2009 the Planning Board voted to waive the 500' corner clearance standard and allow a 130' corner clearance. In voting to waive that standard the Planning Board found that the Maine DOT Highway and Entrance Rules define corner clearance as the minimum distance, measured parallel to a highway, between the nearest curb, pavement or shoulder line of an intersecting public way and the nearest edge of a driveway excluding its radii, the Maine DOT Highway and Entrance Rules requires a minimum of 125 feet of corner clearance, Hedrich in a letter dated July 6, 2009 to DeLUCA HOFFMAN stated that the edge to edge of driveway functional separation is approximately 220 feet based on the angle of the intersection at Route 4, and Hedrich in a letter dated July 24, 2009 stated that queues from the primary driveway onto Snell Hill Road to the Route 4 intersection are to remain in their storage area. The Planning Board also found the Maine DOT Traffic Movement Permit allowed the proposed corner clearance, that the Androscoggin Transportation Resource Center reviewed the proposed corner clearance, the reduced corner clearance would not affect traffic safety, the standards of the Ordinance would be met, the public, health, safety and welfare would be protected, the intent of the Comprehensive Plan would be met and the performance standards of the ordinance have been or will be met.

The minimum corner clearance for the pharmacy drive through and delivery/service entrance will comply with standards.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That new developments or redevelopments along Routes 4, 117 and 219 and other important travel corridors will maintain traffic carrying functions and minimize congestion and crash potential.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 5 No 1 Abstain 0

Standard

Minimum distances between driveways serving the same parcel, measured from point of tangency to point of tangency by type of driveway, should be as follows:

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Driveway Type	Minimum Spacing to Adjacent Driveway by Driveway Type		
	Medium (feet)	High w/o RT (feet)	High w/RT (feet)
Medium Volume	75		
High Volume W/O RT (without right-turn channelization)	75	150	
High Volume W/RT (with right-turn channelization)	75	250	500

Findings

Minimum distances between driveways serving the parcel, measured from point of tangency to point of tangency will be met.

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

The minimum distance between driveway to property line, as measured from point of tangency, should be:

Driveway Type	Minimum Spacing to Property Line (ft.)
Medium Volume	20
High Volume (without right-turn channelization)	75
High Volume (with right-turn channelization)	75

Findings

The minimum distance between driveway to property line, as measured from point of tangency, will be met.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Conclusion

Based on the above information and information in the record the Planning Board finds that this standard will be met.

Vote: Yes 6 No 0 Abstain 0

Standard

4. Pedestrian and Trail Access. The proposed development shall provide safe pedestrian access within the project parcel and interconnection with existing facilities on abutting properties including connection and/or preservation of existing snowmobile trails with easements to maintain a multi-use trail system within the Town of Turner. To preserve these opportunities, the Planning Board may require the applicants to record easements or require conditions of approval which define future access rights between properties to accomplish the goals of the Zoning Ordinance.

Findings

Pedestrian movement within the project site will involve customers moving from their vehicle to and from the supermarket. As customary pedestrian will move through the parking lot and then use one of three proposed 6 foot wide painted cross walks to the concrete side walk in front of the supermarket.

At the present time there are no existing facilities on abutting properties that require interconnections.

The Androscoggin Land Trust owns property that abuts the applicant's property to the north. Information submitted states that the applicant and the Land Trust have reached an agreement where the applicant will provide four designated parking spaces located in the applicant's parking lot and provisions for a trail head across the applicant' property to provide access to the Land Trust property. Site plans indicate a 5-foot wide trail corridor to the Land Trust property. The site plans indicate that an easement or other right of use will be granted to the Land Trust.

At the present time there are no off-site pedestrian facilities/sidewalks in the vicinity of the project site. The Comprehensive Plan does not identify a need for sidewalks in the vicinity of the project site. Current and future development characteristic in the vicinity of the project site do not indicate a need for off-site pedestrian facilities.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

The Planning Board received a written request dated September 1, 2009 from the Turner Village Preservation Committee that a cross walk be installed to allow for pedestrian traffic to cross Route 4 to reach the project site. Bicycle lanes were also recommended.

In supplemental information dated September 23, 2009 the applicant provided a cross walk design for pedestrian movement across Route 4 to the project parking lot.

The Town of Turner Road Commissioner provided the Planning Board with a Memo dated September 24, 2009 that it is the policy of Maine DOT to not allow cross walks in areas with a posted speed limit of greater than 35 MPH.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

Provide for pedestrian and bicycle transportation systems in densely developed areas.

Condition(s)

Prior to granting a building permit the applicant shall provide the Planning Board a copy of the easement granted to the Androscoggin Land Trust for use of the trail head.

Should Maine DOT policies relating to crosswalks locations change to allow a crosswalk and/or the posted speed limit is reduced to 35 MPH within a five year time period from the date of any final application approval that applicant shall install a crosswalk meeting Maine DOT specification.

Conclusion

Based on the above information, information in the record and conditions the Planning Board finds that the proposed development shall provide safe pedestrian access within the project parcel and interconnection with existing facilities on abutting properties.

Vote: Yes 6 No 0 Abstain 0

Standard

5. Off-Street Parking

A use shall not be extended and no structure shall be constructed or enlarged unless sufficient off-street automobile parking space is provided. The location of parking to the side or rear of buildings is encouraged.

Parking areas with more than two parking spaces on all nonresidential uses shall be arranged so that it is not necessary for vehicles to back into the street.

Where the development will abut an existing or potential parking area provisions shall be made for internal vehicular connections.

Required off-street parking for all land uses shall be located on the same lot as the principal building or facility.

The joint use of a parking facility by two or more principal buildings or uses may be approved by the Planning Board where it is clearly demonstrated that said parking facilities would substantially meet the intent of the requirements by reason of variation in the probable time of maximum use by patrons or employees of such establishments.

Access to parking stalls should not be from major interior travel lanes, and shall not be immediately accessible from any public way.

Parking areas shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

Parking aisles should be oriented perpendicular to stores or businesses for easy pedestrian access and visibility.

In paved parking areas, painted stripes shall be used to delineate parking stalls. Stripes should be a minimum of 4 inches in width. Where double lines are used, they should be separated a minimum of 1' 0" on center.

In aisles utilizing diagonal parking, arrows should be painted on the pavement to indicate proper traffic flow.

Bumpers or wheel stops shall be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.

Off-street parking spaces shall comply with the following standards:

Except as provided below, each parking space shall contain a rectangular area at least eighteen (18) feet long and nine (9) feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.

Up to twenty (20) percent of required parking spaces may contain a rectangular area of only eight (8) feet in width by fifteen (15) feet in length. If such spaces are provided, they shall be conspicuously designated as reserved for small or compact cars only.

Off-street parking spaces shall be provided to conform with the number required in the following schedule.

Findings

The applicant proposes 161 off-street parking areas that exceed the number required by the Town of Turner Zoning Ordinance. The parking area will be located in front of the structure.

Parking areas are arranged so that it is not necessary for any vehicle to back into a street.

The development does not abut an existing or potential parking area.

All off-street parking is located on the same lot as the building.

No joint use of parking facilities is necessary.

Parking stall access are not from major interior travel lanes. No parking stalls are directly accessible from a public street.

Parking areas are designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

Parking aisles are oriented perpendicular to building.

Site plans indicate 4" wide yellow stripes delineating parking stalls.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Diagonal parking is not proposed.

Site plan C.5 indicates a 2' vehicular overhang in appropriate locations.

Site plans indicate 9' x 19 foot' parking stalls except the nine barrier free stalls are design to comply with ADA standards.

The Town of Turner Zoning Ordinance in Section 5.E.5.m requires a minimum of 144 off-street parking spaces. The applicant has proposed 152 standard spaces and nine barrier free spaces.

Conclusion

Based on the above information and information in the record the Planning Board finds that the proposed development will comply with the standards for off-street parking

Vote: Yes 6 No 0 Abstain 0

Standard

6. Surface Water. The proposed activity will not result in undue surface water pollution. In making this determination, the Board shall at least consider the elevation of land above sea level and its relation to the floodplains, the nature of soils and subsoils and, if necessary, their ability to adequately support waste disposal and/or any other approved licensed discharge; the slope of the land and its effect on effluent.

Findings

The applicant submitted information on Sheet C-2.0 of the application that the portion of the parcel to be developed is not located within a 100-year floodplain. The applicant provided information prepared by Haley & Aldrich, Inc. (geotechnical engineers) and Albert Frick, Certified Soil Scientist relating to soils and subsoils within the project site. Information presented indicates soils are adequate for wastewater disposal.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To maintain and improve the quality of surface waters in Turner.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

That all activities adjacent to surface waters will be directed so the cumulative effects of those activities do not bring water quality below state standards as in Title 38, M.R.S.A. Sec. 464.

Conclusion

Based on the above information and information in the record the Planning Board finds that the proposed development will comply with the standards for surface water.

Vote: Yes 6 No 0 Abstain 0

Standard

7. Conservation, Erosion and Sediment Control. Erosion of soil and sedimentation of water-courses and water bodies shall be minimized. The following measures shall be included, where applicable, as part of any Site Plan Review and approval.

Stripping of vegetation, regrading or other development shall be done in such a way as to minimize erosion.

Development shall keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and so as to adequately handle surface water runoff.

The disturbed area and the duration of exposure of the disturbed area shall be kept to a practical minimum.

Disturbed soils shall be stabilized as quickly as practical.

Temporary vegetation or mulching shall be used to protect exposed critical areas during development.

The permanent (final) vegetation and mechanical erosion control measure shall be installed as soon as practical on the site.

Until the disturbed area is stabilized, sediment in the runoff water shall be trapped by the use of debris basins, sediment basins, silt traps or other acceptable methods.

Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the developer causing such sedimentation to remove it from all adjoining

surfaces, drainage systems and watercourses and to repair any damage at his or her expense as quickly as possible.

Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

The standards set forth in the Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices (March 1991 and as amended) shall be employed.

Findings

The applicant submitted and Erosion and Sediment Control Plan as identified on Sheets C-6.0-C-6.3 of the application. In addition Attachment N of the application contained an Erosion and Sedimentation Control Report.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To maintain and improve the quality of surface waters in Turner.

That all activities adjacent to surface waters will be directed so the cumulative effects of those activities do not bring water quality below state standards as in Title 38, M.R.S.A. Sec. 464.

Conclusion

Based on the above information and information in the record the Planning Board finds that the proposed development will comply with the standards for conservation, erosion and sediment control.

Vote: Yes 6 No 0 Abstain 0

Standard

8. Phosphorous Export. Projects proposed within the direct watershed of a lake or pond listed below shall be designed to limit phosphorus runoff to the levels defined below. The Board shall keep an accurate record of permits issued by watershed using an appropriate record keeping system, and shall review actual development rates and recommend adjustments to the table at five year intervals, subject to a reasonable appropriation by the Town to conduct such a reassessment, or the availability

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

of adequate State or regional grant programs or technical assistance programs. Adjustments shall be made by amendment of this ordinance and the town's comprehensive plan.

Findings

The project site is not located within a direct watershed listed as requiring a phosphorous export analysis in the Town of Turner Zoning Ordinance.

Conclusion:

Based on the above information and information in the record the Planning Board finds that is standard is not applicable.

Vote: Yes 6 No 0 Abstain 0

Standard

9. Site Conditions

During construction, the site shall be maintained and left each day in a safe and sanitary manner. Site area shall be regularly sprayed with an environmentally safe product to control dust from construction activity.

Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials shall be removed or destroyed immediately upon the request and to the satisfaction of the Code Enforcement Officer prior to issuing an occupancy permit.

Changes in elevation. No significant change shall be made in the elevation or contour of any lot or site by the removal of earth to another lot or site other than as shown on an approved Site Review Plan. Any non-permitted removal of greater than 1,000 cu. yds. in a 12-month period must be approved by the Code Enforcement Officer or Planning Board according to Section 3.G.

Findings

On Sheet C-1.1 of the application General Note 8 requires the contractor to collect, transport and dispose all construction and demolition wastes in accordance with Department of Environmental Protection Rules.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

The applicant submitted an erosion and sediment control plan. Section 9.0 of that plan includes provisions to apply dust control measures on a daily basis except on those days where precipitation exceeds 0.25" and to take measures to control fugitive dust emissions.

On Sheet C-1.1 of the application Grading and Drainage Note 5 requires all stumps to be removed for the work limits. Stumps are to be removed from the site or chipped/ground onsite.

Condition(s)

Prior to the issuance of an occupancy permit the Code Enforcement Officer shall find that all litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials have been removed from the site.

Any non-permitted removal of greater than 1,000 cubic yards of earth in a 12-month period will be approved by the Code Enforcement Officer or Planning Board according to Section 3.H of the Town of Turner Zoning Ordinance.

Conclusion

Based on the above information, information in the record and conditions the Planning Board finds that the proposed development will comply with the standards for site conditions.

Vote: Yes 6 No 0 Abstain 0

Standard

10. Signs: All signs shall comply with standards set forth within this Ordinance.

Findings

The applicant proposes to place one freestanding sign adjacent to Route 4 and one wall mounted sign on the eastern wall of the building. In addition, traffic related signs will be placed at various location within the project site. The application included the design and location of the proposed signs. Section 4.S of the Town of Tuner Zoning Ordinance contains the standards for signs including location height and size. The Code Enforcement Officer issues permits for signs.

Condition(s)

All signs shall comply with Section 4.S of the Town of Turner Zoning Ordinance.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed development will comply with the standards for signs.

Vote: Yes 6 No 0 Abstain 0

Standard

11. Special Features. Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures, shall be subject to such setbacks, plantings or other screening methods as shall reasonably be required to prevent their being incompatible with the existing or contemplated environment and the surrounding properties.

Findings

The applicant proposes a truck unloading dock at the rear of the building, three exposed machinery installations (trash compactor, standby generator and transformer pad) at the rear of the building and two accessory type structures a (30'x 30') water storage building and a (45'x25') area for LP tanks at the rear of the building.

The applicant proposes to erect a 10' high solid wooden fence along the entire westerly side of its property. This fence will screen the site from the residential properties located along Jordan Lane. The applicant proposes to erect an 8' high wood fence at its southwest property line for approximately 30' easterly along Snell Hill Road. Exposed machinery installations, service areas, truck loading areas, utility buildings setbacks range from 100' to 190' from the centerline of the Snell Hill Road. Sheet C-5.0 of the application indicates proposed plantings that include three balsam fir trees 6'-7' in height and three red sunset red maple 2.5"-3" in caliper. Along the Snell Hill Road side of the property in the area of exposed machinery installations, service areas, truck loading areas, utility buildings there is proposed a berm along the Snell Hill Road that is approximately 3' higher than the final grade of the area where exposed machinery installations, service areas, truck loading areas, utility buildings will be located.

In supplemental information dated September 23, 2009 the applicant revised screening of the truck loading and utility areas from the Snell Hill Road. The revised landscape plan includes staggered rows of evergreen trees 6' to 7' feet in height and Red Maples. There will be a 6' high solid wooded fence around the above ground LP tanks. The applicant stated roof top screening

would be provided to screen fluid coolers at the rear of the building. The screening panels would be the same color as the siding on the building.

In supplemental information dated December 21, 2009 the applicant revised the plans to add a building screen to the left corner of the structure to provide further screening of the vendor receiving area and the location of the transformer and generator was moved adjacent to the water supply building.

In supplemental information dated December 21, 2009 and February 10, 2010 the applicant revised the buffering plan on the westerly and northerly portions of the project site. Rather than a 10' high solid wood fence along Jordan Lane the applicant proposed an 8' wooden fence on a 2' berm along Jordan Lane and along the property line north of the stormwater retention pond. Within the area in front of the fence area white cedar, hemlock, white pine and spruce trees ranging in height from 5' to 7' would be planted to screen the wooden fence.

Condition(s)

Exposed machinery installations, truck loading areas, utility buildings and structures, and similar accessory structures screened as shall to prevent them for being incompatible with the existing or contemplated environment and the surrounding properties in all seasons of the year.

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed development will comply with the standards for special features.

Vote: Yes 6 No 0 Abstain 0

Standard

12. Exterior Lighting. All exterior lighting shall be designed to encourage energy efficiency, to ensure safe movement of people and vehicles, and to minimize adverse impact on neighboring properties and public ways. Adverse impact is to be judged in terms of hazards to people and vehicle traffic and potential damage to the value of adjacent properties. Lighting shall be arranged to minimize glare and reflection on adjacent properties and the traveling public.

Findings

The applicant proposes to install both pole-mounted and building-mounted lighting fixtures. All fixtures will be of full cutoff design. The parking area will be illuminated with five back-back 400-watt high pressure sodium fixtures placed on 30' tall poles. The primary entrance,

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

the pharmacy entrance and southwest portion of the site will be illuminated with single 250-watt high pressure sodium fixtures placed on 20' tall poles. The exterior of the structure will have nine wall mounted 70-watt high pressure sodium fixtures placed at 18' above the finished grade. The truck loading area will have one wall mounted 250-watt high pressure sodium fixtures placed 18' above the finished grade. The applicant provided information that lighting will have a Color Rendering Index value of 22. This value is suitable for commercial locations expect downtown commercial areas.

The applicant indicated that pole mounted lights except at the primary entrance will be turned off one hour after store closing.

The applicant provided Site Lighting Photometric Plan dated June 18, 2009 prepared by Hubbell Lighting, Inc. That Plan indicates foot-candles produced by the proposed lighting on and adjacent to the project site. That Plan indicates no new foot-candles on adjacent residential properties.

In supplemental information dated January 11, 2010 that applicant indicated that recessed light cans with 100-watt high pressure sodium light fixtures at 20' intervals would be located beneath the from canopy to provide downward illumination of the side walk.

Conclusion

Based on the above information and information in the record the Planning Board finds that the proposed development will comply with the standards for exterior lighting.

Vote: Yes 6 No 0 Abstain 0

Standard

13. Emergency Vehicle Access. Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.

Findings

The project site is accessed from two points on the Snell Hill Road. There is a designated No Parking/Fire Lane across the entire front of the building. The applicant submitted information that on May 6, 2009 a meeting was held with the Fire and Rescue Department and at that meeting Chief Arsenault indicated that the proposed access to the site was acceptable. The Planning Board has not received any testimony to the contrary.

Condition(s)

Conclusion

Based on the above information and information in the record the Planning Board finds that the proposed development will comply with the standards for emergency vehicle access.

Vote: Yes 6 No 0 Abstain 0

Standard

14. Municipal Services. The development will not have an unreasonable adverse impact on the municipal services including municipal roads systems, fire protection, police department, emergency medical unit, solid waste disposal, schools, open spaces, recreational programs and facilities and other municipal services and facilities. The Planning Board shall consider the input from the Town's Department Heads and Superintendent of Schools in making a determination of an unreasonable adverse impact. If the Board makes a finding of unreasonable adverse impacts, the Planning Board, as a condition of approval, may require the applicant to make or pay for required upgraded municipal services necessitated by the development.

Findings

The Planning Board did not receive any written or verbal comments from the Superintendent of Schools. The Fire and Rescue Department attended the public hearing and other meetings. Fire and Rescue provided testimony concerning the operation of the traffic signal during emergency calls and the suitability of the stormwater pond for the placement of a dry hydrant. The applicant submitted information that on May 6, 2009 a meeting was held with the Fire and Rescue Department and at that meeting Chief Arsenault indicated that the proposed access to the site was acceptable. The applicant provided information that solid waste for the project will not be disposed of at the Turner solid waste facility.

The applicant was requested to provide information concerning calls for law enforcement assistance at similar stores to that proposed for Tuner. The applicant provided information prepared by the Buxton Police Department for a 19 month period. Other than motor vehicle violations there were nine calls relating to suspicious activity, eight calls or shoplifting, larceny, and liquor law violations, and four calls for medical emergencies. The traffic signal proposed for the Route 4/Snell Hill Road intersection would be the only signal in Androscoggin County located in a community without a local police department. During any periods of signal traffic control would be required.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

The Planning Board received a letter dated July 15, 2009 from the Road Commissioner that stated that it is the Road Commissioner recommendation that the required improvements as outlined in the Traffic Impact Study Proposed Hannaford Supermarket Turner, Maine have no financial impact to the Town of Turner for the installation or maintenance of any devices. The Road Commissioner also indicated looking now or to the future would also include a close study of Urban Compact Zones and the cost of maintenance responsibilities and that they also have no financial impact to the Town of Turner.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To assure that new growth and development does not exceed the capacity of public safety services.

That future growth does not over burden the town's ability to provide high quality municipal services at reasonable cost.

Condition(s)

It shall be the responsibility of the applicant to pay the cost for operation, maintenance and repair of the traffic signal at the Route 4/Snell Hill Road intersection.

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed project will not have an unreasonable adverse impact on municipal services including municipal roads systems, fire protection, police department, emergency medical unit, solid waste disposal, schools, open spaces, recreational programs and facilities and other municipal services and facilities.

Vote: Yes 6 No 0 Abstain 0

Standard

15. Water Supply. The development has sufficient water available for the intended use. When the location of the water supply source will be a public water supply as defined in Title 22 M.R.S.A. Section 2601, its location shall not restrict the location of a subsurface sewage disposal system on adjacent parcels. If subsurface sewage disposal will be restricted, the applicant shall obtain an easement.

***Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law***

Findings

The applicant provided information that the project will use approximately 3,000 gallons of water per day. In addition, the applicant proposed to construct a 40,000-gallon fire suppression water storage tank. The applicant installed a well on adjacent property that is a bedrock well approximately 340' deep. A 48-hour pump test and recovery test was conducted by Goodwin Well and Water. The well was pumped at 15 gallons per minute or 21,000 gallon per day. The pump test drew water down 150' from the ground surface and the well recovered after 8 hours of the stopping of the pump test.

The water supply well is considered a non-transient, non-community water supply well by the Maine Department of Human Services and defined in Title 22 M.R.S.A. 2601. Sheet C.2. of the application indicated a 300 foot radius water supply well setback area. This area is located on land owned by the applicant, Androscoggin Land Trust and State of Maine.

In supplemental information dated September 24, 2009 the applicant provided an estimate of the magnitude of the draw down that could occur in nearby wells after the Hannaford well is operational. Haley & Aldrich constructed a model using MODFLOW 2000 with the processor Visual MODFLOW Pro v.4.3. The model input variables included a pumping rate of 2.1 gpm, extent of fracture zone, the hydraulic conductivity of the bedrock fracture zone and width of the bedrock fracture zone. Haley & Aldrich concluded that the Hannaford well will not impact the well yield or water quality of nearby bedrock or dug wells.

The applicant provided a letter dated October 6, 2009 from the Maine Center for Disease Control and Prevention granting conditional final approval for a new water supply well. Conditions of approval included the collection of a combined radium sample, satisfactory results for the Carbamate test pending analysis and copies and plans for proposed chlorination & de-chlorination treatment.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To protect the quality and quantity of ground water resources for current and future use.

Condition(s)

Prior to granting a building permit the applicant shall provide the Planning Board with easements that restrict subsurface sewage disposal within the well head protection area on land not owned by the applicant.

Conclusion

Based on the above information, information in the record and the condition the Planning Board finds that the proposed development will comply with the standards for water supply.

Vote: Yes 6 No 0 Abstain 0

Standard

16. Ground Water. The proposed development shall not result in undue effect of the quality or quantity of ground water. In making this determination, the Board shall consider the location of aquifers and aquifer recharge areas, the nature of the proposed development and its potential threat to ground water resources. The Board may place conditions upon an application to minimize potential impacts to the Town's ground water resources.

The development will not result in the existing ground water quality becoming inferior to the physical, biological, chemical, and radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 M.R.S.A., Section 601. If the existing ground water quality is inferior to the State Drinking Water Regulations, the development will not degrade the water quality any further.

For above ground tanks used for storage of fuels, hazardous substances, chemicals, industrial wastes and flammable or combustible liquids or other potentially harmful raw materials, an impermeable diked area shall be provided; the diked area must be sized to contain 110 percent of the volume of the largest tank; roofed to prevent accumulation of rainwater in the diked area and shall be properly vented. There shall be no drains in the facility. All concrete, whether walls or pads, shall be reinforced concrete and shall be designed by a Professional Engineer Registered in the State of Maine when required by the Planning Board.

All above or below ground storage tank(s) used for the storage of fuels, hazardous substances, chemicals, industrial wastes and flammable or combustible liquids shall be designed and installed in accordance with all applicable rules or standards set by the State of Maine, Maine State Fire Marshal's Office or the Maine Department of Environmental Protection.

Findings

The Sand and Gravel Aquifer Map prepared by the Maine Geological Survey labeled Map 16 and identified as Open-File Report No. 85-82d, Plate 3 of 5 indicates that the project site is located on a sand and gravel aquifer (10-50 gallons per minute).

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Potential threats to groundwater quality include the subsurface wastewater disposal system, and spills of hazardous or petroleum products in the structure and on the project site. The quantity of ground water could be altered by the 3.2 acres of impervious area changing recharge characteristics.

The applicant provided information prepared by Haley & Aldrich relating to geologic site conditions including if the site was covered by a sand and gravel aquifer. The applicant reported that more than 30 exploration holes were drilled on site that indicated that portions of the site are underlain by alluvial or marine deposits consisting of silty sand. The surficial alluvial deposits are underlain by marine deposits consisting of stiff to soft clay. The Planning Board received testimony from Haley & Aldrich that surficial geology of the site does not meet the criteria for significant sand and gravel aquifer.

The applicant retained R.W. Gillespie & Associates, Inc. to prepare a Septic Effluent Rate Analysis (nitrate loading). The analysis considered nitrate impacts on groundwater quality. Gillespie used a modified Domenico and Palciauskas model to estimate the maximum contamination level down gradient from leach fields. Gillespie conclude that designed to State of Maine standards, the wastewater disposal system would not adversely affect any existing private or public drinking water supplies.

The Planning Board received testimony concerning nitrate plume impacts on ground water from the proposed leach field and the possibility of impacts on nearby water wells. Commenters were concerned about impacts on nearby water well quality and quantity as the result of the wastewater disposal system and water demands by the proposed project.

In supplemental information September 23, 2009 the applicant addressed groundwater elevations and flow directions, leach field mounding and groundwater contamination. The applicant provided a letter dated October 16, 2009 from the Maine Center for Disease Control and Prevention for the approval of the proposed subsurface waste disposal system.

In supplemental information dated September 23, 2009, October 16, 2009 and November 3, 2009 the applicant provided information relating to the types of hazardous material on site and the procedures to respond to spills of such materials in store and outside of the store.

In supplemental information dated September 24, 2009 the applicant provided an estimate of the magnitude of drawdown that could occur in nearby wells after the Hannaford well is operational. Haley & Aldrich constructed a model using MODFLOW 2000 with the processor Visual MODFLOW Pro v.4.3. The model input variables included a pumping rate of 2.1 gpm, extent of fracture zone, the hydraulic conductivity of the bedrock fracture zone and width of

the bedrock fracture zone. Haley & Aldrich concluded that the Hannaford well will not impact the well yield or water quality of nearby bedrock or dug wells.

In supplementary information the applicant provided a letter dated October 13, 2009 from R.W. Gillespie & Associates relating to the existence of a significant sand and gravel aquifer on the project site. Gillespie reported that the combination of low hydraulic conductivity and thin saturated thickness indicate yields of 10 GPM are unlikely and are unsupportable for extended durations for all but a small area at the southeastern extremities of the site.

In supplemental information dated October 14, 2009 and November 3, 2009 the applicant provided the effects of the project on the hydrology of undisturbed wetlands. Stantic Consulting stated that while the proposed development will slightly alter the hydrology of wetland it should not affect the overall species composition and functions and values.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To protect the quality and quantity of ground water resources for current and future use.

Condition(s)

On annual basis Hannaford shall submit to the Town of Turner Code Enforcement Officer copies of Septic Tank Pumping/Inspection Report (Form # 6) and Annual Septic Tank System Summary Report (Form #7).

Prior to any site disturbance the applicant shall provide to the Planning Board a predevelopment evaluation of the 12 wells of the abutters.

Conclusion

Based on the above information, information in the record and the conditions the Planning Board finds that the proposed development will comply with the standards for groundwater supply.

Vote: Yes 6 No 0 Abstain 0

Standard

17. Air Emissions. No emission of dust, ash, smoke or other particulate matter or gases and chemicals shall be allowed which can cause damage to human or animal health, vegetation or

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

property by reason of concentration or toxicity, which can cause soiling beyond the property boundaries, or which fail to meet or cannot meet the standards set by the Maine Department of Environmental Protection.

Findings

The applicant provided information that the project does not require an air emissions license issued by the Maine Department of Environmental Protection. During the construction phase dust may be created. The applicant submitted an erosion and sediment control plan. Section 9.0 of that plan includes provisions to apply dust control measures on a daily basis except on those days where precipitation exceeds 0.25" and to take measures to control fugitive dust emissions.

Conclusion

Based on the above information and information in the record the Planning Board finds that the proposed development will comply with the standards for air emissions.

Vote: Yes 6 No 0 Abstain 0

Standard

18. Odor Control. The proposed development shall not produce offensive or harmful odors perceptible beyond their lot lines either at ground or habitable elevation. For the purpose of this subsection, when land of the applicant is divided by a public way, the lot line shall not be considered to be the edge of the right-of-way.

Findings

The applicant proposed no activities or processes that normally produce offensive or harmful odors. The applicant stated that a self-enclosed compactor located to the rear of the building is used to contain solid waste and there is limited odor generated by the short term storage and handling of solid waste on the site.

Condition(s)

Should the Code Enforcement Officer receive creditable complaints relating to odor from the self-contained compactor and upon his investigation determines that offensive odors exist the applicant shall be required to alter the time frames for removal of solid waste from the compactor to minimize odor.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed development will comply with the standards for odor control.

Vote: Yes 6 No 0 Abstain 0

Standard

19. Noise. The proposed development shall not raise noise levels to the extent that abutting or nearby residents are adversely affected.

The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity shall be limited by the time period and land use which it abuts listed below. Sound levels shall be measured at least 4 feet above ground at the property boundary of the source.

Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (Leq 1) (measured in dB(a) scale)

	7 a.m.10 p.m.	10 p.m.-7 a.m.
Residential	55	45
Commercial	65	55
Industrial	70	60

Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI 81 4-1961) "American Standard Specification for General Purpose Sound Level Meters."

Findings

Stationary equipment associated with the project that will generate noise at ground level includes a compressor room located at the southwest corner of the building, self-contained compactor and emergency generator. On the roof of the building will be located five exhaust fans, six condensing units and four fluid cooler units. Mobile noise producers will include delivery trucks, refrigeration compressors and snow removal equipment.

The applicant retained Cavanaugh Tocci Associates to prepare an Environmental Sound Evaluation. In a report dated June 17, 2009 Cavanaugh Tocci provided data of background sound levels at four locations adjacent to the project site. Cavanaugh Tocci provided

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

additional information in a letter dated July 21, 2009. Sound control measures for facility mechanical equipment identified by Cavanaugh Tocci include sound control attenuating enclosure for the compressor room at the southwest corner of the building, sound control attenuating enclosure for the emergency generator, the use of low speed fans (550 RPM) for rooftop fluid cooler racks and careful placement of rooftop condensers to obtain shielding to sensitive receptor levels.

Cavanaugh Tocci employed CadnaA sound modeling software to estimate sound levels that would be produced by the project. The model predicted that “worst case” facility sound levels to range from 36 dBA and 44 dBA at various abutting property lines. The applicant did not provide data on ambient sound levels.

Adjacent residential property owners may perceive an increase in noise levels.

Condition(s)

Within six months, or other time period determined to be appropriate, from the date of opening the Town at the expense of the applicant shall conduct an environmental sound evaluation to determine the compliance with this standard.

The Code Enforcement Officer shall monitor and enforce the standards for sound pressure limits contain in Section 5.E.19 of the Town of Turner Zoning Ordinance.

Conclusion

Based on the above information, information in the record and conditions the Planning Board finds that the proposed development will comply with the standards for noise control.

Vote: Yes 6 No 0 Abstain 0

Standard

20. Sewage Disposal. The development shall provide for a suitable sewage disposal.

All individual on-site systems will be designed by a licensed soil evaluate in full compliance with the Maine Subsurface Wastewater Disposal Rules.

The Planning Board may require an analysis and evaluation including nitrate-nitrogen concentrations of the impacts of the subsurface sewage disposal system on ground water. The Planning Board shall

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

base its determination for the need for an analysis and evaluation on density, designed flows and nature of wastewater.

Findings

The applicant proposes to install a subsurface wastewater disposal system. Soils suitability for subsurface wastewater disposal was determined by Albert Frick, CSS# 66, LSE #163. The engineered system was designed by Joseph Laverriere, P.E. The applicant indicated that the design utilized soil classifications and limiting as reported by Frick with groundwater mounding and nitrate analysis prepared by R.W. Gillespie & Associates, Inc. Prior to wastewater reaching the disposal field waste will be pretreated through a grease trap, septic tanks, equalization tank, Bioclere tanks and settling tank.

Frick identified areas of soil suitable for subsurface wastewater disposal. Due to the limiting factor being within 24 inches in the area of the proposed disposal fields the applicant identified a second location for a replacement system.

Based on Sheet C-4.0 of the application setback distances for the components of the sewage disposal system comply with the requirements of Table 700.2 as contained in the State of Maine Subsurface Wastewater Disposal Rules.

The applicant retained R.W. Gillespie & Associates, Inc. to prepare a Septic Effluent Fate Analysis (nitrate loading). The analysis considered nitrate impacts on groundwater quality. Gillespie used a modified Domenico and Palciauskas model to estimate the maximum contamination level down gradient from leach fields. Gillespie conclude that designed to State of Maine standards, the wastewater disposal system would not adversely affect any existing private or public drinking water supplies.

In supplemental information dated September 23, 2009 and November 3, 2009 the applicant provided additional information relating to wastewater effluent strength, performance of wastewater pretreatment, fill requirements beneath the disposal field, groundwater mounding and nitrates.

The applicant provided a letter dated October 16, 2009 from the Maine Center for Disease Control and Prevention for the approval of the proposed subsurface waste disposal system.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To protect the quality and quantity of ground water resources for current and future use.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

That all activities over significant aquifers be directed so that the cumulative effect of those activities do not bring water quality below state drinking water standards.

Condition(s)

The reserved areas for the second wastewater disposal areas shall not be altered in any way that makes the area unsuitable for a wastewater disposal system, unless an alternate site is designated and approved by the Planning Board

On annual basis Hannaford shall submit to the Town of Turner Code Enforcement Officer copies of Septic Tank Pumping/Inspection Report (Form # 6) and Annual Septic Tank System Summary Report (Form #7).

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed development will comply with the standards for sewage disposal.

Vote: Yes 6 No 0 Abstain 0

Standard

21. Waste Disposal. The proposed development will provide for adequate disposal of solid wastes and hazardous wastes.

All solid waste will be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

All hazardous waste will be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility shall be submitted.

Findings

The applicant will contract with Casella Waste Systems, Inc. for the hauling and disposal of all solid waste. The applicant stated that the project will generate approximately 15 tons of non-recyclable solid waste per month. Solid waste and recyclables will not be disposed at the Town of Turner solid waste facility but at another licensed facility. Sheet C-1.1 General Note 8 of the application requires the contractor to collect, transport and dispose all construction and demolition wastes in accordance with Department of Environmental Protection Rules. The applicant provided no information if the project would generate hazardous waste products.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

In supplemental information date November 3, 2009 the applicant provided information that floor stripping chemicals will be disposed of by Environmental Projects, Inc. of Auburn, Maine.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

That future growth does not over burden the town's ability to provide high quality municipal services at reasonable cost.

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed development will comply with the standards for waste disposal.

Vote: Yes 6 No 0 Abstain 0

Standard

22. Buffer Areas. No industrial or commercial buildings or uses shall be established in, or adjacent to, a residential use, or an existing agricultural use unless a landscaped buffer strip is provided to create a visual screen between the uses. Where no natural vegetation can be maintained or due to varying site conditions, the landscaping screen may consist of fences, walls, tree plantings, hedges or combinations thereof. The buffering shall be sufficient to minimize the impacts of any kind of potential use such as: loading and unloading operations, outdoor storage areas, vehicle parking, mineral extraction, waste collection and disposal areas. Where a potential safety hazard to small children would exist, physical screening or barriers shall be used to deter entry to such premises. The buffer areas shall be maintained and vegetation replaced to insure continuous year-round screening.

Findings

Residential property adjacent to the site include three single family homes to the west, two single family homes to the south, on the opposite side of the Snell Hill Road and one single family home to the north. There is no existing natural vegetation that creates a visual screen between residential properties along Jordan Lane and the project site. Instead of creating a buffer area of living materials the applicant initially proposed to erect a 10' high solid wooden fence along the entire westerly side of the property. This fence will screen the site from the residential properties located along Jordan Lane. The applicant proposes to erect an 8' high wood fence at its southwest property line for approximately 30' easterly along Snell Hill Road. Sheet C-5.0 of the application indicates the proposed plantings that include three balsam fir trees 6'-7' in height and three red sunset red maple 2.5"-3" in caliber along the Snell Hill Road

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

side of the property in the area of exposed machinery installations, service areas, truck loading areas, utility buildings. There is proposed a berm along the Snell Hill Road that is approximately three feet higher than the final grade of the area where exposed machinery installations, service areas, truck loading areas, utility buildings will be located. The applicant proposed no landscaped buffer to provide a visual screen between the project site and the residential structure to the north.

In supplemental information dated September 23, 2009 the applicant revised screening of the truck loading and utility areas from the Snell Hill Road. The revised landscape plan includes staggered rows of evergreen trees 6' to 7' feet in height and Red Maples. There will be a 6' high solid wooden fence around the above ground LP tanks. The applicant stated roof top screening would be provided to screen fluid coolers at the rear of the building. The screening panels would be the same color as the siding on the building.

In supplemental information dated December 21, 2009 and February 10, 2010 the applicant revised the buffering plan on the westerly and northerly portions of the project site. Rather than a 10' high solid wood fence along Jordan Lane the applicant proposed an 8' wooden fence on a 2' berm along Jordan Lane and along the property line north of the stormwater retention pond. Within the area in front of the fence area white cedar, hemlock, white pine and spruce trees ranging in height from 5' to 7' would be planted to screen the wooden fence.

In addition a building screen was added to the left corner of the structure to provide further screening of the vendor receiving area and the location of the transformer and generator was moved adjacent to the water supply building.

Condition(s)

The project owner shall be responsible for maintaining all buffers in a healthy condition as to maintain them for the purposes designed.

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed development will comply with the standards for buffer areas.

Vote: Yes 5 No 1 Abstain 0

Standard

23. Financial and Technical Capacity. The applicant has adequate financial and technical capacity to meet these standards.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Findings

The applicant indicated project cost to be approximately \$6.3 million. In the application dated June 24, 2009 the applicant stated that Hannaford Bros. has adequate funds to complete and operate the project. An excerpt from the 2008 Annual Report of Delhaize Group was provided. The applicant provided supplemental information in a letter dated July 23, 2009 from Delhaize America. That letter stated that Hannaford Bros. has the financial resources to undertake and complete the project. Delhaize America allocates Hannaford Bros. funds to complete a number of large projects each year and funds may not be specifically allocated until a project is fully permitted. Hannaford Bros. operates and maintains over 140 supermarkets in the northeastern United States.

The applicant retained the services of a number of consulting firms to prepare the application. They include DeLuca-Hoffman Associates (civil engineering and landscape design), Gorrill-Palmer Consulting Engineers (traffic engineering), Owen Haskell, Inc. (surveying), Haley & Aldrich, Inc. (geotechnical and water supply), Stantec Consulting, Inc. (wetlands), Albert Frick Associates (soils), R.W. Gillespie & Associates (hydrogeologic) and Cavanaugh Tocci Associates (noise).

Condition(s)

Prior to any onsite or off site construction that does or does not require a permit issued by the Town of Turner the applicant shall provide a written statement, acceptable by the Planning Board, that a specific dollar amount has been dedicated to complete the project as approved.

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed development will comply with the standards for adequate financial and technical capacity.

Vote: Yes 6 No 0 Abstain 0

Standard

24. Comprehensive Plan. The proposed activity is in conformance with the comprehensive plan.

Findings

Under each review standard relevant comprehensive plan statement(s) related that specific standard were identified.

Conclusion

Based on the above information, information in the record including that the Planning Board considered each relevant comprehensive plan statement pertaining to the review standard and the right of both the applicant and abutting property owners the Planning Board finds that the proposed development will comply with the standard for conformance with the comprehensive plan.

Vote: Yes 5 No 1 Abstain 0

Standard

25. State and Federal Permits. Prior to issuance of a Building Permit by the Code Enforcement Officer of any project which has received Site Plan Review approval, the applicant shall provide proof to the Code Enforcement Officer that all necessary permits required by the Natural Resource Protection Act, Site Location of Development Act and Section 404 of the Federal Water Pollution Control Act have been obtained. Such proof of permits shall be placed in the Planning Board application record.

Findings

The proposed project requires permits under the Natural Resource Protection Act, Site Location of Development Act, Section 404 of Clean Water Act, Traffic Movement Permit Law, Maine State Plumbing Code, Subsurface Wastewater Disposal Rules and Safe Drinking Water Act.

As of February 10, 2010 the applicant has submitted applicable approvals for traffic movement, drinking water, subsurface wastewater disposal, Natural Resource Protection Act, and Site Location of Development Act.

Condition(s)

The Code Enforcement Officer shall not issue any required permits until the applicant provides copies of all applicable State permit approvals. Should the project, as may be approved by the Planning Board, require changes as the result of such State permits the applicant shall submit such changes for review and approval by the Planning Board.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Conclusion

Based on the above information, information in the record and condition the Planning Board finds that the proposed development will comply with the standards for State and Federal permits.

Vote: Yes 6 No 0 Abstain 0

Standard

26. Specific Standard/Sand and Gravel Pits

Conclusion

Based on the above information and information in the record the Planning Board finds that the proposed development is not a sand and gravel pit and thus this standard is not applicable.

Vote: Yes 6 No 0 Abstain 0

Standard

27. Specific Standard/Groundwater Protection

In addition to the standards contained in Section 5. E. 16., the following standards shall be utilized by the Planning Board for reviewing development applications located on a mapped sand and gravel aquifer.

The boundaries of sand and gravel aquifers shall be as delineated on the Sand and Gravel Aquifer Map prepared by the Maine Geological Survey labeled Map 16 and identified as Open-File Report No. 85-82d, Plate 3 of 5.

When the boundaries of the sand and gravel aquifer are disputed due to lack of sufficient detail on available maps, the applicant or agent may submit hydrogeologic evidence prepared by a geologist certified in the State of Maine which identifies actual field locations of the aquifer boundaries within the project area. The Planning Board may require actual field identification if they believe the Maine Geological Survey Maps are incorrect.

Hydrogeologic Study. Based on the size, location, surrounding uses or other characteristics of the proposed use or site to determine compliance with the requirements of this section and the water quality criteria of the Site Plan Review, the Planning Board may require submittal by the

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

applicant of a hydro geologic impact study. The impact study shall be prepared by a State of Maine Certified Geologist with experience in hydrogeology. The study shall contain the following components unless waived by a specific vote of the Board.

A map showing: (1) soil types; (2) surficial geology on the property; (3) the recommended sites for individual subsurface wastewater disposal systems and wells in the development; and (4) direction of groundwater flow. (The Planning Board expects the detail of this study to vary with the intensity of the development.)

The relationship of surface drainage conditions to groundwater conditions.

Documentation of existing groundwater quality for the site.

A nitrate nitrogen analysis or other contaminant analysis as applicable including calculation of levels of the property line(s) and well(s) on the property.

A statement indicating the potential sources of contamination to groundwater from the proposed use and recommendations on the best technologies to reduce the risks.

For water intensive uses, analysis of the effects of aquifer drawdown on the quantity and quality of water available for other water supplies or potential water supplies.

The Planning Board may require installation and regular sampling of water quality monitoring wells for any use or proposed use deemed to be a significant actual or potential source of pollutants or excessive drawdown. The number, location and depth of monitoring wells shall be determined as part of the hydrogeologic study, and wells shall be installed and sampled in accordance with “Guidelines for Monitoring Well Installation and Sampling” (Tolman, Maine Geologic Survey, 1983). Water quality sample results from monitoring wells shall be submitted to the Code Enforcement Officer with evidence showing that contaminant concentrations meet the performance standard for pollution levels.

A list of assumptions made to produce the required information.

Conditions/Standards

In addition to the standards contained in Section 5.D. 16, the following standards shall be met:

No use including home occupations shall dispose of other than normal domestic wastewater on-site without approval of the permit granting authority. Disposal of wastewater shall be in

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

strict compliance with the Maine Subsurface Wastewater Disposal Rules and other relevant State and local laws, rules and ordinances.

Indoor use or storage facilities where hazardous materials, wastes or other liquids with the potential to threatened groundwater quality are used or stored shall be provided with containment which is impervious to the material being stored and have the capacity to contain 10 percent of total volume of the containers, or 110 percent of the volume of the largest container, whichever is larger.

Petroleum and Other Hazardous Material or Waste Transfer. A Spill Control and Countermeasure Plan shall be submitted and approved by the Planning Board.

In those areas identified as sand and gravel aquifers as defined in Section 5.F.2.b. the following land uses are prohibited unless the Planning Board finds that no discharges will occur such that water quality at the property line will fall below State Drinking Water Standards and all provisions of this ordinance are met.

- dry cleaners
- photo processors
- printers
- auto washes
- Laundromats
- meat packers/slaughter houses
- salt piles/sand-salt piles
- wood preservers
- leather and leather products
- electrical equipment manufacturers
- plastic/fiberglass fabricating
- chemical reclamation facilities
- industrial waste disposal/impoundment areas
- landfills/dumps/transfer stations
- junk and salvage yards
- graveyards
- chemical manufacturing

Findings:

The Sand and Gravel Aquifer Map prepared by the Maine Geological Survey labeled Map 16 and identified as Open-File Report No. 85-82d, Plate 3 of 5 indicates that the project site is located on a sand and gravel aquifer (10-50 gallons per minute). Potential threats to groundwater quality include the subsurface wastewater disposal system, and spills of hazardous or petroleum products in the structure and on the project site. The quantity

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

of groundwater could be altered by the 3.2 acres of impervious area changing recharge characteristics.

The applicant provided information prepared by Haley & Aldrich relating to geologic site conditions including if the site was covered by a sand and gravel aquifer. The applicant reported that more than 30 exploration holes were drilled on site that indicated that portions of the site are underlain by alluvial or marine deposits consisting of silty sand. The surficial alluvial deposits are underlain by marine deposits consisting of stiff to soft clay. The Planning Board received testimony from Haley & Aldrich that surficial geology of the site does not meet the criteria for significant sand and gravel aquifer. In supplementary information the applicant provided a letter dated October 13, 2009 from R. W. Gillespie & Associates relating to the existence of a significant sand and gravel aquifer on the project site. Gillespie reported that the combination of low hydraulic conductivity and thin saturated thickness indicate yields of 10 GPM are unlikely and are unsupportable for extended durations for all but a small area at the southeastern extremities of the site.

The applicant retained R.W. Gillespie & Associates, Inc. to prepare a Septic Effluent Fate Analysis (nitrate loading). The analysis considered nitrate impacts on groundwater quality. Gillespie used a modified Domenico and Palciauskas model to estimate the maximum contamination level down gradient from leach fields. Gillespie conclude that designed to State of Maine standards, the wastewater disposal system would not adversely affect any existing private or public drinking water supplies. The proposed subsurface wastewater disposal system will dispose of other than normal domestic wastewater. In supplemental information September 23, 2009 the applicant addressed groundwater elevations and flow directions, leach field mounding and groundwater contamination. The applicant provided a letter dated October 16, 2009 from the Maine Center for Disease Control and Prevention for the approval of the proposed subsurface waste disposal system.

In supplemental information dated September 23, 2009 and October 16, 2009 the applicant provided information relating to the types of hazardous material on site and the procedures to respond to spills of such materials in store and outside of the store.

In supplemental information dated September 24, 2009 the applicant provided an estimate of the magnitude of drawdown that could occur in nearby wells after the Hannaford well is operational. Haley & Aldrich constructed a model using MODFLOW 2000 with the processor Visual MODFLOW Pro v.4.3. The model input variables included a pumping rate of 2.1 gpm, extent of fracture zone, the hydraulic conductivity of the bedrock fracture zone and width of the bedrock fracture zone. Haley & Aldrich concluded that the Hannaford well will not impact the well yield or water quality of nearby bedrock or dug wells.

Relevant comprehensive plan statement(s) related to Review Standard 24 (The proposed activity is in conformance with the comprehensive plan)

To protect the quality and quantity of groundwater resources for current and future use.

Condition(s)

On annual basis Hannaford shall submit to the Town of Turner Code Enforcement Officer copies of Septic Tank Pumping/Inspection Report (Form # 6) and Annual Septic Tank System Summary Report (Form #7).

Conclusion

Based on the above information, information in the record and condition(s) the Planning Board finds that this standard will be met. In voting to find that this standard will be met the Planning Board also approves the subsurface wastewater disposal system that will dispose of other than normal domestic wastewater.

Vote: Yes 6 No 0 Abstain 0

Street Construction Standards/ Section VIII Town of Turner Maine Street Construction Ordinance

Section III.B of the Town of Turner, Maine Street Construction Ordinance requires that alterations, widening and improvements to roads be consistent Section VII, Street Construction Standards. The applicant proposes to reconstruct approximately 500' of the Snell Hill Road to serve the project. The Snell Hill Road is a 20' wide paved town road. Based on site plans submitted by the applicant it has a right-of-way of 33'. The applicant proposes to construct turning lanes and widen portions of the Snell Hill Road. The portions to be improved will meet the standards of Section VII. The applicant has verbally stated an interest in deeding to the Town property to extend the right-of-way to the north of the current right-of-way of the Snell Hill Road.

Condition(s)

At least five days prior to commencing reconstruction of Snell Hill Road construction the applicant shall provide the Town of Turner with the performance guarantee in the type and the amount approved by the Road Commissioner.

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

At least five days prior to commencing reconstruction of Snell Hill Road the applicant shall provide the Town of Turner with a check for the amount of 2% of the estimated cost road construction and improvements to pay for the cost of inspection.

It shall be the responsibility of the applicant to maintain any road and drainage improvements not located in the existing right-of-way for the Snell Hill Road until such time that any additional Snell Hill Road right-of-way may be accepted by the Town of Turner.

Conclusion

Based on the above information, information in the record and conditions the Planning Board finds that the proposed development will comply with the standards of the Street Construction Ordinance.

Vote: Yes 6 No 0 Abstain

Based upon the foregoing Findings and Conclusions, the Planning Board finds that the applicant has satisfied each of the review criteria for approval and therefore the Planning Board approves the Site Plan Review Application of Hannaford Bros. Co. for a Hannaford Supermarket and Pharmacy on Lots 21, 26 and 27, as depicted on Tax Map 40, subject to the following conditions:

Conditions of Approval

- 1. The project is carried out as approved and as set forth in the application, site plans and verbal testimony.*
- 2. If any of the supporting data or representations for which this approval is based changes in any way or is found to be incorrect and/or inaccurate, the applicant shall request in writing from the Town of Turner Planning Board a decision of what impacts those changes will have on the approval. The applicant will then be required to submit those changes for review and approval and mitigation as a result of those changes may be required at the expense of the applicant.*
- 3. Exposed machinery installations, truck loading areas, utility buildings and structures, and similar accessory structures shall be screened as to prevent them from being incompatible with the existing or contemplated environment and the surrounding properties in all seasons of the year.*
- 4. Within a time period no sooner than six months and no later than 12 months from the date of store opening, the applicant shall conduct traffic counts at the intersection of*

*Hannaford Supermarket & Pharmacy
Site Plan Review
Findings of Facts and Conclusion of Law*

Main Street and Route 117. Should such traffic counts indicate that the intersection functions at a Level of Service of less than C due to increased traffic as the result of the overall Hannaford project, the Planning Board reserves the right to reopen the application for the reconsideration of this standard.

5. *Prior to granting a building permit the applicant shall provide the Planning Board a copy of the easement granted to the Androscoggin Land Trust for use of the trail head.*
6. *Should Maine DOT policies relating to crosswalks locations change to allow a crosswalk and/or the posted speed limit is reduced to 35 MPH within a five year time period from the date of any final application approval that applicant shall install a crosswalk meeting Maine DOT specification.*
7. *Prior to the issuance of an occupancy permit the Code Enforcement Officer shall find that all litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials have been removed from the site.*
8. *Any non-permitted removal of greater than 1,000 cubic yards of earth in a 12-month period will be approved by the Code Enforcement Officer or Planning Board according to Section 3.H of the Town of Turner Zoning Ordinance.*
9. *All signs shall comply with Section 4.S of the Town of Turner Zoning Ordinance.*
10. *It shall be the responsibility of the applicant to pay the cost for operation, maintenance and repair of the traffic signal at the Route 4/Snell Hill Road intersection.*
11. *Prior to granting a building permit the applicant shall provide the Planning Board with easements that restrict subsurface sewage disposal within the well head protection area on land not owned by the applicant.*
12. *On annual basis Hannaford shall submit to the Town of Turner Code Enforcement Officer copies of Septic Tank Pumping/Inspection Report (Form # 6) and Annual Septic Tank System Summary Report (Form #7).*
13. *Prior to any site disturbance the applicant shall provide to the Planning Board a predevelopment evaluation of the 12 wells of the abutters.*
14. *Should the Code Enforcement Officer receive creditable complaints relating to odor from the self-contained compactor and upon his investigation determines that offensive odors*

exist the applicant shall be required to alter the time frames for removal of solid waste from the compactor to minimize odor.

15. *Within six months, or other time period determined to be appropriate, from the date of opening the Town at the expense of the applicant shall conduct an environmental sound evaluation to determine the compliance with this standard.*
16. *The Code Enforcement Officer shall monitor and enforce the standards for sound pressure limits contain in Section 5.E.19 of the Town of Turner Zoning Ordinance.*
17. *The reserved areas for the second wastewater disposal areas shall not be altered in any way that makes the area unsuitable for a wastewater disposal system, unless an alternate site is designated and approved by the Planning Board*
18. *The project owner shall be responsible for maintaining all buffers in a healthy condition as to maintain them for the purposes designed.*
19. *Prior to any onsite or off site construction that does or does not require a permit issued by the Town of Turner the applicant shall provide a written statement, acceptable by the Planning Board, that a specific dollar amount has been dedicated to complete the project as approved.*
20. *The Code Enforcement Officer shall not issue any required permits until the applicant provides copies of all applicable State permit approvals. Should the project, as may be approved by the Planning Board, require changes as the result of such State permits the applicant shall submit such changes for review and approval by the Planning Board.*
21. *At least five days prior to commencing reconstruction of Snell Hill Road construction the applicant shall provide the Town of Turner with the performance guarantee in the type and the amount approved by the Road Commissioner.*
22. *At least five days prior to commencing reconstruction of Snell Hill Road the applicant shall provide the Town of Turner with a check for the amount of 2% of the estimated cost road construction and improvements to pay for the cost of inspection.*
23. *It shall be the responsibility of the applicant to maintain any road and drainage improvements not located in the existing right- of- way for the Snell Hill Road until such time that any additional Snell Hill Road right-of-way may be accepted by the Town of Turner.*

Vote: Yes 5 No 1 Abstain 0

Dated in Turner, Maine this 10th day of March, 2010.

Turner Planning Board

By: _____
Chair

JAM 02.17.10
Revisions

03.02.10.

03.03.10.03.04.10

Town of Freeport Planner's Memo to Design Review Board-May 12, 2010



Planning Department

TO: Freeport Project Review Board
FROM: Donna Larson, Town Planner
RE: Staff Report
DATE: Wednesday, May 12, 2010

Greystone Freeport Living Retirement Community – Renewal of Approval

The applicant is seeking a renewal of the approval for a retirement community off Stagecoach Road / Pine Street as construction of the project has not started and the approval is set to expire in June. The proposal includes 155 living units in a variety of housing types including a lodge, assisted living building, and independent cottages. This project requires both Subdivision and Site Plan Review. The location of the Retirement Community Overlay District was approved by the Freeport Town Council in October 2006.

The phasing plan will remain the same with the applicant requesting two years to complete each phase, for a total of ten years. The breakdown is as follows:

- Phase I: portion of the main road, independent apartment building along with associated parking and infrastructure, and 4 cottages
- Phase II: assisted living building and associated parking, sky-bridge, service building
- Phase III: 16 cottages
- Phase IV: 24 cottages and infrastructure on the main road
- Phase V: 19 cottages and infrastructure on Ridge Road

As with the original approval, the applicant would be required to substantially complete one phase before moving on to the next. A performance guarantee and associated fees would be required for each phase, with cost estimates to be reviewed and approved by the Town Engineer prior to the start of any site work for each of the phases. The applicant will also be required to establish an inspection account for each phase. In addition, the applicant would be required to pay any and all required permit fees based upon the permits and fees required at such time that construction commences.

If for some reason regulations change prior to the phase commencing, the applicant may be required to return to the Town for approval and get any additional permits as necessary. This would apply for changes required to the plan by State agencies or other governing bodies. As long as the phases are

done within the time frame approved by this Board, the Town's approval would still be valid and any changes to town regulations would not require changes to the plan.

The same conditions of approval as from the original approval are applicable.

Proposed Findings of Fact: (Section 602.F. of the Freeport Zoning Ordinance)

a. Preservation of Landscape.

The proposed development will have a variety of building types from cottage style condominium units to an independent apartment building and assisted living buildings. After careful consideration of the placement, the location of the two larger buildings has been established in a way that will minimize the view from abutting properties, the Interstate, and US Route One. The building closest to Pine Street is a cottage and will be similar in size and use to other nearby properties which are also residential. The layout has been designed with sensitivity to abutting residential properties, incorporates buffers, and retains existing vegetation where possible. Building designs were completed by Gawron Turgeon Architects.

b. Relation of Proposed Buildings to the Environment.

The two large buildings which include assisted living facilities, apartments, and common facilities are located on the shortest section of road in the Commercial I District with a main access drive being located nearby off of US Route One. The buildings have been situated to minimize the impact from the roads and abutting residential properties. Since these buildings are located in the Commercial District there are other large buildings nearby. The applicant has considered the architectural features of the buildings and designed them to be compatible with the other buildings on the property and to minimize the appearance of the large facades. This development is not located within the Freeport Design Review District. The plans incorporate buffers and additional landscaping to screen the facilities from the abutting properties.

c. Vehicular Access.

Primary vehicular access will be off of US Route One with a new entrance proposed. The applicant will be required to obtain a Driveway Entrance Permit from the Freeport Department of Public Works prior to any sitework.

A portion of this property does abut Stagecoach Road. There is an existing access easement connecting from Stagecoach Road to the water tank. This easement will remain so that those who have rights can continue to access the tank. This easement may provide back-up emergency access to the site should the main roadway be blocked in an emergency situation and public safety personnel need to access the site. This access easement will not be used to provide regular day-to-day access to the site.

Traffic Generation Rates for the project were completed by John Kennedy, Sevee and Maher Engineers in 2006. Gorrill-Palmer Consulting Engineers, Inc. also conducted a traffic review for the project. In a letter dated February 28, 2007, Randall Dunton, P.E., PTOE, Gorrill-Palmer concludes that the site distance at the proposed entrance exceeds MDOT standards,

there are no high crash locations in the area, and the number of trips generated will not meet the threshold to require a Maine Department of Transportation Traffic Movement Permit.

d. Parking and Circulation.

Access to the site will be off of US Route One. The roadways within the development will be private. There will be sidewalks throughout the development along one side of the road. There will also be pedestrian trails on the property with one providing a connection to Pine Street. Site plans including road design were completed by Sevee and Maher Engineers.

Based upon the number of units, the parking requirement is as follows:

cottages (elderly housing dwelling unit) = 63 spaces

apartments in the independent apartment building (elderly housing unit) = 31 spaces

assisted living building (care beds) = 10 spaces

employees (based upon the largest shift) = 40 spaces

Total required parking = 144

For the assisted living and independent apartment building and the various uses within those buildings, 96 parking spaces are being provided. Of the total, 8 are garage spaces and the other 88 are in paved lots. The parking is distributed in multiple locations to provide better access to each of the buildings and to break-up the visual impact of a large surface parking lot. For the cottages, 22 units have a one-car garage, 36 units have a two-car garage, and there are 13 stall spaces. Each unit will also have room for additional parking in their driveway. The parking requirements of the Freeport Zoning Ordinance have been met.

e. Surface Water Drainage.

The applicant has submitted stormwater management and erosion control plans which were engineered by Sevee and Maher Engineers. The applicant was required to submit plans to the Maine Department of Environmental Protection for review and approval of a Site Location of Development Permit. Approval of that permit was granted on May 25, 2008. As a condition of that approval, the applicant is required to incorporate stormwater management buffer protection easements into the deeds for the properties so that these areas remain protected. The applicant will have to comply with the DEP requirement pertaining to the installation, care, maintenance, and inspection of vegetated soil filters.

In addition, the Town Engineer has reviewed the plans (memo dated June 4, 2008) and recommended that the applicant enter into a Maintenance Agreement for a Stormwater Management System with the Town of Freeport, to be recorded in the Cumberland County Registry of Deeds. The applicant will also be required to submit written inspection and maintenance reports to the Town of Freeport about the various stormwater systems on the property annually, even though the DEP only requires this every 5 years.

Due to the fact that some of the drainage from the site drains into the Concord Brook Watershed, which is a watershed for an urban impaired stream, the DEP requires that the developer participate in either a stormwater compensation project or establish a compensation utilization plan (CFUP) to fund a stormwater project within the watershed). The applicant has developed a CFUP which was approved by the DEP. Funds in the amount of \$11,650.00 have been deposited into this account and will be used as outlined in the approved CFUP (letter dated 04/10/08 from Donald T. Witherhill, Director, Division of Watershed Management, Bureau of Land and Water Quality, MDEP).

The area of development is categorized as Zone C (areas of minimal flooding) on the 1995 Federal Emergency Management Agency Flood Insurance Rate Maps.

f. Utilities.

Due to the location of the property, there are portions of the development within each of the service areas of both the Freeport Water District and the South Freeport Water District. In an email dated September 14, 2008, Rick Knowlton of Aqua Maine states his approval to allow the Freeport Water District to serve all units including those located in the area typically served by the South Freeport Water District (as described in a letter dated August 30, 2007). In a letter dated March 8, 2007, Ron Seaman, Superintendent of the Freeport Water District states that they have the capacity to serve all of the units. Aqua Maine granted written approval of the water utility plans and stated that they have capacity to serve the project in a letter dated May 13, 2008 from Stephen Cox, PE at Aqua Maine.

The project will be served by the Freeport Sewer District. In letters dated September 26, 2006 and June 3, 2008, Tom Allen, Superintendent of the Freeport Sewer District states that the utility has the capacity to serve the project. In a letter dated June 4, 2008, Mr. Allen stated that he has reviewed the final plans and they will be accepted with one change being made which the applicant has agreed to.

Drainage facilities and some of the sewer pipe for the project will be located in part of the Route One right-of-way. The Town of Freeport will need to apply for a MDOT Utility Location Permit on behalf of the applicant so that these improvements can be made in the public right of way.

g. Advertising Features.

The applicant will install a granite sign with sand blasted letters and a stone base. The sign face will be 12 feet long and two feet in height. The location of the sign will be near the entrance on US Route One.

h. Special Features.

The location of dumpster and utility pads are shown on the plans. The areas will be screened with a 6-foot wooden screening fence.

i. Exterior Lighting.

Photometric Plans were prepared and submitted by Gawron Turgeon Architects and the illumination levels are within the standards set by Section 521: Lighting of the Freeport Zoning Ordinance. All fixtures will be full cut-off. A cut sheet has been submitted for the site lighting, sign lighting and building sconces.

j. Emergency Vehicle Access.

All Public Safety Department Heads have reviewed and approved the plans. The Fire Chief has required that all of the units and buildings have sprinklers. Emergency access to the development will be via the main entrance off of US Route One. This parcel does abut Stagecoach Road and the Town of Freeport does have an access easement off of this road and over the land within this development. This easement may provide back-up emergency access to the site should the main roadway be blocked in an emergency situation and public safety personnel need to access the site. This access easement will not be used to provide regular day-to-day access to the site. The road names of Sky Drive, Wildflower Drive, and Treehouse Drive have been approved by Clinton Swett, the Town of Freeport E-911 Addressing Officer.

k. Landscaping.

The applicant will retain existing vegetation where possible and supplements as needed with a variety of trees and shrubs. This will help to minimize the impact of the development on neighboring properties. The applicant has maintained an undisturbed forested buffer to screen the properties from Winston Hill Road. There are areas of under-drained soil filter that will provide additional plantings and buffers throughout the site. Within the development street trees in accordance with those listed in the Freeport Village Design Standards are proposed. There will also be terraced walls with landscaping worked into the topography of the site. Additional plantings will be located around the buildings.

l. Environmental Consideration.

This project is not within the Marine Waterfront District of the Shoreland Zone. The development will be connected to the Public Water System. Site Location of Development Permit was issued by the Maine Department of Environmental Protection on May 25, 2008. The Maine Historic Preservation Commission has reviewed the project and in a letter dated May 30, 2006 from Earle Shettleworth, Jr., stated that there are no historic properties within or adjacent to this development. Wetlands were delineated by Woodlot Alternatives in November 2006 (letter dated December 13, 2006) and the location of the wetlands is shown on the recording plan. In a letter dated June 6, 2006, Eugenie Francine from Woodlot Alternative states that two vernal pools were identified on the site. The location of these two vernal pools is shown on the recording plan. The applicant is altering 4,069 s.f. of wetlands and a Natural Resources Protection Act Permit is not required. In a letter dated June 1, 2006 Brian Lewis of the Maine Department of Inland Fisheries and Wildlife (IF&W) states that there are no known threatened or endangered fish species, habitat, or fisheries resources in the area of the project. In a letter from Kendall Marden of IF&W, it is stated that there are no known essential or significant wildlife habitats or threatened or endangered species on the property.

Conclusion: Based on these facts the Board finds that this project meets the criteria and standards of Section 602 Site Plan Review.

Proposed Findings of Fact:

11.1 Pollution

A Class B High-Intensity Soil Survey was completed by Norman Scott in early 2007. The development will be connected to the public sewer and public water systems. The area of development is categorized as Zone C (areas of minimal flooding) on the 1995 Federal Emergency Management Agency Flood Insurance Rate Maps. A portion of the parcel is in an area identified as a potential bedrock aquifer in a report entitled "Town of Freeport Bedrock Aquifer Study" prepared by Robert Gerber, Inc. in July 30, 1986. This portion of the property is zoned Resource Protection II which is intended to provide protection for the aquifer; however, development is allowed by the Ordinance. The applicant is not proposing any development within this portion of the property and the area will be protected by a deed restriction and conservation easement.

11.2 Sufficient Water

Due to the location of the property, there are portions of the development within each of the service areas of both the Freeport Water District and the South Freeport Water District. In an email dated September 14, 2008, Rick Knowlton of Aqua Maine states his approval to allow the Freeport Water District to serve all units including those located in the area typically served by the South Freeport Water District (as described in a letter dated August 30, 2007). In a letter dated March 8, 2007, Ron Seaman, Superintendent of the Freeport Water District states that they have the capacity to serve all of the units. Aqua Maine granted written approval of the water utility plans and stated that they have capacity to serve the project in a letter dated May 13, 2008 from Stephen Cox, P.E. at Aqua Maine.

11.3 Impact on Existing Water Supplies

Due to the location of the property, there are portions of the development within each of the service areas of both the Freeport Water District and the South Freeport Water District. In an email dated September 14, 2008, Rick Knowlton of Aqua Maine states his approval to allow the Freeport Water District to serve all units including those located in the area typically served by the South Freeport Water District (as described in a letter dated August 30, 2007). In a letter dated March 8, 2007, Ron Seaman, Superintendent of the Freeport Water District states that they have the capacity to serve all of the units. Aqua Maine granted written approval of the water utility plans and stated that they have capacity to serve the project in a letter dated May 13, 2008 from Stephen Cox, P.E. at Aqua Maine.

11.4 Soil Erosion.

A Class B High-Intensity Soil Survey was completed by Norman Scott in early 2007.

The applicant has submitted stormwater management and erosion control plans which were engineered by Sevee and Maher Engineers. The applicant was required to submit plans to the Maine Department of Environmental Protection for review and approval of a Site

Location of Development Permit. Approval of that permit was granted on May 25, 2008. As a condition of that approval, the applicant is required to incorporate stormwater management buffer protection easements into the deeds for the properties so that these areas remain protected. The applicant will have to comply with the DEP requirement pertaining to the installation, care, maintenance, and inspection of vegetated soil filters.

In addition, the Town Engineer has reviewed the plans (memo dated June 4, 2008) and recommended that the applicant enters into a Maintenance Agreement for a Stormwater Management System with the Town of Freeport, to be recorded in the Cumberland County Registry of Deeds. The applicant will also be required to submit written inspection and maintenance reports to the Town of Freeport about the various stormwater systems on the property annually, even though the DEP only requires this every 5 years.

11.5 Traffic Conditions

Primary vehicular access will be off of US Route One with a new entrance proposed. The applicant will be required to obtain a Driveway Entrance Permit from the Freeport Department of Public Works prior to any sitework.

A portion of this property does abut Stagecoach Road. There is an existing access easement connecting from Stagecoach Road to the water tank. This easement will remain so that those who have rights can continue to access the tank. This easement may provide back-up emergency access to the site should the main roadway be blocked in an emergency situation and public safety personnel need to access the site. This access easement will not be used to provide regular day-to-day access to the site.

Traffic Generation Rates for the project were completed by John Kennedy, Sevee and Maher Engineers in 2006. Gorrill-Palmer Consulting Engineers, Inc. also conducted a traffic review for the project. In a letter dated February 28, 2007, Randall Dunton, P.E., PTOE, Gorrill-Palmer concludes that the site distance at the proposed entrance exceeds MDOT standards, there are no high crash locations in the area, and the number of trips generated will not meet the threshold to require a Maine Department of Transportation Traffic Movement Permit.

11.6 Sewage Disposal

The project will be served by the Freeport Sewer District. In letters dated September 26, 2006 and June 3, 2008, Tom Allen, Superintendent of the Freeport Sewer District states that the utility has the capacity to serve the project. In a letter dated June 4, 2008, Mr. Allen stated that he has reviewed the final plans and they will be accepted with one change being made which the applicant has agreed to.

11.7 Solid Waste

As required by the Freeport Solid Waste Ordinance, the applicant and/or homeowners will be required to contract with a private solid waste hauler.

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

Site Location of Development Permit was issued by the Maine Department of Environmental Protection on May 25, 2008. The Maine Historic Preservation Commission has reviewed the project and in a letter dated May 30, 2006 from Earle Shettleworth, Jr., stated that there are no historic properties within or adjacent to this development. Wetlands were delineated by Woodlot Alternatives in November 2006 (letter dated December 13, 2006) and the location of the wetlands is shown on the recording plan. In a letter dated June 6, 2006, Eugenie Francine from Woodlot Alternative states that two vernal pools were identified on the site. The location of these two vernal pools is shown on the recording plan. The applicant is altering 4,069 s.f. of wetlands and a Natural Resources Protection Act Permit is not required. A portion of the property is zoned Resource Protection II which is intended to provide protection for the aquifer however development is allowed by the Ordinance. The applicant is not proposing any development within this portion of the property and the area will be protected by a deed restriction and conservation easement to the Freeport Conservation Trust. In a letter dated June 1, 2006 Brian Lewis of the Maine Department of Inland Fisheries and Wildlife (IFW) states that there are no known threatened or endangered fish species, habitat, or fisheries resources in the area of the project. In a letter from Kendall Marden of IFW, it is stated that there are no known essential or significant wildlife habitats or threatened or endangered species on the property.

11.9 Conformance with Zoning Ordinance and Other Land Use Ordinances.

This parcel is located in the Commercial I District, Resource Protection II District, Rural Residential I District, and Medium Density Residential II District. The development complies with the applicable space and bulk standards as set forth by the Freeport Zoning Ordinance. In addition, this development complies with the requirements of the Freeport Subdivision Ordinance. The Freeport Town Council approved a Retirement Community Overlay District for this property in October 2006 and the development complies with the standards set forth by that section of the Freeport Zoning Ordinance.

11.10 Financial and Technical Capacity

The final submission was prepared by Terrance DeWan and Associates. Sevee and Maher completed the engineered plans and reports. The recording plan was prepared by Royal River Survey Company. Gawron Turgeon Architects designed the buildings. In a letter dated May 6, 2008, the Senior Vice President from Bank of America states their interest in financing this joint project between Greystone and Co. Inc. and Freeport Living, LLC.

11.11 Impact on Water Quality or Shoreline

This development is not within the watershed of a great pond, lake, or river.

11.12 Impact on Ground Water Quality or Quantity

A portion of the parcel is in an area identified as a potential bedrock aquifer in a report entitled "Town of Freeport Bedrock Aquifer Study" prepared by Robert Gerber, Inc. in July 30, 1986. This portion of the property is zoned Resource Protection II which is intended to

provide protection for the aquifer; however, development is allowed by the Ordinance. The applicant is not proposing any development within this portion of the property and the area will be protected by a deed restriction and conservation easement. There will be no private wells on the property. The entire project will be connected to the public sewer system.

11.13 Floodplain Management

The area of development is categorized as Zone C (areas of minimal flooding) on the 1995 Federal Emergency Management Agency Flood Insurance Rate Maps.

11.14 Identification of Freshwater Wetlands

Wetlands were delineated by Woodlot Alternatives in November 2006 (letter dated December 13, 2006) and the location of the wetlands is shown on the recording plan. The applicant is altering 4,069 s.f. of wetlands and a Natural Resources Protection Act Permit is not required.

11.15 Rivers, Streams, and Brooks

No rivers, streams, or brooks have been identified on the plan.

11.16 Stormwater Management

The applicant has submitted stormwater management and erosion control plans which were engineered by Sevee and Maher Engineers. The applicant was required to submit plans to the Maine Department of Environmental Protection for review and approval of a Site Location of Development Permit. Approval of that permit was granted on May 25, 2008. As a condition of that approval, the applicant is required to incorporate stormwater management buffer protection easements into the deeds for the properties so that these areas remain protected. The applicant will have to comply with the DEP requirement pertaining to the installation, care, maintenance, and inspection of vegetated soil filters.

In addition, the Town Engineer has reviewed the plans (memo dated June 4, 2008) and recommended that the applicant enter into a Maintenance Agreement for a Stormwater Management System with the Town of Freeport, to be recorded in the Cumberland County Registry of Deeds. The applicant will also be required to submit written inspection and maintenance reports to the Town of Freeport about the various stormwater systems on the property annually, even though the DEP only requires this every 5 years.

Due to the fact that some of the drainage from the site drains into the Concord Brook Watershed, which is a watershed for an urban impaired stream, the DEP requires that the developer participate in either a stormwater compensation project or establish a compensation utilization plan (CFUP) to fund a stormwater project within the watershed. The applicant has developed a CFUP which was approved by the DEP. Funds in the amount of \$11,650.00 have been deposited into this account and will be used as outlined in the approved CFUP (letter dated 04/10/08 from Donald T. Witherhill, Director, Division of Watershed Management, Bureau of Land and Water Quality, MDEP).

The area of development is categorized as Zone C (areas of minimal flooding) on the 1995 Federal Emergency Management Agency Flood Insurance Rate Maps.

11.17 Spaghetti Lots

No spaghetti lots are proposed with this development.

11.18 Phosphorus Impacts on Great Ponds

The development is not within the watershed of a great pond.

11.19 Impacts on Adjoining Municipalities

This development is not within or does not border an adjoining municipality.

Conclusion: Based on these facts the Board finds that this project meets the criteria and standards of the Subdivision Ordinance.

Proposed Motion: Be it ordered that the Freeport Project Review Board renew the approval of the proposed Greystone/Freeport Living Retirement Community on Stagecoach Road/Pine Street, to be built substantially as proposed, subdivision recording plan dated 05-30-08 finding that it meets the standards of the Freeport Subdivision Ordinance and Section 602 of the Freeport Zoning Ordinance, with the following Conditions of Approval:

- 1) This approval incorporates by reference all supporting plans that amend the previously approved plans submitted by the applicant and his/her representatives at Project Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions.
- 2) The Board approves the five phases as presented by the applicant and each phase is approved for two years, for a total of ten years. Construction of each phase must be substantially completed as presented, before moving to the next phase. If during such time prior to construction, rules and regulations of the State or other governing bodies besides the Town change and require changes to the plan, the applicant may be required to return to the Town for approval of such changes.
- 3) Prior to any site work, the applicant do the following:
 - A. Obtain approval from the Freeport Department of Public Works for a Driveway Entrance Permit.
 - B. The applicant is responsible for obtaining permits and paying all applicable fees associated with such permits from the Freeport Codes Enforcement Department.

- C. The applicant enters into a Maintenance Agreement for a Stormwater Management System with the Town of Freeport, to be recorded in the Cumberland County Registry of Deeds.
- 4) Prior to any site work for each phase of the buildout, the applicant shall do the following:
- A. Pay a Pavement Maintenance Impact Fee based upon the road lengths of 950 feet (Sky Drive), 2,650 feet (Wildflower Drive), and 1,010 feet (Treehouse Drive) and the current impact fee effective when the building permit is issued. Applicants for building permits will also be required to pay the Impact Fee, at the time a building permit is issued and based upon the size of the structure and the current impact fee effective at such time that the permit is issued.
 - B. The applicant establishes a performance guarantee, before beginning each phase, in the amount to cover the cost of all site work and approved by the Town Engineer, in a form acceptable to the Town Attorney. The performance guarantees shall cover the cost of all site work, including the driveway, parking areas, landscaping, erosion control, and stormwater management for the phase to be started. Along with the performance guarantees, a non-refundable administrative fee of 2% of the performance guarantee, in the amount of be paid prior to construction. The final cost estimated for each phase is to be reviewed and approved by the Town Engineer at such time that the applicant is to begin each phase.
 - C. Establish an inspection account, in the amount to be determined by the Town Engineer, for inspection of the site improvements for each phase.
- 5) The foundation for the building which contains units 27 and 28 must be established by a Land Surveyor after the footings are poured. Any projections from the building, including overhangs, must meet the setbacks. Written documentation of this being done and the building meeting required setbacks must be submitted to the Freeport Codes Enforcement Officer.
- 6) The project roads and infrastructure will remain private and the Town of Freeport is not assuming any responsibility for repair or maintenance thereof. The owner of the property, their successors or assigns, will be responsible for all maintenance and repair of the project roads and project infrastructure. Vegetated emergency access off Pine Street shall be provided.
- 7) Stormwater drainage facilities shall be maintained in accordance with the requirements of the Maine Department of Environmental Protection as outlined in the Stormwater Maintenance Plan.

- 8) The owner of the property, their successors or assigns, will assume responsibility over undeveloped lands to maintain safety.
- 9) Specific details on maintenance and associated costs will be detailed in the cooperative documents and supplied to the Freeport Planning Office prior to building permits being issued.

Freeport Village Station – Project Identification Signs

The applicant is seeking approval of a Design Review Certificate for new Project Identification Signs and exterior alterations at Freeport Village Station. The exterior alteration will be the addition of an architectural canopy over the entrance on the corner of Depot and Mill Street which will be the entry to the theatre. The design is typical of that which is often seen over a theatre entrance as it is a flat canopy with lights proposed around the border. The canopy will be made of steel. A sign will be installed on the front face of the canopy. It will be reverse channel letters with exposed bulbs.

Additional signage for the theatre is proposed. There will be a building mounted sign on the Mill Street façade. The sign will be made of metal with white letters and will be halo lit. The sign will be 20' x 6'. The last component of the theatre signage is posters for showings. Eight total posters are proposed with 4 along each of the front facades. The posters will obviously change depending on what is playing; however, the cases will remain the same with a glass front and lighting inside. Although the applicant is seeking approval for 8, they may not actually install all 8. All of the proposed theatre signs will count towards the signage totals for the development. Fred Reeder, CEO has reviewed them for their compliance for the size limitations of the Freeport Sign Ordinance.

The applicant is also seeking approval for new signs at the entrances. This will replace existing signage which is not working for the development. The following signs are proposed:

Main Street – “Freeport Village Station” arch sign which will be reverse channel letters with exposed lights. The letters will be attached to metal arches. The arch will connect to a light on either side. The light will have a brick base (a/k/a pier) which will also have name plates for the tenants. “Freeport Village Station” will also be added in small letters along the existing concrete wall.

Mill Street – Two piers with tenant signs are proposed. There will be one on either end of the steps and abutting the sidewalk. There will also be two “Freeport Village Station” signs; one on either side of the Mallet Building and hung on arches connected to the abutting buildings. The arch signs will also be reverse channel letters with exposed lights.

Depot Street – A brick pier with tenant name plates will be added.

Bow Street – A brick pier with tenant name plates will be added as a new base to the existing sign.

The piers with tenant names are considered ground signs and count towards the overall signage totals. It should also be noted that these signs will also be illuminated on each side with angled-down lights. Each of the piers will most likely have signs on all four sides. The bases of the Main Street piers will be granite; the others will be concrete.

Design Review Ordinance: Chapter 22 Section VII.C.

1. **Scale of the Building.** The scale of a building depends on its overall size, the mass of it in relationship to the open space around it, and the sizes of its doors, windows, porches and balconies. The scale gives a building “presence”; that is, it makes it seem big or small, awkward or graceful, overpowering or unimportant. The scale of a building should be visually compatible with its site and with its neighborhood.

The scale of the building will not be altered.

2. **Height.** A sudden dramatic change in building height can have a jarring effect on the streetscape, i.e., the way the whole street looks. A tall building can shade its neighbors and/or the street. The height of buildings should be visually compatible with the heights of the buildings in the neighborhood.

The height of the overall building will not be altered.

3. **Proportion of Building’s Front Facade.** The “first impression” a building gives is that of its front facade, the side of the building, which faces the most frequently used public way. The relationship of the width to the height of the front facade should be visually compatible with that of its neighbors.

The entrance located at the corner of Mill Street and Depot Street will be altered with the addition of a canopy. The canopy will help to break up the height of the façade.

4. **Rhythm of Solids to Voids in Front Facades.** When you look at any facade of a building, you see openings such as doors or windows (voids) in the wall surface (solid). Usually the voids appear as dark areas, almost holes, in the solid and they are quite noticeable, setting up a pattern or rhythm. The pattern of solids and voids in the front facade of a new or altered building should be visually compatible with that of its neighbors.

No new windows are proposed.

5. **Proportions of Opening within the Facility.** Windows and doors come in a variety of shapes and sizes; even rectangular window and door openings can appear quite different depending on their dimensions. The relationship of the height of windows and doors to their width should be visually compatible with the architectural style of the building and with that of its neighbors.

No new openings are proposed.

6. **Roof Shapes.** A roof can have a dramatic impact on the appearance of a building. The shape and proportion of the roof should be visually compatible with the architectural style of the building and with those of neighboring buildings.

The roof shape will not change.

7. **Relationship of Facade Materials.** The facades of a building are what give it character, and the character varies depending on the materials of which the facades are made and their texture. In Freeport, many different materials are used on facades—clapboards, shingles, patterned shingles, brick—depending on the architectural style of the building. The facades of a building, particularly the front facade, should be visually compatible with those of other buildings around it.

The canopy will be made of aluminum.

8. **Rhythm of Spaces to Building on Streets.** The building itself is not the only thing you see when you look at it; you are also aware of the space where the building is not, i.e., the open space which is around the building. Looking along a street, the buildings and open spaces set up a rhythm. The rhythm of spaces to buildings should be considered when determining visual compatibility, whether it is between buildings or between buildings and the street (setback).

*The site is already developed and the signs are being added near the existing entrances.
No other changes to the building are proposed.*

9. **Site Features.** The size, placement and materials of walks, walls, fences, signs, driveways and parking areas may have a visual impact on a building. These features should be visually compatible with the building and neighboring buildings.

The site is already developed and the signs are being added near the existing entrances.

10. In addition to the requirements of the Freeport Sign Ordinance, **signs** in the Freeport Design Review District shall be reviewed for the following: materials, illumination, colors, lettering style, location on site or building, size and scale. Minor changes that do not alter the dimensions or lettering style of an existing

sign need not be reviewed, i.e. personal name changes for professional offices, or changes in hours of operation. See Special Publication: “Sign Application Requirements”.

The applicant is proposing project identification signs at the Main Street and Mill Street entrances to the development. The signs will be reverse channel letters with exposed bulbs. A total of six new piers will be added with tenant signs. These signs will be located along the street sides of the building and are considered ground signs and count towards the total signage for the building. The piers will be made of either brick and granite or brick and concrete. The tenant signs will be all one size and reflect the colors and logos of the tenants. Two new “Nordica Theatre” signs will be installed; one on the building and one on the canopy. The one on the building will be channel letters and halo lit. The sign on the canopy will be reverse channel letters with exposed bulbs. There will be up to 8 poster signs on the front facades of the building. The posters will be in glass enclosures and will be illuminated.

Proposed Motion: Be it ordered that the Freeport Project Review Board approve the printed Findings of Fact and a Design Review Certificate exterior alterations and signage at Freeport Village Station, to be built substantially as proposed, submission dated 28 April 2010, finding that it meets the standards of the Freeport Design Review Ordinance with the following Conditions of Approval:

- 1) This approval incorporates by reference all supporting plans that amend the previously approved plans submitted by the applicant and his/her representatives at Project Review Board meetings and hearings on the subject application to the extent that they are not in conflict with other stated conditions.
- 2) The applicant must obtain any applicable permits from the Freeport Codes Enforcement Officer.

Bow Street Realty – Courtyard Kiosk – Design Review District I – Class C

The applicant is presenting conceptual plans to add a 400 s.f. building with deck to use for restaurant carry-out. Site Plan Review and Design Review are required. The building will be located on the side of the property abutting the pedestrian plaza which connects to Freeport Village Station. The building will have space for up to four separate tenants.

The use is restaurant carry-out (see letter from C.E.O. dated 05/05/10) and will require that the applicant lease 6 parking spaces based upon the square footage, the number of employees, and a reduction for shared parking. The use would operate most likely from May to November. Although the use is seasonal in nature, the applicant will still be required to provide the parking (through lease in this case) for the entire year as do other existing establishments that close in the winter. The only case where the parking requirement has been reduced in the Village has been for outdoor seating only, and not for the actual use.

The building will be open in the front when in use and there will be roll down (most likely fabric) when the businesses are closed and during the winter. The building will be 10' x 40' and single story. It will be sided with cement siding to match the main building on the property. Details on the inside of the building and what will be visible when the businesses are open, still needs to be provided. The building does show potential location for signage; details still need to be submitted. The applicant is looking for feedback on the design so they may proceed with the final plans.

Freeport Campground – Site Plan Amendment

The applicant originally obtained site plan approval for a 15 site campground in 1998. Since that time, an additional 18 units have been added after-the-fact, bringing the total up to 33 sites. Access to the site remains unchanged. Since the additional units were after-the-fact there is an outstanding violation and the applicant cannot use the additional 18 sites until approval is granted by this Board. The applicant is presenting conceptual plans at this time so that they may proceed with the development of final plans.

The campground is a public water supplier and therefore the applicant will need to contact the State to see if their approval is required for the expansion. With the previous approval, the applicant did obtain a Tier One permit from the DEP. There is some conflicting information about the wetlands and how much was previously filled and actually defined as wetlands. That being the case, the applicant will need to submit a copy of the new wetlands report and contact the DEP to see if their approval will also be needed for the expansion.

The applicant will need to update stormwater management and erosion control plans as information was not included with the conceptual submission.

The plan does depict one campsite (pad) encroaching in the setback; this site needs to be moved and the plan needs to be revised.

The plans do not include any information on new signage or lighting. If any has been added since the original approval, this should also be included with the final submission. The applicant will also need to include information on the septic systems on site, so it can be reviewed by the local plumbing inspector to determine that it can adequately handle the waste from the site. The plan does not show any dumpsters.

Freeport Housing Trust – Contract Zone

The applicant is presenting conceptual plans for an application for a contract zone at their Oak Leaf Terrace senior housing property on South Street. The applicant presented the application to the Council in April and the Council determined that the application was an appropriate use of contract zoning and referred the application to the Project Review Board for review. The Council did identify concern with the project such as the building design, compatibility, buffering and traffic.

As far as the process (per Section 204 of the Freeport Zoning Ordinance), the ultimate decision for the contract zone and the details of the agreement are up to the Town Council. This Board's responsibility is to hold a public hearing and then make a recommendation to the Town Council (in the form of a possible contract) on the request.

The proposal includes a building with a footprint of 7,100 s.f.; the standards for the VMU-II would allow for a 2,500 s.f. footprint. The building would provide an additional 22 units of affordable senior housing. The development would also include a parking area and expanded driveway. The building would be three stories and only partially visible from South Street and therefore the applicant is also requesting that the Contract Zone provide a waiver from Design Review.

The Board can give the applicant general feedback on the project at this time, but ultimately they are trying to determine if the application would be an appropriate use of contract zoning. If the zone is approved, the applicant would then return to the Board for Site Plan Review, Design Review, Subdivision Review, and review for compliance with the standards of the Freeport Village Overlay District.

Before this Board can make their decision, an advisory opinion from the Planning Board is required. A June 2nd site walk with the Planning Board and Project Review Board at 5:00 p.m. is suggested. The item would then be on the Planning Board's June 2nd agenda for an advisory opinion.

Readfield Planning Board-Findings of Fact and Conclusion of Law dtd. May 20, 2004

Findings of Fact and Conclusions of Law

In the Matter of: Kent's Hill Lumber Co.
P.O. Box 285
Kent's Hill, Maine

Application for the construction of a self-storage facility on Rt. 17

Findings of Fact

The applicant has proposed to construct a 25 unit, 30 foot by 120 foot self-storage warehouse facility off Rt. 17 in Kent's Hill. The applicant has proposed that storage space at the facility would be available for rental to the public for storage of various types of personal property on a cash/credit basis. The structure was proposed to be constructed on a parcel of land identified on Assessor's Map 8 as Lot 21, and was proposed to be set back 75 feet from Rt. 17. The parcel is owned by Kent's Hill Lumber Co. ("KHL") and is adjacent to a separate parcel upon which the KHL lumber business is located. The lot in question abuts Kent's Hill Orchard on its eastern side. The applicant submitted a Land Use Permit Application signed by Stephen Monsulick, Jr. (President, KHL) and dated March 30, 2004.

Map 8 Lot 21 is located in the Rural Residential District as designated on the "Land Use Map of Readfield, Maine" and as defined in the Town of Readfield's Land Use Ordinance. The proposed use of the parcel, from the Table of Uses in the Land Use Ordinance (Article 7, Section 5, Table 1) was identified by the Board as "Warehousing and Storage", based upon the description of the proposed use provided by the applicant and described above. The Kent's Hill Lumber Co. business, located on an adjacent parcel, is also within the Rural Residential District and exists in that district as a non-conforming use. The existing use of that parcel from the Table of Uses, as identified by the Board, is as a "retail business" (lumber and building materials).

The above described land use application was initially presented to the Planning Board on April 6, 2004. The Board found the application complete on that date. A site visit and a public hearing were held on April 20, 2004. No members of the public provided comment or asked questions at the hearing. The application was again considered by the Board on May 4, 2004. Following extended discussion of the provisions of Article 3, Section 5 (Non-Conforming Uses) of the Land Use Ordinance the Board unanimously voted to deny the application of Kent's Hill Lumber Co. to construct a self-storage warehouse.

Conclusions of Law

Based upon the above Findings of Fact the Readfield Planning Board makes the following conclusions:

- The proposed use of Lot 21 of Map 8 is “Warehousing and Storage” as presented in Article 7, Section 5, Table 1 of the Town of Readfield Land Use Ordinance. This conclusion is based upon the applicant’s description of the proposed facility as one at which storage space would be available for rental to the public for the storage of various types of personal property on a cash/credit basis.
- New “Warehousing and Storage” Uses are not permitted in the Rural Residential District in accordance with Article 7, Section 5, Table 1 of the Town of Readfield Land Use Ordinance.
- Expansions of existing non-conforming commercial and industrial uses are permitted under certain circumstances pursuant to Article 3, Section 5(B) of the Land Use Ordinance. Article 3, Section 5(B) states that: “Non-conforming commercial and industrial uses, legally in existence as of June 11, 1998, located within the Village, Village Residential, Rural and Rural Residential Districts may be allowed to expand up to 100% of their existing developed area provided such expansion takes place on the existing lot or on land contiguous to the existing lot.” This section specifically references commercial and industrial uses, **legally in existence as of June 11, 1998** (emphasis added). The construction of a new self-storage facility, although adjacent to an existing non-conforming retail lumber/building materials business, is not found to be an expansion of an **existing** non-conforming commercial or industrial use. As described above, the Board has concluded that the proposed use is “Warehousing and Storage”, a land use that is separate and distinct from the existing use as a lumber/building materials retail business.
- Article 3, Section 5(D) of the Land Use Ordinance states: “An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board.” The construction of a new self-storage facility, although adjacent to an existing non-conforming retail lumber/building materials business, is not found to constitute a change from an existing use to another non-conforming use because: 1) it involves construction of a new structure and 2) it constitutes a new land use that is separate and distinct from the existing land use of lumber/building materials retail business which will continue.
- The proposed use does not fit within the scope of the existing non-conforming use and does not constitute a change of use but constitutes an additional use. The proposed use does not reflect the nature and purpose of the use prevailing when the ordinance took effect and creates a use different in quality and character than the original use.

- The Maine courts have supported the principle that zoning regulation provisions concerning the continuation of non-conforming uses should be strictly construed and that provisions concerning limitations on non-conforming uses should be liberally construed.

THEREFORE, the Town of Readfield Planning Board denies the application of Kent's Hill Lumber Co. to construct a self-storage facility on Rt. 17 in Kent's Hill as described in the above Findings of Fact.

Dated at Readfield, Maine the 20th day of May 2004.

READFIELD PLANNING BOARD

BY: _____
Paula M. Clark, Chair

Town of Bar Harbor Planning Board Land Use Ordinance / Site Plan Decision-May 19, 2010

93 Cottage Street, Suite I
Bar Harbor, Maine 04609-1400
Tel. 207-288-3329 Fax 207-288-3032

DECISION

Project Number: SP-09-02

Project Name: West Street Hotel

Project Location: West Street (Tax Map 104, Lots 113, 114, 115, 116, 117, 118, 122, 123, 143, 144, 146, 147, and 149).

Applicant: North-South Corp.

Application: This applicant proposed to construct a 102 room hotel which will contain six dwelling units, two of which will be dedicated to affordable housing, as well as a 72 space parking deck.

Zoning District: Downtown Business I

To the Code Enforcement Officer:

Under the authority and requirements of Land Use Ordinance Article V, Section 125-61.F, at the properly noticed public hearing on March 3, 2010, the Planning Board voted to deny the proposed project on the grounds that the proposed hotel did not meet the height requirements of Section 125-21(G). The Planning Board signed and issued its written decision on March 17, 2010. The applicant appealed the denial of the project to the Bar Harbor Board of Appeals. The Appeals Board held public hearings on April 13, 2010 and April 22, 2010 to review the appeal. The Appeals Board overturned the decision of the Planning Board on the grounds that the project would meet the height requirements of Section 125-21(G). The Appeals Board, by a 3-2 vote, concluded that the Planning Board misinterpreted Section 125-21(G) and voted to reverse the decision and remand the application with instructions to approve the project and issue a permit. The Board of Appeals issued its written decision on May 3, 2010. The Findings and Conclusions of Law in Section I of this decision are based upon the following submitted plans and documents:

1. "Proposed Site Plan, Exhibit 9.1.9" prepared by Moore Companies with a revision date of January 13, 2010.
2. "Subdivision Plan" prepared by Plisga and Day Land Surveyors, dated November 25, 2009.
3. "Grading and Drainage Plan, Exhibit 9.2.1" prepared by Moore Companies and stamped by Andrew McCullough with a date of January 22, 2010.
4. "Existing Site Plan" prepared by Moore Companies with a date of July 13, 2009.

5. "Sketch of Properties to be combined for Creation of West Street Hotel" prepared by Plisga and Day Surveyors and stamped by Patrick Donovan with a date of July 8, 2009.
6. "Proposed Landscape Plan, Detail Plantings, Exhibit 11.2.1" prepared by Moore Companies with a date of January 20, 2010.
7. "Proposed Landscape Plan, Street Trees Exhibit 11.1.1" prepared by Moore Companies with a date of January 20, 2010.
8. "Proposed Landscape and Buffering Plan, Exhibit 11.0" prepared by Moore Companies with a date of March 4, 2009.
9. "Topographic Site Plan" prepared by Plisga and Day Land Surveyors, and stamped by Patrick Donovan with a date of August 18, 2009.
10. "Site Preparation and Erosion Control Plan, Exhibit 17.0" prepared by the Moore Companies and stamped by Andrew McCullough with a date of September 30, 2009.
11. "Architectural Plans, Drawing Numbers A2.00, A2.01, A3.00" prepared by Eliopoulos Architecture, Inc. with a preparation date of January 18, 2010, January 15, 2010, and September 29, 2010 respectively.
12. "Parking Deck Floor Plans, Exhibits 20.A.1.5 and 20.B.1.5" prepared by the Moore Companies and stamped by Andrew McCullough with a date of January 22, 2010.
13. "Proposed Lighting Plan, Exhibit 21.1.2" prepared by the Moore Companies with a date of January 22, 2010.
14. "Changes to Traffic Review for Ocean Properties" prepared by Sewall Company with a date of November 17, 2009.
15. "Amended Affordable Housing Covenant to Address Items 1 and 4 in the Staff memo dated December 2, 2009" prepared by Eaton Peabody and submitted with a packet of materials received by the Planning Department on January 27, 2010.

I. FINDINGS AND CONCLUSIONS OF LAW WHICH SUPPORT THE DECISION OF THE PLANNING BOARD:

Based upon the documents received, and accepting the work of the professionals who have prepared the documents, the Planning Board makes the following findings with respect to the requirements of Section 125-67 of the Bar Harbor Land Use Ordinance as noted below:

- A. The proposed hotel is a Transient Accommodation 8, which is a permitted use in the Downtown Business I neighborhood district.
- B. Once the underlying lots are combined, the development will comply with the minimum lot size, road frontage, lot width, lot coverage, and the side setback requirements. Evidence of recorded deeds that accomplish this land combination must be submitted and received by the Town Assessor prior to issuance of building permits.
- C. Pursuant to a decision and findings made by the Town of Bar Harbor Board of

Appeals, (AB-10-02) the project will comply with the height requirements of the Downtown Business I neighborhood district.

- D. The Board finds that the development will supply 81 real physical parking spaces as indicated on Site Plan Exhibit 9.1.9. The Board grants a total of 21 green space credits. Together, the applicant has a total of 102 parking spaces which is equal to the number of guest suites as required for a Transient Accommodation of this size.
- E. The Board finds that the development would supply adequate space for parking areas and driveways.
- F. The Board finds that the development would meet the requisite loading standards.
- G. The Board finds that the development will meet the street, sidewalk, and access requirements subject to the review of the Town Council and the conditions noted in Section III of this Decision under Additional Considerations C and F.
- H. The Board finds that the development will provide adequate buffering and screening as indicated on Exhibits 11.0, 11.1, and 11.2.
- I. The Board finds that there is adequate water supply to support the development. However, all water services to be abandoned or demolished related to this project must be disconnected at the water main. The disconnection of these water services shall be coordinated with the Town Water Division.
- J. The Board finds that the proposed development will not cause an unreasonable burden on the municipal water supply.
- K. The Board finds that the groundwater will not be adversely affected by the development.
- L. The Board finds that the development will meet the stormwater standards. However, a plan depicting all utilities (power, telephone, water, and sewer) has not yet been provided. The applicant shall supply a utility plan as described in Section III, Additional Considerations C, prior to issuance of building permits.
- M. The Board finds that the development will comply with municipal wastewater standards. However, it is noted that the applicant is required to change the existing impellers and seals, and shall bear any cost associated with this change out.
- N. The Board finds that the site plan demonstrates the proposed development will provide for adequate sewage waste disposal.
- O. The Board finds that the soils are suitable for the development.
- P. The Board finds that landscaping is provided to enhance the development as shown on Exhibits 11.0, 11.1, and 11.2. The property owner would be responsible for replacement and maintenance of all vegetated areas.
- Q. The Board finds that adequate measures will be implemented to prevent undue erosion and control of sediment and dust during construction for this development pursuant to Exhibit 17. It is noted that the streets bounding the site would be required to be swept as needed and washed down to prevent siltation in the storm water system, and the harbor, as well as dust accumulation on neighboring properties and on the right of ways in order to meet this requirement.

- R. The Board finds that the development is outside the flood zone as shown on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps for this area.
- S. The Board finds that the development will meet the requisite air quality standards.
- T. The Board finds that refuse disposal is adequately provided.
- U. The Board finds that the development does not anticipate the use or generation of dangerous or hazardous waste.
- V. The Board finds that the development does not anticipate activities which would generate vibrations that may be transmitted beyond the lot lines.
- W. The Board finds that the effects to wildlife habitat are minimized or not applicable.
- X. The Board finds that the effects on aesthetic quality have been adequately mitigated.
- Y. The Board finds that there is little or no radiant heat from the development as proposed.
- Z. The Board finds that development would meet the light and glare requirements as shown on Exhibit 21.1.2.
- AA. The Board finds that the applicant will comply with the Town noise standards and that the development shall comply with the quiet hours as found in the Town Code.
- BB. The Board finds that signage is not part of this current application.
- CC. The Board finds that the development does not anticipate outdoor storage or display of merchandise.
- DD. The Board finds that all new utilities for this development would be installed underground.
- EE. The Board finds that the development would supply adequate provisions for fire protection provided the entrance to York Street will be at least 25' wide with turndown curbs at the corners. Additionally, a water curtain shall be installed between buildings with Fire Marshall and Fire Chief's approval. Finally, note that the development has not been submitted to Fire Marshall for approval. A permit from the Fire Marshall must be obtained prior to issuance of a building permit.
- FF. The Board makes no determination regarding the compatibility of the project or the Land Use Ordinance with the Comprehensive Plan.
- GG. The Board finds that the applicant has the financial and technical capacity to construct and operate the facility.
- HH. The Board finds that the site contains no registered farmland.
- II. The Board finds that the Town is able to provide municipal services.
- JJ. The Board finds that there are no outstanding ordinance violations on the property.
- KK. The Board finds that the Legal Documents standard is inapplicable to this application.
- LL. The Board finds that the development would have no negative effect on historic or archaeological resources.
- MM. The Board finds that there are no environmentally sensitive areas designated on the property.
- NN. The Board finds that there are no environmentally sensitive areas designated on the

property.

II. ADDITIONAL FINDINGS

- A. The applicant has obtained approval from the Town of Bar Harbor Design Review Board.

III. CONDITIONS OF APPROVAL

- A. All dwelling units would be required to be leased for a period of not less than 90 days and at no time could the dwelling spaces be used as rented guest suites for the hotel. The number of dwelling units and affordable housing units must conform to the calculations in the applicant's so-called "Illustrative Aid 20" provided during the Board of Appeals hearing which indicates the floor area of the building over 35 feet in height measures 2,884 square feet. The portion of the hotel devoted to dwelling space measures 3,474 square feet¹ and must contain a total of six dwelling units, two of which are required to be dedicated to affordable housing.
- B. The proposed hotel must contain no more than 102 rentable guest suites. Guest suites numbered 109, 220, 223, 325, 328, and 425 must be used exclusively as two bedroom deluxe suites and must have only one keyed entry at the outer most point of access to the space. The adjoining unnumbered rooms must not be used as separately rentable guest suites as this would create the need for additional parking spaces which the development does not supply.
- C. The applicant must receive approval from the Bar Harbor Town Council for proposed traffic pattern changes on Lennox Place prior to the issuance of building permits. Note that the Department of Public Works Capacity Statement details additional comments and concerns related to the design of this project. As such, these comments and conditions are incorporated by reference as if fully set forth herein this Additional Consideration.
- D. The applicant shall be responsible for obtaining assistance from the Bar Harbor Police Department to direct traffic should queuing or other traffic related concerns arise, and the applicant shall bear the financial responsibility for such police services.
- E. The Public Works Director has endorsed the Capacity Statement required for approval of this project. The applicant must demonstrate that they have met all conditions required in this Capacity Statement prior to the issuance of a building permit including but not limited to the following:

¹ Square footage equal to dwelling space on each floor of the hotel is as follows: first floor – 900 square feet, second floor – zero square feet, third floor – 1,287 square feet, and fourth floor – 1,287 square feet for a total of 3,474 square feet of dwelling space.

1. The applicant shall submit to the Town plan/profile construction drawings which detail all utility work which will be conducted in Town right-of-ways. These drawings shall show the proposed location of utilities, as well as the location of existing utilities that will remain undisturbed during the construction process. The plan/profile drawings shall also include typical cross sections of trench work. The Department of Public Works will assist the applicant in locating any existing Town owned utilities. The applicant is hereby advised that utility work within the Town right-of-way shall not commence until the Department of Public Works has reviewed and approved the plan/profile construction drawings described above.
2. Upon approval of the utility construction drawing, the applicant shall hold a pre-construction utility coordination meeting. Representatives from Bangor-Hydro, Fairpoint Communications, Time Warner Cable, Bar Harbor Water Division, Bar Harbor Wastewater Division, and the Bar Harbor Highway Division shall be present at this meeting. The applicant shall review the utility drawings and discuss their scope of work and schedule for completion. The applicant, or its designated general contractor, shall be responsible for scheduling the meeting and maintaining notes for distribution to participants. Progress meetings shall be scheduled as needed.
3. All sidewalks within the public way shall be constructed with a minimum of 3500 psi concrete, reinforced with fiber mesh or welded wire slab. Expansion joints shall be cut a minimum of every five feet. The Town walks to be reconstructed include: Rodick Street, from the southern walkway into the parking deck heading north to its intersection with West Street; West Street, from its intersection with Rodick Street to its intersection with Main Street; and Main Street, from the intersection of West Street to the southern boundary with Geddy's restaurant.
4. All sidewalks shall be ADA compliant, and conform to all ADA standards including, but not limited to, the following: 1) all sidewalk intersections with public ways and tip downs shall be constructed with ADA compliant truncated dome pavers; and 2) all crosswalks shall be painted to meet ADA standards.
5. Roadway curbing shall be comprised of granite stone set in concrete. Existing granite curbing may be reused upon Department of Public Works approval. Any existing granite curbing that is removed from the right-of-way shall be retained by the Department of Public Works in coordination with the applicant's general contractor and the Highway Department.
6. In order to minimize construction impacts, the applicant shall coordinate with

the Department of Public Works to determine if other work within the right-of-way is necessary. Note that the water line on Rodick Street, as well as the sidewalk located on the western side of Rodick Street, is scheduled for replacement. Replacement work for the water line should be completed prior to the street being paved. Replacement of the sidewalk should be coordinated with other construction activities on Rodick Street. Additionally, the wastewater and storm drain conditions south of Rodick Street intersection with York Street require evaluation and may need to be replaced. This evaluation and possible replacement should be completed before paving as well. Coordination of this work will benefit the Town and the applicant in reducing the overall construction related impacts.

7. Due to the number of utility connections and disconnections associated with the project, the following streets shall be paved at full width: Rodick Street, from the intersection of York Street, north to the intersection of West Street; and West Street from the intersection with Rodick Street to its intersection with Main Street.

- F. The applicant shall provide evidence of recorded deeds that demonstrate the underlying lots have been combined. The recorded deed shall be submitted and received by the Town Assessor prior to issuance of building permits.

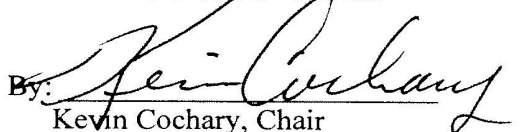
IV. Based on the above findings and conclusions, the Board approves the application of North-South Corp. to construct a 102 room hotel on West Street.

IN WITNESS WHEREOF, Kevin Cochary, duly authorized chair of the Bar Harbor Planning Board, has signed this decision this 19th day of May 2010.

WITNESS:

Name:

PLANNING BOARD CHAIR

By: 
Kevin Cochary, Chair
Planning Board, Town of Bar Harbor

Sample Wording for Use in a Permit Issued to a Landowner Where Title to the Land, Boundary Location or Other Title Problem has Been Raised by a Third Party

“This permit represents a finding by the (Board)/(CEO) that the application satisfies the requirements of the town’s ordinance. It is approved on the basis of information provided by the applicant in the record regarding his/her ownership of the property and boundary location. The applicant has the burden of ensuring that he/she has a legal right to use the property and that he/she is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding property boundaries, ownership or similar title issues. The permit holder would be well-advised to resolve any such title or boundary problems before expending money in reliance on this permit.”

Sample Wording for Use in Approving a Development Plan to Ensure that the Plan will be Developed Exactly as Depicted Unless Revisions are Approved by the Appropriate Authority

“The (Board)/(CEO) approves the development proposal submitted by (applicant’s name) as described in his/her application dated _____, including all depictions on the accompanying plan and other attachments. Except to the extent that the (Board)/(CEO) has expressly indicated in its/his/her decision that certain depictions may be revised by the applicant without further review and approval by the (Board)/(CEO), any changes to the plan and attachments must receive prior approval by the (Board)/(CEO), including but not limited to changes in the proposed location of structures, roads, wells, and subsurface disposal systems, the method of waste disposal, and the extent and location of vegetated areas.”

Excerpts from Maine Supreme Court Decisions

A. *Widewaters Stillwater Co. v. Bangor Area Citizens Organized for Responsible Development*, 2002 ME 27, 790 A.2d 597:

The only evidence of the Board's decision in the administrative record is the transcript of the April meeting. The administrative record contains no written decision or findings of fact by the Board. Because the Board made no findings whatsoever, the parties have sought to glean the basis of its decision from the remarks of the individual members found in the transcript of the April Board meeting. Each of the five Board members spoke during that meeting, with each giving his reason for voting for or against the permit. All three members voting against the permit spoke of their concerns about the nature of the Penjajawoc and its unique habitat. One of the three, however, stated that his single reason for voting against the permit was the location of the detention pond. The member stated he would have voted for the permit if the storm water detention pond was more than 250 feet from the Penjajawoc. Section 165-114(J) of the Code states that when part of any project is within 250 feet of any stream, the Board must consider whether the project "will not adversely affect the shoreline of such body of water." Questions concerning the location of the detention pond were raised at the April hearing, and a representative of Widewaters stated that "a good portion" of the pond was located within 250 feet of the Penjajawoc.

Although one of the Board members clearly stated that his reason for rejection was the location of the detention pond, the other two members voting in the majority were less direct. One appeared to agree that the location of the detention pond within 250 feet was a problem and that Widewaters had not shown that the project would not adversely affect the Penjajawoc, but he also spoke about the "irreplaceable natural beauty" of the Penjajawoc. The lack of findings in this case severely hampers judicial review. The majority of the Board should have stated the basis of the denial of the permit and should have made factual findings underlying the decision. If the basis of the Board's decision was the impact of the proposed development on the "scenic or natural beauty of the area or on historic sites or rare and irreplaceable natural areas," Code § 165-114(I), then we would have to reach the issue of whether that section is unconstitutional. We do not reach constitutional issues when it is unnecessary to do so. *Town of Burlington v. Hosp. Admin. Dist. No. 1*, 2001 ME 59, 769 A.2d 857. Because of the lack of findings by the Board, it is not clear that we must reach this constitutional issue.

As we said in *Christian Fellowship & Renewal Ctr. v. Town of Limington*, 2001 ME 16, 14-18, 769 A.2d 834, 838-40, when an administrative board or agency fails to make sufficient and clear findings of fact and such findings are necessary to judicial review, we will remand the matter to the agency or board to make the findings. Although both parties assert facts as though they were found by the Board or state that the Board made certain findings, this is not a case in which the facts are obvious from the record. Our reasons for

requiring findings in *Christian Fellowship* are equally applicable here. Those reasons include the statutory requirement to make findings as well as policy concerns. See 1 M.R.S.A. § 407(1) (1989); see also 30-A M.R.S.A § 2691(3)(E) (1996). This case has the additional aspect of a constitutional challenge to the Bangor Code. Because findings are necessary for a reviewing court to determine the factual basis for the Board's decision and whether that decision is adequately supported by the evidence, we remand the matter for findings.

RUDMAN, J., with whom SAUFLEY, C.J. and DANA, J. join, concurring. Although I concur in the opinion of the Court, I feel constrained to write separately to advise the Bangor Planning Board and other similar boards what we seek when we remand for findings of fact. We have on at least three occasions recently remanded pending cases for findings of fact. We review, in this case, the Planning Board's findings of fact to determine whether those findings are supported by substantial evidence. When a board's findings of fact are insufficient to apprise us of the basis of the Board's decision, it is impossible for us to determine whether that decision is supported by substantial evidence.

The Bangor Land Development Code contains in section 165-114 the standards to be used by the Planning Board when reviewing any plan for approval of a land development project. The City Solicitor directed the Board to section 165-114 prior to the Board's consideration of Widewaters' application. Before the Board commenced deliberations, the Planning Officer reviewed the approval standards and indicated the conclusion of the Planning staff that Widewaters' site plan met all of the ordinance requirements. The Chair then indicated that he would accept a motion in the affirmative. A member of the Board then stated, "I so move," which motion was seconded. Each of the Board members then spoke at length, after which the Chair stated, "I think pretty much the decision has been made," denying the Board's approval of the site development plan. The record, however, is devoid of an indication as to which of the standards of section 165-114 a majority of the Board determined were not met.

We remand to the Bangor Planning Board so that the Board may specifically indicate which of the eleven standards were met and which of the standards were not met. It may well be that when considered separately there are three members of the Board that found the applicant satisfied all eleven standards. Rather than to have considered a blanket motion to approve, to permit effective appellate review, the Board should have voted separately on each of the applicable standards or in some manner indicated which of the standards the applicant satisfied and which the applicant did not. In this manner, a reviewing court can determine whether there is substantial evidence in the record to support the Board's decision.

B. *Chapel Road Associates v. Town of Wells*, 2001 ME 178, 787 A.2d 137:

The Board issued “Findings of Fact” which stated that the 1.02-acre parcel is located in the general business district; that abutters were notified of the proceedings; that the Board conducted a site walk and held a public hearing and several workshops; that the proposal is for a 3,800 square foot fast food restaurant with forty-two parking spaces; and that the applicant submitted plans and studies considered by the Board. The findings also noted that the Board considered peer reviews of the traffic plan as well as staff reviews. The findings concluded with the following statement: “The Board finds that the applicant failed to demonstrate compliance with Chapter 138, Land Use Code of the Town of Wells, Maine. In particular, the applicant failed to demonstrate compliance with section 10.6.1 of this code....” The Board then quoted the traffic portion of the ordinance:

“Traffic. The proposed development shall provide safe access to and from public and private roads. Safe access shall be assured by providing an adequate number of exits and entrances that have adequate sight distances and do not conflict with or adversely impact the traffic movements at intersections, schools or other traffic generators. Curb cuts shall be limited to the minimum width necessary for safe entering and exiting. The proposed development shall not have an unreasonable adverse impact on the town road system and shall provide adequate parking and loading areas. No use or expansion of a use shall receive site plan approval if any parking spaces are located in a public right-of-way or if any travel lane of a state number highway is used as part of the required aisle to access any parking spaces. Wells, Me., Land Use Ordinance § 10.6.1 (1985-2000).” Other than its general conclusory statement that Chapel Road Associates failed to demonstrate compliance with section 10.6.1, the Board made no findings concerning traffic. The Board’s findings neither indicated the portions of section 10.6.1 that were not met by the proposal nor stated the evidence upon which it relied in determining noncompliance....

The Board’s findings in the instant case neither meet the requirements of the ordinance or statute nor are they sufficient to permit judicial review. As noted above, they consist of a summary of the proposed development; a statement that the Board considered the plans, specifications, and studies; and a conclusion that the applicant failed to comply with the traffic standard. This recitation does not constitute findings, see *Christian Fellowship*, 2001 ME 16, 7, 769 A.2d at 837, nor is this a case in which the facts found by the Board are obvious or in which the subsidiary facts can be inferred from stated conclusory facts, see *Wells v. Portland Yacht Club*, 2001 ME 20, 10, 771 A.2d 371, 375. Because there is no indication of either the specific portions of the traffic standard on which the decision turned or an indication of the evidence on which the Board relied, there can be no meaningful inquiry as to whether the Board’s decision was supported by the evidence.

“[T]he remedy for an agency’s failure to...make sufficient and clear findings of fact is a remand to the agency for findings that permit meaningful judicial review.” *Kurlanski v. Portland Yacht Club*, 2001 ME 147, 14, 782 A.2d 783, 787 (quoting *Christian Fellowship*, 2001 ME 16, 12, 769 A.2d at 838). A court should not “embark on an independent and original inquiry,” *Harrington*, 459 A.2d at 561, or review the matter by implying the findings and grounds for the decision from the available record.

The entry is: Judgment vacated. The case is remanded to the Superior Court with instructions to remand the case to the Town of Wells Planning Board for further findings of fact.

C. *Conservation Law Foundation, Inc. v. Town of Lincolnville*, 2001 ME 175, 786 A.2d 616:

Although they made no request for findings of fact, CLF and Osgood also argue that the Board’s findings were insufficient to support its decision. They contend that the findings were conclusory and failed to explain how the Board reached its decision. Again, the Board found that the proposed subdivision “will not have an undue adverse effect upon the scenic or natural beauty of the area” and that the view corridor would sufficiently mitigate any undue effect caused by the development. Due to the subjective nature of the section 1(H) requirement, it is difficult to envision more adequate findings. The Board members were familiar with the site and the minutes from the Board’s meetings reflect much discussion concerning the proposed subdivision. It is clear that the Board fully and conscientiously considered the proposed easement before it made its final decision. We conclude that the Board’s findings were adequate.

D. *Kurlanski v. Portland Yacht Club*, 2001 ME 147, 782 A.2d 783:

The Planning Board failed adequately to consider and make findings about a number of required site plan elements: the driveway, parking, landscaping, and lighting. For instance, based on the site plan submitted, there is only one light depicted in the parking lot.

Although the Falmouth ordinance permits the Planning Board to waive the standards in sections 9.10 through 9.31, the Planning Board expressly waived only the parking lot aisle width standard in section 9.10(b). *Id.* § 9.8 (stating that the standards in sections 9.10 through 9.31 apply to all site plans unless “the Planning Board finds that, due to special circumstances of a particular plan, the application of certain required performance standards are not requisite in the interest of public health, safety, and general welfare, the Planning Board may waive the required standards, subject to appropriate conditions”). The Planning Board did not state whether for site plan approval purposes it accepted as grandfathered any violations of current off-street parking setback provisions, *Id.* § 5.5(g), or shoreland zoning provisions, *Id.* § 7. The Planning Board made no findings to allow us to determine whether it

waived certain requirements for site plan approval or approved the site plan on the Club's demonstration that it satisfied those requirements.

"[T]he remedy for an agency's failure to act on all matters properly before it or to make sufficient and clear findings of facts is a remand to the agency for findings that permit meaningful judicial review." *Christian Fellowship and Renewal Center v. Town of Limington*, 2001 ME 16, 12, 769 A.2d 834, 838 (quoting *Harrington v. Inhabitants of Town of Kennebunk*, 459 A.2d 557, 561 (Me. 1983)); *Chapel Road Associates v. Town of Wells*, 2001 ME 20, 10, 771 A.2d at 375 ("[I]f an agency's findings of fact are insufficient to apprise us of the basis of the agency's decision and whether it is supported by substantial evidence, we should usually remand to the agency for further findings of fact.").

The entry is: Judgment vacated. Remanded to the Superior Court with instructions to remand to the Planning Board to complete site plan review in accordance with Falmouth's site plan review ordinance.

E. *Christian Fellowship and Renewal Center v. Town of Limington*, 2001 ME 16, 769 A.2d 834:

The county commissioners issued a document entitled "Findings of Fact" in which they concluded that the Center was not entitled to a tax exemption and denied the abatement request. The "Findings of Fact" includes a detailed statement reciting the procedural posture of the case and the respective legal and factual contentions of the parties. The findings contain several paragraphs describing the position and claims of the Center, including the sentence, "[The Center] notes that Christian Fellowship and Renewal Center should continue to be tax exempt as they provide religious, charitable and food distribution services." Another paragraph sets forth the position of Limington. McGlauflin, on behalf of the Town of Limington, notes that the Center property is used for a variety of functions for fees and not solely charitable or benevolent purposes. "Recitation of the parties' positions or reiterations of the evidence presented by the parties do not constitute findings and are not a substitute for findings. See *Newsweek Magazine v. Dist. of Columbia Comm'n on Human Rights*, 376 A.2d 777, 784 (D.C. 1977); *Roy v. Town of Barnet*, 522 A.2d 225, 226 (Vt. 1986).

The only portions of the findings which could be considered factual findings are statements that (1) the Center owns ninety-one acres of land in Limington; (2) Limington was advised by the State of Maine Bureau of Property Taxation that the Center did not qualify for exemption as a charitable and benevolent organization but that a portion of the property used for religious purposes did qualify; and (3) Limington followed the State's opinion and exempted from taxation the retreat center and three acres of land.

The commissioners made no findings as to whether the Center was a benevolent and charitable institution and whether the Center used or occupied the property exclusively for its own charitable and benevolent purposes. Limington presented evidence that the Center offered its facilities for rent for weddings, baby and bridal showers, graduations, family reunions, and receptions, and that in some years it sold gravel from its land. The Center, on the other hand, supplied evidence of churches and other groups that used its facilities. It also presented evidence that no gravel was sold in 1996.

The commissioners failed to make findings sufficient to apprise either us or the parties of the basis for their conclusion that the Center was not entitled to the tax exemption. The insufficient findings do not allow a reviewing court to determine whether the commissioners' decision is supported by substantial evidence.

F. *York v. Town of Ogunquit*, 2001 ME 53, 769 A.2d 172:

The Board met and discussed the plan for the subdivision numerous times between August of 1998 and June of 1999. The Board held two public hearings and conducted one site review. Abutters participated in both public meetings and voiced various concerns. On June 21, 1999, the Board voted to accept and approve the final plan for the subdivision on three conditions, one of which was the condition that "the developer will discuss bonding requirements with the Town Manager."

The Board later issued twelve pages of findings of fact approving Young's application. Included in its approval were waivers of five Ogunquit Subdivision Standards requirements and one Ogunquit Zoning Ordinance requirement discussed at many of the meetings: a thirty-two foot road width requirement, a six percent road grade requirement, a cul-de-sac dead end street design requirement, a two street connections requirement, and a five foot sidewalk width requirement. The Board disclosed the lengthy considerations underlying each waiver. Finally, the findings included the statement that Young had not demonstrated a legal interest in the property.

At a subsequent Board meeting on May 22, 2000, the findings of fact were amended to fix a "clerical error" by removing the word "not" from the statement that Young had not demonstrated an interest in the property. Thus, the Board found that Young *did* have a legal interest in the property for the proposed subdivision.

The Planning Board does have the authority to waive strict application of Subdivision Standards in certain circumstances, on a Board finding of extraordinary and unnecessary hardship *or* because of the special circumstances of a plan. The record is replete with evidence that there are special circumstances associated with Young's plan necessitating these four waivers. This is true even though some of the rationale for the waivers could

apply to any plan. For example, the steepness of the property caused significant concerns regarding storm water runoff and retention, and resulted in the Board permitting a seven rather than a six percent road grade. The waivers also operate to preserve more of the natural features of the property, which is aesthetically desirable, and better for the environment because they reduce the impact on clam beds and vegetation. The waivers also are beneficial in reducing the property's potential flooding problems. Four of the waivers were therefore granted by the Board pursuant to its authority under State statute and municipal ordinance. These four waivers were based on substantial evidence of special circumstances as is required by the Subdivision Standards.

The remaining fifth requirement, however, that streets must be thirty-two feet in width, is mandated not just by the Subdivision Standards, but also by Ogunquit Zoning Ordinance itself, which provides, "...paved traveled surface shall be at least 32 feet in width." Ogunquit, Me., Ogunquit Zoning Ordinance § 10.2(B)(3) (Apr. 5, 1999). See *supra* note 3. This requirement is limited to "collector streets," defined in the Zoning Ordinance as, "Any street that carries the traffic to and from the major arterial streets to local access streets, or directly to destinations or to serve local traffic generators." Ogunquit, Me., Ogunquit Zoning Ordinance § 2 (Apr. 5, 1999). At least one of the street width waivers granted by the Board was for a collector street; in fact, the Board's findings of fact specifically state, "The Board approved the requested waiver from 32 feet to 24 feet from the collector road, Windward Way...." Therefore, in granting Young a waiver of the thirty-two foot street width requirement, the Board has granted Young a waiver of a provision mandated by the Ogunquit Zoning Ordinance. This is impermissible.

York also contends that the twelve pages of findings of fact issued by the Board regarding the five waivers as well as the criteria for subdivision approval enumerated in 30-A M.R.S.A. § 4404 (1996 & Supp 2000) are both inadequate and based on insufficient evidence pursuant to 1 M.R.S.A. § 407(1) (1989). We disagree. Although agencies are required to make written factual findings sufficient to show the applicant and the public a rational basis of its decision, the agency is not required to issue a complete factual record. *Cook v. Lisbon Sch. Comm.*, 682 A.2d 672, 677 (Me. 1996). "If there is sufficient evidence on the record, the Board's decision will be deemed supported by implicit findings." *Forester v. City of Westbrook*, 604 A.2d 31, 33 (Me. 1992). Substantial evidence exists if there is any competent evidence in the record to support a decision. *Adelman v. Town of Baldwin*, 2000 ME 91, 12, 750 A.2d 577, 583.

The record before us reveals considerable evidence to support the Board's determinations, including the four properly granted waivers. All of the issues were addressed and discussed at numerous Board meetings held over the course of more than a year. There was sufficient competent evidence, including evidence supporting a finding of the special circumstances of Young's plan, on which the Board could have based its ample findings of fact.

Appendix 4 – Shoreland Zoning

**“Expanding Non-Conforming Structures Revisited,” “Legal Notes,” *Maine Townsman*,
December 1998349**

**Shoreland Zoning News, DEP-Bureau of Land Quality Control-Tracking Expansions of
Non-Conforming Structures351**

**“News from the 118th Legislature-Current 30 Percent Expansion Rule” by Geoff Herman,
Maine Municipal Association355**

Additional DEP “Shoreland Zoning News” Articles and Interpretations.....357

“Expanding Non-Conforming Structures Revisited,” “Legal Notes,” *Maine Townsman*, December 1998

In a December 1995 *Maine Townsman* Legal Note (“Expansion of Nonconforming Structures”), we posed the following question:

Our zoning ordinance permits the expansion of nonconforming structures provided there is no “increase” in nonconformity. Does this mean that no part of a structure within a required setback may be expanded in any direction, including sideways or upward, or simply that the expansion may not further reduce the existing setback?

The Maine Supreme Court has now answered this question, but not in the way we had predicted. In *Lewis v. Town of Rockport*, 1998 ME 144, an abutter appealed the Zoning Board’s approval of an addition to a building that already encroached on the required sideyard setback and exceeded the maximum allowable height. The Board’s reasoning was that as long as the addition did not encroach beyond the current “limit of nonconformance” (the extent to which the existing building was nonconforming), the addition would be “no more nonconforming,” as the ordinance specified. The Law Court, however, found this reasoning “unconvincing.”

Noting that the phrase “no more nonconforming” was undefined in Rockport’s ordinance, and citing its longstanding rule that ordinance provisions governing nonconformities should be strictly construed, the Court stated flatly, “Any modification of or addition to a building that would increase the square footage of nonconforming space within the building, even if it would not increase the linear extent of nonconformance, does make the building more nonconforming.”

The *Lewis* case has important consequences for planning boards and boards of appeals in interpreting zoning ordinances generally, many of which incorporate the concept of expansion of nonconforming structures and allow it as long as the expansion creates no greater nonconformity. However, unless an ordinance defines “no more nonconforming” (or a similar standard) more liberally, the restrictive *Lewis* definition will control.

The Court’s decision could affect interpretation of shoreland zoning ordinances as well. While *Lewis* did not directly address the expansion of nonconforming structures under shoreland zoning, a possible reading of *Lewis* is that for an expansion under the 30% rule (for structures or portions of structures within the required water setback), no lateral or vertical expansion along the most nonconforming portion of the structure is permitted. This runs counter to the longtime interpretation – by both DEP and municipalities – that expansion is allowed along a structure to the extent of any grandfathered encroachment into the required setback. The phrase “increase in nonconformity” is not defined in the shoreland zoning statute or the State’s minimum shoreland guidelines, however, so the *Lewis* definition threatens the continued validity of this traditional interpretation.

In light of *Lewis*, boards should be careful in applying ordinance provisions governing expansion of nonconforming structures. Boards may wish to recommend that their legislative bodies adopt a more flexible definition of “no more nonconforming” (or a similar standard) if the municipality wants to avoid the result in the *Lewis* case. For shoreland zoning ordinances, DEP is proposing a change to the State’s minimum shoreland guidelines that would provide a more liberal standard for municipalities wishing to incorporate it into their ordinances. On the other hand, it is not necessary to amend local ordinances to add a definition – some municipalities may agree with the result in *Lewis* and not want to liberalize their ordinances.

(By J.N.K.)

[Editor’s Note: The DEP model shoreland zoning guidelines now include a definition of “increase in nonconformity” that addresses the *Lewis* decision.]

Shoreland Zoning News, DEP-Bureau of Land Quality Control-Tracking Expansions of Non-Conforming Structures

Volume 3 Number 5

September/October 1989

Shoreland

Zoning

News

***** Andrea M. Lapointe, Editor 289-2111

Tracking Expansions of Non-Conforming Structures

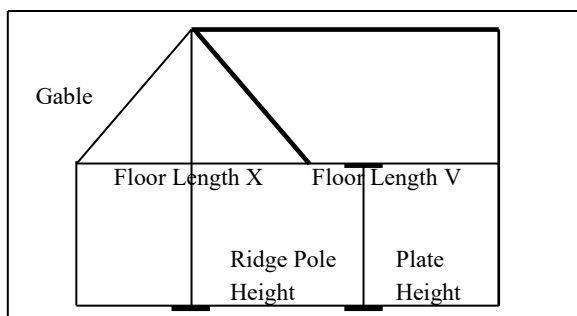
By Laurel M. Dodge, Summer Intern

Frequently, municipal officials are called upon to search their memories on issues involving incremental changes in a structure's size. In order to assess with accuracy and fairness when the 30% expansion of floor space or volume of a nonconforming structure as regulated by Title 38 M.R.S.A. § 439-A(4), has been reached, it is necessary to have documentation of the original size of the structure and dates and dimensions of any later additions.

This type of organizational record to physically keep track of original dimensions and incremental changes over time could be housed in either a file, notebook, or computer spreadsheet indexed by tax map and lot number and perhaps cross referenced by landowner name. Such a central collection of data could also serve to reduce disagreements revolving around whether or not mandated limits have been exceeded or met where the original size of later expansions is in dispute.

Follow these steps:

1. Determine the original size and volume of the structure:
 - a. Volume of structure - the total volume is calculated by dividing the structure enclosed by a roof and exterior walls into three-dimensional cubes. Measurement of length, width and height is made from the exterior faces of roof and walls. The length, width and height measures for each section of the structure are multiplied to calculate a subtotal in cubic feet. The subtotal volumes of all sections of the structure are then added to arrive at the total volume of the structure. To calculate the attic space or any 3-sided area, refer to the diagram below and use the following formula: $\frac{1}{2}$ (floor length under gable X difference between ridge pole height and plate height) X floor length not under the gable.



Under current policy, foundations that do not exceed the existing structure's footprint or cause the structure to be elevated more than three (3) additional feet are not included in this calculation.

- b. Square footage of structure – The square footage of a structure is measured in much the same manner as the volume. The floor of the structure including decks and porches is divided into rectangles or squares. These sections are measured in length and width from the outside edges and multiplied together. The resulting measures in square feet are added together to arrive at the total square footage for the structure.

2. Record this data in the appropriate column and row on the sample chart portrayed on the back page.
3. When an expansion is proposed, compare the volume and square footage of the existing structure with the proposed expansion. Use the same method if possible as was used to determine the original measure to ensure consistency.
4. Calculate the difference in volume or square footage from the original and the percentage that it represents and compare with the regulated standards using the following example as an aid:

EXAMPLE:	Original volume	= 40,000 ft ³
	-New total volume	= 46,200 ft ³
	Difference	= 6,200 ft ³

then: 6,200 ft³ is what percent of the original?

- a. 6,200 ft³ = n% x 40,000 ft³
 - b. 6,200 ft³/40,000 ft³ = .155
 - c. .155 x 100 = 15.5%
5. Record the date, dimensions, and percentages of each new expansion.

In the event that a structure is located partially outside the setback area, calculate the floor area and volume of only that portion within the setback area. Likewise, if only a portion of the proposed expansion will be within the setback area, calculate the floor area and volume of only that portion within the setback area.

Property Owner: **Doug Brown**

SAMPLE RECORD PAGE

Subject Structure Date	Volume (FT3)	Floor Area (FT2)	Percent Increase (volume)	Percent Increase(floor area)
Existing Principal				
Expansion 1				
Expansion 2				
Existing Accessory A				
Expansion 1				
Existing Accessory B				
Brief Description Accessory A Accessory B		Total % Increase Per Structure		

Municipal Choices Under the Non-Conforming Structures Expansion Section

Maine DEP “Shoreland Zoning News”
Spring 2017, Vol. 30, No. 1



In 2015 the Department amended the Municipal Shoreland Zoning Guidelines (Chapter 1000) in an effort to bring the guidelines into compliance with 38 M.R.S. § 439-A (4), which was amended in 2013. One primary amendment in Title 38 M.R.S. § 439-A (4), Setback requirements, commonly referred to as the Expansion Provision, no longer permits the old “30% expansion rule” that allowed nonconforming structures in the Shoreland Zone to expand by 30% of the floor area and volume. The legislature replaced that language with new

expansion limits for nonconforming structures that are based on square footage and height. We introduced the new provisions in the summer 2014 Shoreland Zoning News.

The new provisions limit footprint by square footage or percent, whichever allows for more expansion. Including both limitations would provide landowners with the choice of which limitation to apply to their property. Municipal officials may choose to include only one of the limitations, either square footage or percent. This would be more restrictive on the landowner, but simpler for municipal officials to administer and enforce.

Many municipalities continue to use the old “30% rule” even though the law requires municipalities to adopt “ordinances that are consistent with or are no less stringent than the minimum guidelines” 38 M.R.S. § 438-A (2).

The Department strongly urges these municipalities to amend local ordinances in a manner that is consistent with current state law. Consistency between local ordinances and state law will provide clarity to property owners and code enforcement officials, which will in turn reduce the likelihood of costly legal disputes. Additionally, in the event the “old 30% rule” is less restrictive than 38 M.R.S. § 439-A (4), municipalities run the risk of violating 38 M.R.S. § 443-A(3).

The Chapter 1000 Guidelines must be modified for local adoption. Shoreland zoning staff is available to assist municipalities with this process. Ordinances must be approved by the Department in order to become effective, and the Shoreland zoning staff urges municipalities to contact us early in the amendment drafting process.

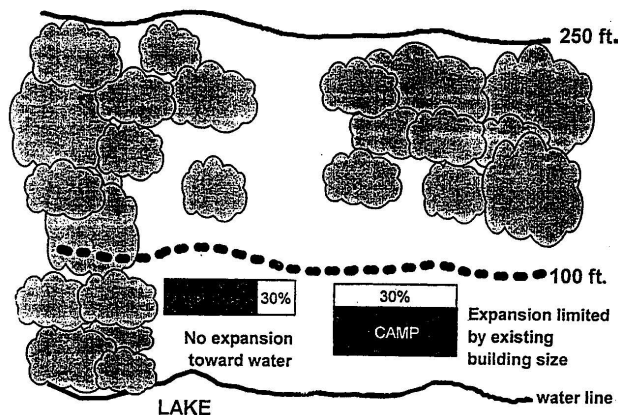
“News from the 118th Legislature-Current 30 Percent Expansion Rule” by Geoff Herman, Maine Municipal Association

The second session of the 118th Legislature, which finally adjourned (from a special session) on April 9th, included among its enactments only a few changes to existing law that directly impact on the municipal planning community.

Shoreland Zoning

There was one mandatory and one optional change to the shoreland zoning law.

CURRENT 30 PERCENT EXPANSION RULE



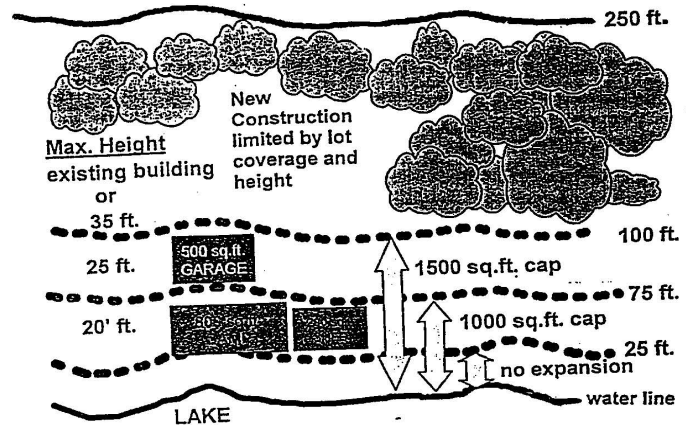
(Illustrations provided by the Shoreland Zoning Unit, Maine DEP)

Boathouses. The mandatory change (PL 1997, chap. 726) is that residential boathouses may *not* be considered “functionally water-dependent uses” under shoreland zoning law and therefore may not be permitted for construction within the building set back zones. As a point of clarification, this law also expressly *includes* retaining walls as functionally water dependent, at least potentially. The background of this legislation was the discovery of some ambiguity in the definition of “functionally water-dependent” in Title 38 M.R.S.A. which allowed for some property owners and a couple of municipal Code Enforcement Officers to adopt an interpretation of that definition that would allow the construction of a residential boathouse within the setback zone as a functionally water-dependent use. The Department of Environmental Protection’s Shoreland Zoning Unit took the position that such an interpretation was never the “legislative intent”, and submitted this legislation to “clarify” the law in this area. The Maine Municipal Association opposed the legislation as a DEP overreaction and an unwarranted further intrusion of state government into the shoreland zone, but the Legislature ultimately adopted DEP’s approach. This law institutes the prohibition as a matter of statute and becomes effective on July 9, 1998. Because the prohibition is effected by statute, clarifying changes to the municipality’s shoreland zoning ordinance are not required, but may be appropriate for housekeeping purposes and to avoid any confusion on the local, permitting level.

Alternative to the 30% rule. The optional change to shoreland zoning law was enacted as part of PL 1997, chap. 748. This enactment provides municipalities with the authority to adopt an alternative system to govern the expansion of nonconforming structures that exist within the building setback of a shoreland zone. The existing standard is the so-called 30% rule which has come under criticism in the past for being inequitable and difficult to administer.

Under the new law, municipalities are authorized as of July 9th to amend their shoreland zoning ordinance to replace the 30% rule with the following alternative. Instead of a rule that begins with the original size of the nonconforming structure, the alternative would allow for

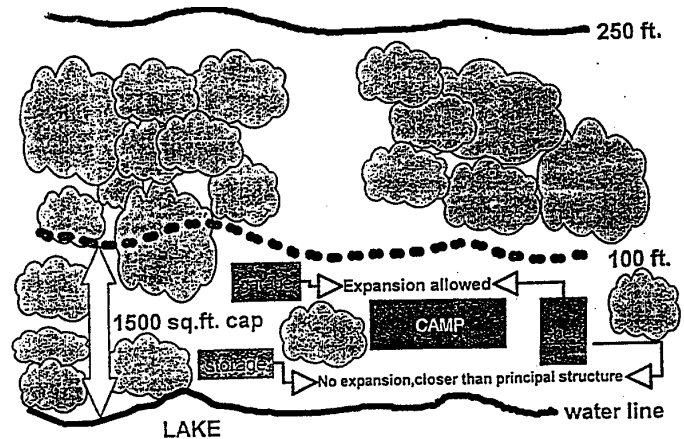
EXPANSION OPTION



expansion up to the maximum square foot allowance. Within the first 75' setback, the maximum allowance would be 1,000 square feet and the maximum height of the structure would be 20' or the structure's existing height, whichever is greater.

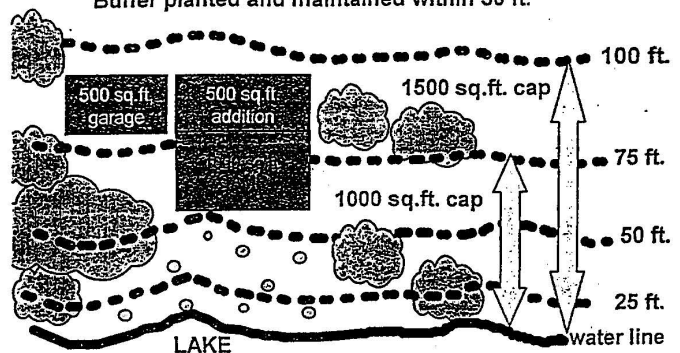
Within the 100' setback, the maximum allowance would be 1,500 square feet and the maximum height of the structure would be 25' or the structure's existing height, whichever is greater. A bonus 500 square foot expansion allowance would be granted under this alternative if the property owner creates and maintains a 50' buffer strip of vegetation along the shoreline and files an enforceable "mitigation plan" to be approved by the local planning board which describes how the property owner is going to control erosion and storm water runoff from the site.

EXPANSION OPTION—Accessory Structures



SPECIAL EXPANSION ALLOWANCE

Up to 500 sq.ft. above cap allowed provided:
Camp greater than 50 ft. from shore, and
Buffer planted and maintained within 50 ft.



Additional DEP “Shoreland Zoning News” Articles and Interpretations

Summer 1992

Question:

The shoreland zoning law limits the allowable expansion of nonconforming structures to less than thirty percent of the existing volume and floor area. If a landowner has more than one nonconforming structure on the property, such as a camp and storage building, can they remove the storage building and “credit” that building’s floor area volume toward an expansion of the camp?

Answer:

No. The shoreland zoning law limits the expansion of that portion of a nonconforming structure located within the setback area to less than 30 percent of the existing volume and floor area of the structure as of January 1, 1989 (effective date of statute amendment). This provision applies for the lifetime of the structure. The law does not make any provisions for combining structures or “crediting” the allowable expansion of one structure to another. Simply put, each nonconforming structure is treated separately when calculating the allowed expansion for that structure.

Spring 1995

Question:

I have a legally existing non-conforming deck attached to my camp. If I add a roof over the deck, will I create additional volume? What if I decide to screen in the deck?

Answer:

Unless your Town’s local ordinance specifically addresses open sided roofed additions, simply adding a roof over the existing deck would not add volume to the structure for the purpose of calculating the 30 percent volume limit for non-conforming structures. Under DEP guidelines, volume is defined as “all portions of a structure enclosed by a roof and fixed exterior walls as measured from the exterior faces of these walls and roof.” Since the roofed deck does not have walls, no volume is created.

If the deck is screened, without fixed walls, it is our policy that no additional volume has been created. However, if the deck is enclosed with fixed walls and/or glass (such as a half-wall porch with windows), volume has been created and is limited to the lifetime 30 percent expansion limit.

Spring 1995

Question:

A year ago, our Planning Board approved a new full basement beneath a non-conforming camp. No other expansions or additions were proposed. In approving the project, the Planning Board required the owner to move the camp to maximize the water setback and ensure that the basement did not raise the building by more than three feet. The owner now wants to expand the camp and use the previously approved basement area toward calculating the 30 percent expansion allowance. Is this allowed?

Answer:

NO. The 30 percent expansion limit applies to the floor area and volume of the camp as of January 1, 1989 (the date the 30 percent rule went into effect). The new basement area, while exempted from the 30 percent calculation, cannot be used toward a new expansion because it did not exist on 1/1/89.

Fall 1995

Question:

Our Planning Board was recently faced with an interesting question. A camp owner has two non-conforming structures on his lot. A camp and a storage shed. He wants to expand the camp by more than 30 percent using the combined allowable expansion area of both the camp and the shed. As part of the deal he would agree to never expand the storage shed. Is this something the Planning Board can allow?

Answer:

No. While the camp owner's proposal seems reasonable, particularly if the shed is closer to the water than the camp, the proposal is not allowable under the shoreland and zoning law. In addition, it could create an administrative headache for both the landowner and the Town over time.

The reason is that the law is clear that the expansion of any non-conforming structure by 30 percent or more is allowed only by variance from the Board of Appeals, and that the 30 percent provision applies to each structure separately.

In addition, approving a greater than 30 percent camp expansion with a condition prohibiting future shed expansion could easily lead to future violations since tracking that condition over time would be very difficult.

Also, selling the property would be made more difficult because lending companies may not be willing to loan money to purchase a property which on its face violates the 30 percent expansion cap of the shoreland zoning law.

Summer 1996

NON-CONFORMING STRUCTURE EXPANSIONS

Over the years, the *Shoreland Zoning News* has had many articles concerning the 30 percent expansion cap for structures which are non-conforming due to the fact that they are too close to the shoreline. However, based on the number of questions we received from town officials and land owners, the subject bears repeating.

We cannot over emphasize the potential nightmare that can be created for both landowners and town officials when this provision of the law is overlooked. Not only are the municipality and landowner subject to potential legal action, fines, and reconstruction costs, but we have heard of several situations where landowners have been unable to sell their property, because lenders were justifiably unwilling to hold mortgages on property which violate the local ordinance and state law.

In concept, the law and local ordinances are quite clear. As of January 1, 1989, the portion of any structure which does not meet the shoreline setback standard of the Town's zoning ordinance may not be expanded by 30 percent or more, in either its volume or floor area, nor can the structure be expanded closer to the shoreline. This restriction applies for the lifetime of the structure.

When reviewing a permit application to expand a non-conforming structure, it is very important for the town officials to:

1. Confirm the size of the structure as of 1989,
2. Confirm the allowable square footage and volume increase (**neither the floor area or volume can be increased by 30% or more over the size on 1/1/89**),
3. Check Town records to see if any other additions were made since 1989, and subtract those additions from the allowed total. (A site visit will help confirm any possible unauthorized additions made in recent years),
4. Confirm that the applicant's plans do not exceed the allowed expansion limit or reduce the existing shoreline setback distance.

Finally, it is very important that any approved expansion be properly recorded and filed so that future Planning Boards, Code Enforcement Officers, Assessors, and property owners can determine what has been legally approved.

Summer 1996

Question:

If there is more than one non-conforming building too close to the shoreline, can one be torn down and its floor area and volume plus 30% “credited” to an addition to one of the other buildings?

Answer:

As a general rule the answer is NO.

The 30 percent expansion cap for non-conforming structures applies to each structure individually. In addition, when any non-conforming structure is relocated or reconstructed, it must meet the shoreline setback standard to the greatest practical extent. It cannot simply be moved over to another building, and certainly not closer to the water than its current location.

Two situations where a non-conforming building might possibly be joined or “credited” to another building is if they are already very near each other, so that a 30 percent expansion of one or both would bring them together. The other possibility is if the site of relocation to the greatest practical extent brings two structures close enough so that they could be joined.

Summer 1996

RELOCATING NON-CONFORMING STRUCTURES

Next to expansions, the most troublesome issue for Planning Boards seems to be how to deal with proposals to relocate non-conforming buildings. These projects usually come up when a landowner decides to add a full basement to a structure, or when the building has deteriorated to the point where replacing it makes more sense than maintaining what is there.

It is important to keep in mind that the goal of the relocation standards is to limit new non-conforming development near the shoreline, and if possible, to reduce it over time. Once a new basement is placed under an existing building, or a damaged or dilapidated building is replaced, it will be there for a very long time.

As with expansions, the key to making sense of relocation and reconstruction projects is to first get a clear description from the applicant, in writing, of exactly what is proposed.

Ask questions if anything is unclear, and then break down the review into simple steps, comparing each part of the project against the standard of relocation to the greatest practical extent:

1. What are the limitations for relocation?

2. Could the setback be improved if the building size or orientation were modified?
3. Will the septic system be replaced as part of the project, and can it be sited to improve the building setback?
4. If an expansion is also proposed, will the lot coverage exceed 20 percent, or make existing coverage over 20 percent more non-conforming?
5. Does the proposed basement, if any, raise the building by less than three feet?
6. How will the area where the building is now be re-vegetated to re-establish the shoreline buffer?

In order for everyone to have a clear picture of the proposal, a scale drawing of the property must be included with the application. The drawing should include the lot dimensions, lot lines, shoreline, cleared and wooded areas, all existing buildings, driveway, parking areas, sewage disposal system, well, and any other features which may affect potential expansion and relocation, including any tributary streams or wetlands. Without this information, the Planning Board cannot adequately review the proposal and make an informed decision.

It is important to ask whether the existing building is to be relocated, or if a new replacement structure is proposed. Too often, the Planning Board is led to believe that the existing building cannot be moved because of some limitation, only to learn after-the-fact that the actual plan was to tear down the old building and build a new one in the same spot. If the Planning Board had known, they may have been able to require reconstruction further from the water, and avoid the limitation.

While it could be argued that the above situation may be a violation if the misrepresentation was intentional, the point is that once the new building is up, the options for correcting the situation become much more difficult, and may be avoided by asking enough questions during the permitting process.

Summer/Fall 2001

Question:

A camp owner has approached me for a permit to remove a rotting deck and replace it with a new one of the same size and in the same location as the existing deck. The deck is attached to the water-side of a nonconforming camp. I don't believe that I can issue a permit to remove the deck and replace it with a new one since it does not meet the water setback and is being removed by more than 50% of its market value. Am I correct in telling the applicant that the deck must be rebuilt meeting the setback requirement to the greatest practical extent?

Answer:

If the deck is attached to the camp you are probably wrong. The deck, if attached, would be considered to be part of the principal structure. Therefore, removing the deck alone will not result in the removal of more than 50% of the market value of the structure (the camp and deck together). You, as the code enforcement officer can issue a permit to rebuild the deck.

Winter/Spring 2001

Question:

There is an existing one-story camp located on a peninsula. The building is set back from the water 30 feet on one side, 45 feet on the opposite side, and 60 feet from the tip of the peninsula. The setback standard is 100 feet. Can this building be expanded?

Answer:

Yes, but the options are limited. The shoreland zoning law allows legally existing nonconforming structures to be expanded by less than 30% of its size (both volume and floor area) as it existed on January 1, 1989 (the effective date of the law). The law also states that no structure may be expanded so as to increase its nonconformity (i.e. get closer to the water).

In the situation you describe the building is already too close on three sides, so expansion in those directions is not allowed. The only options left are to expand toward the base of the peninsula or to raise the roof slightly to create a 1/2 story loft. Remember that floor area and volume may not be increased by more than 30%, so a full second floor (100% floor area expansion) could not be permitted.

Winter/Spring 2001

Question:

Scenario: A property owner proposes to add a full basement to an existing one-story camp located 20 feet from the river. The property is entirely within the 100-year flood plain. The owner has agreed to move the building as far back from the water as possible, but it will still be within 75 feet of the river. Raising the new basement one foot above the base flood elevation will cause the existing structure to be raised by more than three feet.

Can the basement addition be exempted from the 30% expansion cap for nonconforming structures in order to satisfy the flood ordinance standards?

Answer:

No. In order for a project to be approved, it must meet all of the applicable ordinance standards. The Town may not waive one standard in order to satisfy another.

In this case, both the shoreland zoning and flood ordinances require the lowest floor, including basements, to be elevated at least one foot above the base flood elevation. In addition, the non-conforming structure standards specify that basement additions can only be exempt from the 30% expansion rule if the building is relocated away from the water to the greatest practical extent (which the owner proposes to do) and the basement addition does not cause the building to be raised by more than 3 feet. Since it is not possible in this scenario to meet both standards, the proposed basement must be denied. The owner still has the option of adding another type of foundation to further protect the building from flooding, but he cannot add a full basement in this flood-prone area.

Spring 2003

Question:

A shorefront property owner wishes to rebuild an aging boathouse for his recreational watercraft. The building is located at the immediate shoreline. Can I, the CEO, grant a permit to the owner to rebuild on the same footprint?

Answer:

No. First of all, in 1998 the Maine Legislature declared that recreational boat storage buildings are not water-dependent. Therefore, the boathouse you refer to is a nonconforming structure. If a nonconforming structure is removed, damaged, or destroyed by more than 50% of its market value (a complete rebuild certainly meets this criteria), it can only be rebuilt after obtaining a permit from the planning board. The planning board must require the new structure to be placed at the location of the lot that complies with the setback requirement to the greatest practical extent. This may result in the new structure being set back 100 feet from a lake or 75 feet from a tidal or riverine waterbody. If the full setback cannot be met, then the next most practical location must be determined. Only if there is no other location on the property where the structure can be rebuilt further from the water, can the planning board allow it to be built at the same setback as the previously existing structure.

Spring 2003

DECKS AND PORCHES

Department Shoreland Zoning staff frequently receives calls from municipal officials inquiring whether someone can enclose a legally existing deck without counting the new space toward the 30% volume expansion limitation. The town can grant a permit for the construction of fixed walls to enclose a deck and that would not add *floor area*, but would count toward the 30% *volume* limitation. This position is further supported by the Superior Court decision, *Fielder v. Town of Raymond and John Cooper*, a decision you may want to familiarize yourself with. In the case of an individual seeking to create a screened porch with a roof over a legally existing

deck, the Department's opinion is that neither volume nor floor area are created. The floor is already present and there are no fixed walls to create volume. We do not consider screens as fixed walls.

Excerpt from August 23, 2003 e-mail from Richard Baker, Shoreland Zoning Unit Coordinator, to MMA Legal Services

Regarding your question, the 30% expansion allowance applies to both floor area and volume. Each one can be expanded by 30%. For instance, if I build a deck (not closer to the water of course) that expands the floor area of my structure by 30%, I can still expand my volume by 30%, whether now or later. That volume expansion might be by enclosing the deck or, perhaps, raising the pitch of the roof. Once I have expanded my volume by 30% and the floor area by 30%, I can expand no more in the lifetime of the structure.

Note also, that when calculating the allowable floor area and volume expansions, only the floor area and volume that is located less than the required setback can be used for determining the base floor area and volume. If a 20' x 30' structure lies such that half of the building is within the setback area and half is outside the setback line, the allowable floor area expansion within the setback area is 30% of 300 square feet (10' x 30'). The same would be true to volume.

Fall 2004

Replacement of a Structure: Part II

After our last edition of the Shoreland Zoning News we were contacted by a CEO from a town that adopted and administers the alternative to the 30% expansion rule. He requested that we clarify the non-conforming structure replacement standards under this alternate provision, much like we did in our last edition for those towns with the standard 30% expansion rule.

As you may be aware, the alternative to the 30% expansion rule is an optional method of limiting expansions of non-conforming structures based on certain criteria. Here are the highlights:

- No portion of a structure located within 25 feet of the shoreline may be expanded;
- For structures located less than 75 feet from the shoreline, the maximum combined floor area for all structures is 1,000 square feet, and the maximum building height is 20 feet or the height of the existing structure, whichever is greater;
- For structures located less than 100 feet from the shoreline of a great pond or river flowing to a great pond, the combined maximum floor area for all structures is 1,500 square feet and the maximum building height is 25 feet. However, no more than 1,000 square feet may be within 75 feet of the waterbody.

The alternative language replaces only the *30% expansion* section of most ordinances (Section 12-C(1) of the Guidelines), and therefore the relocation, reconstruction or replacement, and change of use provisions still apply as usual. The replacement of 50% or more of the market value of a structure would then require the replacement structure to meet the shoreline setback to the greatest practical extent. That said, if one has a 1,600 square foot structure located 7 feet from a great pond and the “greatest practical extent” is determined to be 60 feet from the water, the structure must be moved to 60 feet from the water even though the size doesn’t conform to the maximum allowable floor area. Obviously an expansion within 100 feet of the pond would not be allowed, since the structure is already greater than 1,500 square feet in total floor area.

Fall 2005

How Much of the Structure do I Count Towards the Expansion Anyways?

One of the questions we in the Shoreland Zoning Unit get from landowners most often is how much of their non-conforming structure they can count towards their expansion allowance. One would think this would be a simple question, but alas, there are variables that must be considered. The first thing that you as a CEO must determine is the date which the structure became legally nonconforming. In most cases it is the date of the original adoption or imposition of the Shoreland Zoning Ordinance in your municipality. It may also be a subsequent date when the ordinance was amended to cause the structure to be non-conforming. Bear in mind, the regulation in question is a structure setback requirement. Non-conforming uses, except residential non-conforming uses, cannot be expanded in most municipalities.

So now we know we have to look up the date to find out when the structure became non-conforming. But the ordinance in § 12.C.1.a says “[a]fter January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure.” So doesn’t that mean we automatically use January 1, 1989? No. If the structure became non-conforming at a later date, that later date is when the 30% rule affects the structure. For example, if a structure was built 75 feet from a lake in 1980, it was a conforming structure at that time. Suppose, however, that the town on June 3, 1993, amended its ordinance to increase the lake setback to 100 feet. The structure is now non-conforming and the 30% expansion rule would be based on the size of the structure as it stood on June 3, 1993, not January 1, 1989. So while no non-conforming structure expanded after January 1, 1989, can be expanded by more than 30% of the volume or floor area, the date by which we calculate the volume and floor area is the date the structure became non-conforming.

Next, we have to look at exactly what we are calculating. Volume is defined as “all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.” It is important to note that “livable area” is not mentioned anywhere in that

definition, and that we measure from **outside** the structure. This would indicate that we include all the eaves and attic spaces, as well as full basements. Similarly, the definition of floor area is “the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.” This means we add all stories of the structure including full basements at least six feet in height. Also remember that we also have to calculate both floor area and volume, because neither one can exceed 30% of what existed on the date the structure became non-conforming.

Appendix 5 – Subdivisions

The Statutory Definition of “Subdivision” for Purposes of Municipal Review and Related Issues by Rebecca Warren Seel (2014).....	369
“Task Force to Study Growth Management: Proposals by Subdivision Law/Impact Fee Working Group” (2000)	401
Certificate of Variance or Waiver Approval.....	407
Hows and Whys and Dos and Don’ts of LOCs and Bonds by Peter Morelli	409
<i>Sample</i> Letter of Credit	411
SMRPC Model Subdivision Regulations—Application Fee Provisions	413
List of <i>Maine Townsman</i> Legal Notes Discussing Issues Related to Subdivision Review	415

The Statutory Definition of “Subdivision” for Purposes of Municipal Review and Related Issues by Rebecca Warren Seel (2014)

Rebecca Warren Seel, Esq.

Senior Staff Attorney

Legal Services Department

Maine Municipal Association

Prepared for the September 2014 MSBA Real Estate Institute

[Updated November 2019 by MMA Legal Services]

Introduction: The following discussion of the Municipal Subdivision Law is intended as general information and not as legal advice. It is important to read and re-read the statutory language, pertinent municipal ordinance provisions, and relevant court decisions in attempting to determine whether a particular fact pattern constitutes a subdivision requiring municipal review and approval. Municipal review of subdivisions is governed by 30-A M.R.S.A. §§ 4401-4408 (2011 & Supp. 2013). The definition of “subdivision” that controls review by the Department of Environmental Protection under the Site Location of Development Act is found in 38 M.R.S.A. § 482(5)(Supp. 2013). The definition governing review by the Land Use Planning Commission of subdivisions in the unorganized territories of Maine is found in 12 M.R.S.A. §§ 682 (Supp. 2013), 682-A and 682-B (2005).

The Statute: A copy of the Municipal Subdivision Law [30-A M.R.S.A. §§ 4401-4408 (2011 & Supp. 2013); formerly 30 M.R.S.A. § 4956 and 30-A M.R.S.A. § 4551] appears in its entirety in Appendix A-1 of these materials. A complete legislative history for this law is included in Appendix A-2. [The subdivision statute was amended in 2017 and 2019, as discussed below. The appendix is not included in this Manual. Copies of the law are located on the State Legislature’s website or available by contacting MMA Legal Services].

The Statutory Definition of “Subdivision”: The statutory definition of “subdivision” for the purposes of municipal review currently is found in 30-A M.R.S.A. § 4401(4)(Supp. 2013). It includes two distinct categories: land subdivisions and dwelling unit subdivisions.

Land Subdivisions—Basic Elements and Issues

The elements:

- the “division”
- of a “tract or parcel” of land
- into 3 or more “lots”
- within any 5 year period beginning on or after September 23, 1971
- whether accomplished by “sale, lease, development, buildings or otherwise”
- by whomever accomplished

- unless otherwise exempt as a “homestead” lot, “open space” lot, 40 acre lot, devise, condemnation, court order, gift to relative, gift to a municipality, transfer to an abutter, lot not part of a subdivision when created, lot with a pre-September 23, 1971 dwelling structure, or “grandfathered” subdivision (see discussions below)

The issues:

1. The “division” into lots by sale, lease, development, buildings or otherwise means the “splitting off of a legal interest of sufficient dignity” in the land.

- *Town of York v. Cragin*, 541 A.2d 932 (Me. 1988) (held that structures such as hotel, motel, apartment building, multi-unit condo structure didn’t qualify as “divisions” of land); see discussion later in these materials of current statutory language regarding multi-unit dwellings and construction or placement of “dwelling units.”
- *Town of Arundel v. Swain*, 374 A.2d 317 (Me. 1977) (use of campsites for a rental fee in a traditional type of campground didn’t qualify as “divisions”).
- *Planning Board of Town of Naples v. Michaud*, 444 A.2d 40 (Me. 1982) [Fee simple sale of site in a campground constituted a “division.” Although the sites had no fixed boundaries, the court found that there was a “functional division” on the basis that the layout of the sites would lend itself to a feeling of control by the occupant (“territorial imperative”) and would provide a legal basis on which a court could establish legal boundaries.]
- *Town of Harpswell v. Powers*, Mem. of Decis., February 17, 1998 (lease of two portions of Powers’ parcel of land divided the parcel into 3 lots requiring subdivision approval).
- *Horton v. Town of Casco*, 2013 ME 111, 82 A.3d 1217 (lease agreement giving AT&T the right to use and occupy a certain space for a finite period of time and for the specific and limited purpose of building a wireless communication tower was akin to a license and was not a sufficient interest in the land to constitute a division that created a lot)
- A mobile home park generally qualifies as a type of division by lease.
- Mortgage interests—If encompassing the entire lot, the mortgage doesn’t constitute a division in its own right; if on a portion of the lot, it does constitute a division [30-A M.R.S.A. § 4401(4)(I)(Supp. 2013)(bona fide security interest granted on an entire exempt lot does not create a lot, absent intent to avoid subdivision review); *Town of Orrington v. Pease*, 660 A.2d 919 (Me. 1995)].
- Mortgagee not prevented from lawfully foreclosing upon property in an unapproved subdivision. *Gorham Savings Bank v. Baizley*, 1998 ME 9, 704 A.2d 398.

- A land installment contract isn't a "sale" until a deed is issued because the buyer has no enforceable interest in the land; may be an example of a division by "otherwise."
- A purchase and sale agreement describing a lot to be sold must contain language conditioning the sale on obtaining subdivision approval if entered before a plan is approved, if the lot is part of an unapproved subdivision. 30-A M.R.S.A. § 4406 (2011); *Murray v. Town of Lincolnville*, 462 A.2d 40 (Me. 1983).
- The creation of a condominium interest in land may constitute a division.
- Placement of 3 or more buildings on a single parcel, where the land and buildings are in single ownership and used by the owner (e.g., college campus; complex of commercial buildings including main office, storage building, warehouse)—does it constitute a subdivision? Arguably it is a division by "buildings," but the statute is unclear when the buildings aren't dwelling units.
- Where a strip of land is sold in fee for a road, it constitutes a "division" for the purposes of the subdivision law, even though it is not a buildable lot in its own right.
- Beware of unintended subdivisions which result from poor descriptions/conveyancing language in deeds, as for example, where the intent is to convey 2 lots, but because a small portion of land is left out of the description, a third, unintended lot, is created.

2. A "tract or parcel"

- § 4401(6) (Supp. 2013) defines "tract or parcel" as "all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971." (This definition was amended by P.L. 2007, ch. 49, § 1, effective September 20, 2007, adding the reference to September 22, 1971.)
- A lot is analyzed as part of the bigger tract or parcel from which it was split (a.k.a., "parent parcel"), at least until 5 years have elapsed since its creation, and maybe longer under 30-A M.R.S.A. § 4406(1)(E) (2011) or some local ordinances; it doesn't become a tract or parcel in its own right at least until the expiration of 5 years from its creation, even if it is a lot which is exempt when first created. (See discussion of exempt lots later in these materials.)
- "All contiguous land"—"Contiguous" is defined in *The American Heritage Dictionary of the English Language* (4th edition) as "sharing an edge or boundary; touching." This would include land on each side of a road or stream or river, if the ownership of the bed is the same as on both sides. (But see the discussion below regarding a parcel divided by a road.)

- In the “same ownership”—Title of all contiguous parcels must be held in the same names and in the same estate to be treated as a single tract or parcel; see *Town of Orrington v. Pease*, 660 A.2d 919 (Me. 1995), and *Town of Bridgton v. Rolfe*, District Court, District Nine, Division of No. Cumberland, Dkt. BRI-90-LU-1, August 15, 1990.
- If the road separating the land on each side was “established” by the owner of land on both sides of the road after September 22, 1971, then the land on each side constitutes a combined single parcel, not two separate parcels. Research when and how the road in question was established by reviewing records at the registry of deeds and State, county and municipal records documenting creation of the road and the maintenance and use of the road. Questions: Does “established” mean “officially” created? What is “creation”? Is September 22, 1971 now the point of reference for all road-related “tract or parcel” analyses or only for divisions occurring after September 20, 2007 (the effective date of the amendment to the definition of “tract or parcel”)? Is it enough that the landowner at the time physically removed trees and made a path with heavy equipment? Is prescriptive use without a court declaration regarding status enough? Use less than 20 years? Are deeded easement rights a “road”?
- See § 4404(13), (14), (14-A), and (15) (Supp. 2013) regarding flood areas, freshwater wetlands, farmland, and rivers, streams and brooks—These must be identified if “within the subdivision,” not just for the lots that will be offered for sale, but for all the land that is part of the “subdivision” as defined, including retained acreage. Whether these must be identified on the plan itself or only on accompanying maps is unclear. (“Farmland” definition was added as § 4401(2-B) by P.L. 2009, ch. 356, Pt. C, § 1, effective September 12, 2009; “farmland” review criterion was added as § 4404(14-A) by P.L. 2009, ch. 356, Pt. C, § 2, effective September 12, 2009.)

3. **Creation of 3 or more lots**

- Two “divisions” of the parcel create 3 lots, whoever makes the divisions.
- Where the owner conveys a lot from the middle of a parcel to another person and retains the portions on either side of the middle piece, a subdivision is not created. Only one “division” has occurred and only 2 lots are created; the pieces on either side of the middle are considered to be a combined single lot retained by the owner, even though they do not touch at any point. *Bakala v. Town of Stonington*, 647 A.2d 85 (Me. 1994). If one of the “end” pieces is then conveyed to a third party within the same 5 year period and the conveyance is not eligible for an exemption, the conveyance constitutes a second division and creates a third countable lot requiring subdivision approval. Question: What if the owner conveys a lot out of the middle to one person and also conveys the

land on either side of the middle piece to a second person, with each end piece having its own legal description in the deed of conveyance? Some argue that this is controlled by *Bakala* and that no subdivision is created. Others take the position that this is distinguishable from *Bakala* because there is more than one “division” as a result of the conveyance of the end pieces to another person. The answer probably depends on whether multiple deeds were used to convey the end pieces and whether those deeds were delivered simultaneously.

4. Within any 5 year period beginning on or after September 23, 1971

- To determine how many lots have been split from a “parent” parcel within a single 5 year period, the starting point for calculating the 5 year period is the creation of a particular lot (e.g., when sold, leased, made the subject of a written purchase and sale agreement or option to purchase); the presumption is that the division occurred on the date of the deed or other document, absent other evidence of record to the contrary.
- A rolling window; for each lot created, use its date of creation as the point of reference to determine whether that lot is part of a subdivision by looking forward 5 years and back 5 years; the date of creation of the first lot split from a particular parent parcel isn’t the only point of reference for the other lots. Planning board approval doesn’t create a lot; it only gives permission to create it legally by splitting off an interest in that lot. *Planning Board of Town of Naples v. Michaud*, 444 A.2d 40 (Me. 1982); *Town of York v. Cragin*, 541 A.2d 932 (Me. 1988). See *Pleasant View Mobile Home Park v. Town of Mechanic Falls*, 538 A.2d 273 (Me. 1988) (if a subdivision plan was approved before September 23, 1971 and the 5 year period begins before that date, the development may continue as an exempt subdivision after that date, without new subdivision approval).
- 30-A M.R.S.A. § 4406 (1)(E)(2011)—If a person obtains planning board approval of a subdivision plan and records the plan, that person can’t make changes to the plan or create additional lots without planning board approval of a plan revision, regardless of whether the changes occur more than 5 years later; not true for people who buy the lots shown on the recorded plan—after 5 years from the creation of their lots, the lots become separate tracts/parcels in their own right, absent a local ordinance provision to the contrary addressing further division of approved lots. However, § 4406(1)(E) (2011) refers to the “transfer of any lot in a manner other than depicted on the approved plans.” What if the person who received the original subdivision approval wants to create and convey a new lot that is eligible for a gift exemption or an exemption as a transfer to an abutter? Both § 4401(4)(D-4) and (D-6) (Supp.2013) characterize

those exempt transactions as not creating a lot. Arguably those conveyances would not trigger review under § 4406(1)(E) (2011).

- A patient landowner may divide his/her parcel once in each new 5 year period without needing subdivision approval.

5. **A lot is exempt from the calculation of “3 or more within any 5 year period” if it qualifies under one of the following exemptions:**

A. Homestead” exemption [§ 4401(4)(A)(1)(Supp. 2013)]

- Both the first and second divisions must be accomplished by a sub-divider who has used one of the lots for his/her own principal single family residence for a period of at least 5 years immediately preceding the second division.
- A seasonal residence no longer qualifies for this exemption.
- Mere ownership of the land is not enough; the person must have lived in a residence there.
- The lot with the “homestead” dwelling structure can’t be the first conveyance, but probably can be sold as the second division made; probably doesn’t have to be retained longer.
- This exemption was clarified in 2001 (P.L. 2001, ch. 359, effective September 21, 2001) by adding references to “principal residence” and “immediately preceding.” Initial effective date was September 21, 2001, retroactive to June 1, 2001, per P.L. 2001, ch. 359, § 8; P.L. 2001, ch. 523 clarified the effective date as September 21, 2001—ch. 523 was enacted as emergency legislation effective March 12, 2002.
- What if the land and house were jointly owned by a husband and wife, but only the husband lived on the property continuously during the 5 year period? The wife lived there occasionally, but mostly out of state while trying to sell another home. Could it be said that the Maine property was the wife’s “principal residence”? The statute doesn’t say “legal residence.” Is there a difference?

B. “Open Space” exemption [§ 4401(4)(A)(1)(Supp. 2013)]

- Repealed in 2001 by P.L. 2001, ch. 359. Initial effective date was September 21, 2001, retroactive to June 1, 2001, per P.L. 2001, ch. 359, § 8; P.L. 2001, ch. 523 clarified the effective date as September 21, 2001—ch. 523 was enacted as emergency legislation effective March 12, 2002.

- This section authorized an exemption for a lot retained by the sub-divider as “open space” as defined in 36 M.R.S.A. § 1102(Supp. 2013) for a period of 5 years prior to the second division.
- The law was unclear whether there had to be a filing with the municipal tax assessor for open space classification and approval by the assessor.

C. Lots not part of a subdivision when created [§ 4401(4)(B)(Supp. 2013)]

- The first lot created isn’t really an exempt lot, because it is counted in determining whether 3 or more exist. It can be used/developed by the owner, even though a subdivision plan has already been filed with the planning board for review, but not yet approved. *Paladac v. City of Rockland*, 558 A.2d 372 (Me. 1989).
- Lots eligible for one of the statutory exemptions are “not part of a subdivision when created.”
- “Do not become subject to this subchapter by the subsequent dividing of that tract or parcel or any portion”—Those lots that are not part of a subdivision when created won’t be the subject of substantive review by the planning board or conditions of approval, but must be shown on the plan so that the planning board may take them into account in reviewing and fashioning conditions applicable to other lots. This doesn’t mean that subsequent divisions of those lots are automatically exempt and not subject to review. Requiring that those lots be numbered on a plan doesn’t make them subject to review and conditions of approval; the numbering may help everyone better understand what has happened and what is proposed. Language can be included on the plan to clarify the status of such lots. See generally, *Martin v. City of Lewiston*, 2008 ME 15, 939 A.2d 110.

D. Lots of 40 or more acres [§ 4401 (4)(C) (Supp. 2013)]

- As of July 25, 2002, these lots are **NO LONGER EXEMPT BY STATUTE** (P.L. 2001, ch. 651); they were previously exempt unless (1) all or part of the “parent parcel” was within the shoreland zone or (2) a municipal ordinance eliminated the exemption.
- To be exempt under current law, the municipality must adopt an ordinance (or planning board regulation, where there is no subdivision ordinance adopted by the legislative body) which restores the exemption; the ordinance/regulation must be adopted after July 25, 2002 to be effective in reinstituting the exemption.
- A municipality can’t establish a 40 acre exemption for lots which are conveyed from a bigger parcel which is partially or totally within the

“shoreland zone” as defined in 38 M.R.S.A. § 435 (Supp. 2013) or by local ordinance.

- The reference to parcels within the shoreland zone not being eligible for the 40 acre lot exemption was first added in 1988, effective April 19, 1988; the reference to a municipal definition of “shoreland zone” was added in 1989.
- There was a brief period (1987-1989) during which a plan of 3 or more 40 acre lots sometimes had to be filed with the Registry and the municipality, although no review was required.

E. Divisions by Devise [§ 4401(4)(D-1) (Supp. 2013)]

- “Devise” refers to a lot left to a person in a will.
- “Intent to avoid the objectives” of the subdivision law is applicable to this exemption (see P.L. 2001, ch. 359 and ch. 523).
- A lot created by devise is not exempt from local minimum lot standards even though not counted for subdivision purposes. Cf., Estate of Eldon C. Hunt, 2010 ME 23, 990 A.2d 544.

F. Divisions by Condemnation [§ 4401(4)(D-2)(Supp. 2013)]

- “Condemnation” refers to lots resulting from the use of eminent domain by a governmental entity.
- The “intent to avoid” standard is applicable to lots created by condemnation, according to the statute, though it is difficult to imagine an actual scenario (see P.L. 2001, ch. 359 and ch. 523).
- Lots created by condemnation are not exempt from local minimum lot standards even though not counted for subdivision purposes.

G. Divisions by Order of Court [§ 4401(4)(D-3)(Supp. 2013)]

- The “intent to avoid” standard is applicable (see P.L. 2001, ch. 359 and ch. 523).
- Intent to avoid the law might be a relevant analysis in a divorce settlement adopted by the court.
- Court-ordered divisions are not exempt from local minimum lot standards even though not counted for subdivision purposes.

H. Divisions accomplished by Gift to a Person Related to the Donor

[§ 4401(4)(D-4)(Supp. 2013)] if:

- The “parent parcel” was held by the donor for a continuous period of 5 years “prior” to the gift conveyance (effective September 21, 2001, per P.L. 2001, ch. 523, which took effect as an emergency law on March 12, 2002; initially effective September 21, 2001, retroactive to June 1, 2001, per P.L. 2001, ch. 359). Does this mean “immediately prior”?
- Qualifying relatives are spouse, parent, grandparent, brother, sister, child, or grandchild related by blood, marriage or adoption. (See discussion of P.L. 2001, ch. 359 and ch. 523 above regarding effective dates.) There is no reference to “domestic partners,” so probably they are not eligible for the purposes of this exemption, since exemptions are narrowly construed by the courts.
- The conveyance may be for consideration and still be a gift as long as the consideration is not more than $\frac{1}{2}$ the “assessed value of the real estate.” Questions: Who determines the “assessed value”? Probably the municipal assessor. What “real estate”? Arguably the gift lot, but the statute is unclear. Possible interpretations: (1) Take the assessed value of the entire parcel which is being divided as recorded by the local assessor in the valuation book and divide it by the number of divisions being proposed as gifts; or (2) use the assessed value of the proposed gift lot as determined by the assessor based on the characteristics of the lot; or (3) compare the consideration paid for the gift with the assessed value of the whole parcel as stated in the valuation book by the assessor and determine whether it is an amount which is $\frac{1}{2}$ or less of that value. Option #2 raises unfunded State mandate issues, but seems to be the favored approach. (See discussion of P.L. 2001, ch. 359 and ch. 523 above regarding effective dates.)
- The person receiving the gift lot can’t “transfer” the “real estate exempt under this paragraph” for 5 years except to another qualifying relative of the original donor; if transferred sooner to a person and/or for an amount that would not qualify as a gift, the exemption for the original gift lot is lifted retroactively to the date of the gift (the “reach back” provision). (The effective date of this provision was July 14, 1990.) Issue #1: There is a strong argument that the exemption is lost retroactively even if only a portion of the gift lot is transferred, since the gift exemption statute doesn’t expressly state that the exemption is lost if only the entire gift lot is transferred. Where the Legislature wants to make a distinction between all or part of a lot, it knows how to do that. E.g., § 4401(4)(D-6) and

§ 4401(4)(I) (Supp. 2013). Issue #2: Since the statute says “transfer” and not “give,” some might argue that the donee could either give or sell to a qualified relative. However, since the original exemption relates to a gift, it is reasonable to construe “transfer” to mean that the donee may not sell the gift lot to a qualifying relative without jeopardizing the gift exemption, unless the transfer by the donee meets the same test for consideration as the original gift. The “reach back” language was first added to the statute when a gift couldn’t involve any consideration, but it now should be read in light of the current test for a “gift.” Issue #3: What if all or part of the gift lot is leased within the 5 year period? A lease arguably does not constitute a “transfer” for the purposes of the “reach back” provision; “transfer” probably envisions the conveyance of title.

- Avoid problems for third parties that could result from transfers by the original donees that lift the gift exemption retroactively; include broad, clear language in the deeds from the original donor to those donees citing the statute and reminding them and prospective buyers about the consequences of an ineligible transfer by the donee within 5 years of the original gift conveyance. Attorneys representing third parties who purchase lots within the same 5 year period as gift conveyances from the same parent parcel should remind their clients about the possibility of the retroactive elimination of gift exemptions and resulting need for subdivision approval. They should caution their clients against dividing their own lots without first determining what may have been done with the gift lots.
- Intent of the donor in making the gift is relevant; the 5 year retention period didn’t replace the broader intent analysis. Maine court decisions involving the gift to relatives exemption and intent to avoid the objectives of the law include: *Mills v. Town of Eliot*, 2008 ME 134, 955 A.2d 258 (case dealing with the role of the local code enforcement officer in determining whether a “family subdivision” has been created and the point at which that decision is appealable); *Tinsman v. Town of Falmouth*, 2004 ME 2, 840 A.2d 100 (court agreed with town’s contention that conveyances of “gift” lots were intended to avoid the objectives of the subdivision law based on a number of things, including: landowner’s background in real estate development; his admission that some of the transfers were intended to avoid subdivision requirements; town planner’s testimony that approval would be difficult to obtain due to poorly drained soils; numerous transfers between him and his corporation without consideration over a short period of time; and the sequence of conveyances); *Paumgarten v. Inhabitants of Town of Mt. Desert*, District Court, District Five, Division of Southern Hancock, Dkt No. BAR92-CV-

031, December 27, 1993 (conveyances by partnership to the partners and their wives constituted gifts to family members; evidence of their intent to make the conveyances in order to take advantage of needed federal tax exemptions supported a finding that there was no intent to avoid the objectives of the subdivision law); *Hylar v. Town of Blue Hill*, 570 A.2d 316 (Me. 1990)(in reviewing new subdivision applications, the planning board may reconsider the validity of earlier family transfers in light of the donors' subsequent conduct); *Scorcio v. Inhabitants of Town of Boothbay*, CV-91-116 (Me. Super. Ct., Linc. Cty., June 10, 1992) (conveyance from husband and wife to husband was not intended to avoid subdivision review but rather to comply with the town's building permit regulations); *Fisher v. Dame*, 433 A.2d 366 (Me. 1981) (appeal of board's finding regarding family gift conveyances was deemed to be an untimely Rule 80B appeal rather than a declaratory judgment action); *Bauer v. Town of Gray*, AP-99-90 (Me. Super. Ct., Cum. Cty., September 6, 2000) (a planning board decision regarding intent must be supported by substantial evidence in the record which it created; the parties must introduce pertinent evidence into the planning board record; they can't bolster the record through a trial of the facts in Superior Court.); *Bauer v. Town of Gray*, AP-99-090 (Me. Super. Ct., Cum. Cty., May 17, 2001) (a planning board may base findings regarding intent to avoid the objectives of the statute on circumstantial evidence); *Inhabitants of Town of Lyman v. Dion*, CV-83-663 (Me. Super. Ct., York Cty., July 1, 1987) ("desire to avoid the effect of a change in the minimum lot size requirement is not tantamount...to an intent to avoid the objectives of the state subdivision statutes and local ordinances implementing those statutes. . . . (T)he town equates the criteria for subdivision approval, such as consideration of the impact of a development on existing water supplies or soil erosion, with the 'objectives' of the subdivision statute. That equation is also inappropriate. Although the statutes do not specify the objectives of the subdivision law, the statutory scheme indicates two overriding legislative objectives: to prevent the adverse environmental consequences of uncontrolled development, and to protect members of the public who purchase subdivided lots.... (N)othing in the record to support a finding that there is any intent to avoid the second objective. All of the conveyances were to family members. These were not sham transactions which were designed to lead ultimately to conveyances to members of the public unrelated to (the donors). (E)ven the right of first refusal retained by (the donors) was intended to provide for some continuing family control over the disposition of these lots, rather than to provide for the possibility of a reconveyance to (the donors) for the purpose of then

conveying these parcels to unrelated members of the public.... The record would support a finding that (the donor's) own experience with the subdivision process in Lyman...gave him a secondary intent to allow his children to develop their parcels and the family compound without subdivision controls. However, the existence of this subsidiary intent does not deprive the gifts of their bona fide quality and does not run afoul of the statutory language.”)

- What if the parcel from which the gift lot is conveyed was jointly owned for part of the 5 year period and one joint owner acquired the other's interest during the third year? If the one who owned it either jointly or solely for the entire 5 year period conveys a gift lot, does he/she satisfy the “continuous ownership” requirement? Probably.
- A landowner seeking exemption from subdivision approval has the burden of proving that he/she did not intend to avoid the objectives of the law. *Tinsman, supra*; a local code enforcement officer must make factual findings related to intent in determining the legality of a “family subdivision.” *Mills, supra*.

I. Gift to a Municipality (§ 4401(4)(D-5)(Supp. 2013)]

- To be eligible, the gift lot must be accepted by a vote of the legislative body (i.e., town meeting or town/city council).
- The “intent to avoid” standard is applicable to municipal gifts (per P.L. 2001, ch. 359 and ch. 523).

J. Transfer to Abutter [§ 4401(4)(D-6)(Supp. 2013)

- Amended most recently by P.L. 2013, ch. 126, § 1, effective October 9, 2013, deleting the phrase “that does not create a separate lot,” which had been a source of much confusion.
- Prior to the 2013 amendment, the first sentence read: “A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transfer is to avoid the objectives of this subchapter.” This version took effect September 21, 2001. (Initially effective September 21, 2001, retroactive to June 1, 2001, per P.L. 2001, ch. 359; P.L. 2001, ch. 523 clarified that the effective date was September 21, 2001—ch. 523 took effect as emergency legislation on March 12, 2002).
- The pre-2013 version of this exemption involved the transfer of an interest in land to the owner of abutting land that did not create a “separate lot.” Some argued that such a transfer is always exempt because it is just a shift

in the lot line and never creates a “separate lot.” They took the position that the issue of whether the conveyed piece is “buildable” was irrelevant because the language of the statute said “separate lot,” not “buildable lot,” so the Task Force report (see below) that was the springboard for the amendment was not controlling. Others focused on the language of the Task Force report as pertinent legislative history that must be considered to resolve an ambiguity regarding the meaning of “separate lot” in the statutory language. They argued that if the conveyed acreage had insufficient area to satisfy applicable minimum lot size requirements for development, making it a lot that was not separately “buildable,” the conveyance was exempt and didn’t result in a countable lot, unless intended to avoid the objectives of the subdivision law; if there is enough acreage to create a “buildable” lot, then it is not an exempt transfer. It is impossible to say with certainty what the Legislature intended. (See “Task Force to Study Growth Management, Proposals by Subdivision Law/Impact Fee Working Group” in Appendix A-4 of these materials.) Now that the “separate lot” language has been repealed, the question is whether to judge abutter transfers made prior to October 9, 2013 by the amended version of § 4401(4)(D-6) or the current version. Can we view the deletion of the “separate lot” language as simply a clarification of the intent of the pre-2013 language? The “Summary” in the legislative document that proposed the 2013 amendment (L.D. 966, First Regular Session, 126th Legislature) reads: “This bill clarifies an exemption to the definition of ‘subdivision’ for purposes of planning and land use regulation. This bill specifies that a parcel of land created by a division that is transferred to an owner abutting that parcel is not subject to municipal review and regulation.” Based on the bill’s “Summary,” it seems reasonable to construe abutter transfers made prior to October 9, 2013 in light of the current statute.

- If the exempt conveyance is transferred by the abutter within 5 years to another person without all of the “merged land,” then the exemption for the original conveyance is lifted retroactively to the date of the original transfer to the abutter (“reach back” provision). Does “merged land” refer to all of the land owned by the abutter at the time of the original exempt conveyance and the land that was transferred? Probably. If so, then a person who owns 100 acres and receives a conveyance of a small strip from an abutter to even off a boundary must either hold the entire 100+ acres for 5 years or convey the entire 100+ acres if sooner than 5 years.
- The lot conveyed to the abutter must directly abut his/her existing parcel (“transfer of any interest in land to the owners of land abutting that land”);

it isn't enough that some other part of the "parent parcel" borders the abutter's land.

- The piece being conveyed must be to the same person/people who owns/own the abutting parcel—identical record title. *Town of Orrington v. Pease*, 660 A.2d 919 (Me. 1995); *Town of Bridgton v. Rolfe*, District Court, District Nine, Division of No. Cumberland, Dkt. BRI-90-LU-1, August 15, 1990.

K. Existing Developed Parcel [§ 4401(4) (E)(Supp. 2013)]

- The division of a parcel into 3 or more lots doesn't constitute a subdivision if a permanent dwelling structure legally existing before September 23, 1971 is located on each of the lots being created.
- Old fishing camps and cottage colonies—Do the cabins/cottages constitute "dwelling structures" or "commercial" structures? There is no helpful legislative history and no court decisions directly on point. In a municipality with a land use ordinance, a court may try to resolve this issue based on definitions in that ordinance. E.g., *Wachusett Properties Inc. d/b/a The Cabins at China Lake v. Town of China*, CV-07-329 (Me. Super. Ct., Kenn. Cty, September 9, 2008). Some argue that such cabins constitute commercial structures under *Oman v. Town of Lincolnville*, 567 A.2d 1347 (Me. 1990). Others focus on the residential nature of the activity conducted by the occupants of the cabins.
- Where a project involves a set of pre-September 23, 1971 cottages or cabins and other common buildings used as a dining hall, kitchen, recreation hall, or similar common uses, if the proposed project will create separate lots on each of which one of those structures will be located, it will not be exempt from subdivision review. The common buildings would not qualify as "permanent dwelling structures," even if the cabins/cottages do.
- In the example above, what if the land remains in single ownership, but the buildings are sold to separate owners? A dwelling unit subdivision? No, because the buildings are not new residential construction since September 23, 1988 and not newly placed on the parcel. (See further discussion regarding dwelling unit subdivisions later in these materials.)

- L. Documenting Eligibility For Exemption in the Registry**--If there is no official ruling by the planning board on the eligibility of a lot for an exemption, record factual documentation (in affidavit form?) in the Registry; if the planning board has taken official action at an advertised public meeting of the board regarding eligibility for an exemption, record a certified copy of the

documentation of that board vote in the Registry. Where a code enforcement officer has issued building permits after determining that the lots involved were exempt gift lots under § 4406(1)(C)(2011), record a certified copy of the CEO's findings. See *Mills, supra*.

Dwelling Unit Subdivisions—The Elements and Issues

The elements:

- The “division” of a “new structure or structures” on a “tract or parcel” of land into 3 or more “dwelling units” within a 5-year period.
- The construction or placement of 3 or more dwelling units on a single “tract or parcel” of land; although this part of the definition is not expressly modified by a reference to a 5 year period, it is commonly believed that the Legislature intended hat a 5 year period should also apply to this part of the definition. This interpretation is supported by the lack of a comma separating this category of dwelling unit subdivision from the one involving conversions.
- The division of an existing structure or structures previously used for commercial or industrial use into 3 or more “dwelling units” within a 5 year period.

The issues:

- “Dwelling unit” means “any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units.” [§ 4401(2) (Supp. 2013)]
- “New structure” includes “any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure.” [§ 4401(5) (Supp. 2013)] Example: An existing single family dwelling was built in 1985; an addition built in October 1988 is occupied by two dwelling units. This is not a subdivision.
- “Tract or parcel” is defined in § 4401(6)(Supp. 2013) as “all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.” (Amended by P.L. 2007, ch. 49, § 1, effective September 20, 2007).
- Hotel and motel units generally don't qualify as “dwelling units.” *Town of York v. Cragin*, 541 A.2d 932 (Me. 1988).

- The Maine Legislature first added dwelling unit provisions to the statutory definition in response to *York v. Cragin*, effective September 23, 1988.
- [Prior to July 1, 2018, leased dwelling units were exempt from municipal subdivision review when the municipal reviewing authority determined that they were otherwise subject to municipal review that was at least as stringent as subdivision review (30-A M.R.S.A. § 4401(4)(G), repealed by P.L. 2017, ch. 104, § 1). In 2017, this provision was repealed and the Legislature enacted an exemption for the division of a new or existing structure that was subject to municipal site plan review under the Site Location of Development Act, effective July 1, 2018 (30-A M.R.S.A. § 4402(6), amended P.L. 2019, ch. 174, § 2). In 2019, the Legislature amended § 4402(6) eliminating the requirement that a project be subject to municipal site plan review under the Site Location of Development Act. Effective June 30, 2018, for a project to be exempt under this section, it must be subject to “municipal site plan review” under a local land use ordinance that meets certain specified criteria, which must include criteria regarding stormwater management, sewage disposal, water supply and vehicular access. The municipal reviewing authority in each municipality is required to determine whether a municipal site plan review ordinance meets the criteria in the statute.]
- ~~Leased dwelling units (e.g., multi-unit apartment building) do not require subdivision review if the planning board determines that the units are otherwise subject to review under another local ordinance which is at least as stringent as that required by the Municipal Subdivision Law [§ 4401(4)(G)(Supp. 2013)]; typically, the other review is conducted under a separate site plan review ordinance or a site plan review or conditional use review which is part of a town-wide zoning ordinance. [This example is no longer accurate due to the 2017 and 2019 amendments to the subdivision law].~~
- Does the following constitute the construction or placement of 3 or more dwelling units on a single tract or parcel? A landowner divides a parcel into 2 countable lots, selling each to different people. The owner of one lot builds a duplex. The owner of the other lot places a mobile home on the lot. All of this is done within a single 5 year period. There is no clear answer regarding whether this is a subdivision. Some attorneys say yes, using the “parent parcel” as the point of reference, and find 3 dwelling units placed or constructed on the original tract or parcel within a 5 year period based on the definition of “tract or parcel.” Others say no, viewing each lot, now in separate ownership, as a single “parcel” for the purposes of this part of the definition of “dwelling unit”—no individual lot has 3 dwelling units on it. But see *Inhabitants of Town of Harpswell*

v. Powers, CV- 95-1093 (Me. Super. Ct., Cum. Cty., June 9, 1997), where the court found that the statutory definition of “subdivision” includes the combination of dividing a parcel and placing structures upon one or more of the lots within a single 5 year period; on appeal, the Law Court decided the case on other grounds in a Memorandum of Decision dated February 17, 1998. [See last bullet below for additional discussion].

- In § 4401(4) (Supp. 2013), the fact that the conversion of an industrial or commercial building to a multi-unit residence is a statutory subdivision and the conversion of a one unit residential structure to a multi-unit residence is not reflects the Legislature’s preoccupation with trying to address what was happening on the Portland waterfront with condominium conversion of warehouses; it makes no sense from the standpoint of the purpose of subdivision review. [Due to the 2017 and 2019 amendments, the division of an industrial or commercial building may now be exempt from subdivision review if a municipality has adopted a municipal site plan review ordinance that meets the statutory criteria.]
- Conversion of an old sea captain’s home into 3 or more apartments is not a statutory subdivision.
- Conversion of a residential accessory garage built in 2001 into 2 dwelling units on the same lot with a principal single family residence built in 2001 is arguably not a subdivision, since the garage is arguably a residential structure for the purposes of the conversion rule; conversion of a barn on a family commercial dairy farm into 3 apartments is arguably the conversion of a commercial structure and therefore a statutory subdivision.
- The same counting and exemption rules that apply to divisions of land govern the determination of the number of dwelling units in a structure. [§ 4401(4)(F)(Supp. 2013)]. Since the language of § 4401(4)(F)(Supp. 2013) addresses only dwelling units within a single structure, it is arguable that exemptions do not apply to dwelling units that are placed or constructed on the lot or that are located in a converted commercial or industrial structure. This probably was not what the Legislature intended.
- Question: If a person gives a lot to each of his 3 children and, in the same 5 year period, each child builds or places a dwelling structure on his/her lot, is there a 3 dwelling unit subdivision requiring planning board approval? Arguably there is, since the grantor didn’t give both the lot and dwelling to each child and the courts generally construe exemptions narrowly. Some would argue that there is no subdivision because each lot is a separate “tract or parcel” and also because requiring review of the dwelling units would defeat the purpose of the exemptions for the lots. [See last bullet below for additional discussion].

- [The provision in the subdivision law that exempts the division of a “new or existing structure” from subdivision review if the project is subject to municipal site plan review probably only applies to “divisions of a new structure” and “the division of an existing structure or structures previously used for commercial or industrial use.” Arguably, it does not apply to the “construction or placement of 3 or more dwelling units on a single tract or parcel of land,” since the exemption only applies to “a division of a new or existing **structure**” into 3 or more dwelling units (emphasis added)].

Exempt Subdivisions [30-A M.R.S.A. § 4402 (2011)]

Certain subdivisions are “exempt” from subdivision review under the current law. However, sometimes an “exempt” subdivision cannot be developed as it exists, as it was approved, or as shown on the plan in question. This is because a current municipal ordinance, such as a zoning or minimum lot size ordinance, may have a nonconforming lot provision that requires legally nonconforming lots that are undeveloped, contiguous and in single ownership to be merged. In order to convey separate lots, the original exempt subdivision lots may have to be reconfigured to comply with current dimensional requirements. If that is the case, and the “exempt” subdivision cannot legally be developed “as is,” any changes made necessary by the new dimensional requirements may cause the subdivision to be changed in such a way that it is no longer “grandfathered” and must receive planning board approval under the current subdivision law before lots may be offered or conveyed. The following subdivisions are listed as “exempt” in § 4402:

1. Subdivisions approved by the planning board or municipal officers before September 23, 1971 in accordance with the laws in effect at that time.
2. Subdivisions in “actual existence” on September 23, 1971 that didn’t require approval under prior law [land divided and lots surveyed prior to September 23, 1971 constituted “actual existence”—*State ex rel Brennan v. R.D. Realty Corporation*, 349 A.2d 201 (Me. 1975)].
3. Subdivisions shown on plans legally recorded in the proper registry of deeds before September 23, 1971.
4. Airports with an airport layout plan that has received final approval from the airport sponsor, Maine Department of Transportation and the Federal Aviation Administration.
5. A subdivision in violation of the Municipal Subdivision Law [30-A M.R.S.A. §§ 4401-4408 (2011 & Supp. 2013)] that has been in existence 20 years or more, except a subdivision that falls within one or the following categories:
 - a. That has been enjoined pursuant to § 4406 (2011);
 - b. For which approval was expressly denied by the planning board and a record of the denial was recorded in the appropriate registry of deeds;

- c. For which a lot owner was denied a building permit under § 4406 (2011) and a record of the denial was recorded in the appropriate registry of deeds;
 - d. That has been the subject of an enforcement action or order and a record of the action was recorded in the appropriate registry of deed.
6. Beginning June 30, 2018, a division of a new or existing structure into 3 or more dwelling units whether the division is accomplished by sale, lease, development or otherwise is exempt from municipal subdivision review in a municipality where the project is subject to municipal site plan review. The municipal reviewing authority has the authority to determine whether a municipal site plan review ordinance adopted by the municipality meets the requirements in the statute.

Section 4402(5) (2011) took effect on September 19, 1997. To prevent the 20 year period from expiring, the municipality must make the required recordings any time before the end of the 20 year period. The 20 year period arguably begins with the creation of the lot which resulted in the creation of an unapproved subdivision. The Maine Law Court in *Town of Eddington v. University of Maine Foundation*, 2007 ME 74, 926 A.2d 183, held that Section 4402(5)(2011) establishes the statute of limitations that controls the enforcement of subdivision violations under § 4406 (2011).

Municipal Ordinance Definitions [30-A M.R.S.A. § 4401(4)(H-1) (Supp. 2013)] [30-A M.R.S.A. § 4401(4)(H-1) was repealed in 2017 and replaced by § 4401(4)(H-2), which was amended in 2019. Each time the law was amended the Legislature established a grace period for municipalities to amend local ordinances establishing a different definition of subdivision. These dates listed below in brackets.]

Statutory Limitations on Home Rule Authority: Home rule authority regarding the definition of “subdivision” is now expressly limited. It is no longer legal for a municipality to adopt a definition which changes the exemptions (other than as permitted by the statute regarding 40 acre lots) or which establishes a different timeframe or different number of lots for the creation of a subdivision. A municipal ordinance definition of “subdivision” which was in conflict with the statute and which was in effect on July 25, 2002 [November 1, 2017 or September 19, 2019] remained in effect until January 1, 2006 [2019 or 2021] if the municipality recorded the ordinance definition in the registry of deeds by June 30, 2003 [or 2018; or 2020]. By January 1, 2006 [2019 or 2021], ordinance definitions had to be consistent with the statutory definition, except as otherwise provided by the statute. P.L. 2001, ch. 651, effective July 25, 2002 [P.L. 2017, ch 104, section 1, effective November 1, 2017; P.L. 2019, ch. 174, sec. 1, effective September 19, 2019]. (Since municipalities were prohibited from adopting conflicting definitions of “subdivision” as of June 1, 2001, it is basically ordinance definitions in effect on that date which would be recorded in the registry and preserved until 2006. See P.L. 2001, ch. 523, § 1, effective as an emergency on March

12, 2002, which established June 1, 2001 as the retroactive effective date for P.L. 2001, ch. 359, § 4.)

In *Mills v. Town of Eliot*, 2008 ME 134, 955 A.2d 258, the Law Court noted that “in 2001, the State statute...permitted local governments to enforce a more expansive, i.e., inclusive, definition of a subdivision in the regulation of land use activities, meaning local ordinances need not exempt ‘family subdivisions’ from the requirements for forming subdivisions.” This recognition by the court of a municipality’s home rule authority to adopt a different definition of “subdivision” is a reminder of the importance of researching municipal records and registry records to determine whether a particular municipality had adopted and was enforcing a modified definition of “subdivision” prior to June 1, 2001, before the Legislature imposed express limitations on home rule ordinance authority regarding the definition.

Recording the Ordinance: Section 4401(4)(H-1) (Supp. 2013) [and now, Section 4401(4)(H-2)] required each registry to collect and index in a separate book any subdivision ordinances that were filed. However, the registries may not have been aware of this requirement, so may have recorded subdivision ordinances in their regular books, not in a special one. Anyone researching whether a subdivision was created during the above time periods must check with the appropriate registry to see whether a particular municipality’s subdivision ordinance was on file, whether it was filed by the required deadline, and to what extent the ordinance varied from the statutory definition.

It is likely that only a few municipalities recorded their subdivision ordinances. Many may not have known about the requirement of recording in order to preserve a home rule definition, or knew about it and missed the recording deadline. Some may have decided that it was not worth the effort to record, knowing that it would only preserve the definition until 2006 [, 2017 or 2021]. Others may not have recorded because they were not experiencing the kind of development activity that they saw in the 1970’s and 1980’s when they adopted their home rule definitions. For a report prepared by Kirsten Hebert of the State and Federal Relations Department at Maine Municipal Association in September 2001 entitled “Maine’s Subdivision Law and Its Home Rule Implications,” see Appendix 5 in these materials. The original report includes a spread sheet indicating which municipalities adopted definitions which vary from the statutory definition and in what respects. That spread sheet is not included in the appendix to these materials, but can be found on pages 99-104 of the text for the March 2004 MSBA Seminar entitled “Subdivisions in Maine—2004.” See also a discussion of municipal ordinance definitions prepared by Rebecca Warren Seel, Esq. in the seminar text for a November 1990 Maine State Bar Association seminar entitled “The Definition of Subdivision in Maine Law.”

“Resubdivision” Provisions: Some municipal ordinances include provisions addressing the “resubdivision” of a lot shown on an approved plan. Those provisions typically require review and approval by the planning board whenever an approved lot is further divided,

regardless of who does the dividing or when. This approach is more far-reaching than the language of 30-A M.R.S.A. § 4406(1)(E) (2011), but probably does not constitute an alteration of the definition of “subdivision” for the purposes of the limits on home rule authority and the recording deadline discussed above.

Related Issues: Waivers; Expiration Clauses/Extension of Deadlines/Recording Deadline; Plan Revisions; Pending Applications/Retroactivity Clauses; Abandonment of Approved Plans; Subdivisions Crossing Municipal Boundaries; Violations of the Subdivision Law

Waivers

Planning boards are often given the authority in subdivision ordinances and regulations to approve “waivers” of certain requirements. See the language of a particular ordinance or regulation to know exactly what kind of requirements may be waived and what findings the board must make to support a waiver. *Jarrett v. Town of Limington*, 571 A.2d 814 (Me. 1990); *York v. Town of Ogunquit*, 2001 ME 53, 769 A.2d 172; *Bodack v. Town of Ogunquit*, 2006 ME 127, 909 A.2d 620; *JPP, LLC v. Town of Gouldsboro*, 2008 ME 194, 961 A.2d 1103. In granting waivers, planning boards must ensure that they are waiving only a requirement that is established by the subdivision ordinance or regulation and not a requirement that actually is based on a provision of a zoning ordinance; only boards of appeal have the authority to grant variances from zoning requirements. *York v. Town of Ogunquit*, *supra*; *Sawyer v. Town of Cape Elizabeth*, 2004 ME 71, 852 A.2d 58. See also, 30-A M.R.S.A. § 4353(4-C) (Supp. 2013), last paragraph. If a planning board grants initial subdivision approval or approval of a plan amendment based on the granting of a waiver of a subdivision requirement, 30-A M.R.S.A. § 4406 (1)(B)(2011) requires that this be noted on the face of the plan and that the plan be recorded within [2 years (P.L. 2017, ch. 104, § 5)] of final approval in order to prevent the waiver from becoming void. The recording is done by the applicant, not the municipality. Where no amended plan is filed as part of the request that an amendment be approved, § 4406(1)(B)(2011) outlines the contents of a certificate which must be recorded in the registry if the amendment was approved on the basis of a waiver.

Extension of Deadlines/Expiration Clauses/Recording Deadline

Some municipal ordinances or subdivision regulations authorize conditions of approval which are subject to certain compliance deadlines. Even without such an ordinance provision, the planning board has general authority under 30-A M.R.S.A. § 4403(5)(C) (Supp. 2013) to grant approval on any terms or conditions that it deems advisable and reasonably related to applicable review criteria. At least one court has held that a board has no obligation to grant an extension of such a deadline and that just because the board granted one extension, it is not obligated to continue to do so. *People’s Heritage Savings*

Bank, v. Inhabitants of City of Rockland, CV-91-174 (Me. Super. Ct., Knox Cty., April 27, 1992).

Many municipal ordinances include clauses which provide that a permit, approval or variance will expire unless the authorized work has begun or been substantially completed within a stated deadline. Such ordinance provisions have been upheld by the Law Court. In order to know what kind of work must be completed and within what timeframe, it is necessary to review the ordinance under which the permit, variance or approval was granted. Failure to satisfy the deadline will generally result in the permit, variance or approval becoming void. *E.g.*, *George D. Ballard, Builder v. City of Westbrook*, 502 A.2d 476 (Me. 1985); *Laverty v. Town of Brunswick*, 595 A.2d 444 (Me. 1991); *Cobbossee Development Group v. Town of Winthrop*, 585 A.2d 190 (Me. 1991); *City of Ellsworth v. Doody*, 629 A.2d 1221 (Me. 1993); *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930.

Some communities also may have an ordinance requirement that an approved plan must be recorded at the registry within a certain number of days after final approval or the approval becomes void. The ordinance also may provide for the granting of an extension of the filing deadline. If the deadline for recording the plan expires before an extension is sought and approved, the plan becomes void and the board has no authority to approve an extension. *Burr v. Town of Rangeley*, 549 A.2d 733 (Me. 1988), citing *George D. Ballard, Builders v. Westbrook, supra*. Title 30-A, section 4408 of the Maine statutes (Supp. 2013) provides that a municipality may not establish a recording deadline of less than 90 days. (P.L. 2011, ch. 245, § 1)

Plan Revisions or Amendments after Approval and Recording

To amend a previously approved subdivision plan, 30-A M.R.S.A. § 4407 (2011) requires that an application for subdivision approval be submitted to the planning board and that it bear certain information. The statute provides little guidance as to the contents of the application or accompanying plan or the procedure to be followed by the planning board in its review and approval; some municipal ordinances or subdivision regulations include more detail. It is safest for the board to follow the same procedures as for an initial subdivision application. But see, *Buckingham v. Town of Scarborough*, AP-99-79 (Me. Super. Ct., Cum. Cty., August 13, 2000), where the court noted that there are no express notice requirements regarding an amendment to a plan, no requirement that a public hearing be held, and no time limits imposed on when an amendment may be sought, absent language to the contrary in a local ordinance or regulation.

The board's review of a plan revision is limited to the proposed revision. It does not conduct a review of the entire original plan and cannot apply any new ordinances to the entire plan in conducting its review, absent language to the contrary in a local ordinance. *Schmidt v. Inhabitants of Readfield*, CV-89-169 (Me. Super. Ct., Kenn. Cty., August 16, 1989). See

also, *Chasteen v. Town of China*, AP-02-45 (Me. Super. Ct., Kenn. Cty., April 30, 2003) and *DeMille v. Town of Cape Elizabeth*, AP-99-45 (Me. Super. Ct., Cum. Cty., 12/21/99) (discussion regarding the extent to which lots that were part of the original plan were “grandfathered” and not subject to the new ordinance requirements). When a subdivision plan is amended to add another lot, that lot becomes subject to any conditions of approval imposed as part of the approval of the original plan, absent language to the contrary in the decision or the applicable ordinance or regulation. *LaBelle v. Blake*, CV-94-85 (Me. Super. Ct., Kenn. Cty., April 11, 1997). Where a change to an approved plan is not something for which monumentation would be necessary or relevant, it is not necessary to require certification of monumentation as part of the approval of the revised plan. *Chasteen v. Town of China*, *supra* (revision of phosphorous control plan). For a case involving a plan revision coupled with the granting of a waiver, see *Leonard v. Town of Winthrop*, AP-03-52 (Me. Super. Ct., Kenn. Cty., September 24, 2004).

Where the original subdivision plan as approved did not specify the type of subsurface wastewater disposal system that had to be used on the lots as a condition of approval, the fact that the developer later sought a plumbing permit for a cluster system rather than for individual systems on each lot did not constitute a revision of the plan requiring planning board approval. *Hamilton v. Town of Cumberland*, 590 A.2d 532 (Me. 1991). The court noted that the board could have designated the type of system it wanted to require as a condition of approval, but did not do so.

As noted earlier in these materials, if the person who received the original subdivision approval is the one proposing to make changes to the approved plan by creating additional lots, that person is required to obtain approval of a revised plan from the planning board, regardless of how much time has passed since the plan approval. 30-A M.R.S.A. § 4406(1)(E)(2011). Changes made by others may also require approval of a revised plan, depending on the wording of the applicable ordinance or conditions of approval. It should be noted that some attorneys believe that, under State law, once a lot is shown on an approved plan, it remains within the planning board’s jurisdiction indefinitely and that any changes to it require planning board approval, regardless of who makes the changes or when. Question: What if a “change” involves the conveyance of a new exempt lot? No clear answer. Obtaining approval to create an exempt lot in cases where non-exempt lots would require approval is the safest course. (See earlier discussion of this issue in these materials under “Land Subdivisions—The Issues: 4. Within any 5-year period beginning on or after September 23, 1971” (third bulleted paragraph).

Where a sub-divider applies to the planning board for approval of a plan revision after lots have been sold as depicted on an approved plan, in some cases the sub-divider will also need to obtain release deeds from those lot owners in order to go forward with the revision, even if the planning board has granted approval. The other lot owners generally have a right to have the original plan developed as depicted on the approved and recorded plan which was

in effect when they bought their lots; this right cannot be taken away by the granting of approval of a revision by the planning board. The planning board's approval of a revision is simply evidence that the board found that the revision satisfies applicable statutory and ordinance requirements. *See, Green v. Lawrence*, 2005 ME 90, 877 A.2d 1079, and *Kargar v. Town of Falmouth*, AP-07-14 (Me. Super. Ct., Cum. Cty, March 5, 2008).

Pending Applications/Retroactivity Clauses in New Ordinances

Sometimes a municipality amends an applicable ordinance provision either while an application is being reviewed by the planning board or after the board has granted its approval, but before the landowner has begun any of the work authorized by the board. If an application is "pending" when the ordinance is amended, 1 M.R.S.A. § 302 (1989) requires the board to complete its review under the original ordinance, unless the new ordinance contains a retroactivity clause. Such clauses have been upheld by the Law Court. *City of Portland v. Fisherman's Wharf Associates II*, 541 A.2d 160 (Me. 1988). The courts have found that an application is "pending" if the board has conducted at least one substantive review of the application, absent a contrary provision regarding what is "pending" in the ordinance. *Littlefield v. Inhabitants of Town of Lyman*, 447 A.2d 1231 (Me. 1982); *Maine Isle Corp., Inc. v. Town of St. George*, 499 A.2d 149 (Me. 1985); *Brown v. Town of Kennebunkport*, 565 A.2d 324 (Me. 1989); *Walsh v. Town of Orono*, 585 A.2d 829 (Me. 1991). Section 302 defines "substantive review" as a "review of that application to determine whether it complies with the review criteria and other applicable requirements of law." Preliminary review of an application for completeness generally does not constitute a substantive review. *Waste Disposal Inc. v. Town of Porter*, 563 A.2d 779 (Me. 1989). The fact that an application was delivered to the town office or received and receipted by the town office staff does not make an application "pending," absent a local ordinance provision to the contrary. *P.W. Associates v. Town of Kennebunkport*, CV-88-716 and CV-89-29 (Me. Super. Ct., Yor. Cty., November 20, 1989).

Where a project is governed by more than one ordinance, the fact that an application is "pending" under one ordinance does not mean that it is "pending" for all purposes. *Larrivee v. Timmons*, 549 A.2d 744 (Me. 1988); *Perrin v. Town of Kittery*, 591 A.2d 861 (Me. 1991). Changes enacted in other relevant ordinances would apply, which in some cases will mean that subdivision lots will need to be revised in order to conform to the new ordinances. This in turn will probably trigger the need to submit a revised subdivision plan for review and approval.

Abandonment of an Approved Subdivision Plan

There are times when it is advantageous for a landowner to abandon all or a portion of a subdivision plan approval due to property tax considerations or for other business reasons. There is no process described in the Municipal Subdivision Law in Title 30-A for the

approval of a plan abandonment. One approach is for the landowner to submit a plan which includes the language required by § 4407 (2011) and which depicts the land in question in its pre-subdivision approval form, eliminating proposed lot lines, roads, and other improvements, and which bears a statement explaining that the revised plan is intended to abandon the approval granted by the planning board on a specified date, recorded in a specified book at a specific registry of deeds, and return the parcel to its pre-subdivision approval condition. Once approved by the board, this revised plan would be recorded in the registry of deeds. Some attorneys view this method of abandonment as being more consistent with the statute. The following language appeared on a plan submitted to the Town of Sumner's planning board by a developer who used this method for abandoning his approved subdivision plan: "This plan is submitted as an amendment to a revised final subdivision plan of Labrador Pond Estates previously approved by the Town of Sumner planning board on November 15, 1988 and recorded in the Oxford County Registry of Deeds in Plan File # 2388. The purpose of this amendment to that revised subdivision plan is to revert the entire subdivided parcel shown hereon to its status prior to approval of the original final subdivision plan of Labrador Estates on December 29, 1987, recorded in said Registry of Deeds Plan File #2283." The following language also appeared on the plan below the signature lines: "This is to certify that after reviewing the amendment to a subdivision shown by this plan, and considering Title 30-A, M.R.S.A., sections 4401 through 4407, as amended, and the Town of Sumner Subdivision Ordinance, the above signed have established that this amendment will revert the subdivision of this parcel to the unsubdivided status that existed prior to the original subdivision approval of Labrador Pond Estates on Dec. 29, 1987. The board finds that the parcel status as amended does not require review under either Title 30-A, M.R.S.A. sections 4401 through 4407, as amended, or the Town of Sumner Subdivision Ordinance."

An approach favored by other attorneys is for the landowner to submit a "Notice of Intent to Abandon" for acceptance by the planning board and a "Certificate of Abandonment" for the board or other appropriate municipal official to complete which can then be recorded at the registry of deeds. See Appendix A-3 of these materials for sample forms to implement this latter process prepared by William H. Dale, Esq., of Jensen, Baird, Gardner and Henry, for a 1994 Maine State Bar Association seminar entitled "Maine's Land Use Laws." The forms are reprinted in this seminar text with the permission of their author.

It is important to note that 23 M.R.S.A. § 3027 (1992) imposes additional requirements and limitations in the context of a subdivision in which a highway property interest has been dedicated to a municipality. Also, as was mentioned earlier in the discussion of plan revisions, if any lots have been sold in relation to a recorded plan which the owner is seeking to abandon, the abandonment process will involve obtaining not only the approval of the planning board, but also a release of rights in the plan by those who already purchased

lots. Obviously, if enough of the lots shown on the plan have been sold to create a subdivision, the entire approved plan could not be abandoned.

Subdivisions Divided by Municipal Boundaries

Title 30-A, section 4403(1-A) (Supp. 2013) provides that “if any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review the application must be held jointly by the reviewing authorities from each municipality,” unless waived by written agreement of the reviewing authorities (i.e., the planning boards, or where none, the municipal officers) of each municipality. The same is true where a revision of an approved plan is being proposed. This language clearly requires that all of the municipalities in which a portion of the subdivision is located must meet jointly for all meetings and hearings related to the proposed subdivision. A prior version of the law required only that the boards “meet jointly to discuss the application.” One case decided under the prior law found that it was enough if the board of the town in which the majority of the subdivision was located notified the other town and had its code enforcement officer attend a meeting with the board of the other town to discuss the proposed subdivision. *Tolman v. Inhabitants of the Town of Ogunquit*, CV-92-559 (Me. Super. Ct., York Cty., August 17, 1993). Such a process would not be consistent with the current version of § 4403, which has been in effect since 1997. Joint meetings are required unless the boards sign a written agreement waiving the requirement. *Johansen v. City of Bath*, AP-10-002, Me. Super. Ct., Sagh. Cty, December 14, 2010. In *Town of North Yarmouth v. Moulton*, 1998 ME 96, 710 A.2d 252, the Law Court held that North Yarmouth was required by the statute to review and approve the proposed subdivision, even though the only portion which was located in North Yarmouth was land marked on the plan as “reserved for a road.” The court disagreed with the Moultons’ argument that a municipality must review a proposed subdivision only where 3 or more lots in the subdivision will be created within that town’s boundaries. The current statute, which requires all meetings and hearings involving the subdivision to be held jointly when any portion of the subdivision crosses municipal boundaries, doesn’t provide any guidance regarding procedures to be followed by the boards in conducting joint sessions. There have been at least 6 or 7 subdivisions in York County within the past decade which crossed municipal lines and required joint review, according to staff at Southern Maine Regional Planning Commission.

Subdivision Violations and Enforcement Actions

Title 30-A, section 4406 of the Maine statutes (2011) authorizes the Attorney General, a municipality, or the municipal planning board to institute proceedings to enjoin a violation of the Municipal Subdivision Law. Municipal code enforcement officers are generally authorized by local ordinance or order of the municipal officers to enforce the Municipal Subdivision Law on behalf of the municipality.

Title 30-A, section 4452 of the Maine statutes (Supp. 2013) establishes the penalties which a court may order for land use violations, including violations of the subdivision law. A municipality arguably may establish more stringent penalties by home rule ordinance.

Land use enforcement actions in court seeking penalties and corrective action are generally brought under Maine Rule of Civil Procedure 80K. Not all violations are prosecuted in court. Many municipalities attempt to negotiate a “consent agreement” with the violator as a way to recover a penalty and obtain corrective action without going to court. Sometimes a municipality will file a Rule 80K complaint and then ask the court to adopt a negotiated consent agreement as its decision, at which point the consent agreement becomes a “consent decree.” For some types of violations, municipalities issue a “no action letter,” which is merely a statement by the current council or board of selectpersons that they agree not to prosecute the violation because of its inconsequential nature, such as a very old sideline setback violation of a few feet. Since these letters are not binding on a subsequent board or council or on the municipalities’ legislative body, many attorneys and financial institutions are unwilling to accept them.

If a person seeks subdivision approval after the violation has occurred, there is no guarantee that a planning board will approve the subdivision at all or approve it as it exists on the face of the earth. The planning board must review the plan as though none of it had been built or conveyed. If approval is denied, and if any illegal structures are not removed voluntarily by the landowner, the municipality could ask a court to order the owner to remove/demolish the structures. Title problems for any illegally conveyed lots would need to be resolved by the parties in some other way if the planning board will not approve the subdivision after the fact.

As previously discussed, an illegal subdivision may become “grandfathered” if it has been in existence for 20 years and the municipality has not taken the actions or recorded any of the documents outlined in 30-A M.R.S.A. § 4402(5)(2011) before the end of the 20 year period. The 20 year period probably begins with the creation of the lot which triggered the need for subdivision approval; this isn’t addressed in the statute. For a discussion of the relationship between 30-A M.R.S.A. §§ 4402(5) and 4406 (2011), see *Town of Eddington v. University of Maine Foundation, supra*.

A violation may be unintentional and may be corrected by obtaining planning board approval after the fact or by the reconveyance of the lots to the original owner. However, a municipality has the legal right to take enforcement action to recover a monetary penalty pursuant to 30-A M.R.S.A. § 4452 (Supp. 2013) in recognition that a violation did exist at one point.

Local building officials are prohibited from issuing building permits for lots in an illegal subdivision. 30-A M.R.S.A. § 4406(1)(C) (2011). (Amended by P.L. 2007, ch. 699, § 24,

effective July 18, 2008, to replace “building inspector” with “building official”) Question: What if a permit application is submitted after the creation of an illegal subdivision for a building which will be situated on the first lot created? It is arguable that the permit can be issued because the lot in question wasn’t part of a subdivision when it was created. It also could be argued that, since the permit wasn’t sought until after the lot became part of an illegal subdivision by virtue of subsequent conveyances, the permit cannot be granted until the subdivision violation is corrected.

For a statute validating certain subdivision plans recorded prior to January 1, 1970 which were approved by the wrong municipal board or which did not bear a notation regarding approval, see 33 M.R.S.A. § 353-B(1999).

Appendices

A-1. Municipal Subdivision Law (30-A M.R.S.A. §§ 4401 to 4408)

A-2. Complete Legislative History of the Municipal Subdivision Law (history through 1999 prepared by Christopher Neagle, Esq. and reprinted here with his permission; updated by Rebecca Warren Seel, Esq. through 2014)

A-3. Forms for Use in Abandoning an Approved Subdivision Plan (prepared by William Dale, Esq. and reprinted here with his permission)

A-4. Report of Legislative “Task Force to Study Growth Management: Proposals by Subdivision Law/Impact Fee Working Group” (November 13, 2000)

A-5. Report entitled “Maine’s Subdivision Law and Its Home Rule Implications: A Response to LD 1278, P.L. 2001, ch. 359” by Kirsten Hebert, Maine Municipal Assoc., September 2001 (attachments 1-6 omitted)

A-6. Diagrams depicting various subdivision scenarios and related Commentary

Excerpt from material prepared by William H. Dale, Esq., Jensen, Baird, Gardner, and Henry, for 1994 Maine Bar Association seminar entitled "Maine's Land Use Laws." Reprinted with permission of the author and the Maine Bar Association. Copyright 1994. All rights reserved.

Exhibit A – Notice of Abandonment

Development Company
100 Main Street
Anytown, Maine 04000

Date

Town Manager
Town Office
Center Street
Anytown, Maine 04000

RE: Subdivision

Dear Town Manager:

Development Company, a subsidiary of Big Company, intends to abandon its approved subdivision on the Shore Road in Anytown, known as _____, approved by the Anytown Planning Board on _____, 20_____ and recorded in the _____ County Registry of Deeds in Plan Book _____, Page _____. We have decided not to develop the _____ that was the basis for the subdivision.

Development Company understands that once this Notice is accepted by the Anytown Planning Board, all local approvals relating to said project will be considered null and void and any future development will be governed by the current Anytown Land Use and Subdivision Ordinances. We further understand that after the Planning Board's action the Town will release the _____ Bank Letter of Credit (or other form of Performance Guarantee) securing construction in the amount of \$_____ and the \$_____ deposit held in escrow toward Shore Road improvements.

Thank you for your cooperation in this regard.

Very truly yours,

President, Development Company

Excerpt from material prepared by William H. Dale, Esq., Jensen, Baird, Gardner, and Henry, for 1994 Maine Bar Association seminar entitled "Maine's Land Use Laws." Reprinted with permission of the author and the Maine Bar Association. Copyright 1994. All rights reserved.

Exhibit B

CERTIFICATE OF ABANDONMENT

I, _____, Town Manager of the Town of _____,
Maine, do hereby certify that on _____ 20_____, the Town of _____
received a written Notice of Abandonment from _____,
developer of _____
(name of subdivision), a _____
(description of development), that the said developer no longer intends to pursue its plans to
subdivide certain property located on the _____
(street or road) in said Town, which said subdivision was to be known as "_____."

Said Notice of Abandonment is attached hereto as Exhibit A-Notice of Abandonment.

The _____
(town) Planning Board at its meeting on _____,
20_____, accepted said Notice of Abandonment and authorized the release of a certain

(letter of credit or other form of Performance Guarantee) and escrowed funds held by the
Town. This Certificate is intended to give public notice of the abandonment of said
subdivision as recorded in the _____

County Registry of Deeds in Plan Book _____, Page _____.

Accordingly, the Town certifies that certain improvements set forth in Exhibit A to _____
Bank irrevocable letter of credit No. _____, dated _____ (the
"Letter of Credit") (or other form of Performance Guarantee) have not been commenced and

need not be completed, and said Letter of Credit (or other form of Performance Guarantee) have not been commenced and need not be completed, and said Letter of Credit (or other form of Performance Guarantee) has been returned to _____ Bank to be terminated. Further, the improvements to _____ (street or road), for which funds were escrowed, need no longer be completed and the escrowed funds have been released to _____ (developer).

Dated: _____

Town Manager

State of Maine
_____, ss. _____ 20____

Personally appeared the above-named _____,
Town Manager, and acknowledged the foregoing instrument to be his free act and deed in his/her capacity.

Before me,

Notary Public/Attorney at Law

(Print Name)

“Task Force to Study Growth Management: Proposals by Subdivision Law/Impact Fee Working Group” (2000)

I. SUBDIVISION LAW

1. HOME RULE ORDINANCE AUTHORITY:

- Clarify in statute that municipalities are authorized to adopt ordinances that define subdivision more narrowly than state law. For example, by ordinance, a municipality could define subdivision as division into less than 3 lots.

Draft statutory change:

30-A M.R.S.A. § 4401, sub-§ 4, ¶H is amended to read:

H. Nothing in this subchapter may be construed to prevent a municipality from enacting an ordinance under its home rule authority which expands the definition of subdivision ~~to include the division of a structure for commercial or industrial use or~~ which otherwise regulates land use.

2. EXEMPTIONS TO DEFINITION OF SUBDIVISION:

§ 4401(4)(A)(1):

- Homestead Exemption § 4401(4)(A)(1) – Retain exemption, but add requirement that the single-family residence has been the subdivider’s principal residence for the immediate past 5 years prior to the division.
- Open Space Exemption § 4401(4)(A)(1) – Delete the exemption for a division where the subdivider had retained one of the lots for open space land for a period of 5 years prior to the second division.

Draft statutory change:

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider’s own use as a single-family residence that has been the subdivider’s principal residence ~~or for~~

~~open space land as defined in Title 36, section 1102, for a period of at least 5 years immediately preceding before the 2nd division dividing occurs; or~~

~~(2) The division of the tract or parcel is otherwise exempt under this subchapter.~~

§ 4401(4)(C):

- 40-Acre Lot Exemption § 4401(4)(C) – Retain exemption for 40-acre lots, but delete 4401(4)(C)(2).

Draft statutory change:

C. *A lot of 40 or more acres shall not be counted as a lot, except:*

(1) When the lot or parcel from which it was divided is located entirely or partially within any shoreland area as defined in Title 38, section 435, or a municipality's shoreland zoning ordinance; or

~~*(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected to count lots of 40 or more acres as lots for the purpose of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435, or a municipality's shoreland zoning ordinance.*~~

§ 4401(4)(D):

Currently, 6 exemptions are identified in paragraph D. Under the working group proposal, each exemption would be identified in a separate paragraph.

Current statutory language:

D. *A division, accomplished by **devise, condemnation, order of court, gift to a person related** to the donor by blood, marriage or adoption or a **gift to a municipality** or by the transfer of any interest in land to the owner of land **abutting** that land does not create a lot or lots for the purposes of this definition, unless the intent of the transferor in any transfer or gift within this paragraph is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is*

transferred within 5 years to another person not related to the donor of the exempt real estate by blood marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this subsection.

- Devise Exemption § 4401(4)(D) – No consensus by working group:
 - A. One group would keep the exemption.
 - B. Other group would delete the exemption. Rationale – one ought not to be able to do in death what you can't do in life.

Draft statutory change if keep the exemption:

*D-1. A division accomplished by **devise** does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.*

Condemnation Exemption § 4401(4)(D) – Retain exemption.

Draft statutory change:

*D-2. A division accomplished by **condemnation** does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.*

Order of the Court Exemption § 4401(4)(D) -

Draft statutory change:

*D-3. A division accomplished by **order of court** does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.*

Gifts to Relatives Exemption § 4401(4)(D) – To get exemption:

1. The lot being divided must be held for 5 years prior to the transfer.
2. The recipient of the gift must hold the lot for 5 years after the transfer.
3. The recipient of the gift must be related to the donor by blood, marriage or adoption and to the 1st or 2nd degree (parent, grandparent, brother/sister, child, grandchild).

4. There must be no consideration component given for the gift.
5. There should be a limit on the number of receipts of gifts allowed to one relative before subdivision review is required, but the working group did not reach consensus. Alternative choices are:
 - One lot per relative per parcel
 - One lot per relative per county
 - One lot per relative per lifetime statewide

Draft statutory change:

*D-4 A division accomplished by **gift to a person related to the donor** of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. “Person related to the donor” means a parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph cannot be given for consideration that can be assessed a monetary value. [?? 1 lot per relative per parcel/1 lot per relative per county/1 lot per relative per lifetime statewide ??]*

Gifts to Municipalities Exemption § 4401(4)(D) – Retain exemption, but add requirement that the municipality must accept the gift. Also task force should consider expanding this exemption to gifts to the “state or any political subdivision of the state”. Also consider expanding the exemption to conservation commissions, municipal land trusts, etc.

Draft statutory change:

*D-5 A division accomplished by a **gift to a municipality** if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.*

- Abutters Exemption § 4401(4)(D) – Retain the exemption for transfers that do

not create a new buildable lot. Also, add provision that the abutter cannot sell the acquired lot (he could sell the merged lot) and get the exemption unless he held the lot for 5 years.

Draft statutory change:

*D-6. A division accomplished by the transfer of any interest in land to the owner of land **abutting** that land that does not create a buildable lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred **without the abutting land** within 5 years to another person, then the previously exempt division creates a lot or lots for the purposes of this subsection.*

3. **CHANGES TO STATUTE TO PREVENT SPRAWL**

- Not discussed by Working Group. See documents prepared by Dan Fleishman.

II. **IMPACT FEES**

- Proposal: Require impact fees to be linked to a comprehensive plan. Also, require that an impact fee must be linked to that aspect of a capital improvement plan that relates to the improvement that is being assessed the impact fee. Example: if a municipality charges an impact fee for highway construction, then the municipality needs to have at least a 5-year capital improvement plan for highways.

Certificate of Variance or Waiver Approval

I, _____, the duly appointed and qualified Secretary

of the Planning Board for _____,

County, State of Maine, hereby certify that on the _____ day of _____, 20 _____,

the following-described variance or waiver was granted pursuant to the provisions of 30-A

M.R.S.A. § 4401 et seq. and Section _____ of the Subdivision Ordinance.

1. Property Owner: _____.

2. Property Description: _____ County Registry of Deeds, Book _____ Page _____.

3. Variance/Waiver and Conditions attached: _____

IN WITNESS WHEREOF, I have hereto set my hand and seal this _____

day of _____, _____.

/s/ _____

, Secretary

(Printed or Typed Name)

STATE OF MAINE

_____, ss.

Then personally appeared before me the above-subscribed official of the municipality of _____

and acknowledged the above certificate to be his/her free act and deed in his/her official
capacity as Secretary of the Planning Board.

Date: _____, 20 /s/ _____
(Notary Public) (Attorney at Law) Signature

(Printed or Typed Name)

My commission expires: _____ (Notary)

My Bar Number: _____ (Attorney at Law)

This certificate must be recorded in the Registry of Deeds within 90 days of the final subdivision approval or approval under Title 38, chapter 3, subchapter I, article 6, where applicable, whichever date is later, or the variance/waiver is void (30-A M.R.S.A. § 4406(B)).

Hows and Whys and Dos and Don'ts of LOCs and Bonds By Peter Morelli

How secure does that performance bond in the safe down the hall make you feel?

“A performance bond has merely given you a right to sue an insurance company,” says Portland attorney F. Paul Frinkso.

An irrevocable letter of credit, on the other hand, is “almost as good as cash,” according to Frinkso’s colleague Christopher Vaniotis, who adds one important caveat, “if drafted properly.”

The two members of the law firm Bernstein, Shur, Sawyer and Nelson discussed the intricacies of managing performance guarantees at a recent meeting of the Cumberland County Planners Association. About a dozen town planners and engineers attended the workshop and rated it one of the most useful they’d been to in a long time.

The performance guarantee issue has become a major concern not only because of numerous project failures and developer bankruptcies, but also because of the many banks in trouble, said Scarborough Planner Joe Ziepniewski, who organized the workshop. He and colleague Ken Dinsmore noted that many of the letters of credit in Scarborough are drawn on Maine Savings Bank, one of the state’s most troubled. Several planners at the meeting reported the recent need to draft letters of credit.

Frinkso called good management of performance guarantees “a matter of self-preservation” in a political environment. Residents and councilors angry about the implications of a failed project may decide they need someone to blame, he said.

Cash is the best performance guarantee, but seldom a realistic option on large projects, the lawyers and planners agreed. A cash guarantee requires that a developer have twice as much capital to do a project, one planner noted. If cash is used, it should be deposited in an escrow account in the city’s name and supported by an appropriate agreement between the town and the developer.

Second best is the irrevocable letter of credit which is really a contract between the bank and town, without the developer in an intermediary role. If properly drafted the letter of credit can be collected upon within three business days with two simple steps, the presentation of a notice of default and the presentation of a draft.

The attorneys provided sample language for l.o.c.s. A key phrase states that the draft will be paid if the town finds that the “developer has failed to complete in a timely fashion improvements required” by a referenced set of plans and conditions. Another key issue, Vaniotis said, is a specific schedule for performance.

Frinkso and Vaniotis stressed the importance of drafting the letter of credit so that it secures the entire project without reference to the specific breakdown of the items covered by the letter. Releases should not be tied to specific improvements that have been completed, they said. No releases should be made until “no matter what, you will never ever need more than the reduced amount,” Frinkso said. Don’t accept letters of credit that are phrased to say that the bank “is holding the money of the (developer),” Frinkso said.

We need to be concerned about bank failures, the attorneys said, because in the case of receivership, letters of credit are a low priority creditor.

One defense against bank failure Frinkso said, is to accept letters of credit only from banks with a local presence. This provides three advantages: *Information is available from local regulators. *Problems are resolved in Maine courts. *You can talk to a local loan officer.

The Bernstein Shur office is working on language that will allow the town to require a replacement letter of credit from a different institution if the bank can no longer meet certain nationally recognized quality standards.

The deadlines in the letter of credit are important and should be aligned with a “tickler” system in the planning office, Frinkso said. Falmouth Planner George Theborge said his office notifies the bank 60 days before the deadline that the project is not completed. Thirty days before the deadline Falmouth warns that if the project is not completed it will collect. And 14 days before the deadline, it sends the default notice and draft.

The attorneys also recommend the use of performance guarantees on site plans on private property if they are not prohibited by ordinance.

If the l.o.c. is properly worded, “it’s none of the bank’s business to discuss whether the work is done properly,” Frinkso said.

In contrast a performance bond by a surety company is far less secure. The insurer has a role in determining the extent of correcting it. Proving default is “a helluva burden,” Frinkso said.

Sample Letter of Credit

Date: _____

Jane Planner, Chairman
Your Town Planning Board
Town Hall
Your Town, ME 04000

Re: Letter of Credit: Developer, Inc., Sunshine Estates, Your Town

Dear Ms. Planner:

This letter will confirm to Your Town that the Big Town Savings Bank has issued a loan commitment to Developer, Inc. for the Purpose of constructing all required improvements in the "Sunshine Estates" subdivision.

Big Town Savings Bank will set aside \$230,000 in a Construction Escrow Account, for completion of the required improvements. This account can be drawn upon by Your Town in the event that Developer, Inc. fails to complete steps A through H listed below for Windy Road by (two years from date of Final Plan approval).

Approximate length of road 2, 350 feet:

A. Grub roadways full width of 50 feet - \$4/ft.	\$ 9,400
B. Shape sub-base and grade it - \$4/ft.	9,400
C. Install under drain culverts - \$16/ft.	37,600
D. Install sewer \$22/ft. x 2,050 plus pump \$16,500	61,600
E. Install water mains 14/ft. x 2,400	33,600
F. Apply and shape 18" gravel base \$8.30	19,500
G. Apply and shape 3' of crushed gravel; apply 1 ¾ of base course bituminous concrete to width of 24', apply bituminous curb and 2" of bituminous concrete to a width of 5', 10/ft. x 2,350'	23,500
H. Apply ¾" of surface bituminous concrete to width of 24' - \$5/ft.	11,800

Big Town Savings Bank understands that Developer, Inc., or the contractor, will notify the Town Engineer or Code Enforcement Officer before any of the above work has begun and obtain his approval in writing as he completes each phase of the road construction.

This Account shall expire when Your Town acknowledges in writing to Developer, Inc. that the work outlined in Steps A through H has been completed in accordance with Your Town's subdivision regulations and street acceptance ordinance, and the approved plans of Sunshine Estates. Any funds remaining in the account on (Date specified above) for work outlined in Steps A through H which has not been completed and approved by the Town on that date shall be released to the Town to complete such work. As the Town Engineer or Code Enforcement Officer has issued his written approvals to Developer, Inc. the funds in this Account will be released based upon the schedule above.

Drafts drawn upon this account must be for this particular subdivision and to complete any work which is outlined above. Furthermore, drafts must be accompanied by itemized statements showing costs of work to be completed and must be submitted prior to (six to nine months following date specified above). Your Town will not be responsible for repayment or interest cost for any funds released to the Town for work not completed on or before (date specified above).

Very truly yours,

Barbara Banker
Loan Officer

SEEN AND AGREED TO: _____
Developer, Inc.

Your town hereby accepts this original letter as evidence of Developer, Inc.'s obligation to be performed.

Town Manager
or
Chair of the Select Board

SMRPC Model Subdivision Regulations—Application Fee Provisions

Preliminary Plan:

6.1 Procedure.

- B. All applications for preliminary plan shall be accompanied by a nonrefundable application fee of \$300, plus \$50 per lot or dwelling unit, payable by check to the municipality. In addition, the applicant shall pay an escrow fee of \$250 per lot or dwelling unit, to be deposited in a special escrow account designated for that subdivision application, to be used by the Board for hiring independent consulting services to review engineering and other technical submissions associated with the application, and to ensure compliance with the Zoning Ordinance and Subdivision Regulations. If the balance in this special account is drawn down by 75%, the Board shall notify the applicant, and require that the balance be brought back up to the original deposit amount. The Board shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by 75% of the original deposit. Any balance in the escrow account remaining after a decision on the final plan application by the Board shall be returned to the applicant.

Final Plan

- B. All applications for final plan approval for a major subdivision shall be accompanied by a nonrefundable application fee of \$300, payable by check to the municipality. The Planning Board may continue to require the replenishment of the escrow account for hiring independent consulting services to review the application for final plan approval, along with any supporting materials, pursuant to the procedures of section _____.

List of *Maine Townsman* Legal Notes Discussing Issues Related to Subdivision Review

The following *Maine Townsman* Legal Notes may be found in the Legal Notes Archives on MMA's website at www.memun.org:

1. **“Planning Board Review: ‘Final Subdivision Plans Requirement of Seal’” (July 1992)**
2. **“Important Information to Include on an Approved Subdivision Plan” (July 1994)**
3. **“Subdivision Takings Claim Denied” (May 1998)**
4. **“Liquidation Harvesting and Local Subdivision Review” (January 2005)**
5. **“Subdivisions and Farmland” (August/September 2009)**
6. **“Paper Streets I” (October 1996)**
7. **“Paper Streets II (November 1996)**
8. **“Update on Paper Streets” (August/September 1997)**

Appendix 6 – Ordinance Drafting, Adoption and Amendment

“Ordinance Enactment” Information Packet and Online Ordinance/Charter Collection....	419
“Ten Common Mistakes in Drafting Land Use Ordinances”.....	421
<i>Sample SPO Model Site Plan Review Ordinance Fee Provision</i>.....	423
“Application Fees,” “Legal Notes,” <i>Maine Townsman</i>, August/September 1995	425

“Ordinance Enactment” Information Packet and Online Ordinance/Charter Collection

MMA’s Legal Services Department publishes an “Ordinance Enactment” Information Packet that is available by contacting the Legal Services Department (1-800-452-8786 or 623-8428 or legal@memun.org) or by going to MMA’s website at www.memun.org in the “Members Center.” You will need to apply for a password (free for officials from member municipalities) to enter that section of the website.

The packet includes:

- Cover memo discussing a number of issues
- Title 30-A M.R.S.A. §§ 2528, 3001, 3009, 4324, 4352 and 4403
- Title 38-A M.R.S.A. § 438-A
- Title 12 M.R.S.A. § 685-A
- Title 1 M.R.S.A. §§ 401-414
- MMA’s “Right to Know Law” Information Packet
- Sample ordinance amendment format and warrant articles: Kennebunk and Denmark
- “Ordinance Enactment,” “Legal Note,” *Maine Townsman*, April 1989
- “Preemption Doctrine,” “Legal Note,” *Maine Townsman*, June 1991
- *Sample* “Certification of an Ordinance by the Municipal Officers”
- *Sample* “Ordinance adopting by reference the Maine Model Uniform Building Code (MUBEC) prepared by MMA and sample Supplemental Building Ordinance for Town of York.
- Planning Board Manual
- Sample ordinance adopting by reference the National Fire Prevention Code and Life Safety Code (City of South Portland)
- MMA “Moratorium Ordinance” Information Packet
- Public hearing notice for adoption of parking ordinance

In addition to this information packet, a number of others related to other types of ordinances can also be found on MMA’s website in the “Members Center” (See the list in Appendix 7 of this manual).

Links to various online ordinance collections on the websites of various Maine municipalities are also available through MMA’s website.

“Ten Common Mistakes in Drafting Land Use Ordinances”

By Richard P. Flewelling, Esq., Maine Municipal Association

1. Inconsistent Terminology

An ordinance is not an essay, and using different terms to refer to the same thing (e.g., “home,” “residence,” “abode”) is confusing and implies distinctions where none may be intended. Choose a single generic term (e.g., “dwelling”), define it if necessary, and use it consistently throughout the ordinance.

2. Omitted Definitions

Some terms are commonly understood and may not require a specific definition (e.g., “use,” “structure”), but many have no generally accepted meaning and are subject to broad interpretation (e.g., “frontage,” “setback”). Failure to define uncertain terms in an ordinance is a clear invitation to misunderstanding and dispute.

3. Superfluous Definitions

Every definition should have a purpose in the ordinance. Defining terms whose meaning is obvious (e.g., “Town,” “Planning Board”) or that appear nowhere else in the ordinance is a waste of space and diverts attention from what really matters.

4. Faulty Incorporation of Materials

Maps, specifications and other standards or requirements are not made enforceable just by attachment to or passing mention in an ordinance. They should be fully identified (i.e., by title, date and source) and expressly incorporated by reference (e.g., “...which is incorporated herein by reference and made a part hereof”). There are also special notice, adoption and filing requirements for national building, electrical and similar codes (see 30-A M.R.S.A. § 3003).

5. Mis-cited Statutes

It is nonsense for an ordinance to refer to a law that no longer exists or that now exists in a different place or form. If in doubt about the correct citation to a statute, always check with appropriate sources.

6. Inconsistencies with Other Laws

A “conflicts” clause deferring to the more restrictive of inconsistent regulations is no substitute for an ordinance that is in harmony with specific statutory requirements. For

instance, State law restricts municipal authority to regulate manufactured housing and mobile home parks (see 30-A M.R.S.A. § 4358). An ordinance that ignores limitations such as these is unenforceable and an embarrassment.

7. Absent or Imprecise Standards

Most ordinances vest at least some discretion in boards to grant (or deny) permits under certain qualified circumstances (e.g., conditional uses or special exceptions). Without specific standards or with only vague criteria to guide officials in reviewing plans and administering approvals, however, a board's decisions are subject to reversal and the entire exercise will have been in vain.

8. Cannibalism of Other Ordinances

An ordinance that consists of nothing more than an amalgamation of borrowed parts from other models is no more pleasing or predictable than Frankenstein's monster. Use other ordinance as prototypes only and make sure that custom components (e.g., cluster housing provisions, mobile home park regulations) mesh with standard features in form, sequence and process.

9. Missing Directions and Disorganization

Every ordinance should answer these questions (among others) and in roughly this order: What is regulated, prohibited, or requires a permit? Who must obtain it, from whom, when and how? Under what circumstances may it be issued, and in what form? If granted, with what conditions, who monitors compliance, and how? If denied, who may appeal, to whom, when and how? What relief is available, under what circumstances? If there is a violation, who enforces it, when, and how? What are the penalties?

10. Failure to Anticipate Probabilities

No draftsman is clairvoyant, and few ordinances contemplate all possibilities, but every ordinance benefits from "reality-testing." Short of hindsight, the best way to identifying an ordinance's deficiencies is to test it with hypotheticals and "what if" scenarios and correct oversights before enactment.

Sample SPO Model Site Plan Review Ordinance Fee Provision

7.4 Fees

7.4.1 Application Fee

An application for site plan review must be accompanied by an application fee. This fee is intended to cover the cost of the municipality's administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee must be paid to the municipality and evidence of payment of the fee must be included with the application.

7.4.2 Technical Review Fee

In addition to the application fee, the applicant for site plan review must also pay a technical review fee to defray the municipality's legal and technical costs of the application review. This fee must be paid to the municipality and shall be deposited in the Development Review Trust Account, which shall be separate and distinct from all other municipal accounts. The application will be considered incomplete until evidence of payment of this fee is submitted to the Planning Board. The Board may reduce the amount of the technical review fee or eliminate the fee if it determines that the scale or nature of the project will require little or no outside review.

The technical review fee may be used by the Planning Board to pay reasonable costs incurred by the Board, at its discretion, which relate directly to the review of the application pursuant to the review criteria. Such services may include, but need not be limited to, consulting engineering or other professional fees, attorney fees, recording fees, and appraisal fees. The municipality shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with condition of the application. Such refund shall be accompanied by a final accounting or expenditures from the fund. The monies in such fund shall not be used by the Board for any enforcement purposes nor shall the applicant be liable for costs incurred by or costs of services contracted for by the Board which exceed the amount deposited to the trust account.

7.4.3 Establishment of Fees

The Municipal Officers, from time to time and after consultation with the Board, establish the appropriate application fees and technical review fees following posting of the proposed schedule of fees and public hearing.

“Application Fees,” “Legal Notes,” *Maine Townsman*, August/September 1995

Questions: Our town only charges \$2.00 for a permit fee under our zoning ordinance and \$10 per lot for a subdivision application under our subdivision ordinance. The planning board often feels the need for clerical assistance and an opportunity to consult with experts, such as an engineer, hydrogeologist, or land use planner, in reviewing applications under these ordinances because of the paperwork involved and the technical decisions that they must make. However, the town does not appropriate money for the planning board to pay for such assistance. Our application fees obviously don't generate enough money to pay for these services. Can these costs be passed along to the applicant?

Answer: Yes, within reason. The Maine Supreme Court has held that “generally, the amount of a fee imposed by a municipality in the exercise of its police powers for the purpose of regulation must be reasonably related to the necessary or probable expenses of issuing a (permit) and of conducting such inspection, regulation, and supervision as may be lawful and necessary.” (*emphasis added*). *State v. Brown*, 135 Me. 36, 188 A. 713 (1937). (Now, see also 30-A M.R.S.A. § 4355). Where the purpose of the fee is to regulate and control an activity rather than to raise revenue, the amount exacted constitutes a fee rather than a tax if it bears the required “reasonable relationship,” even though the fee is in excess of the town's actual administrative costs. However, if the fee is greatly in excess of the amount of administrative costs associated with the permit, the amount collect is deemed to be a tax. *Corpus Juris Secundum*, “Licenses,” § 3. Since a municipality may collect taxes only where specifically authorized by the Legislature, such a tax would be improper. *Cf. Opinion of the Justices*, 141 ME. 442, 42 A.2d 47 (1945).

Consequently, if the town needs to hire a secretary for the board or experts to assist the planning board with its review of a zoning or subdivision application, the town may fund those costs through a permit fee system established by local ordinance or regulation. Generally the fee is adopted by the legislative body of the town (i.e., the town meeting, in the absence of a charter provision to the contrary). However, fees in connection with subdivision review may be established through a regulation adopted by the planning board pursuant to 30-A M.R.S.A. § 4403, provided the legislative body has not already adopted a subdivision ordinance.

A number of communities are requiring applicants to pay both a basic application fee to cover basic administrative and clerical costs and an additional amount to hire expert assistance, such as engineering studies, hydrogeology work or legal advice. Examples of these ordinance provisions are available from MMA's Legal Services Department.

(By R.W.S.)

The opinions printed on the previous page are written with the intent to provide general guidance as to the treatment of issues or problems similar to those stated in the opinion. The reader is cautioned not to rely on the information contained therein as the sole basis for handling individual affairs but he/she should obtain further counsel and information in solving his/her own specific problems.

Appendix 7 – Miscellaneous Land Use Materials

List of Maine Municipal Association Information Packets and Guides	429
List of Other Land Use Publications	431
“LID Approach Manages Growth, Carefully,” <i>Maine Townsman</i>, August/September 2011 by Lee Burnett	433
“Minimum Lot Size for Multi-Family,” “Legal Notes,” <i>Maine Townsman</i>, February 1990	439

List of Maine Municipal Association Information Packets and Guides

The following is a list of the information packets and guides that may be accessed on MMA’s website at www.memun.org. They are located in the “Members Center,” which must be entered using a password obtained by applying online. Passwords are free to officials from member municipalities.

List of Information Packets and Guides

Aircraft Excise Tax [Legal]	Hiring Process, The [HR Toolkit]
Americans with Disabilities Act (Comprehensive) [Legal]	Homestead Exemption [Legal]
Americans with Disabilities Act (Title I) [HR Toolkit]	Independent Contractor vs. Employee Status [HR Toolkit]
Animal Control Officers/Dog Licensing and Regulation [Legal]	IRS Issues for Municipalities [Legal]
Appropriate Use Policies (for Employee E-Mail and Internet Use) [Legal]	Junkyards/Automobile Graveyards [Legal]
Background Checks, Employee [HR Toolkit]	Layoffs in the Municipal Workplace [HR Toolkit]
Bloodborne Pathogens & the Municipal Workplace [HR Toolkit]	Local Liquor Option [Legal]
Board Bylaws [Legal]	Malfunctioning Wastewater Disposal Units [Legal]
Broadband Resources [Legal]	Marijuana, Adult Use [Legal]
Budget Committee [Legal]	Marijuana, Medical [Legal]
Cemeteries [Legal]	Minors, Employment of [HR Toolkit]
Charters, Municipal [Legal]	Moratorium Ordinances [Legal]
Citizen Education & Public Relations Materials [Resource Center]	Municipal Services, Required [Legal]
Communication and Social Media Policy and Guidelines (Sample)	Ordinance Enactment [Legal]
Concealed Weapons [Legal]	Personnel Files [HR Toolkit]
Contracts and Competitive Bidding [Legal]	Personnel Policies [HR Toolkit]
Credit Cards, Municipal Acceptance of [Legal]	Poverty Abatements [Legal]
Dangerous Buildings [Legal]	Reapportionment (Redistricting) [Legal]
Discipline, Municipal Employee [HR Toolkit]	Red Flags Rule [Legal]
Drones: Municipal Use and Regulation [Legal]	Right to Know [Legal]
Drug & Alcohol Testing for Certain Municipal Employees, Mandatory [HR Toolkit]	Road Weight Limits/Seasonal Road Closings [Legal]
Eminent Domain [Legal]	Sign Regulation, Municipal [Legal]
Employee Evaluations [HR Toolkit]	Smoking Laws [Legal]
Employer/Employee Issues [Personnel]	Smoking Laws & the Municipal Workplace [HR Toolkit]
Ethics and Conflicts of Interest [Legal]	State and Federal Mandates [Legal]
Fair Labor Standards Act (FLSA) & Municipal Employers [HR Toolkit]	Tax Increment Financing [Legal]
Family & Medical Leave Act (FMLA) [HR Toolkit]	Tax-Acquired Property [Tax-Acquired Property [Legal]
Family Military Leave [Maine] [HR Toolkit]	Telecommunications Facilities [Legal]
Fees, User Fees, Impact Fees, Service Charges and PILOTS [Legal]	The Manager Plan in Maine [Second Edition, by James J. Haag]
Financial Policies (Samples)	Town Manager Plan [Legal]
Fire Protection [Legal]	USERRA (Military Leave) [HR Toolkit]
Fiscal Year, Changing the Municipal [Legal]	Wind Energy [Legal]
Freedom of Access Act [Legal]	Zoning Variances [Legal]
GA/Confidentiality [Legal]	
General Assistance - Selected Resources [Resource Center]	
Harassment and Sexual Harassment in the Workplace [HR Toolkit]	
Health Officers, Local [Legal]	

List of Other Land Use Publications

Maine Land Use Planning Commission Publications

(<http://www.maine.gov/dacf/municipalplanning/publications.shtml>)

- “How to Prepare a Land Use Ordinance: A Manual for Local Officials”
- “Scenic Assessment Inventory”
- “Creating Traditional, Walkable Neighborhoods: A Handbook for Maine Communities”
- “Comprehensive Planning: A Manual for Maine Communities”
- “Protecting Local Scenic Resources: Community-Based Performance Standards”
- “Gateway 1: Performance Standards for Large Scale Developments”
- “Low Impact Development Manual”
- “The Great American Neighborhood—A Guide to Livable Design”
- “Community Visioning Handbook: How to Imagine—and Create—A Better Future”
- “Financing Infrastructure Improvements through Impact Fees: A Manual for Maine Municipalities on the Design and Calculation of Development Impact Fees”
- “Land Stewardship Resource Guide”
- “Updating Your Comprehensive Plan: A Guide to Making Plan Updates Bolder and Smarter”
- “Draft Guidebook for the Maine Model Wind Energy Facility Ordinance”
- “Site Plan Review Handbook: A Guide to Developing a Site Plan Review System” (model ordinance included)
- “Model Subdivision Regulations for Use by Maine Planning Boards,” with expanded commentary and model forms (prepared by SMRPC, 12th edition)
- “Wireless Telecommunications Facilities Siting Ordinance”
- “Adult Entertainment Establishments”
- “Lighting Manual (TA Bulletin, July 2008)
- “Easements” (TA Bulletin, January 2002)
- “Good Neighbor Policies” (TA Bulletin, January 2002)
- “Noise” (TA Bulletin, May 2000)
- “Archeological Resources” (TA Bulletin, May 2000)
- “Buffers” (TA Bulletin, May 2000)
- “Groundwater” (TA Bulletin, May 2000)
- “Creating User Friendly Land Use Ordinances and Procedures” (TA Bulletin)

Other Publications:

1. “Maine Planning and Land Use Laws 2014 (published every 2 years—contact Fred Michaud; <http://www.michaud.us.com>)
2. Maine Farmland Trust (<http://www.maineFarmlandtrust.org>)—“Cultivating Maine’s Agricultural Future: A Guide for Towns, Land Trusts, and Farm Supporters” (2011)
3. Maine Department of Environmental Protection, Bureau of Land and Water Quality (<http://www.maine.gov/dep/land/publications/index.html>). There are numerous publications on a variety of topics, including shoreland zoning, small community grants for subsurface waste disposal, maintenance of camp roads, erosion and sediment control, wind energy, and many others. Some have their own link and some need to be located by using the search feature.
4. Publications by Randall Arendt

- “Crossroads, Hamlet, Village, Town: Design Characteristics of Traditional Neighborhoods, Old and New,” American Planning Association, Planning Advisory Service Report Number 487/488 (September 1999)
- “Growing Greener: Putting Conservation into Local Plans and Ordinances,” Natural Lands Trust, American Planning Association, and American Society of Landscape Architects (1999)
- “Designing Open Space Subdivisions: A Practical Step-by-Step Approach,” Natural Lands Trust (September 1994)

**“LID Approach Manages Growth, Carefully,” *Maine Townsman*,
August/September 2011 by Lee Burnett**

Low-impact development, or LID, has become something of a planning mantra in states and cities around the country – and it’s beginning to be felt in Maine, too.

The basic concept is pretty simple: To reduce the impact of human-built structures, including roads, parking lots, houses and office buildings, on the environment. The rationale is twofold: To preserve, so far as possible, the natural characteristics of the site; and, to save money, sometimes lots of money, for both developers and the towns and cities where projects are built.

It turns out, though, that the specific applications of LID are varied and diverse. Some are mandatory and regulatory; others are exercises in “visioning” and writing guidelines, and sometimes incentives, for developers concerned about their environmental footprint, or to suit a client’s objective.

Reducing the impact of stormwater runoff is one of most prominent and established applications of LID. According to Fred Snow, Community Planning Director for the Kennebec Valley Council of Governments, between 20 and 30 percent of the toxic contaminants that show up in groundwater in the shoreland zone are produced by water running off impervious surfaces such as roofs and pavements from single-family dwellings.

So far, the primary focus for stormwater management has been in larger municipalities with heavily developed core areas. The latest version of the federal Clean Water Act makes the retention of stormwater on site a high priority, and suitable regulations are mandatory in larger cities and towns, such as those in the Greater Portland metro area.

TOPSHAM’S STANDARD

One town where the stormwater standards are not yet mandatory is Topsham, which is nonetheless incorporating them into its comprehensive plan. New buildings at the Topsham Fair Mall, including Best Buy, have used stormwater-retention systems in their parking lots. That is something that Rod Melanson, a town planner, hopes will become standard.

“We have two impaired streams as defined by the Clean Water Act, and the regulations will probably be extended to smaller communities in the future,” he said. In addition to the mall construction, Topsham’s new municipal complex uses stormwater-retention systems.

Such systems attempt to minimize infiltration of groundwater off site, and do so with various porous pavement designs along with berms and ditching for periods of rapid runoff. They aren’t cheap, Melanson noted, but they are necessary to prevent further deterioration of water quality, particular in urban areas.

Topsham has been revising its comprehensive plan, “and it’s clear we’re not up to date on stormwater management,” he said. The new ordinance will be light on prescription and more focused on results. “On-site investigation is necessary to make these systems work. Every site is different.”

Savings from stormwater retention can be considerable. Building massive storm drains and collection systems can easily run into the millions of dollars – and sewage-treatment costs add up quickly, as well.

Snow said KVCOG is trying to focus smaller towns in the Kennebec Valley on the need to be pro-active, rather than reactive, in reducing development impacts.

In cooperation with the Kennebec County Soil Conservation Service, KVCOG produced a model ordinance for low-impact development in the state-required shoreland zone – often the only form of zoning in rural towns. The model ordinance, completed last year, has not yet been adopted by any owns, but that’s not a surprise, Snow said. Town officials have to become familiar with the problems caused by runoff before they’re willing to create standards to deal with it, he said.

DAY’S STORE IN BELGRADE

Some structures have been built or renovated to LID standards, however. One example is in the village of Belgrade Lakes, where a reconstruction of Day’s Store shows a number of features suited to its location, just a stone’s throw from a lake prized for its salmon and trout fishing.

Snow said that some of the techniques are simple. Porous “pavers,” similar to concrete blocks, are applied directly to the soil, and replace the more typical asphalt paving. Another step is to provide “rain gardens,” with flowering or perennial plants, which are planted slightly below grade to capture runoff and slow its progression toward adjacent lakes and streams.

The idea is to provide a succession of steps where water is absorbed slowly.

“The natural ground cover and tree cover is ideal, and should be retained wherever possible,” Snow said. Where that is not feasible, building and landscape design can help.

The stakes, KVCOG says, are high. Its explanation of the model ordinance says that runoff “can be enough to turn a clear water lake into a lake plagued by algae blooms.”

Another approach to LID is employed by the Beginning with Habitat program housed within the Maine Department of Inland Fisheries and Wildlife. According to Director Steve Walker, Beginning with Habitat is an educational and voluntary program for towns and cities – and one that is starting to show results.

“In Maine, municipalities do most of the planning and have most of the regulations,” Walker said. “That’s why we put our emphasis on working with them.”

Walker and his colleagues have made presentations to more than 100 towns and cities, and the response has often been enthusiastic.

PROTECTING WATERFRONT

That was the case in Bremen, a small community (pop. 794) in coastal Lincoln County, which organized its first town conservation commission in 2007. Dennis Prior, who chairs the commission, said its inception reflected concerns about growth and its effect on the rural landscape prized by residents.

“We place a high priority on preserving our working waterfront, which in turn depends on protecting the land,” he said.

The conservation commission – like those in most towns in Maine – plays an advisory, but influential, role.

“We’re allowed to provide input to all other town boards,” Prior said. “Whenever an ordinance is considered that involves our mission, we try to be involved.”

The commission’s work was made easier by Bremen’s previous adoption of one of the strictest growth control ordinances in the state. It allows just seven new residential units a year.

“Some years, we’re right up to the cap,” Prior said. “Other years, such as recently, there are a few left over.”

Wildlife is a big attraction for people who live in Bremen, and Prior said the presentations showed the scope of the challenge.

“For some species, it takes a huge amount of uninterrupted land—500,000 acres or more,” he said. “What does it take to keep wildlife here?”

The town has begun mapping its wildlife corridors – blocks of open space necessary to facilitate migration and other annual cycles.

Bremen may also be unique in passing an ordinance that doubles the setbacks contained in state shoreland zoning rules. Prior said townspeople see it as a form of insurance.

‘QUITE SIMPLE’

At IF&W Steve Walker said there are a variety of techniques that benefit not only wildlife but the entire ecosystems needed to maintain healthy populations.

“Some of them are quite simple,” he said. “Knowing what you have is definitely the place to start.”

In all, there are 213 species “of concern,” which is different from state and federal threatened and endangered species status. Rather than wait until a species is endangered, the state tries to track populations that are significantly declining and devise protection strategies.

Beginning with Habitat has focused on fast-growing York and Cumberland counties, and to some degree on municipalities in Greater Bangor, because that’s where the most development pressure has been.

One community with significant growth pressure that’s tried to stay ahead of the curve is Freeport. This fast-growing town has experienced significant commercial and residential development pressure. One response has been to incorporate wildlife habitat mapping into the comprehensive plan.

According to Town Planner Donna Larson, the maps are advisory, and don’t require any specific actions on the part of developers. “They’re a resource, and something we think people need to know about,” she said.

They can be a tool for neighbors of proposed projects as well as those building them, she said. In some cases, rules have had an effect not necessarily on where projects are sited, but how they are built.

A few years ago, a state-mapped bald eagle nest was found within the boundaries of a proposed subdivision in Freeport. “They had to limit construction during the periods the eagles were being fledged,” Larson said. “That was one accommodation that was required.”

CHANGES IN SCARBOROUGH

Earlier planning techniques can also have a bearing on LID strategies, with Scarborough providing a good example. Nearly 10 years ago, the town considered, and finally approved, a “Great American Neighborhood” development called Dunstan Crossing. It planned to feature smaller lots, more open space, and – eventually – a small retail and office center.

This “Smart Growth” plan has proven fairly popular with homebuyers, despite the prolonged recession, said Town Planner Dan Bacon. The developer sold out one townhouse complex and is

beginning another. A similar development, Eastern Village, has been started in the Oak Hill area, close to the center of town.

Scarborough can expect more such development, now that its low-density residential zones, which originally called for two-acre lots, require at least one acre of open space per dwelling.

“It definitely reduces the impact, and the costs,” Bacon said. “Developers like it because they can build shorter roads. Homeowners like it because they have woods in the back yard, rather than another house.”

Scarborough voters have also been concerned enough about the impact of development that they passed three bond issues to acquire open space. The bonds, passed in 2000, 2003 and 2009, total \$4.5 million. The money has gone to a variety of purposes, including the purchase of 513 acres on eight separate sites. The largest, a 434-property known as Broadturn Farm, is a community-supported agriculture project that also includes restoration of barns and other buildings.

Scarborough also purchased an agricultural conservation easement on 13-acre Frith Farm. Town Manager Tom Hall said he expects easement purchases to become more frequent as a way of stretching revenue from the bond issues.

SIDEBARS: Municipalities Using Low Impact Development & Resources

Open Space or Natural Resources plan: Bremen, Brunswick, Eliot, Falmouth, Freeport, Hallowell, Harpswell, Holden, Poland, Raymond, Readfield, Topsham, Woodstock (in progress), Yarmouth.

- Ordinances, including conservation zoning, that reduce development impacts: Freeport, Falmouth, Brunswick
- Open space acquisition programs: Falmouth, Wells, Scarborough
- Wetland ordinances exceeding state standards: Bremen

Source: Maine Association of Conservation Commissions

RESOURCES

There are a number of sources of information for towns seeking to pursue low-impact development.

For wildlife habitat and open space preservation, see: www.beginningwithhabitat.org

For stormwater runoff and non-point pollution, see the Nonpoint Education for Municipal Officials site at: www.mainenemo.org.

“Minimum Lot Size for Multi-Family,” “Legal Notes,” *Maine Townsman*, February 1990

Question: Our town does not have a minimum lot size requirement, so we use the State law (12 M.R.S.A. § 4807-A) which is 20,000 square feet for a single-family dwelling. How do we figure out the minimum lot size for multiple family dwellings?

Answer: 12 M.R.S.A. § 4802(2) lays out a formula for determining minimum lot sizes for multiple unit housing. That formula uses as a guideline a certain number of gallons of subsurface waste disposal. A single family dwelling equals 300 gallons per day, and a multiple unit housing equals 120 gallons per bedroom. This formula is confusing, however, and can best be explained as follows:

A single-family dwelling requires 20,000 square feet of land for 300 gallons per day, which divides out to 66.7 square feet of land per gallon. For multi-unit buildings, multiply the total number of bedrooms by 120; then multiply the resulting figure by 66.7, and you will have the minimum square footage necessary.

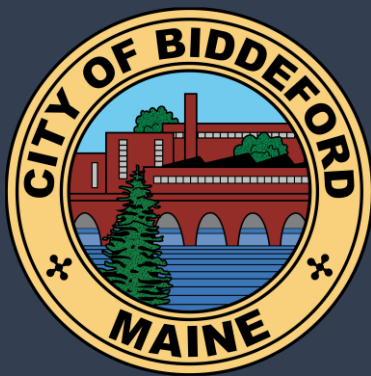
For example, if a multi-family building has 8 bedrooms total, it would be: $8 \times 120 = 960$; $960 \times 66.7 = 64,032$ square feet. Rounded off, this project needs a minimum of 64,000 square feet.

Another example, assume that the project has 50 bedrooms. $50 \times 120 = 6,000$; $6,000 \times 66.7 = 400,200$ square feet. Rounded off, this project needs 400,000 square feet, or 10 acres.

Note that a municipality is not required to use either the State minimum lot size or this formula to determine the minimum lot size for multi-unit development on single lots. It may enact its own lot size ordinance, as long as it does not allow lots smaller than the State minimum.

(This explanation is from Jay Hardcastle of the Department of Health and Human Services, Health Engineering Division.

BIDDEFORD'S COMPREHENSIVE PLAN



2023



TABLE OF CONTENTS

1. Vision and Purpose
2. Demographics
3. Public Engagement
4. Regional Coordination
5. Future Land Use
6. Economy
7. Housing
8. Transportation
9. Historic & Cultural Resources
10. Recreation & Open Space
11. Public Facilities
12. Agricultural & Forest Resources
13. Marine Resources
14. Climate Change
15. Fiscal Capacity & Capital Improvement Plan
16. Appendices
 - 6A. Economy
 - 7A. Housing
 - 8A. Transportation
 - 9A. Historic & Cultural Resources
 - 11A. Public Facilities
 - 12A. Agricultural & Forest Resources
 - 13A. Marine Resources
 - 14A. Climate Change



1 Vision and Purpose

The City of Biddeford would like to acknowledge the land and water that it occupies and abuts, which were the ancestral fishing, hunting, and agricultural grounds of the Abenaki and Wabanaki people for thousands of years. We recognize that we are on indigenous land and acknowledge the uncomfortable truths of settler colonialism, which led to the forced removal of Indigenous peoples from this place.

The harm from the physical and cultural genocide of Indigenous peoples here and throughout Maine, including Biddeford, continues and is felt by members of the Wabanaki Confederacy who live here today. As a simple way of acknowledging the truth, we extend our respect and gratitude to the many Indigenous peoples and their ancestors whose rich histories and vibrant communities include the Abenaki, Maliseet, Micmac, Passamaquoddy, and Penobscot Nations.

We recognize that the broader place we now call Maine is home to the sovereign people of the Wabanaki Confederacy and that we exist on their unceded homelands. We acknowledge that the Wabanaki are the People of the Dawnland and have stewarded this land throughout the generations. We thank them for their strength and resilience in protecting this land and aspire to uphold our responsibilities according to their example.

Our City Today

From the scenic oceanfront to a historic downtown core to timeless farmland and forests, Biddeford is a diverse, growing and thriving city with a strong sense of community, rich history and high quality of life. Biddeford has seen many changes over its 400-year history. From its origins as a small seasonal logging camp, Biddeford grew to become one of the nation's preeminent industrial centers in the 19th century, with textile mills attracting immigrants from many different countries and cultures. Today, those same textile mills are once again bringing vitality and opportunity to Biddeford and have been a catalyst for our city to thrive in the 21st century.

The City of Biddeford adopted its current comprehensive plan in 1999, which has served as the guiding planning framework for our city for over 20 years. Since then, our city has seen a tremendous amount of growth and change, particularly in our downtown core and historic mill district. In addition, we have seen an increasingly urgent need to address emerging challenges and ensure that our city remains sustainable, equitable and resilient in the face of a statewide housing crisis, sea level rise and climate change.

To help meet those challenges, our city is moving forward with a new Comprehensive Plan that celebrates our past and creates a bold vision for our future.

What is a Comprehensive Plan?

The State of Maine regulates the manner in which communities plan for and regulate growth and development through the Growth Management Program (Title 30-A §4312 et seq.), that was adopted in 1988 along with the Comprehensive Planning and Land Use Act.

This law establishes the State's policies and establishes the rules by which communities may engage in land use planning and regulation. Through this law, the State overrides each community's home-rule authority and mandates compliance with an overall set of goals, procedures and standards for community comprehensive plans. Aside from the requirement to have a plan, it just makes sense for towns to plan for the future. The process of preparing a comprehensive plan provides an opportunity for residents, community officials and other stakeholders to share ideas about what is important in the community, to identify issues and desirable responses, and to coordinate a town-wide approach to dealing with change. Ideally, the comprehensive plan will reflect consensus views about town policy.

As circumstances change and the community considers changes in its local policies, it is important to frame these considerations in terms of the comprehensive plan. New policies must strive to fit within current and future State requirements plus mesh with other local policies.

Our City Tomorrow

From the beginning, the goal of Biddeford's new Comprehensive Plan was to celebrate the city's many strengths and preserve what makes our city special while creating a strong vision for our community's future. The development of Biddeford's new comprehensive plan has been guided by extensive community engagement and collaboration. Well over 1,500 community members shared their thoughts on the future of our city throughout the year-long public outreach process.

Workshops and surveys engaged with the community on:

- **Housing**
- **Natural Resources**
- **Public Facilities**
- **University of New England**
- **The downtown and mill district**
- **Neighborhood**
- **Climate change**
- **Youth and schools**



The 2023 Comprehensive Plan recognizes that Biddeford has many unique characteristics that our community values and wants to preserve. Community feedback strongly emphasized the need to protect and enhance access to open space, protect natural resources and respond to the increasing threat of climate change and sea level rise. There was also a strong emphasis on ensuring that our public facilities and services are able to meet the needs of a growing population.

The Comprehensive Plan respects the wide array of diverse environments and neighborhoods within Biddeford, each with their own unique set of characteristics and needs. The plan builds off of the voices of the community and aims to incentivize future growth in areas where it can be more easily accommodated. Additionally, the plan emphasizes the need to ensure that more growth occurs in areas where it can be served by public transit, bicycle and pedestrian infrastructure. These steps will not only help ensure that future growth in Biddeford is forward-thinking and accessible, but will also help guide future growth to be more equitable, resilient and sustainable.

The 2023 Comprehensive Plan is built around four key goals to help guide planning, investment and decision making in the community.

BIDDEFORD STRIVES FOR...

Mobility

A city where residents are able to freely and easily access their basic needs throughout society regardless of income, wealth, occupation, class, race, religious, or personal belief

Resilience

A city that can resist and adapt to such risks as economic downturns, housing shortages, traffic congestion, disease, hunger, and natural phenomena such as coastal flooding and winter storms.

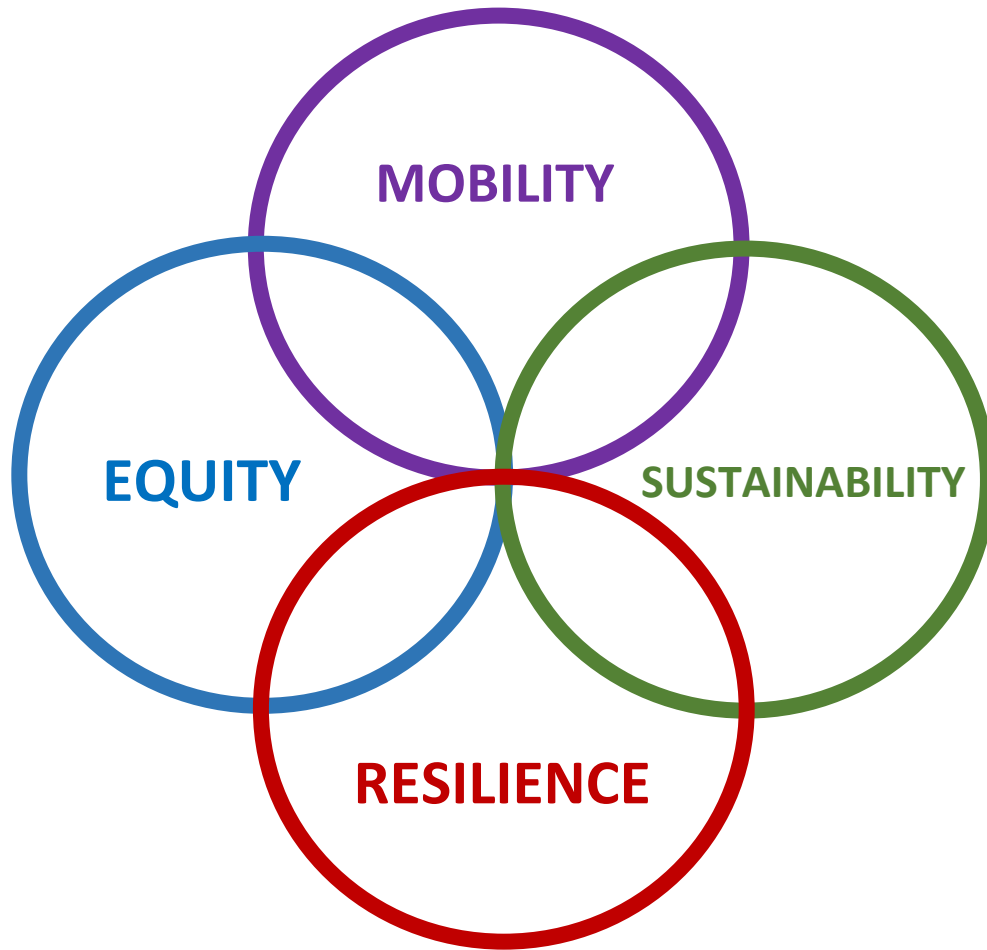
Sustainability

A city that can meet the needs of the present without compromising the ability for future generations to meet their own needs. For Biddeford to be sustainable, it must focus on maintaining and improving its environmental, economic, and social well-being today to ensure that Biddeford is in a better place in the future

Equity

A city where all people have the resources they need to access the same opportunities as others. For Biddeford, equity recognizes that each person or entity has different circumstances and needs, and that different policies and actions at the local level may be needed for different people in order for them to

Using these key goals as a framework; The 2023 Comprehensive Plan establishes a vision for the future of our community which honors our past, embraces new opportunities and identifies ways to address local and regional challenges.



2 Demographics

1. What's happening?

Biddeford has seen substantial growth and change in recent years. A growing and evolving population is reshaping many aspects of our community as part of the ongoing story of change that has defined Biddeford throughout its history. To move forward as a community, it is important to fully understand how and why our city's demographics are changing, and how Biddeford compares to other communities in our region. This section of the Comprehensive Plan looks at both population and demographics for Biddeford as well as York County and Maine as a whole.

2. Population



Biddeford's population grew by **5.9%** between 2010 and 2020

Year	Population	% Change
1980	19,638	-1.7%
1990	20,710	5.4%
2000	20,942	1.1%
2010	21,277	1.6%
2020	22,552	5.9%

Although it grew slower than the rest of York County... Biddeford was one of the **fastest growing** communities in Maine between 2010 and 2020

Biddeford is the **7th Largest** Community in Maine

Biddeford has
9,198
Households

Average Household Size is
2.3 Persons

749
Population per Square Mile

88.3%
Of residents live in the same
home as 1 year ago

Community	2020 Population	% Change from 2010
Maine	1,385,340	1.7%
York County	211,972	7.5%
Biddeford	22,552	5.9%
Portland	68,408	3.3%
Lewiston	37,121	1.4%
South Portland	26,498	5.6%
Scarborough	22,135	16.8%
Sanford	21,982	5.3%
Saco	20,381	10.1%
Kennebunk	11,536	6.6%
Old Orchard Beach	8,960	3.7%

Source: 2020 Census

Biddeford has seen steady and consistent growth for over 30 years. However, the pace of population growth notably increased in both Biddeford and surrounding communities in Southern Maine between 2010 and 2020.

Biddeford's growth is a largely a result of both increasing migration into the region by out-of-state residents and regional population shifts as residents of the "core" of the Portland metropolitan area seek lower-cost living options in communities with high quality of life that are still close to regional centers of employment and recreation.

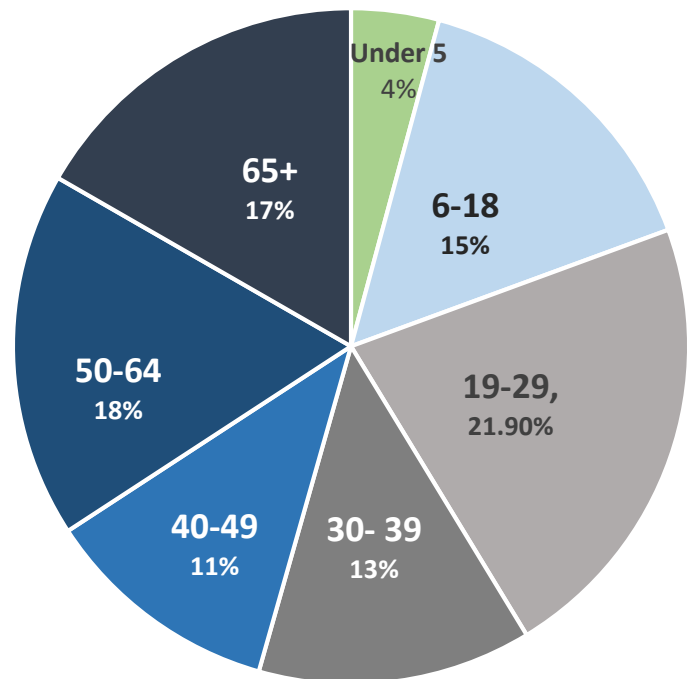
3. Age and Gender

50.4%
Female

36.2
Median Age

Biddeford is the **Youngest**
Community in York County

88.3%
Of residents live in the same
home as 1 year ago



**Biddeford's Age
Distribution**

Area	Median Age
Maine	44.6
York County	45.2
Biddeford	36.2
Saco	43.1
Portland	37.6

Source: ACS 5-Year Estimates 2016-2021

2011
Residents
over 65 **14.9%**

2021
Residents
over 65 **16.7%**

2011
Median Age - **37.1**

2021
Median Age - **36.2**

2-3

Biddeford has a relatively even distribution of ages living in our community. Biddeford is younger than both York County and the State of Maine as a whole, with the lowest median age of any community in York County. This can be partially attributed to the presence of the University of New England, which increases the number of younger residents. This may also be the result of increased in-migration by younger individuals and families moving into new residential space in the Mill District.

While Biddeford's median age decreased between 2011 and 2022, the percentage of residents over the age of 65 increased slightly. This is in line with regional and state trends of aging populations.

4. Race, Ethnicity and Language

Like many communities in Maine, the large majority of Biddeford's population is White. However, the demographics of the community and state have slowly shifted to become more diverse in recent years.

Community	% White	% Black or African American	% Hispanic / Latino	% American Native	% Asian
Maine	94.2	1.8	2.0	0.7	1.4
York County	95.1	1.2	2.0	0.3	1.5
Biddeford	91.8	1.3	2.7	0.1	2.6
Portland	83.0	8.9	2.4	0.2	4.1
Lewiston	83.4	7.3	2.2	0.2	2.0
South Portland	88.3	5.2	2.9	0.3	2.1
Scarborough	92.6	0.2	2.2	0.6	2.8
Saco	90.9	1.2	1.7	0.4	1.8
Kennebunk	93.4	0.1	3.4	0.1	2.7

Source: 2020 Census



Hispanic & Latino residents make up the 2nd largest ethnic group in Biddeford

3.6% of Biddeford Residents are Foreign Born

Biddeford is more diverse than York County and Maine as a whole

Language Spoken at Home

Language	Number of Speakers	% of Population
English	19,025	88.9
Spanish	212	1.1
Other Indo-European	1,853	8.7
Asian & Pacific Languages	302	1.5

59% Of residents who speak a language other than English at home are over the age of 65

Source: 2020 Census

Arabic is the second most spoken language among students in the Biddeford School System; followed by Spanish, Portugese and French

Source: Biddeford School System

5. Education

2,308

Students Enrolled in Biddeford
Public Schools in 2022-23

8.8%

of Biddeford residents have a
Masters Degree or PhD

Biddeford has **lower** educational
attainment than the rest of York
County

Community	% with High School Diploma	% with Bachelor's Degree or more
Maine	93.7	33.6
York County	94.4	32.8
Biddeford	93.8	27.2
Portland	94.2	56.5
Lewiston	88.1	21.3
South Portland	95.9	46.3
Scarborough	97.8	55.0
Sanford	91.2	21.3
Saco	94.5	40.7
Kennebunk	97.7	45.2

Biddeford Public School Enrollment by Grade	
Grade	2022-2023 Enrollment
Pre-K	73
K	176
1	197
2	156
3	179
4	175
5	136
6	164
7	198
8	146
9	163
10	172
11	174
12	199
TOTAL	2308

Biddeford School System Enrollment by School	
Facility	2022-2023 Enrollment
Biddeford High School	708
Biddeford Middle School	644
Biddeford Intermediate School	354
Biddeford Primary School	353
JFK School	265

Source: Biddeford School System

6. Income and Economy

\$58,142

Median Household Income

63.3%

Population in Civilian
Workforce

\$278,350

Median value of owner-
occupied homes

13.3%

Population living below the
poverty line

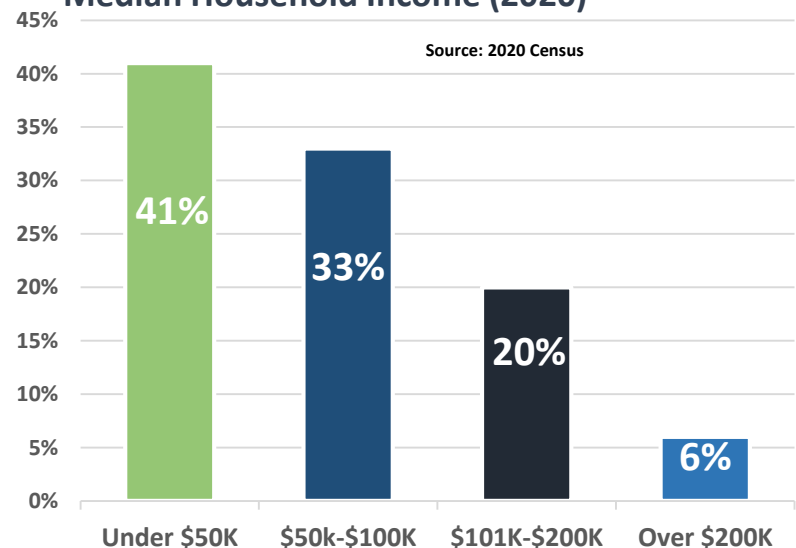
Although still lower
than the County
Average, Biddeford's
Median Income has
risen **faster** than the
rest of York County
from 2010-2020

Community	Median Household Income	Per Capita Income	% Below Poverty
Maine	\$63,182	\$36,171	11.5
York County	\$73,856	\$39,450	8.3
Biddeford	\$58,142	\$33,413	13.3
Portland	\$66,109	\$42,960	12.7
Lewiston	\$48,069	\$27,856	16.3
South Portland	\$73,899	\$42,822	6.1
Scarborough	\$105,960	\$56,863	3.7
Sanford	\$65,671	\$32,648	9.5
Saco	\$72,700	\$40,927	9.3
Kennebunk	\$88,865	\$47,197	6.2
Old Orchard Beach	\$55,766	\$45,572	10.6

Source: ACS 5-Year Estimates 2016-2021

Biddeford's Income Distribution

Median Household Income (2020)



Biddeford's median and per-capita income is lower than Maine as a whole and notably lower than surrounding communities in both York and Cumberland Counties. Biddeford also has a higher overall percentage of the population living at or below the poverty line compared to surrounding communities.

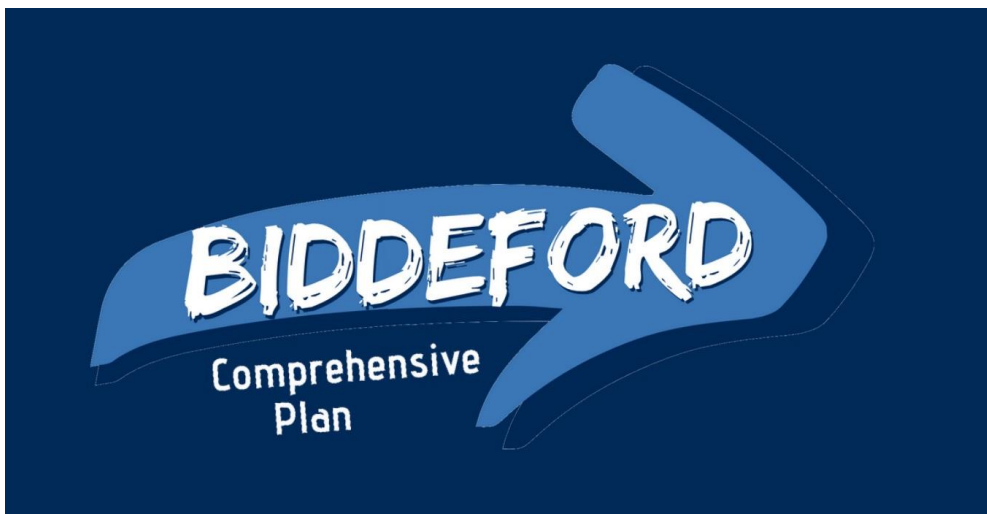
However, Biddeford's overall per-capita and median income for families and households grew at a slightly faster than some other surrounding communities between 2010 and 2020.

3 Public Engagement

1. What's Happening?

Public Engagement is crucial to a Comprehensive Plan in order for the plan to be reflective of the community. City of Biddeford staff, Planning Board members, and members of other city committees and commissions worked together to pursue a robust public engagement process throughout 2021. The information received from the public was used to inform the content of the plan, particularly the Core Values and the Goals, Policies, and Strategies. As part of the development of the Comprehensive Plan, Biddeford pursued a robust, transparent, and inclusive civic engagement process. The Planning Board, with staff, developed a Public Engagement Plan (PEP), as well as a PEP Advisory Committee to facilitate the civic engagement program.

As part of the development of the Comprehensive Plan, Biddeford pursued a robust, transparent, and inclusive civic engagement process. The Planning Board, with staff, developed a Public Engagement Plan (PEP), as well as a PEP Advisory Committee to facilitate the civic engagement program.



2. Community Engagement By the Numbers

1,500+

community members engaged
during the public process

53

residents participated
in focus groups

25

members on the
Advisory Committee

1,212

responses to the
Community Survey

30

participants in the April
2022 public sessions

40+

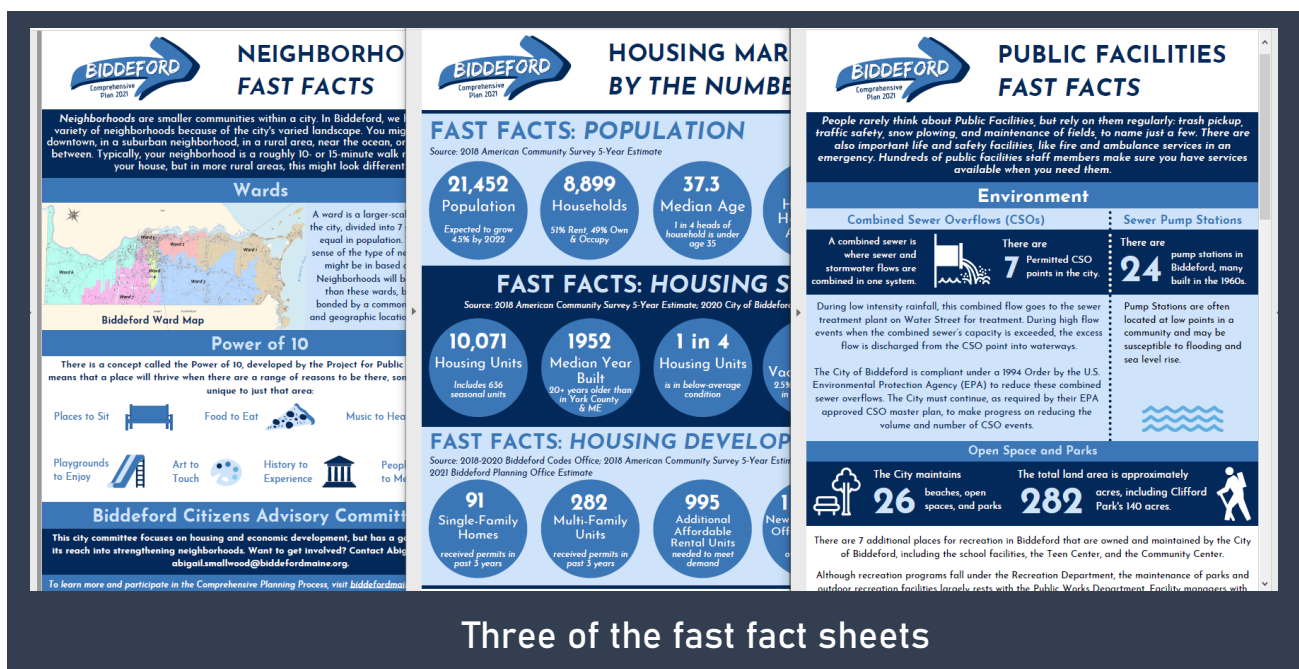
public engagement
opportunities

Planning Board and staff identified eight major topics, and each topic was assigned a Planning Board member, a City staff member, and a member of a City Committee/Commission. The eight topics were Neighborhoods, Housing, Downtown, Climate Change, Youth and Schools, UNE Integration, Natural Resources, and Public Facilities.



Eight major topics for the Comprehensive Plan

For each topic, a fast fact sheet, an overview video, and a survey were developed. The Fast Fact sheets and the overview video gave a brief introduction to the topic, so community members had basic information before taking the survey.

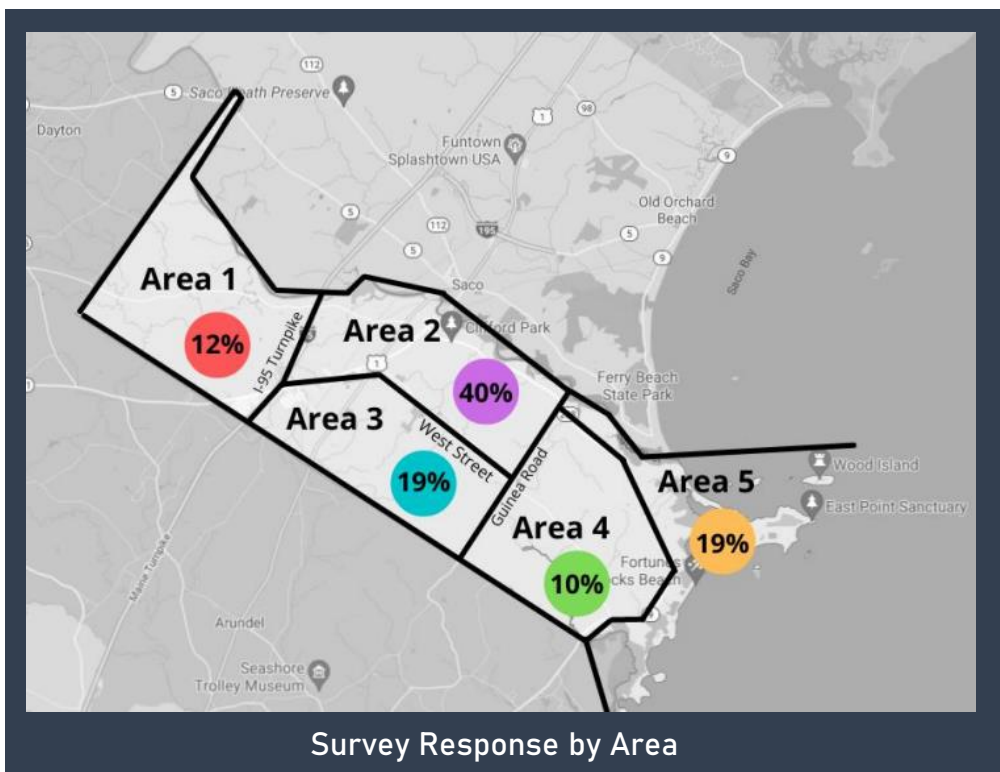


The surveys were released on a weekly basis on the MetroQuest survey platform, a platform designed specifically for municipal and transportation planning. Surveys stayed open for at least 3 weeks (average: 7 weeks), and there were 1,308 responses total over the eight surveys. We expect that some people took multiple surveys, so this number is not unique individuals. The highest responses were for the Neighborhoods, Downtown, and Housing surveys.

PEP Advisory Committee members reviewed and analyzed the results to determine major takeaways and to develop follow-up questions for focus groups. There was one focus group for each topic. The input received at these meetings was compiled into a summary sheet on each topic.

From all the feedback received on these topics, a Community Survey was compiled to go into more detail and to get feedback from a broader section of the community. The survey was available online and on paper in September 2021. Paper copies were mailed to every address in Biddeford. There were 1,212 responses to this survey. There was a follow-up presentation of the results, including an analysis of the differences between Biddeford's population and those who took the survey. The survey was not intended to be representative of the population, but the information was shared in order to contextualize the responses.

From all the information gathered, the existing Goals, Policies, and Strategies for each section were updated, and there were three public sessions in April 2022 to determine level of support and interest in the identified strategies.



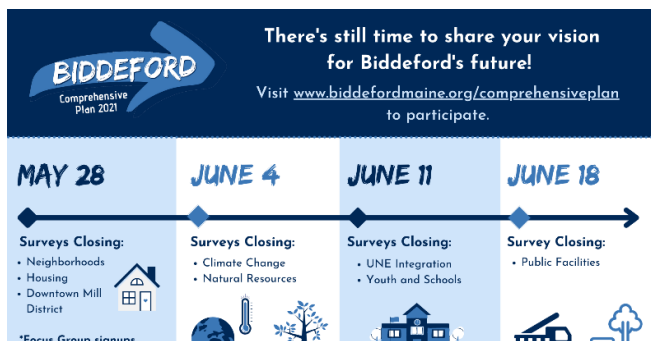
In general, there was support for the strategies – nothing scored below neutral (3 on the 5-point scale), and 91% scored ‘somewhat support’ (4) or higher on average. Staff will look into the items that scored above a 4.5 on average and determine whether to prioritize some of these items in the implementation of the Comprehensive Plan.

Throughout the process, opportunities for engagement were promoted a variety of ways:

- Biddeford Beat, the City’s weekly email newsletter
- City of Biddeford Facebook and Twitter
- Our Biddeford, the City’s engagement platform
- Direct mail to Biddeford addresses
- Courier newspaper ads and articles
- Comprehensive Plan email list
- Updates on the front page of the website
- Partner organizations such as Heart of Biddeford



One of the advertisements posted in the Courier promoting the topic-based surveys



Timeline shared through social media



We want to hear from you! Tell us how you use Biddeford's public facilities and how we can improve them.

Step 1: Watch a [short video](#) to learn about the importance of public facilities. Public facilities include the many systems that few people think about but rely on daily: streets and pedestrian infrastructure, public safety systems, parks and beaches, and Public Works systems like trash pickup and snow removal, to name just a few.

Step 2: Check out this [fact sheet](#) to learn more about Biddeford's public facilities.

Step 3: Click [this link](#) to take a quick survey to share your priorities for protecting and conserving Biddeford's natural resources. The survey will be available until June 18.

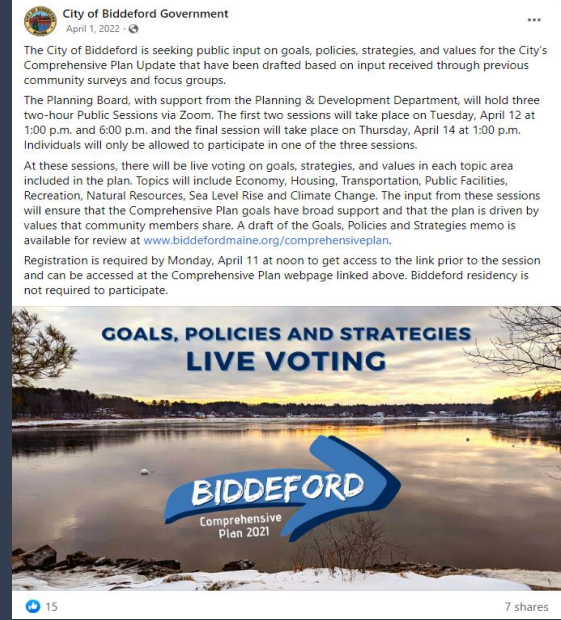
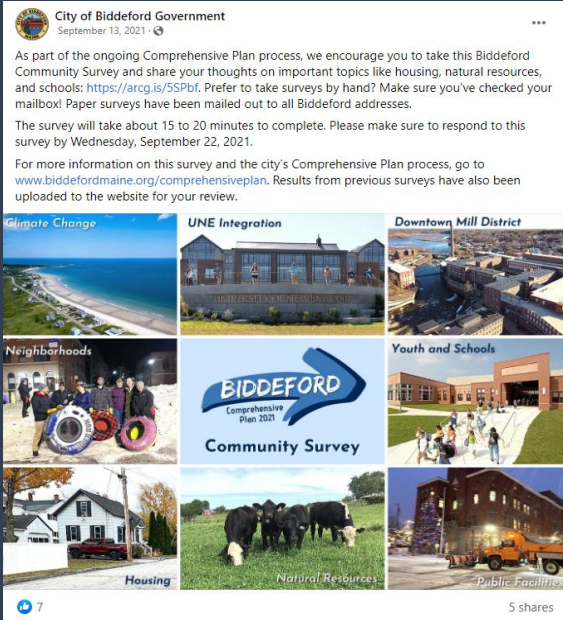
Step 4: Stay involved! [Sign up for email updates](#) about future opportunities to participate.



TAKE THE SURVEY



Focus group recruitment in Biddeford Beat



Social Media Posts about the Comprehensive Plan

Additionally, due to high interest in affordable housing identified through the Comprehensive Plan process and regular citizen engagement with City officials and staff, the Mayor formed an Affordable Housing Task Force that met during 2022 to assess the current reality of housing in Biddeford, collect feedback from the community on affordable housing, and compile data. From this information, the Task Force made recommendations in a Final Report approved on January 4, 2023. The Report went to City Council for action on January 24, 2023, and implementation steps will follow

Community Engagement:

What Comes Next?

The City of Biddeford is committed to continuing implementation and updates as necessary to the Comprehensive Plan during the 10 years that it is in effect. With Biddeford's rapid growth, it is vital that this plan is a living document. Residents are encouraged to contact the Planning and Development Department with questions and ideas and updates that would affect the information in the plan and the goals based on that information.

Civic engagement is vital to the community, so that this plan and the work of the City reflects the values and goals of those who live here.

Some specific projects moving forward are as follows:

In Fall 2022, City staff and the Citizens Advisory Committee (CAC), in partnership with the Mayor and City Councilors, launched a series of Ward meetings as a way to connect with residents in order to share updates and hear questions, concerns, and ideas.

Moving forward, staff and CAC, which is the designated committee to oversee the spending of Community Development Block Grant (CDBG) funds, plan to hold Ward meetings on a yearly basis, as well as more targeted neighborhood meetings and walks. Additionally, every five years, staff and the CAC put together a Consolidated Plan for CDBG funds, which sets goals for the next five years. CDBG funds are targeted toward low-to-moderate income residents in a variety of ways. Public engagement is a key component of creating the plan, so that funding goes towards projects supported by the community, particularly those who are low-to-moderate income. There is a new Consolidated Plan being written in spring 2023, which will launch in July 2023, and the next plan will be written for launch in July 2028.

The City is in the process of completing a Climate Action Plan. In October 2020, City Council passed a Climate Emergency Resolution, which led to the formation of the Climate Task Force. This group is tasked with creating an action plan that focuses on adaptation, mitigation, and sustainability strategies that address the real effects of climate change that threaten our coastal community. Southern Maine Planning and Development Commission (SMPDC), the regional council of governments focused on planning and development, is leading a cohort of communities to create their Climate Action Plans – Biddeford, Kennebunk, Kennebunkport, and Kittery. Public engagement is an important part of this process and there will be numerous opportunities to

participate in 2023. Biddeford's Climate Action Plan is expected to be completed in September 2023. At that time the City's focus will shift to implementation of strategies established by the plan to reduce carbon emissions.

Other public engagement efforts will develop based on needs in the community.

4 Regional Coordination

1. What's Happening?

As the largest city in York County, Biddeford serves as an important regional service center and employment center. Biddeford's needs are closely linked with those of its surrounding communities and the Southern Maine region. Biddeford works closely with a number of regional partners throughout York and Cumberland Counties on a wide range of issues including public safety, resource management, conservation, housing, economic development, climate change and transportation. Working closely with communities and organizations in our area helps Biddeford address regional challenges effectively and creates new opportunities for everyone in our region.

Biddeford is a key partner in these regional organizations and planning efforts:

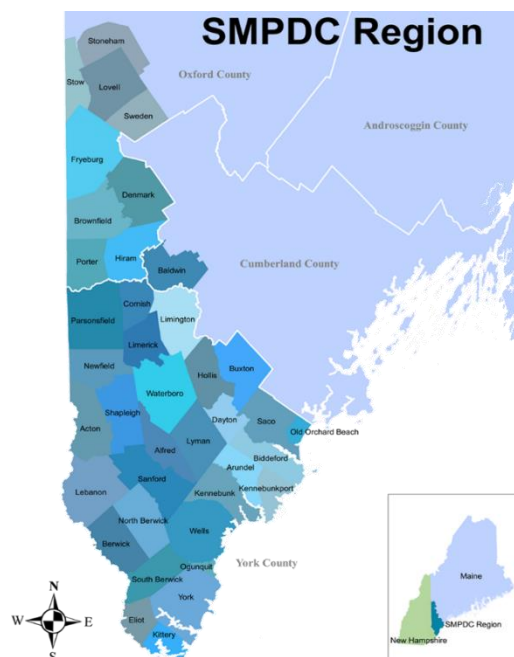
2. Regional Planning & Transportation

Southern Maine Planning & Development Commission (SMPDC)

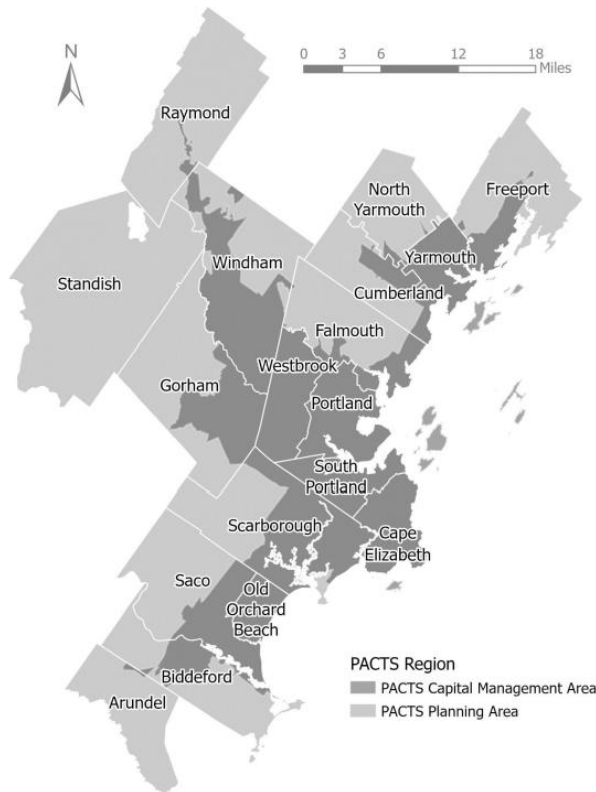
SMPDC is non-partisan nonprofit organization that cultivates thriving, sustainable communities and strengthens local governments by leading planning and economic development for 39 member towns in Southern Maine.

SMPDC Provides a wide range of planning services to communities in York and Southern Oxford counties.

The city of Biddeford works closely with SMPDC on a wide range of planning and Development issues including transportation, brownfield development, conservation and climate resilience.



4-1



PACTS Planning Area, PACTS Capital Management Area

Portland Area Comprehensive Transportation System (PACTS)

The Portland Area Comprehensive Transportation System (PACTS) is a federal metropolitan planning organization that coordinates transportation planning and investment decisions with the state, municipalities and public transportation partners. It directs the spending of more than \$25 million in transportation funding each year.

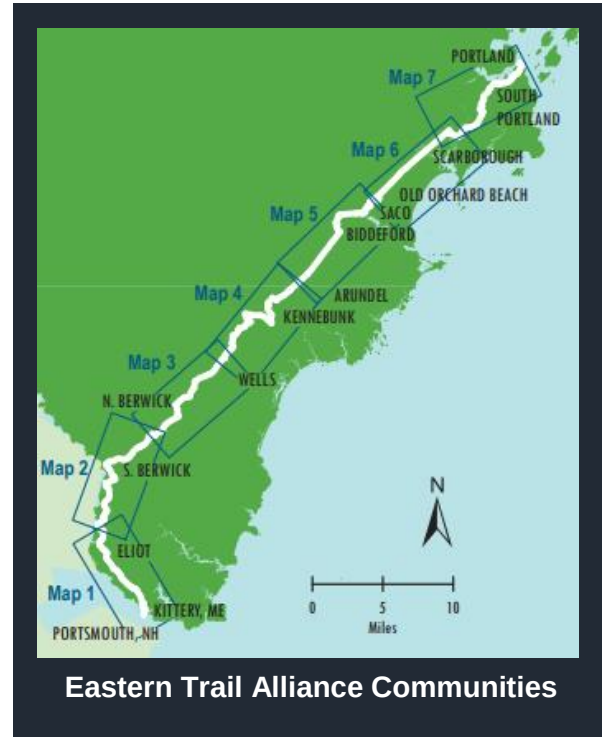
Since 2020, PACTS is fully affiliated with the Greater Portland Council of Governments (GPCOG) and utilizes GPCOG staff and resources.

Within the federally designated urban area, PACTS is also responsible for capital management and determining eligible locations for transportation capital improvements.

Eastern Trail Alliance

The Eastern Trail is a 65 + mile signed bike route that passes through Biddeford on its route from in Kittery to South Portland. It is part of U.S. Bike Route One. Although a majority of the trail is off-road, portions of the trail utilize local roads and streets.

Together with the Eastern Trail Alliance, the City of Biddeford has worked to explore opportunities for improving the corridor through Biddeford, which has significant segments of on-street trail through Biddeford's urban core. The Eastern Trail Alliance is advancing plans to create new off-street trail alignments and improve connectivity between the trail and local Bicycle & Pedestrian routes.



Eastern Trail Alliance Communities

Biddeford-Saco-Old Orchard Beach Transit

Biddeford-Saco-Old Orchard Beach Transit (BSOOB) provides bus transit service throughout its namesake communities as well as intercity bus services to Portland. BSOOB Transit operates three fixed-route transit services within Biddeford serving key corridors and destinations.

City staff work closely with BSOOB transit on short and long-range planning and funding needs.

York County Community Action Corp. (YCCAC)

YCCAC provides fixed route and on-demand transit service throughout York County. YCCAC services Biddeford with its “Southern Maine Connector” service connecting the Saco Transportation Center with Sanford and Springvale along Route 111.

YCCAC Transit services carried over 62,000 riders in 2021.

3. Conservation and Resource Management

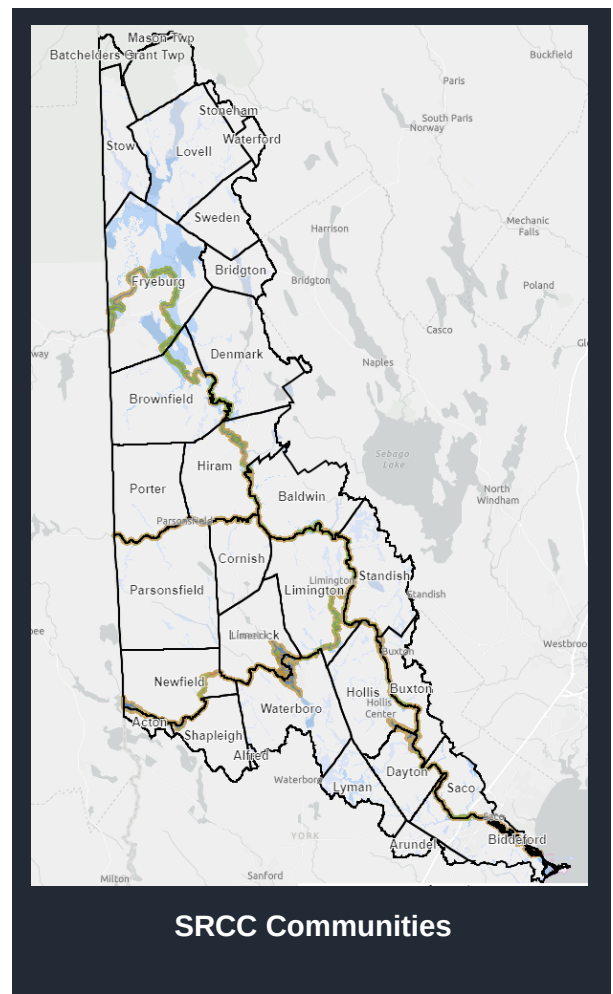
Saco River Corridor Commission (SRCC)

As the largest community along the Saco River, Biddeford works closely with the Saco River Corridor Commission on key issues impacting the Saco River.

The SRCC is responsible for managing water resources, land use and development along the entire 170-mile river corridor reaching from the White Mountains in New Hampshire all the way to the mouth of the river. The SRCC’s direct jurisdiction includes the Saco River watershed and all development and land use changes within 250 feet of the river corridor.

York County Soil & Water Conservation District

York County Soil & Water Conservation District provides technical, educational, and financial resources to land users and communities in York County to promote sustainable land use practices and ensure the viability of the agricultural sector.



Maine Water

The majority of Biddeford is served by the Maine Water Company, which draws directly from the Saco River. In 2022, MWC opened a new, state-of-the-art water treatment facility on South Street to serve parts of Biddeford, Saco and Old Orchard Beach.



Kennebunk, Kennebunkport & Wells Water District (KK&W)

Coastal and eastern areas of Biddeford are served by the KK&W Water District.

Rachel Carson National Wildlife Refuge

Biddeford hosts approximately 244 acres of the Rachel Carson National Wildlife Refuge, a conservation trust which was established in 1966 in cooperation with the State of Maine to protect valuable salt marshes and estuaries for migratory birds. Scattered along 50 miles of coastline in York and Cumberland counties, the refuge consists of ten divisions between Kittery and Cape Elizabeth. It will contain approximately 7,600 acres when land acquisition is complete.

In addition, the city of Biddeford partners with a number of local and regional land trusts and organizations to manage public access to conserved land

4. Economic Development

Biddeford-Saco Chamber of Commerce

The Biddeford-Saco Chamber of Commerce and Industry works to promote local businesses and provide resources to foster growth for more than 400 regional members.

The BSCC also works to promote community engagement and education to strengthen our local economy.



Brownfield Redevelopment

Brownfield sites are abandoned or disused industrial sites with known contamination.

A SMPDC and the Maine Department of Environmental Protection provide funding assistance and technical guidance to assist communities in redeveloping Brownfield sites in York County.

5. Public Safety

Biddeford is one of the twenty-four Public Safety Answering Points (PSAP) in Maine. The PSAP serves all of Biddeford's public safety departments and six other communities 24 hours a day. The PSAP answers and transfers Saco's E-911 calls and dispatches Fire and EMS for Alfred, Arundel, Dayton, Hollis, Lyman, and Waterboro.

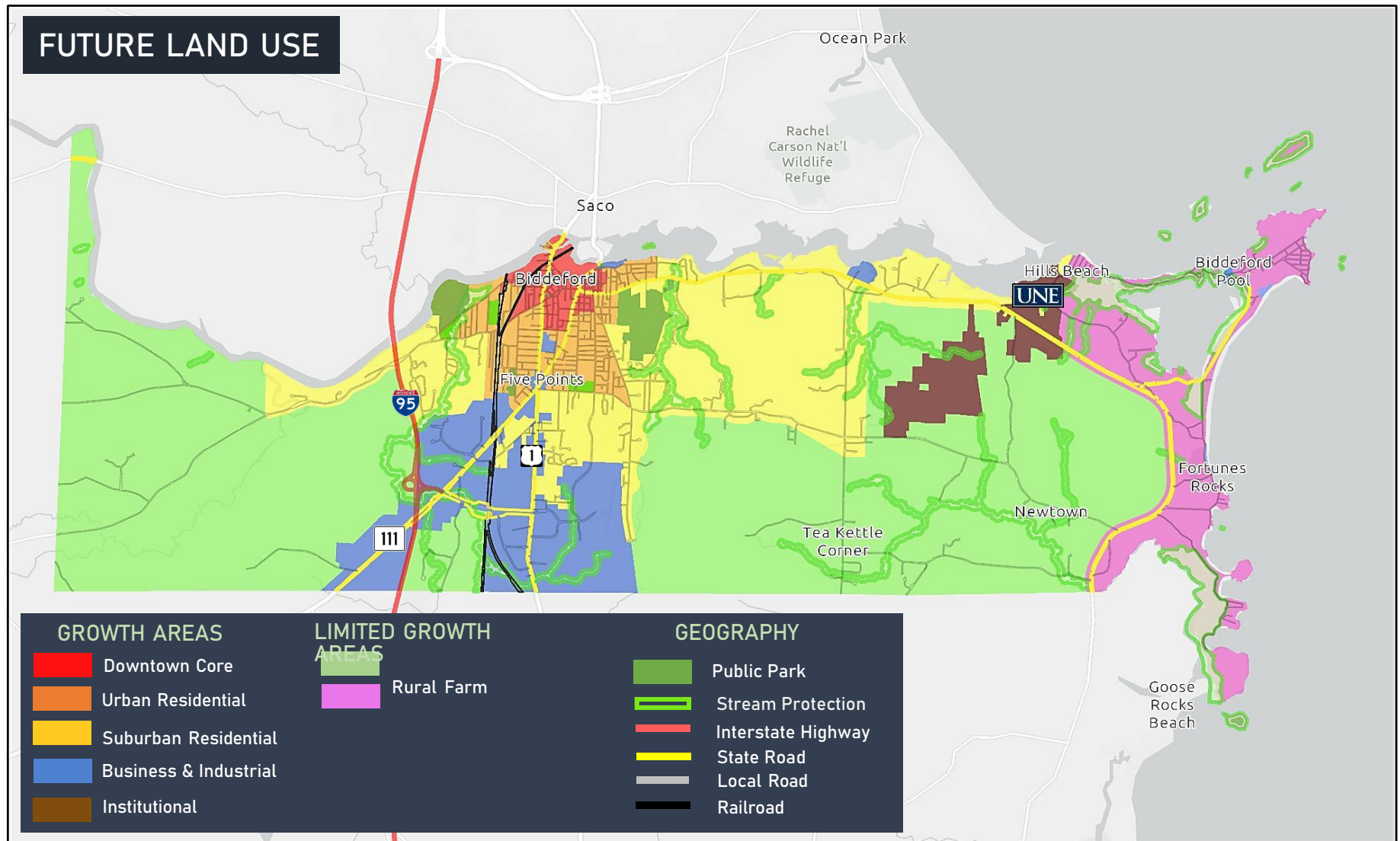
Police

Biddeford Police Department works closely with police departments in Saco, Arundel, Kennebunkport and Dayton. Biddeford is also a participant in the Regional Tactical Team, which serves all of York County.

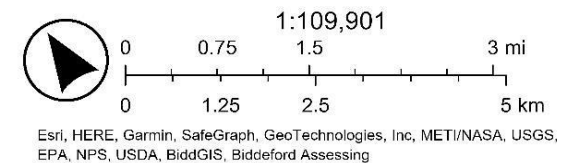
Biddeford also coordinates extensively with other communities in the region for training and emergency response preparedness.

Fire / EMS

Biddeford Fire Department has automatic mutual aid agreements with Saco, Goodwin's Mills, Arundel and Kennebunkport to assist with needed personnel and resources in the event of emergency. Additional resource sharing and incident readiness coordination occurs with the Saco Fire Department.



3/27/2023



5 Future Land Use

1. What's Happening?

The Future Land Use plan identifies needs and opportunities for managing growth and development within the community. To align with the goals of the Comprehensive Plan, as well as ongoing local planning and development projects.

The Future Land Use Plan serves to:

- Identify areas where growth and development are encouraged (Priority Growth Areas)
 - Identity areas where growth should be limited or entirely prohibited (Limited Growth Areas)
 - Create a vision for land use, housing, and transportation
 - Determine what types of uses are appropriate where, and to what intensity.
-

2. Key Goals

The key goals of the Future land use plan have been laid out based on feedback from the community survey and workshops, as well as extensive input from the Planning Board and City Council.

The key goals of the 2022 Future Land Use plan are:

- Support higher density ‘missing middle’ infill housing proximate to downtown as naturally occurring affordable housing.
- Conserve Biddeford’s significant natural resources
- Concentrate housing, employment, services and amenities in close proximity to reduce automobile dependence and establish vibrant complete neighborhoods.
- Invest in developing a complete streets network, which allow for safer and more enjoyable experiences as pedestrians, bicyclists, and transit users.
- Account for the public infrastructure costs necessary to support new growth.

3. Challenges and Opportunities

LD 2003

LD 2003 is state legislation sponsored by Rep. Ryan Fecteau (D-Biddeford) and signed into law in April of 2022. LD 2003 aims to address Maine’s housing crisis by creating new allowances for housing density in designated growth areas.

A growth area is defined as:

- **Locally designed growth areas Identified within an adopted Comprehensive Plan**
- **An area served by public sewer with capacity for a growth-related project**
- **A Compact area of an urban compact municipality**
- **An area identified in the most recent census as a census-designated place**

LD 2003 requires Maine communities to increase housing density within many existing zoning areas in several ways:

- **Requires municipalities to allow additional units on lots zoned for single-family homes.**
- **It requires municipalities allow at least one accessory dwelling unit on lots with existing single-family homes.**

In some areas, including Biddeford, it requires municipalities to allow 2 1/2 times the currently allowed housing units, for developments where most of the units meet standard definition of affordability

So What Does LD 2003 Mean for Biddeford?

LD 2003 is likely to have a notable impact on how our community grows. LD 2003 is intended to incentivize housing density in existing developed areas

- Creates new allowances for Accessory dwelling units and multifamily homes (up to 4 units per lot) in existing residential growth areas, including areas currently zoned for single-family residential.
- Allows for two (2) units per lot by-right in many other non-growth areas
- Density bonuses for certain affordable housing projects

LD 2003 creates new allowances for different types of infill and “missing middle” housing including.....



Accessory Dwelling Units



Duplex, Triplex and Fourplex Homes



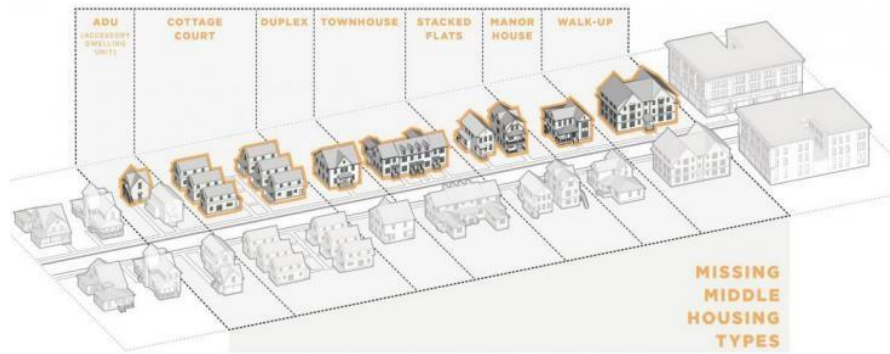
Infill

Creating new housing within existing urban residential neighborhoods through added density.

- **Duplex / Fourplex Homes**
- **Accessory Dwelling Units (ADUs)**
- **Other “Missing Middle” Housing types**

Infill housing allows communities to grow in a way that minimizes sprawl and helps preserve open space elsewhere.

Infill also helps to create vibrant, walkable neighborhoods and allows more people to access businesses and services without a car.



“Missing Middle” Housing Types

Downtown Smart Growth

“Smart growth” development ideas promote walkable, Mixed-use development that prioritizes creating a dense, accessible and vibrant urban core. In order to enhance our downtown and create these vibrant spaces, we can:

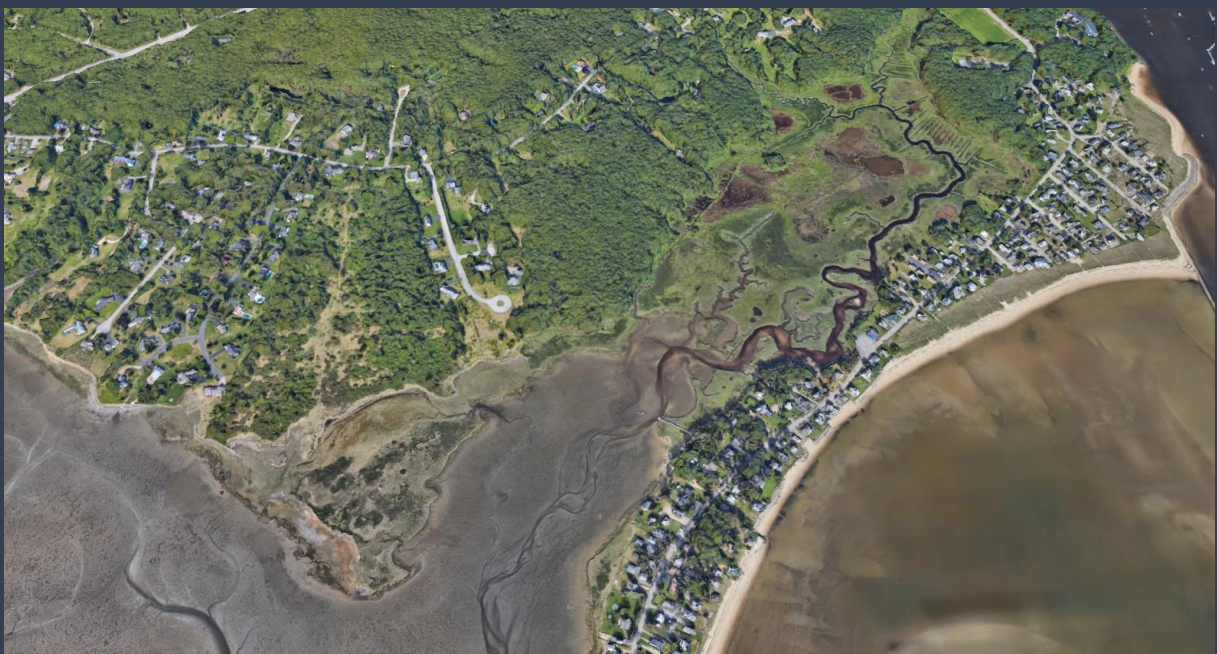
- **Continued redevelopment of the Mill District**
- **Transit-Oriented Development**
- **Reduce or eliminate parking requirements for some downtown projects.**

Focusing on higher-density, mixed-use development in Biddeford’s downtown core will help create a vibrant downtown that supports a wide range of local businesses and allows residents to access goods and services without needing a car. Emphasizing smart growth and urban infill also helps preserve open space elsewhere in the community by limiting low-density, land-intensive development.

Rural Areas and Open Space

Preserving Biddeford's significant and unique rural and undeveloped areas are a core component of the 2022 Future Land Use Plan. The current plan

- **Balancing the needs of working landscapes, conservation and development.**
- **Prioritize protection of prime agricultural soils and vulnerable ecosystems**
- **Identify areas within the Rural Farm zone where any new development should be strongly discouraged**
- **Explore creating a hierarchy of uses for the Rural Farm zone to guide future land use and development needs**



Limiting the impact of new development on rural areas and natural resources is a key goal of the Future Land Use Plan

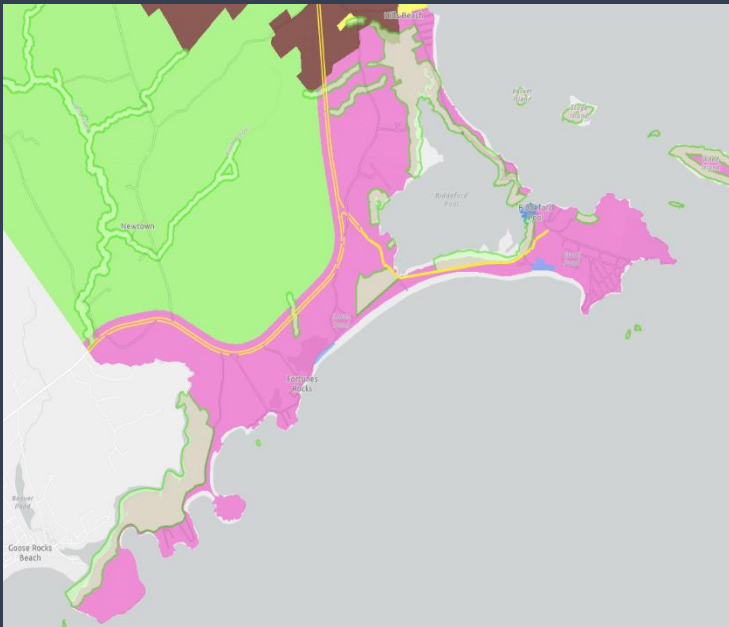
Coastal Areas and Coastal Residential Zone

Biddeford's Coastal Residential (CR) zone comprises most of Biddeford's Atlantic shoreline east of Route 9 including Hills Beach, Biddeford Pool, Fortunes Rocks beach, Granite Point and several islands. Biddeford's coastal area has a unique history and a distinct built environment consisting of close-knit beachfront neighborhoods built in the late 19th and early 20th centuries.

The Coastal Residential zone also faces a unique set of challenges and is the area most vulnerable to sea level rise and coastal flooding driven by climate change.

Biddeford's 1999 Comprehensive Plan included the Coastal Residential zone within the city's growth area boundary. However, as the threats and challenges posed by climate change have become increasingly clear, the 2023 Future Land Use Plan removes the Coastal Residential zone from the growth area in an effort to limit the scope of future development and ensure that vulnerable coastal neighborhoods are not excessively developed.

Removing the CR zone from the growth area will not expressly prohibit future development or redevelopment of existing properties, but it will ensure that future growth is limited in scope.



Biddeford's Coastal Residential zone (pink) has unique attributes and faces unique challenges

FUTURE LAND USE MAP

4. Growth Areas:

The 2022 Future Land Use Plan creates five land use categories within the growth area. The growth area boundaries are defined by existing zoning, land use patterns and infrastructure. The Future Land Use Plan envisions a majority of growth and development occurring within the growth area.

The five land use categories included in the growth area are:

DOWNTOWN CORE

High-Intensity, Mixed-Use Development

GOALS:

Continued redevelopment of the Mill District

Transit-Oriented Development

Multifamily Infill development in residential areas

Reduce or eliminate parking requirements for some downtown areas

Complete Streets and Shared Streets



URBAN RESIDENTIAL

Biddeford's dense, in-town residential. A mix of multifamily and single-family housing interspersed with commercial and retail

GOALS:

Focus on "Complete Neighborhoods"

Small-scale neighborhood retail and commercial

Improved bicycle and pedestrian accessibility



SUBURBAN RESIDENTIAL

A mix of multifamily and postwar single-family housing. Lower density

GOALS:

Focus on “Complete Neighborhoods”

Targeted density increases for multifamily housing

Improved bicycle and pedestrian accessibility



COMMERCIAL & INDUSTRIAL

Lower density, suburban commercial and industrial areas predominantly west of the Five Corners area

GOALS:

Higher density housing and mixed-use development along key corridors (Route 1, Route 111)

Plan for emerging commercial and industrial land uses

Improved transit access



INSTITUTIONAL

All land owned by the University of New England (UNE)

GOALS:

Work with UNE to better integrate the campus into the community

Improve transit access

Responsible campus growth



5. Limited Growth Areas:

The 2022 Future Land Use Plan creates two land use categories within the limited growth area. This area does not have the existing infrastructure or land use to support robust amounts of new growth. Future development in these areas is intended to be small-scale and low intensity. Development in these areas should also be closely examined for its impact on critical resources and conservation

The two land use categories included in the limited growth area are:

RURAL FARM

Biddeford's least-developed areas. Predominantly a mix of undeveloped forest and wetland, agriculture and low-density, single-family housing

GOALS:

- Identify areas where conservation should be prioritized
- Support working landscapes and limit ultra-low density sprawl
- Create a hierarchy of uses to guide future development



COASTAL RESIDENTIAL

Coastal residential areas between Route 9 and the ocean. Including the Biddeford Pool and Fortunes Rocks Beach area

GOALS:

- Prepare for the impacts of sea level rise and climate change
- Improve public access to the ocean and natural resources
- Promote climate-resilient redevelopment

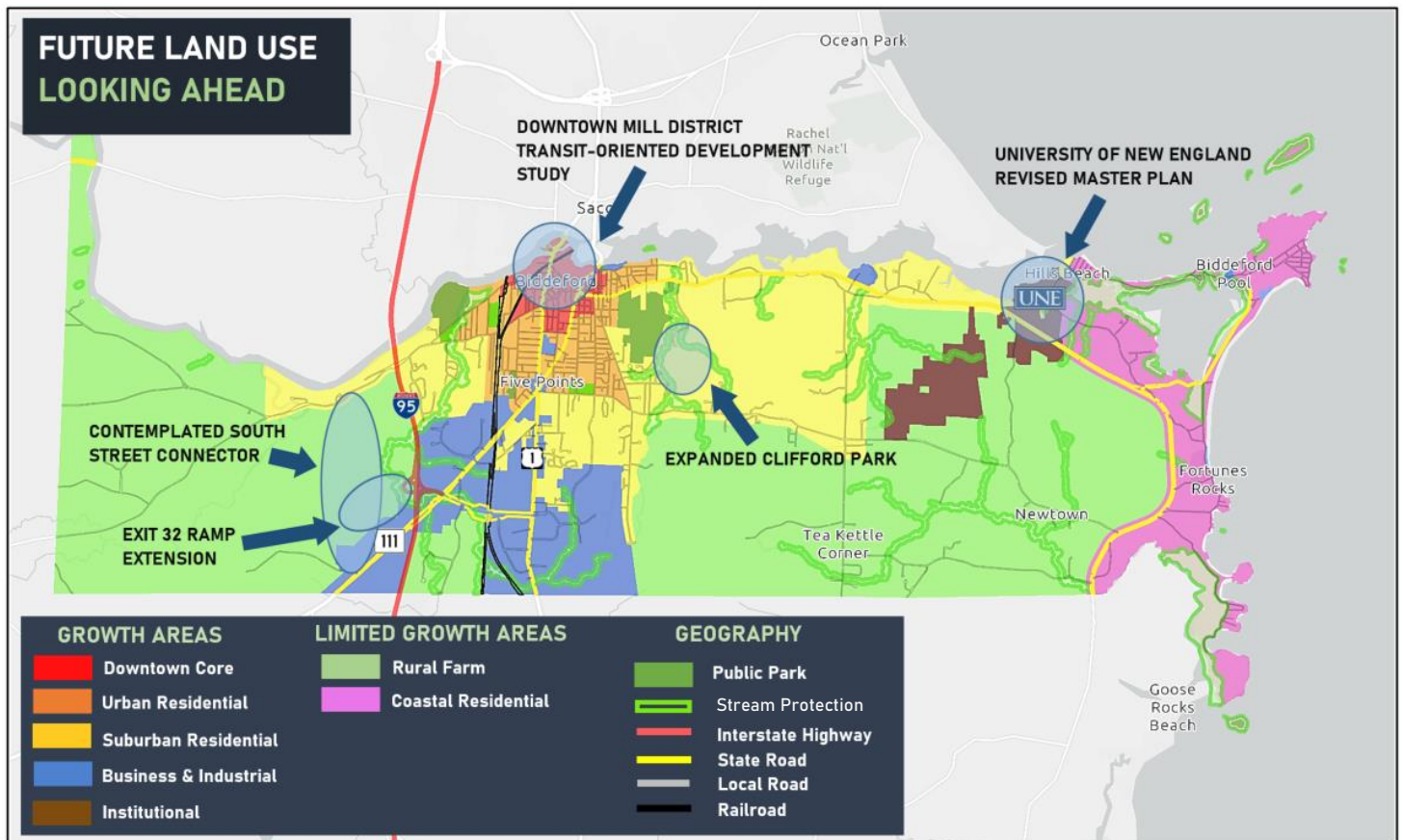


6. Looking Ahead

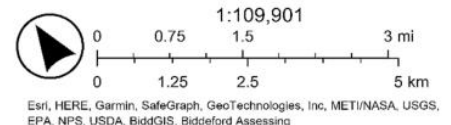
The 2022 Future Land Use plan serves as a foundation for guiding future growth and investment in Biddeford. Although the Future Land Use plan is **not** a zoning map, it will serve as a foundation for future zoning and ordinance changes that will allow our community to achieve the visions laid out in both the Future Land Use Plan and the Comprehensive Plan as a whole. As Biddeford continues to grow and develop, guiding growth is critical to preserving and enhancing our community's strengths and unique identity.

There are several key ongoing initiatives and planning processes that the Future Land Use plan incorporates and anticipates.

- **Downtown Transit-Oriented Development Study**
- **Exit 32 Changes**
- **LD 2003**
- **New conservation and recreation areas including an expanded Clifford Park and land in West Biddeford**
- **Potential South Street connector**
- **Revised University of New England Master Plan**



3/27/2023



This page is intentionally left blank

7 HOUSING

1. What's Happening?

The home is the foundation of any community. It is the physical structure that ties people to place more than any other building type. The availability of decent and affordable housing, for people of all income levels, is a fundamental requirement of a thriving community. Assessing a community's housing stock in a comprehensive plan ensures that future housing needs are addressed before issues of supply, quality and cost become problematic. The availability of a wide diversity of housing types contributes to a community's vibrancy and economic success.

Housing is intricately linked to the local economy in several ways. Demographics help to determine the type and price range of a community's housing stock, but employment opportunities also play a key role. Prospective businesses seek new locations where good quality housing, contributing to the quality of life, is readily available. Also, people from outside a community are drawn in if available homes, either for sale or rent, are considered good values. Finally, a stable housing stock provides a stable property tax base upon which so many local services, like schools and infrastructure needs, depend. Some economic goals in the comprehensive plan that are tied to housing include supporting mixed-use re-development in the City's Mill District and supporting both market-rate and workforce housing initiatives.

Yet affordability continues to be a problem in Biddeford and throughout Maine. In recent years, housing costs have risen faster than household incomes, despite the fact that housing values (rent and ownership) remain below the regional market. Higher land prices, excessive lot sizes, low-density zoning, stringent infrastructure requirements and increasing housing value markets to the north and south of Biddeford have driven up the cost of housing, excluding many people of limited means.

This chapter examines the existing condition of housing in Biddeford, its affordability and availability, especially for lower-income households. The inventory of housing is divided into three sections: first, an overview of

Biddeford's demographic and housing tenure profile; second is a look at the number and type of housing units available, and third is an assessment of affordability.

2. What the Community is Saying

"I've been looking for months and I still can't find an apartment"

"I would love to see more housing for students and families"

"Seniors should be able to live close to the services they need"

"We need more housing for families to strengthen our school system"

3. Housing Today

10,064

Housing Units

Includes 636 Seasonal Homes

3.7%

Rental Vacancy Rate

Lower than the rest of York County

1952

Median Year Built

Older than the rest of York County

1 in 4

Housing Units

are in below average condition

7-2

Housing Units and Household Size

Table 7-1 presents general housing characteristics for Biddeford between the years 2010 and 2020. For this period, the population of Biddeford has increased by 5.9%. While the overall population has grown, the number of housing units has grown at a slightly slower rate of 5%. For this same period, the number of households increased by 9.5%). As a result of relatively stable population increase and the number of households, with more units added as a percentage than either, the average household size has fallen slightly.

Table 7-1. Population, Housing Units, Households, Household Size, and Occupancy Characteristics, Biddeford, 2010-2020

	2010	2020	% Change 2010-2020
Population	21,277	22,552	5.9%
Housing Units	10,064	10,576	5.0%
Households	8,598	9,431	9.5%
Average Household Size	2.30	2.15	-6.2%
Owner Occupied Rate	49.2%	47.8%	-2.8%
Renter Occupied Rate	50.8%	52.2%	2.7%

Source: U.S. Census, 2010,2020

Table 7-2. % Housing Units per Structure for Biddeford, York County, and the State of Maine - Ranked by % Multi-family (3 or more units) - 2013-2017 5-Year Estimate

Municipality	Total Housing Units	1-Unit	2+ Units	Multi-family	Mobile Home	Boat, RV, Van, Etc.
Biddeford	9,815	49.1%	16.5%	30.8%	1.3%	0.0%
York County	108,609	72.7%	6.4%	14.1%	6.7%	0.1%
State of Maine	735,711	72.7%	4.9%	14.0%	8.4%	0.0%

Source: US Census: American Community Survey 2013-2017 5-year Estimates

Table 7-3. % Housing Occupancy by Type - 2013-2017 5-Year Estimates

Geography	# of Occupied Housing Units	Owner Occupied Housing Units	% Owner Occupied	Renter Occupied Housing Units	% Renter Occupied
Biddeford	8,545	4,196	49.1%	4,349	50.9%
York County	83,324	62,076	74.5%	21,248	25.5%
State of Maine	554,061	398,924	72.0%	155,137	28.0%

Source: US Census: American Community Survey 2013-2017 5-year Estimates

Table 7-4. Housing Vacancy Status – 2016-2021 5-Year Estimates

Type	# of Housing Units
Seasonal / Recreational Homes	655
Other Vacant	290
Sold, Not Occupied	15

Biddeford has a large number of seasonal homes which are not occupied year-round or which are rented as short-term rentals or vacation homes. The majority of these properties are concentrated in the Coastal Residential zone.

Biddeford Housing Authority

The Biddeford Housing was established in September 1985. In 2011, Biddeford was asked to take over as a management agent for Saco Housing Authority. In 2014, Saco & Biddeford Housing was consolidated to become one housing authority under the name of Biddeford Housing. The Housing Authority currently has 195 housing choice vouchers and also administers approximately 300 portability vouchers. Biddeford Housing Authority's local preference is Saco and Biddeford but it also covers Old Orchard Beach, Buxton, Arundel, Lyman, Dayton and Kennebunkport.

The Biddeford Housing Authority, combined with Southern Maine Affordable Housing (the development affiliate of BHA) owns 13 properties throughout Biddeford.

As of June 2022, BHA owns 141 housing units spread across 15 properties in Biddeford and Saco.

4. Challenges and Opportunities

Housing Demand

After decades of minimal population growth, Biddeford is now poised for noticeable increases in the number of people who live here. By 2022, Biddeford's population is expected to grow by more than 5%. This magnitude of growth is striking, since Biddeford has essentially the same population size as in 1950. This level of growth has not been experienced in Biddeford within such a short period of time since the mid-twentieth century.

The number of new housing units will likely grow accordingly, especially in the Downtown area and Mill District where conversions will add hundreds of new housing units in coming years. The number of new households created may nevertheless place strain on the availability of housing. The trend in recent decades is of smaller household size. One- or two-person households vastly outnumber larger households in Biddeford as elsewhere; therefore, more housing units may be needed to shelter Biddeford's growing population than ever before, especially for smaller household sizes. Anecdotally, housing in the Portland, Maine area is growing costlier and many households are being driven south to the Saco/Biddeford area by unaffordability. This trend will only drive demand for housing here, and the supply and demand of good housing will likely drive housing costs higher in Biddeford over the next five or more years.

Housing Affordability

"Affordable housing" means decent, safe and sanitary dwelling, apartment or other living accommodation of a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section 8, as amended.

In simplest terms, affordability is a question of household income as compared to the cost of housing. A review of the issue in Biddeford must track and compare trends in income levels and the cost of housing, both owned and rented. For some Biddeford residents, the cost of housing can consume an inordinate amount of their income.

One of the more pressing policy level concerns regarding housing in Biddeford is affordability. In 2020 the city established an affordable housing task force to study Biddeford's housing landscape and develop recommendations on improving affordability and housing equity.

Affordable Housing Task Force

The Affordable Housing Task Force has worked since 2020 to study and analyze ways to preserve and improve access to affordable housing in Biddeford. In December of 2022, the Task Force released its interim report, which outlines a series of recommendations and policy actions to be pursued by the City Council. The Task Force has shared several key findings in its interim report:

Recommendations developed in the interim report include:

1. Unhoused Involvement: The task force considered the multiple of complexities that cause individuals to be unhoused. The nation-wide issue exists in Maine and in Biddeford. With the lack of a national, state and/or regional plan(s) to compliment local efforts, outcomes vary. The task force is recommending that the City Council:

- a. Take immediate action to change the existing policy of doing essentially the state minimum required; so that unhoused does not face a winter night on the street.
- b. Develop and implement a city wide unhoused strategy that provides complete services to assist the unhoused so they may break the cycle of being unhoused. With the complexity of the issue, the Task Force encourages community outreach and engagement during the process. The policy should be adopted by Spring of 2023.
- c. Seek additional technical assistance in developing options for the City Council to explore as they develop a new policy for unhoused

2. Adopt an Inclusionary Zoning (IZ) Ordinance: Inclusionary zoning will require new housing projects to actively participate in the creating of new affordable housing units. While the details are still to be worked out, IZ will require all projects over a certain size to either build a percentage of the units to meet the City's affordable housing goals. In some cases, it will allow a cash payment into the affordable housing fund instead of creating the units.

3. Affordable Housing Fund: The Task Force will be making a recommendation to create a special account for affordable housing initiatives. Funds that are generated for affordable housing would go into the account. The account would include any affordable housing TIF proceeds, the donation from the Devine project, IZ payments, grants or other funds. Annually, the fund would seek proposals for affordable housing projects.

4. Rent Control: The TF will be making a recommendation that any sort of rent control is not a desired solution to address affordable housing units within the community.

5. Targeted Affordable Housing Definitions: The committee has identified that the main goal of affordable housing work will be at the 80% of AMI (annual median income).

6. Modify the amount of the affordable housing goal: The TF is recommending that the current Council goal of creating/preserving 450 affordable units over a five-year period (beginning in 2021). The new goal that the TF has voted on is to create and/or preserve 900 affordable rental units from 2023 to 2028. In addition, the TF is recommending an additional goal that 12.5% of all rental units will be affordable by 2028.

LD 2003

LD 2003 is state legislation sponsored by local Rep. Ryan Fecteau (D-Biddeford) that aims to address Maine's housing crisis by creating new allowances for duplex and fourplex homes in most areas.

- Allows for up to four (4) units per lot by-right in most existing growth
- Allows for two (2) units per lot by-right in other areas
- Density bonuses for certain affordable housing projects
- Signed into law in April of 2022

Phased Implementation LD 2003 is likely to have an impact on how our community develops and where growth occurs. At time of writing, the rulemaking for LD 2003 is ongoing.

Lead Paint

In 2019, the City of Biddeford received a \$3.2 million grant from HUD's Office of Lead Hazard Control and Healthy Homes to establish the Safe and Affordable Homes for Healthy Families Program. Designed to prevent lead poisoning in young children (Biddeford has Maine's 4th highest burden of lead-poisoned youth under age of 6), improve overall housing conditions for families, and maintain affordable rents for a period of at least 3 years, SAHHF pays to abate lead paint hazards and correct other health/safety issues in pre-1978 multifamily units where the majority of households qualify as low income. The Program's target area is the downtown core, which is home to the City's oldest multifamily housing stock, much of it built before 1950, often poorly maintained, and ranging in size from duplexes to 25-unit structures.

Transit Oriented Development

The City of Biddeford has worked in coordination with the City of Saco and the Greater Portland Council of Governments (GPCOG) to study opportunities for transit-oriented housing development for downtown Biddeford and the Mill District, as well as Factory Island and downtown Saco.

This study envisions a more dense, connected and mixed-use urban downtown supported by improved transit service by bus and rail, as well as safe, convenient bicycle and pedestrian connectivity.



Housing:

What Comes Next?

Like many other communities in southern Maine, Biddeford is at a critical juncture when it comes to housing access and affordability. Access to abundant and affordable housing of all varieties is vital to creating a healthy community, attracting new residents and developing a thriving local economy. In the coming years, Biddeford is well suited to leverage its location, historic mill district, and dense urban framework to create new housing opportunities that will make our community a vibrant and equitable place to live and work.

In coming years, we aim to work collaboratively to:

Increase housing availability of all types, with an emphasis on ensuring new housing is affordable and equitable. mixed-use housing in walkable and accessible neighborhoods.

Enable transit-oriented development and promote dense, mixed-use housing in key areas of the city.

Preserve Biddeford's existing housing stock and ensure that legacy housing is safe and resilient.

Goal 1

Increase the supply of safe and adequate affordable housing for low- to moderate-income persons (i.e., Biddeford's "workforce" population)

How We Get There:

- Consider revisions to the City's zoning and land use standards that would provide incentives (e.g. density bonuses) for the development of affordable housing, with a goal for at minimum 1 in every 10 units constructed to be affordable.
- Continue to re-examine growth area land use regulations to increase density and decrease lot size, setbacks and road widths to encourage the development of affordable/workforce housing.

- In partnership with other public/private entities, such as the Biddeford Housing Authority, explore the adaptive re-use and redevelopment of non-residential properties, e.g. mills and churches, into affordable and sheltered housing.
- Maintain and promote Biddeford's Accessory Dwelling Unit (ADU) Ordinance to provide affordable housing throughout Biddeford.

Goal 2

Enable Housing that allows residents to live car-free and easily access local businesses and services via walking, biking and transit

How We Get There:

- Consider revisions to the City's zoning and land use standards that would reduce or remove parking requirements for housing projects in certain zones.
- Maintain and promote Biddeford's Accessory Dwelling Unit (ADU) Ordinance to provide infill housing throughout Biddeford.
- Work with the City of Saco to implement elements of the 2021 Transit-Oriented Development plan for Saco Island and the mill district.
- Collaborate with other public/private entities such as BSOOB Transit to ensure new large-scale housing development can be served by transit.
- Work to enhance bicycle and pedestrian facilities downtown and create complete streets.

Goal 3

Preserve and upgrade the city's housing stock

How We Get There:

- Consider establishment of low-interest loan programs to help finance the rehabilitation of the City's downtown housing stock.
- Undertake a systematic and concentrated program of code enforcement to ensure life safety standards are met and to prevent blighting influences on neighborhoods.

8 Transportation & Mobility

1. What's Happening?

Roads, streets, and other means of transportation are often referred to as the city's circulation system. This system is necessary to move people, goods, and services from one part of the city to another, into and out of Biddeford and into the surrounding region and country as a whole.

Transportation and mobility may be thought of as the framework upon which the city is built. In addition to the basic functions of connecting residents, businesses and services, our transportation system is also the setting from which we view much of the city. The views from the roads in the city, including views of fields, forests, the ocean, and the places where people live and work all form the visual impressions of our community. The efficiency of our city, the value of our land, and how we view and experience our surroundings are all affected by our transportation system and how well it balances the needs of cars, commercial vehicles, public transportation, cyclists and pedestrians.

2. What the Community is Saying

“Crossing some streets can be challenging and dangerous”

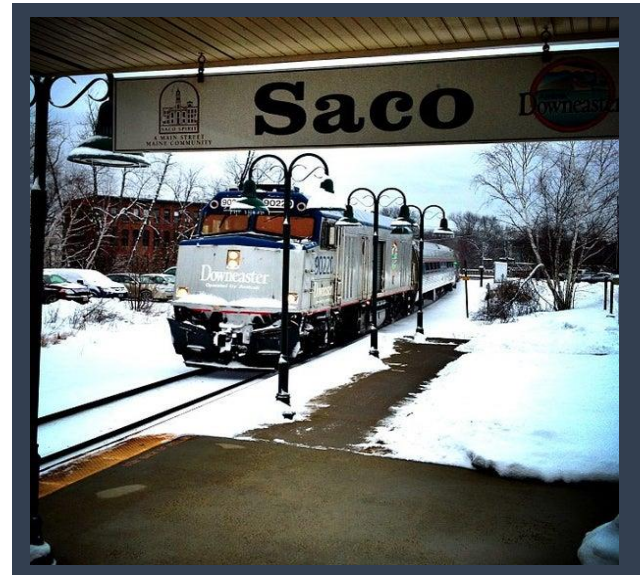
“More bike lanes and wider shoulders would be appreciated”

“So many people speed down residential streets”

“Bike racks downtown would make it easier to bike around the mill district”

“Traffic around Five Points can be a nightmare”

“Some of our Sidewalks are in bad shape”



3. Transportation and Mobility in Biddeford Today

60

Miles

Of Public Sidewalks

\$7.8 Million

Grant

To improve parts of Route 1 / Elm St

138

Miles

Of roads and streets in Biddeford

242,847

Riders

On BSOOB Transit (2022)

4. Roads and Streets

Types of Streets and Roads

Biddeford has almost 140 miles of streets and roads ranging from interstate highways to small local and private drives. Roads in Biddeford are categorized based on traffic volume, ownership and state or federal designation.

Interstate Highway

A Limited-Access Highway which is part of the national interstate highway system

Local Examples Include:

Interstate 95

State Highway

A major numbered road that is not part of the interstate highway system. Often maintained by Maine DoT

Local Examples Include:

Route 1, Route 111, Route 9

State-Aid Highways

Local collector roads not included in the state highway system that receive maintenance funding from Maine DoT

Local Examples Include:

Main St., South St. , Pool St. , May St.

Local Collector Road

Low-to-medium traffic local streets maintained by the City of Biddeford

Local Examples Include:

Granite St. , Union St., Prospect St.

Minor Local Connector Roads

Low-traffic local streets maintained by the City of Biddeford.

Local Examples Include:

Many local residential streets

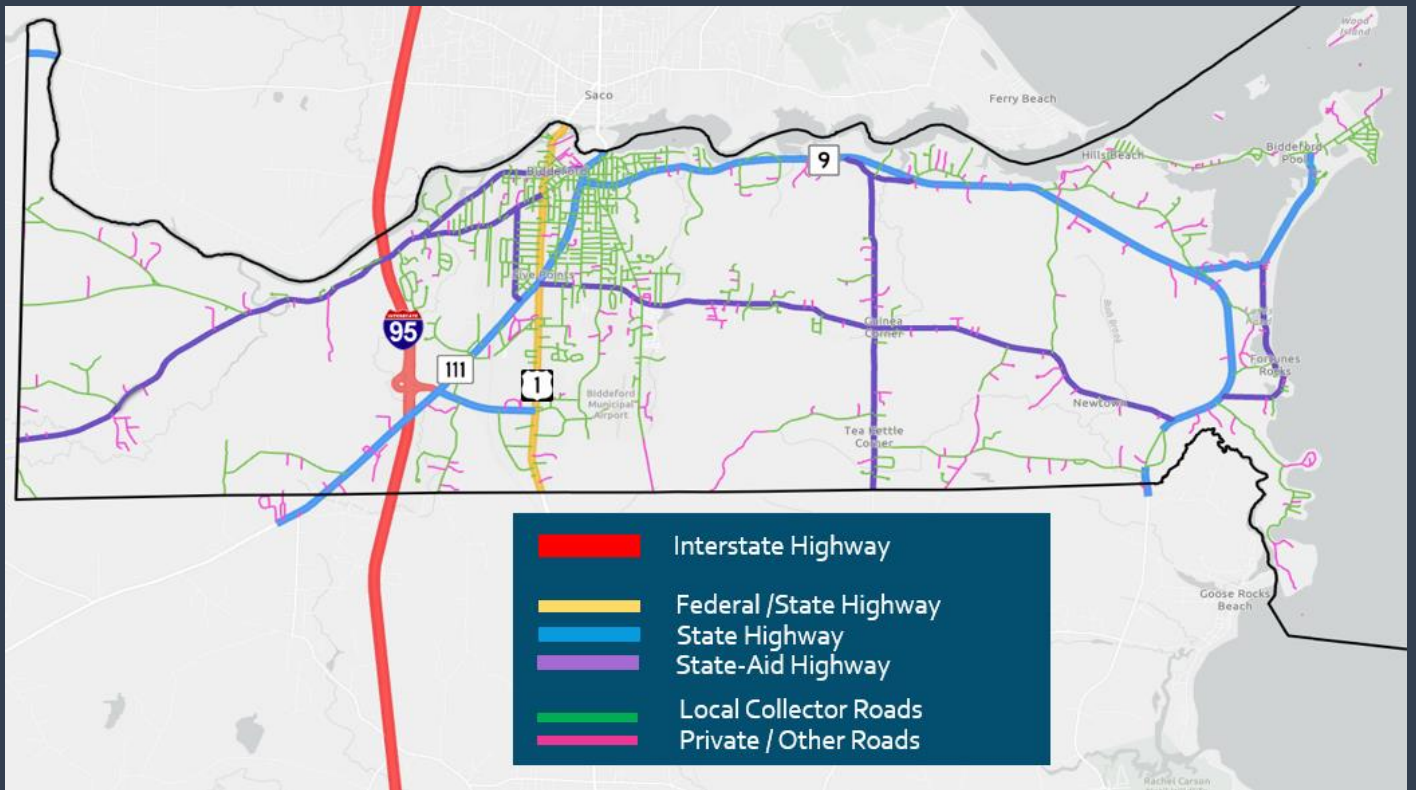
Private Roads

Privately owned roads and drives maintained by private property owners

Local Examples Include:

Many dead-end subdivision roads

Biddeford's Road Classifications

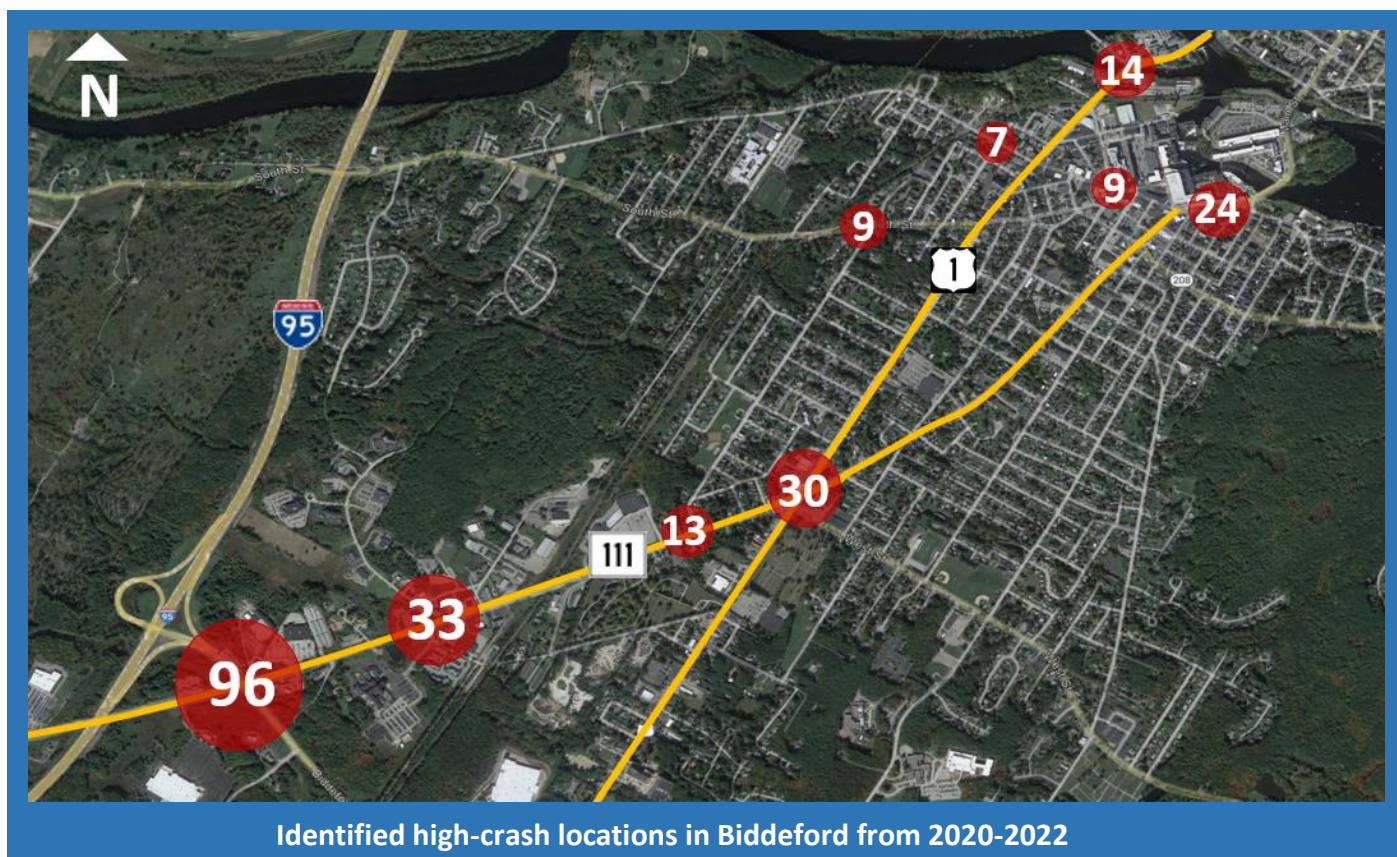


High Crash Locations

The Maine Department of Transportation identifies areas and intersections with a high number of accidents.

Table 8-2: Maine DoT High Crash Locations in Biddeford (2020-2022)

Street / Intersection	Number of Crashes	Injuries
Alfred St. / Biddeford Connector / Exit 32	96	40
Alfred St. / Bara Rd.	33	13
Five Points	30	8
Main St. / Hill St.	24	4
Elm St. / Pine St.	14	6
Alfred St. / May St.	13	2
May St. / South St.	9	1
Adams St. / Main St.	9	7
Bradbury St. / Main St.	7	3



Biddeford has a number of high-traffic areas and traffic-generators. These are locations which draw a large number of visitors and vehicles. Major traffic generators can create traffic and congestion at nearby intersections and along primary and secondary roads.

Generator	Peak Hours
Biddeford Crossing	Daytime Hours, peaks in the evening and on weekends
Walmart Plaza	Daytime Hours, peaks in the evening and on weekends
University of New England	September to May, peaks in morning (7-9) and afternoon (3-6)
Biddeford High School	September to May, peaks in morning (7-8) and afternoon (3-5)
Robert G. Dodge Business Park	Year-round, peak in AM (7-9) and PM (4-6)
Airport Industrial Park	Year-round, peak in AM (7-9) and PM (4-6)
Biddeford Industrial Park	Year-round, peak in AM (7-9) and PM (4-6)
Mill at Pepperell/North Dam Mill	Year-round, peak in AM (7-9) and PM (4-6), but steady throughout the day.

Table 8:3

5. Multimodal and Active Transportation

“Active transportation” refers to any form of mobility that is powered by human energy, primarily walking and bicycling. Active transportation enables communities to become healthier and more interconnected. Cities and transportation agencies can create opportunities for people to exercise for recreation and to build physical activity into their daily routine. This can be achieved by improving bicycle and pedestrian facilities and promoting mixed-use development which enables more people to safely and effectively bicycle or walk to work, school, businesses, and services.

Improving public transportation services produces similar results. Although public transportation is not typically defined as active transportation, studies have shown a higher level of physical activity among public transportation riders. This is because every public transportation trip is a multi-modal trip. Most people who use public transportation walk to or from stops and stations or make other trips by foot during the course of their day.

Transportation agencies can also support projects that enhance mixed-use neighborhoods where different destinations are within walking distance of one another. For example, improved public transportation service can foster new development near a stop or station that already has a variety of housing, jobs, shops, and services.

Biddeford-Saco-Old Orchard Beach Transit (BSOOB)

Biddeford-Saco-Old Orchard Beach Transit (BSOOB Transit) provides fixed-route and paratransit services throughout its namesake communities. BSOOB transit operates six fixed-route services which operate seven days a week. In addition, BSOOB transit provides intercity bus service to South Portland and Portland and offers direct connections to South Portland Bus Service and Greater Portland METRO.

BSOOB Transit carried 242,847 riders in 2022.



As part of the regional “Transit Together” project completed in Fall of 2022,

BSOOB Transit is working to realign its local fixed-route transit services to meet the changing needs of riders and better serve the community. These changes would streamline services along key corridors and improve frequency of service in many high-ridership areas.

BSOOB Transit has also obtained two new all-electric Proterra 40-foot buses. These buses are among the first electric transit vehicles in the state. BSOOB Transit may acquire more electric buses in 2024.

York County Community Action Corp. (YCCAC)

York County Community Action Corporation (YCCAC) provides fixed-route and on-demand transit service through Biddeford and Saco via the “Southern Maine Connector” which links the Saco Transportation Center to Sanford and Springvale on the Route 111 Corridor.

YCCAC provided 62,000 rides in 2021

Bicycle Connectivity

Bicyclists have the same mobility needs as any other road user. Increasingly, land use and transportation planners are recognizing bicycles as a viable transportation mode. While recreation is still the primary use of a bicycle, more people are beginning to cycle as a way to commute to work and run errands. Cyclists should be included in all phases of transportation planning including new road design, construction, and rehabilitation (for more on this, see the Complete Streets section below).

Maine bicycling laws generally give bicyclists the same rights and responsibilities as motor vehicle operators. Bicyclists may use public roads, and they must obey traffic laws such as stopping at red lights and stop signs, yielding to pedestrians at crosswalks, and yielding to traffic when entering a road from a driveway. Motorists are required to give at least three feet of clearance when passing bicyclists.

Any segment of roadway having a paved shoulder of at least four feet wide is generally considered a minimum adequate level of accommodation for bicycle travel. However, a six-foot striped or physically separated bicycle travel lane has become the preferred standard in recent years. A six-foot bicycle or wider dedicated travel lane greatly improves safety and comfort for cyclists and reduces potential choke-points which can create conflict between cars and bicycles.

As highways are improved and upgraded, the City will encourage adequate shoulder widths and striped or protected bicycle lanes when necessary in order to safely accommodate and encourage bicycle travel.

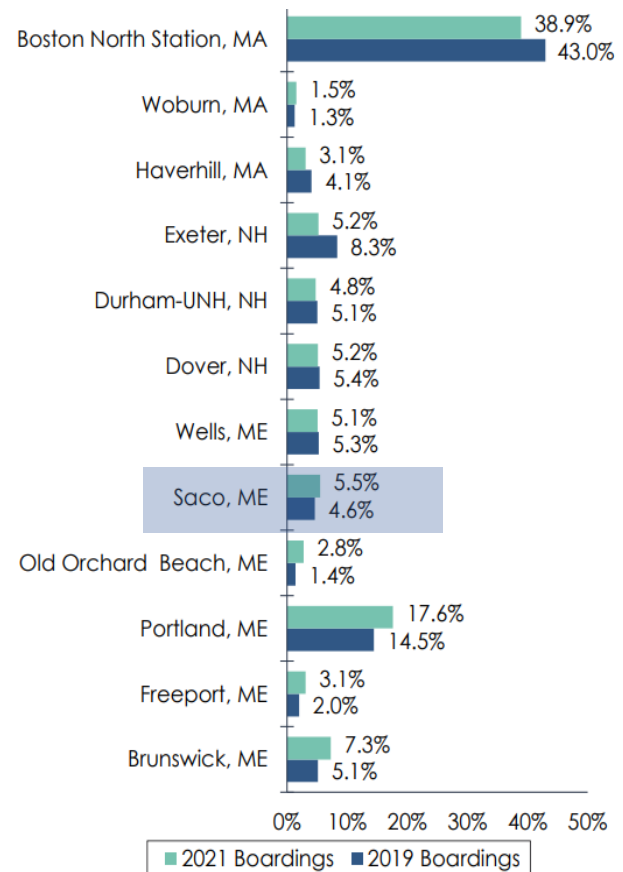
Amtrak Downeaster

The Amtrak Downeaster runs five round-trip trains per day from Boston, Massachusetts to Brunswick, Maine. The train stops within walking distance of downtown Biddeford at the Saco Transportation Center located on Saco Island. Nearly 22,000 people boarded the Downeaster at the Saco Transit Center in 2021.

In coming years, the Northern New England Passenger Rail Authority (NNEPRA) plans to enhance the Downeaster with new locomotives and passenger coaches, which will improve travel times and reduce emissions.



Table 8-3 : Downeaster Ridership by Station: 2019 & 2021



Biddeford Municipal Airport

The Biddeford Municipal Airport is owned and maintained by the City of Biddeford. It is located two miles south of the downtown area. The airport is open to the public and provides access for recreational and private aircraft. Aircraft are allowed to take off and land at no cost. There is one asphalt runway measuring 3,000 feet by 75 feet. Currently, there are no commercial or scheduled air services operating from the airport. Hangar facilities are available for private aircraft.

6. Challenges and Opportunities

Exit 32 and South Street Connector



Biddeford's only point of access to Interstate 95 is Exit 32, which connects directly to Route 111 and Route 1 via the Biddeford Connector road. As the population and economy of our region has grown, Exit 32's existing condition has created congestion and barriers to access for many Biddeford residents and residents of surrounding communities. These accessibility barriers are particularly notable for residents of West Biddeford and Dayton, who must cross Interstate 95 and use local streets to access Route 111 and Exit 32. Route 111 has also experienced increasing congestion from traffic traveling to-and-from Alfred and Sanford using Exit 32 to access Interstate 95.

To help address these challenges, the City of Biddeford has worked with Maine DoT and the Maine Turnpike Authority to study potential solutions to improve Exit 32 and create new connections which would improve regional connectivity and reduce non-local traffic using local streets to access Interstate 95.

The Maine Turnpike Authority has begun preliminary engineering and design for a reconstruction of Exit 32 which would extend some ramps to the west along a new right-of-way behind the Home Depot and connect to Route 111 at a new signalized intersection to the west of the Biddeford Crossing shopping center. This ramp extension would improve highway access to traffic traveling to and from Alfred and Sanford, and reduce traffic congestion around Biddeford Crossing.

In addition, the City of Biddeford has explored the possibility of constructing a new, limited-access connector road which would connect Exit 32 directly to South Street. This connector would dramatically improve highway access for residents of West Biddeford, Dayton and points west. As of Spring 2023, this project is still in a pre-design phase and future plans will be dependent upon funding, community support and environmental review.

Complete Streets

Complete Streets are designed and operated to enable safe access for all users: pedestrians, bicyclists, motorists, and public transportation users of all ages and abilities. Complete Streets make it easy to cross the street, walk to shops, and bicycle to work. They also allow buses to run on time and make it safe for people to walk to and from train stations. Cities and towns in Maine, large or small, can begin building a safer and more welcoming street network by adopting a Complete Streets Policy and then ensuring its full implementation.

As of 2019, eleven communities in Maine have adopted a local Complete Streets Policy.



A Complete Streets Policy does not dictate a one-size fits all approach. A Complete Street in a rural area will look quite different from one in an urban area. Both are designed to balance safety and convenience for everyone using the road. A Complete Street may include sidewalks, bike lanes, paved shoulders, comfortable and accessible bus stops, safe crosswalks, median islands, curb extensions (bump-outs), narrower travel lanes, and more.

Elm Street Rehabilitation and Intersection Change

As part of a Federal SS4A Grant, In 2021 The City of Biddeford was awarded \$7.8 Million for a reconstruction of portions of Elm St. / Route 1 in Downtown Biddeford. These enhancements will make the corridor safer and more efficient for all road users by improving and realigning intersections, rebuilding sidewalks and adding space for bicyclists where available. These improvements will allow Elm St. to better accommodate growth and development in Downtown Biddeford and support regional connectivity.



Transit-Oriented Development

The City of Biddeford has worked in coordination with the City of Saco and the Greater Portland Council of Governments (GPCOG) to study opportunities for transit-oriented housing development for downtown Biddeford and the Mill District, as well as Factory Island and downtown Saco. This study envisions a more dense, connected and mixed-use urban downtown supported by improved transit service by bus and rail, as well as safe, convenient bicycle and pedestrian connectivity.

This study is expected to be published in the Summer of 2023.



Five Points

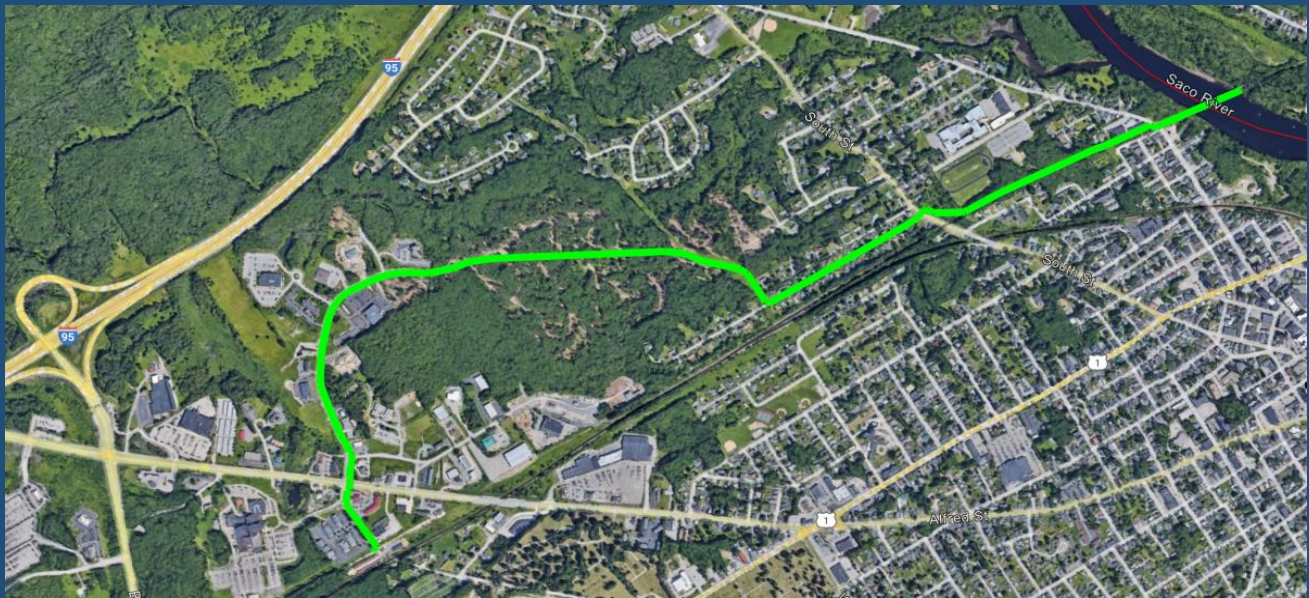
The “Five Points” intersection of Elm St, Alfred Rd and West St. sees very high traffic volume and an above-average number of vehicle accidents. The intersection has been identified as an area of concern and potential future study and redesign.

Riverwalk

The Biddeford Riverwalk is a series of interconnected walkways, plazas and bridges that form a cohesive 3-mile loop through the Mill District in Biddeford and Saco. The Riverwalk has been continually enhanced and expanded since 2015 with new wayfinding signage and public amenities. In coming years, the Riverwalk will be expanded along the edge of the Saco River from the NorthDam mill Complex to the new Pearl Point Park site and pedestrian bridge to the Saco Transit Center. The Riverwalk will continue onward across Elm Street. This extension will greatly enhance pedestrian connectivity throughout downtown Biddeford and provide car-free access to many residents and businesses in the Mill District.

Eastern Trail

The Eastern Trail Alliance works to maintain, and promote the use of the Eastern Trail, a recreation and transportation greenway from Kittery to Portland. The Eastern Trail Alliance is currently in the planning phase of developing a new, off-road alignment for the trail through Biddeford and Saco. The proposed alignment would create new shared pathways along portions of Bara Rd, Westmore Ave. and a “rail with trail” alignment following the Saco Industrial Railroad. This new alignment would greatly improve trail connectivity and user safety while creating new recreational opportunities for our community.



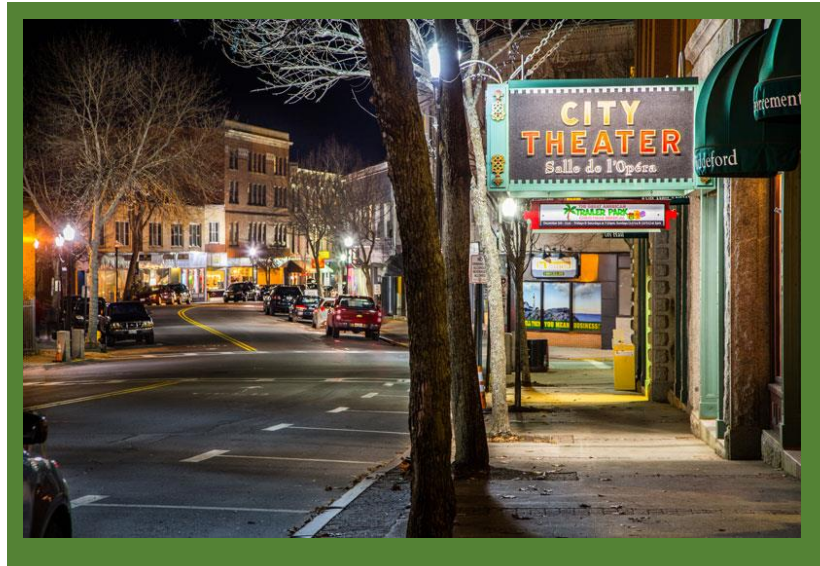
Proposed off-road Eastern Trail alignment through Biddeford

Transportation & Mobility

What Comes Next?

As our region grows and evolves, so too do our transportation needs and opportunities. In order to meet the ever-changing needs of our community, respond to the increasing threat of Climate Change and reduce dependence on single-occupancy vehicles, our community must continually evaluate and embrace new ideas and solutions that will make our city more equitable, sustainable and connected.

We will:



PRIORITIZE

Community and regional needs for safe, efficient and optimal use of transportation systems.

PRESERVE

And improve the transportation system.

PROMOTE

Public health and enhance livability by managing land use in ways that maximize the efficiency of the transportation system and minimizes vehicle miles traveled.

MEET

The diverse transportation needs of all residents by providing a safe, efficient and equitable transportation system for all types of users.

PROMOTE

Fiscal prudence by maximizing the efficiency of the state or state-aid highway network.

MAXIMIZE

Parking efficiency without compromising safety or maintenance efforts.

Goal 1

PRIORITIZE

Community and regional needs for safe, efficient and optimal use of transportation systems

How We Get There:

- Engage in regional and state transportation efforts through Maine Department of Transportation (MaineDOT), Portland Area Comprehensive Transportation Areas System (PACTS), Southern Maine Planning and Development Commission (SMPDC), Biddeford Saco Old Orchard Beach (BSOOB) Transit, Eastern Trail Management District, Northern New England Passenger Rail Association, and other appropriate agencies.
- Identify and prioritize the multi-modal capital improvements needed to maintain or upgrade the transportation system (with priority given to public transit and “active transportation” – i.e. biking and walking) to accommodate the community’s anticipated growth and changing demographics.

Goal 2

SAFELY

Preserve and improve the transportation system.

How We Get There:

- Maintain inventory of existing streets and their status.
- Continue to update and maintain the City’s 5-Year Capital Improvement Program (CIP) related to priorities for public expenditures on the City’s transportation network.
- Plan for increased demand for EV charging infrastructure.

Goal 3

PROMOTE

Public health and enhance livability by managing land use in ways that maximize the efficiency of the transportation system and minimizes vehicle miles traveled.

How We Get There:

- Maintain, enact or amend ordinance standards for subdivisions and for public and private roads as appropriate to foster transportation-efficient growth patterns and provide for future street and transit connections.
- Adhere to Smart Growth principles to guide development toward compact, walkable mixed-use neighborhoods.
- Partner with local and regional stakeholders to reduce peak period traffic congestion.

Goal 4

MEET

The diverse transportation needs of all residents by providing a safe, efficient and equitable transportation system for all types of users.

How We Get There:

- Maintain, enact or amend local ordinances as appropriate to address multi-modal transportation demands and needs, or avoid conflicts with the policy objectives of the Sensible Transportation Policy Act (23 M.R.S.A. §73), the State access management regulations pursuant to 23 M.R.S.A. §704, and State traffic permitting regulations for large developments pursuant to 23 M.R.S.A. §704-A.
- Prioritize the implementation of the recently completed “ADA Self-Evaluation and Transition Plan” to improve and ensure accessibility for persons with disabilities to city programs, services, activities, and infrastructure.

- Ensure future city expenditures on the transportation network are compliant with current Americans with Disabilities Act (ADA) requirements.
- Adopt and maintain a City of Biddeford Complete Streets Policy.

Goal 5

PROMOTE

Fiscal prudence by maximizing the efficiency of the state or state-aid highway network

How We Get There:

- Ensure local expenditures on the state or state-highway system are consistent with existing planned state transportation improvements on those highways.

Goal 6

MAXIMIZE

The parking efficiency without compromising safety or maintenance efforts

How We Get There:

- Maintain, and adjust as necessary, the City's Parking Demand Management strategy.
- Allow parking on Main Street overnight to give a presence of activity downtown and to take advantage of supply. Only prohibit parking on nights where maintenance is planned.
- Begin planning for a second parking structure next to the Police Station. Ensure it is designed with commercial uses on street level, public restrooms, EV

charging stations, and can be re-developed later for housing or other non-parking uses.

- Evaluate parking connections to destinations for sidewalk, lighting, and wayfinding improvements.
- Work with Premium Parking (the City's contracted parking management company) to ensure adjustments are made to maximize the effectiveness and efficiency of public parking in the City of Biddeford.

9 Historic, Cultural & Archaeological Resources

1. Biddeford's Story

Biddeford has a long and storied history dating back many centuries. Before Europeans first arrived in the early 17th century, Native peoples lived along the Saco River, taking advantage of its abundant fishing and easy transportation.

European explorers arrived in what is now Biddeford in 1603, one of the earliest European settlements in North America followed soon after in 1611. The Biddeford pool area was permanently settled in 1626, followed soon after by additional settlements further up the Saco River. For the next 100 years, Biddeford grew slowly as an important stop on the “Kings Highway” linking Falmouth (Portland) and Boston. By the time of the American Revolution, Biddeford was a thriving small community of about 1,000 people with an economy based largely on farming and forestry.

Beginning in the mid-19th century, textile mills became the dominant force in the city's economy and began to dramatically reshape the community. Thanks to the city's advantageous position near major markets, railroads and abundant hydropower, Biddeford grew to become one of the largest textile manufacturing cities in the country by the end of the 19th century. The textile industry employed thousands of people and was an economic engine for the city and the region. Migrants from Canada and Europe flocked to Biddeford to find work in the mills and start a new life in the United States.

The growth of the mills also led to the growth of Biddeford's downtown, as a number of business and shops emerged to cater to the large workforce in the mills.

However, after World War 2, the textile industry in New England began to decline as manufacturing moved to other states or overseas. Biddeford's once thriving mills began closing in the 1950's and the city's traditional urban core began to struggle as development and investment moved into the suburbs. In the 1980's, the community began to see a resurgence as new investment lead to redevelopment of the former Textile mills.

2. Historic and Cultural Resources Today

17

Buildings & Structures

On the NRHP

1758

First Parish Meeting House

Oldest surviving building in Biddeford

65,000+

Books and Media Items

Available at MacArthur Library

62

Historic Structures

In the Downtown Historic District

3. Biddeford's Historic and Archaeological Preservation

Historic Preservation

The Biddeford Historic Preservation Commission protects the historic and architectural heritage of our city and its historically significant areas, landmarks, and sites, while accepting compatible new construction as needed for the city to grow. Biddeford is home to dozens of historically significant buildings and structures, especially in the downtown. It is the duty of the HPC to protect and defend these structures, and to preserve the essential character of historic neighborhoods in such a way that enhances and improves the value of properties. Historic preservation can play a role in economic development of Biddeford by making it more desirable place to live and work, and by encouraging place-making and place-keeping that can help draw in new visitors to our city.

The Code of Ordinances of the City of Biddeford grants the Historic Preservation Commission the authority to review all construction projects in the three Main Street Revitalization District (MSRD) land use zones to ensure compliance with preservation practices. The HPC adheres to the standards set by the U.S. Department of the Interior's Standards of Rehabilitation while also taking into consideration the City's Code of Ordinances.

The HPC considers projects taking place within the MSRD-1, MSRD-2, and MSRD-3 Land Use Zones

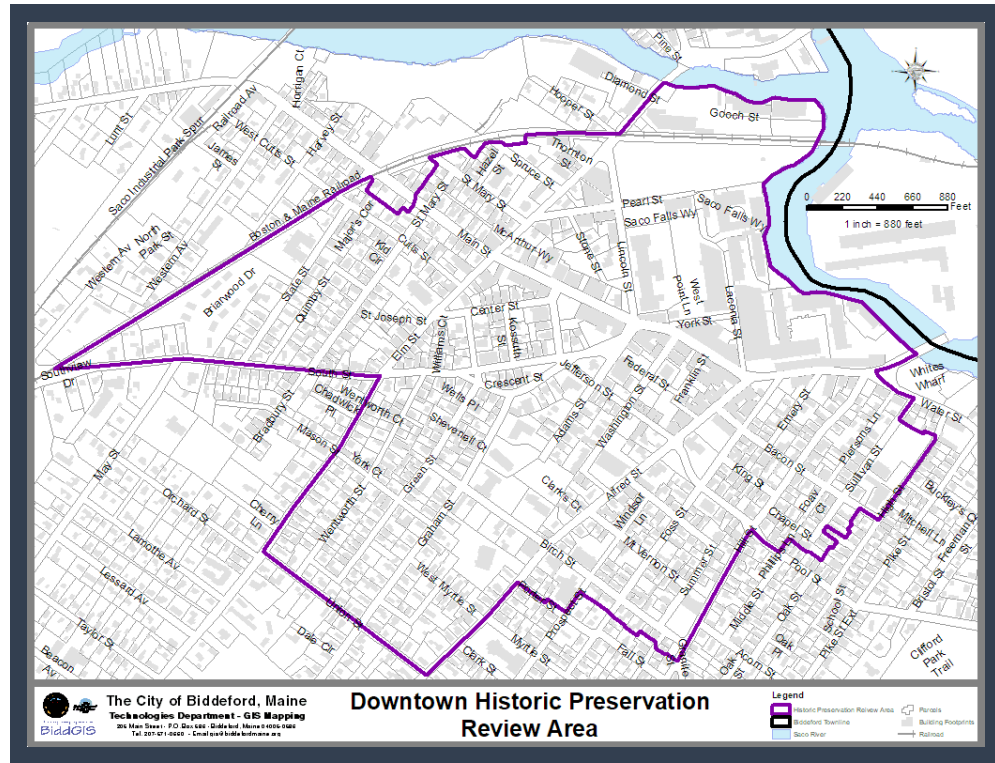


Table 9-1. Biddeford Historic Sites on the National Register of Historic Places, 2020

Name	Address	Approx. Year Built	Year Added to the National Register
First Parish Meeting House	Old Pool Road	1758	1972
Biddeford City Hall, Including City Theater	205 Main Street	1895	1973
U.S. Post Office	35 Washington Street	1914	1973
Fletcher's Neck Lifesaving Station	Ocean Avenue	1874	1974
John Tarr House	29 Ferry Lane	c. 1730	1980
Dudley Block	28-34 Water Street	1848	1982
St. Joseph's School	Birch Street	1887	1984
Wood Island Light Station	Wood Island	1808	1988

Biddeford-Saco Mills Historic District	See Map	Various	2008
Biddeford Main Street Historic District	See Map	Various	2009
Emery School	116 Hill Street	1912	2011
St. Andre's Parish	41 Sullivan Street	1900	2015
Timber Point	1-2 Timber Point Road	1931- 1954	2016

Source: *National Register of Historic Places.*

Archaeological Resources

Biddeford has a number of archaeological sites spanning centuries of human habitation. A large number of these sites can be found in the Biddeford Pool area, where both indigenous peoples and European settlers have fished, farmed and lived for many hundreds of years. The coastal area of Biddeford is also home to a number of shipwreck sites.

There are nine prehistoric archaeological sites known in Biddeford. Eight of these may be significant or are known to be significant. Several of the sites known to be significant are located on the campus of the University of New England (UNE). These sites are villages or farmsteads that were still present and inhabited when the area was visited by Samuel de Champlain in 1604.

The Maine Archaeological Society, Inc. published an article of interest in Spring of 2006 that reviews the "Chouacoet Site" which is located on the site of the present UNE campus. According to the article's author, Richard J. Lore, Samuel de Champlain visited the Chouacoet Site near the mouth of the Saco River and found an Armouchiquois Indian village.

During construction of several buildings on the University of New England Campus, a number of archaeological sites were monitored and some artifacts were recovered. In future surveys related to development projects it is noted in the University of New England Campus Master Plan that the majority of the rest of the site of proposed development on the campus as having been "extensively disturbed" and no further significant archaeological resources have been discovered.

Table 9-2. Biddeford Archaeological Sites

Site Name	Site #	Site type	Periods of Significance
Winter Harbour	ME 041-001	Settlement	1616-1617, 1630-1675, 1708-1775
Saco Fort	ME 041-002	Military, Fort	1676-1725 (1693-1708)
Fleetwing	ME 041-003	Wreck, Schooner	March 2, 1891
Anahuac	ME 041-004	Wreck, Screw	April 15, 1923.
George and Albert	ME 041-005	Wreck, Schooner	November 17, 1887
Marshall Perrin	ME 041-006	Wreck, Schooner	November 16, 1907
Fred Tyler	ME 041-007	Wreck, Schooner	October 27, 1920
Roger Drury	ME 041-008	Wreck, Schooner	January 12, 1918
Biddeford Pool Dugout Canoe	ME 041-009	Wreck, Canoe	c. 1630 to 1900
Biddeford Pool Wharf	ME 041-010	Wharf	c. 1750- c. 1800
Thomas Williams	ME 041-011	Domestic	c.1636 - c.1689
Richard Hitchcock	ME 041-012	Domestic	c.1636 - 1676 or 1689
Edward's Farm #1	ME 041-013	Domestic	c. 1636- c. 1689
Hitchcock's Point #1	ME 041-014	Structure, Unidentified	c. 1770
Hitchcock's Point #2	ME 041-015	Structure, Unidentified	c. 1850
Stackpole - Jordan	ME 041-016	Domestic	c. 1717 - present
'Hiawatha'	ME 041-017	Wreck, Schooner	November 1860
'William and Harris'	ME 041-018	Wreck, Schooner	November 1840
'Game Cock'	ME 041-019	Wreck, Schooner	1867
'Rara Avis'	ME 041-020	wreck, gas screw	1893-1918
'Washington'	ME 041-021	Wreck, Schooner	1856
'Nellie Grant'	ME 041-022	Wreck, Schooner	1869
'C.N. Gilmore'	ME 041-023	Wreck, Schooner	1876-1925
'Valetta'	ME 041-024	Wreck, Schooner	Wrecked on Wood Island on October 28, 1909.
'Queen of the West'	ME 041-025	Wreck, Schooner	1898
Wood Island Lighthouse	ME 041-026	Lighthouse	Original light house station built in 1808
'Livelihood'	ME 041-027	Wreck, Schooner	November 28, 1925
'Augusta'	ME 041-028	Wreck, Schooner	Information Not Provided
'Jessie Lena'	ME 041-029	Wreck, Schooner	March 13, 1912

4. Cultural Resources

McArthur Library

Founded in 1863, McArthur Library is one of the oldest publically funded libraries in New England.

The mission of McArthur Library is to connect the Biddeford community with materials, programs, services, and informational and cultural resources needed to lead fuller, better, and richer lives. McArthur Library is also home to the Biddeford Historical Society and the Franco-American Genealogical Society collections

Today, the library offers over **59,000** books and over 7,000 e-books, audiobooks and magazines. The library also has an extensive collection of audio-visual media.

Library services are available for free to residents of Biddeford and students at the University of New England

In 2019, McArthur Library Welcomed

115,000 Visitors

and circulated more than

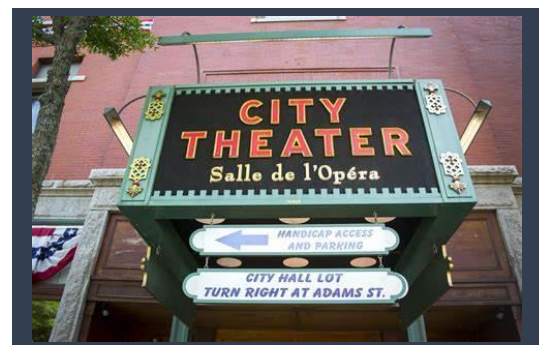
120,000 items

McArthur Library hosts hundreds of programs and community events each year which are attended by over 10,000 people

City Theater

Biddeford City Theater is located adjacent to Biddeford City Hall on Main Street. It is managed by City Theater Associates, Inc., which is a non-profit organization, housed with the Theater. Its mission is “to foster an appreciation for the performing arts by using creative avenues to increase community involvement.”

The City Theater has been in continuous operation for 125 years. Today, it hosts concerts, films, plays and performing artists throughout the year. City Theater serves as a venue for Heart of Biddeford events and seasonal downtown festivals such as Winterfest.



Biddeford Mill Museum

The Biddeford Mills Museum (BMM) was established in 2011. It is overseen by a dynamic board of directors who are devoted to seeing the Biddeford Mills Museum find a permanent space in Biddeford where they can display and care for their collections and offer interactive exhibits, classes and walking tours that tell the history of the mills and the pivotal role they played in shaping Biddeford.

Engine

Engine was established in 2010 and was “Founded on the belief that artistic expression and creative vibrancy are the gateway to cultural, social, and economic revitalization,

Engine’s Mission is “To make arts-driven programming, cultural development, and sustainable creative entrepreneurialism an explicit community value and civic priority in Biddeford.”

Engine partners with the UNE to hold student and faculty art shows at its Main Street gallery and also organizes an ArtWalk on the final Friday of every month. Engine also oversees the public art committee, which guides investment in public art throughout the community.

Biddeford Historical Society

The Biddeford Historical Society (BHS) works to preserve, promote and interpret Biddeford’s long and rich history.

BHS works to preserve historic sites and artifacts and maintains an extensive archive of historic materials. BHS also hosts classes, workshops and walking tours of Biddeford’s historic sites.

Biddeford Museum in the Streets

The Museum in the Streets is a walking tour of Downtown Biddeford and follows a series of signs highlighting important historical features in the heart of Biddeford. It was developed by the Biddeford Historical Society.

Heart of Biddeford

Heart of Biddeford (HoB) is a volunteer-driven organization that works in partnership with the City of Biddeford, the business community, property owners, and residents to foster economic development and improve quality of life in downtown Biddeford by supporting existing businesses, attracting new businesses, promoting the downtown through events, and working to beautify the urban core.

5. Challenges and Opportunities

Historic Preservation and Economic Development

In a 2011 economic impact report for Maine Preservation titled ***The Economic and Fiscal Impact on Maine of Historic Preservation and The State Historic Preservation Tax Credit Planning Decisions*** examined the impact historic rehabilitation projects had between 2007 and 2011. The report notes that this was a recession period of the economy which had a significant negative impact on the construction industry in Maine for this period. For example, unemployment in the construction sector rose from 6.5% to 14.2%, housing starts fell in half, and commercial construction activity severely declined.

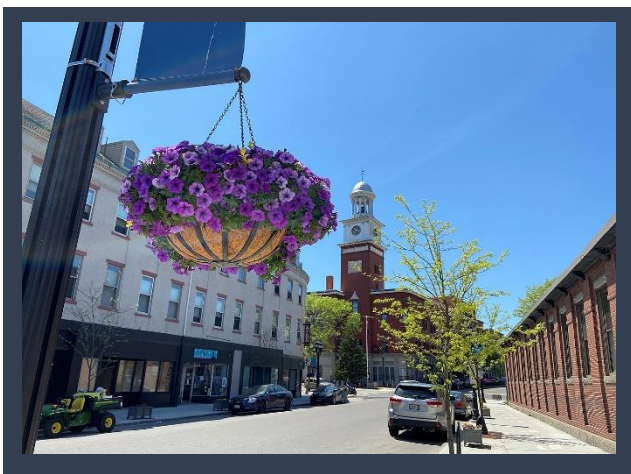
During the same period, however, the report notes that the value of historic rehabilitation activity increased from \$7 million in 2007 to \$40 million in 2011. Further, in 2011 alone, tax credit sponsored Historic Rehabilitation were anticipated to support nearly 800 Maine jobs and \$30 million of income.

Further, according to this same report 25, historic tax credit rehabilitation projects were anticipated to have been completed between 2007 and the end of 2011, with an anticipated increase in Maine's property tax base by \$135 Million. Further, these projects, although there will be an resulting in an estimated \$3.5 million lost to the State from through the tax credit, would add \$2.6 million in additional State income and sales tax revenues and an additional \$1.9 million in municipal property tax revenues.

- Every \$1 spent on Historic Rehabilitation goes in a higher proportion to Maine crafts people than those out of State, than \$1 spent on new construction (I.e., Maine workers benefits more)
- Another benefit is that since the Maine tax credit is typically coupled with the 20% Federal Historic tax credit, which can attract out of State investors thereby bringing money into Maine and promoting Economic Development

Biddeford Main Street Historic District

The Biddeford-Saco Mills Historic District was added to the National Register of Historic Places in December 2008. It is roughly bounded Pearl Street, Lincoln Street, York Street, Laconia Street, Main Street (Biddeford), and Main Street and Gooch Street in Saco. The buildings are generally characterized as being in good condition and that they retain adequate integrity so as to represent their significance as components of a mid-nineteenth to mid-twentieth century downtown. The downtown historic district also includes three parks.



The Main Street Historic District consists of over **50** structures built between 1846 and 1952.

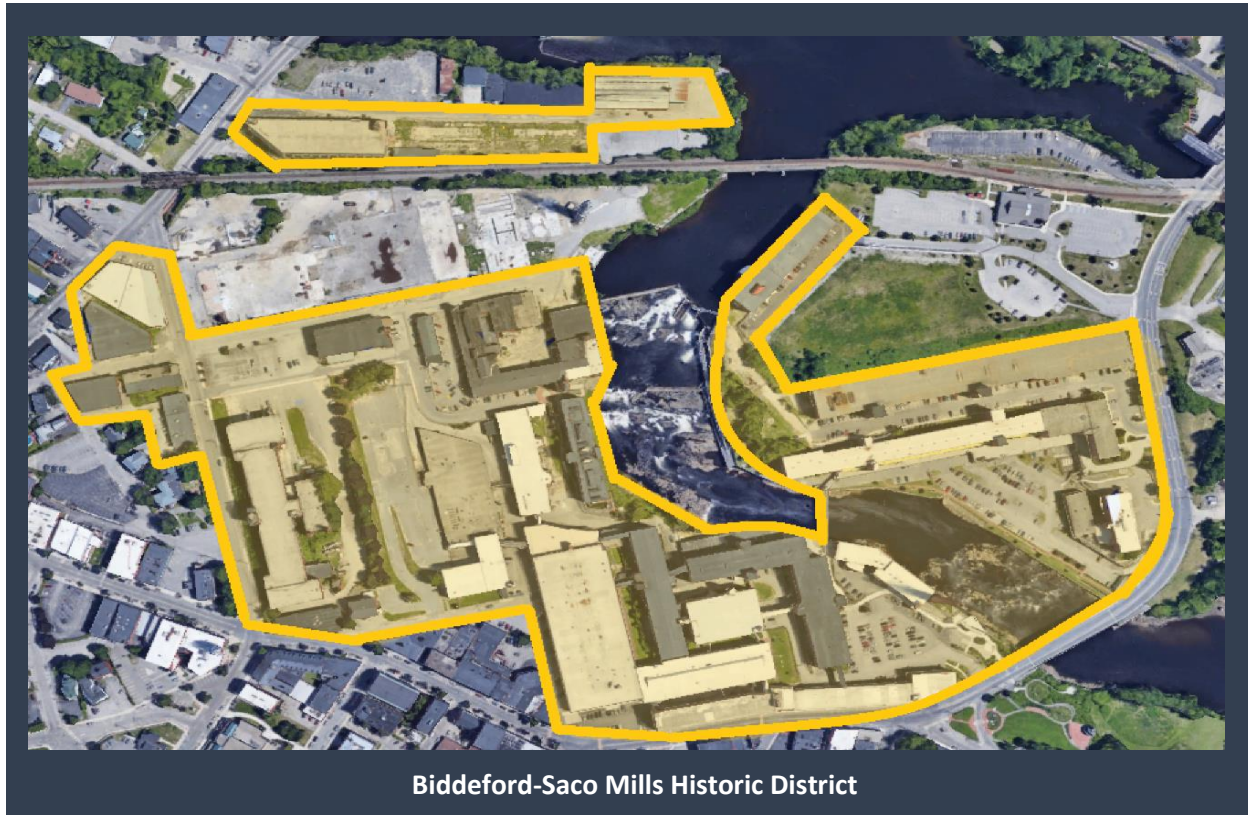
These buildings form a cohesive group that conveys the significance of the district as a social and commercial center of Biddeford.

Biddeford / Saco Mills Historic District

The Biddeford-Saco Mills Historic District was added to the National Register of Historic Places in December 2008. It is roughly bounded Pearl Street, Lincoln Street, York Street, Laconia Street, Main Street (Biddeford), and Main Street and Gooch Street in Saco. It is characterized by its significance in the industrial history of Biddeford and its architecture which is a mix of Mid-19th Century/Greek Revival, Late Victorian/Italianate, and Modern Movement/Tanate.

According to the National Register of Historic Places:

"The Biddeford/Saco Mills Historic District is a cohesive collection of historic manufacturing buildings situated on roughly 38 acres of land flanking the Saco River. The district includes 13 properties in the city of Biddeford and the entirety of, or portions of six properties within the Saco city limits and is located adjacent to the downtown commercial areas of both cities. The river, which separates the two municipalities, runs through the district roughly north to south, with Biddeford on the west bank and Saco to the east...."



Historic Architectural Survey

In Fall of 2022, The Biddeford Historic Preservation Commission embarked on a project to document historic buildings in the downtown and surrounding areas of the city. This project is called an Architectural Survey, and will be conducted by Kleinfelder, Northeast, Inc., a consultant the City hired through a competitive RFP process. Biddeford is fortunate to have a rich assortment of historic buildings, and this survey will record the wide range of buildings its history reflects, dating from the 1700s through the early 1970s.

The project will begin on or around November 1, 2022 and is expected to be completed by September 30, 2023. The Biddeford Architectural Survey is supported in part by a grant administered by the National Park Service, Department of the Interior and the Maine Historic Preservation Commission.

What Comes Next?

EDUCATE citizens and property owners about the value of historical, archaeological, and cultural preservation.

PROTECT Biddeford's historic, cultural and archaeological resources to the greatest extent possible

REDUCE The impact of climate change and sea level rise on Biddeford's historic, cultural and archaeological resources.

SUPPORT arts and culture facilities, events and the “creative economy” throughout Biddeford.

Goal 1

Educate Educate citizens and property owners about the value of historical, archaeological, and cultural preservation.

How We Get There:

- Promote and support Downtown Biddeford, including the Mill District, as the historic and cultural core of the City.
- Continue to support the efforts of the Biddeford Historical Society, the Biddeford Historic Preservation Commission, and other entities such as the Biddeford Mills Museum, in promoting Biddeford's history and historic resources
- Support the implementation of the Biddeford Cultural Plan, completed in November 2021.

Goal 2

Protect Biddeford's historic, cultural and archaeological resources to the greatest extent possible

How We Get There:

- Maintain Biddeford's accreditation as a Certified Local Government (CLG) community.
- Building on Biddeford's new CLG status, begin a comprehensive community survey of historic buildings and structures in Biddeford. priority areas most at risk to loss. Potential match funds are available as a CLG community through the State Historic Preservation Office (SHPO).
- Identify historic resources that are at risk of loss or damage due to climate change impacts.
- Amend the land development regulations to require that projects subject to Planning Board (or its designee) review incorporate maps, information, and comments available from the Maine State Historic Preservation Office (SHPO).
- Ensure the Land Development Regulations, including the subdivision review regulations, require known historic resources be identified and that developers take appropriate measures to protect those resources, including but not limited to, modification of the proposed site design, construction timing, and/or extent of excavation.
- Incentivize methods to increase adaptation of historic resources to climate change that is consistent with National Park Service Standards and protects the long-term stability of these structures.
- Continue to support efforts of the Biddeford Cultural Coalition, which advocates a strong role of arts and heritage in the city's social and economic fabric.
- Continue to support McArthur Library and its contribution to the arts and culture realm in Biddeford.
- Support the mapping of private cemeteries throughout Biddeford to better protect them from land use change and development.
- Ensure the Land Development Regulations, including the subdivision review regulations, require known archeological sites and areas sensitive to prehistoric

archeology be identified and that developers take appropriate measures to protect those resources including but not limited to, modification of the proposed site design, construction timing, and/or extent of excavation

Goal 3

Reduce The impact of climate change and sea level rise on Biddeford's historic, cultural and archaeological resources.

How We Get There:

- Conduct an assessment of existing historic, cultural, and archaeological resources that may be vulnerable to sea level rise and other climate change related weather events

Goal 4

Support Biddeford's historic, cultural and archaeological resources to the greatest extent possible

How We Get There:

- Continue to support and fund efforts that enhance the promotion and marketing of Downtown through festivals and events such as the Biddeford-Saco Art Walk and River Jam festival
- Support the adoption and implementation of a Biddeford Public Art Policy which will establish a Biddeford Public Art Program and the development of a Public Art Master Plan.
- Work with community partners, including Heart of Biddeford and Engine, to seek out financial and technical assistance opportunities to support the creative economy in Biddeford.
- Formally recognize the history and culture of Indigenous People who inhabited the area that is now Biddeford with the support of the Cultural Community.

10 Recreation & Open Space

1. What's Happening?

The City of Biddeford offers many recreational opportunities that are open to residents and visitors. With eighteen parks, including three saltwater beaches, seven recreational facilities, and many other trails, open spaces and athletic facilities, Biddeford supports a strong recreational environment that allows residents of all ages to live active, healthy lives and engage with their community.

In addition to managing public parks and open space, the City of Biddeford hosts a wide array of programs, events and resources for the community.

As Biddeford's population grows and demographics change, the recreational demands and needs of the community will also change.

Like many departments throughout the recreation field, the department transitioned from one that was entirely dependent on taxpayer funding to a hybrid model that has allowed for growth and experimentation with programs. This transition took place in the late 1990's and early 2000's. The department was able to make the transition successfully with the support of the community, volunteers and team members that dedicated a great deal of time and energy to support this growth.

As with many organizations offering recreational programming, the arrival of Covid-19 drastically affected the programs and services offered. The department continued to operate, providing what it could to help support the community during this period. As we continue to work around Covid, the department continues to work to bring its former services back into the fold. Programs have once again begun to flourish, being well received with so many looking to participate. Like many organizations and businesses, the challenge today is to find and retain full-time, part-time and seasonal staff to support the growth of these programs.

As a community agency, the Recreation Department collaborates with local agencies such as the Heart of Biddeford and the Coastal Healthy Communities Coalition to

provide opportunities for the community. These occur with local events such as the Family Fun Festival (former Bacon Street Festival), Winterfest and River Jam. The department also schedules activities in the parks with the Parks Department at Public Works working to maintain the cities fields, parks and playgrounds. The Recreation Department oversees the one freshwater and three ocean beaches, providing lifeguard coverage and maintaining public restrooms within the parks.

It is also important to share the work the department does in collaboration with the Biddeford School Department. The School Department is a strong supporter of the Recreation Department. The two departments share facilities; the Recreation Department utilizes the schools to provide after school care and summer camps along with youth and adult sports. The School Department utilizes the city fields for its sports programs such as baseball, softball and field hockey along with classroom space at the J. Richard Martin Community Center. It is also important to note the Center of Technology (COT) has provided a great deal of service for the city, constructing picnic tables, dugouts, the gazebo at Mechanics Park from the brick work up and recently the construction of a facility at Doran Field including restrooms, concessions, a press box and rehab of the dugouts.

The Recreation Department also works with a multitude of city departments. Some assist with daily operations, such as the Parks Department, and others assist with projects or help support events such as the Public Works Department, Police and Fire Departments, Codes, Clerks and Engineering offices, to name a few.

The department also works with area recreation departments and the University of New England to expand and enhance programming.

2. What the Community is Saying

“I love our open spaces. Thanks to all who keep our open spaces clean, free from trash and well maintained.”

“Recreational opportunities are important for tourism, and winter activities especially for locals. Need more dog friendly places in the city.”

“ Our farm and forest land should be preserved through conservation easements.”

“There are lots of opportunities to put more land into conservation.”

“Accessing the beaches can be difficult.”



3. Recreation and Open Space in Biddeford Today

26

Public Spaces

Parks, Beaches and Open Space

282

Acres

Of public open space

7

Recreational Facilities

Operated by the City

11%

Of Biddeford

Is Conserved as Public Open Space

The Recreation Department offers programs, activities and services for community members starting with preschool-age youth to those 80+. Below is only a sampling of those services, programs and activities. The department is always adding new programs to its offerings.

Youth sports offerings include:

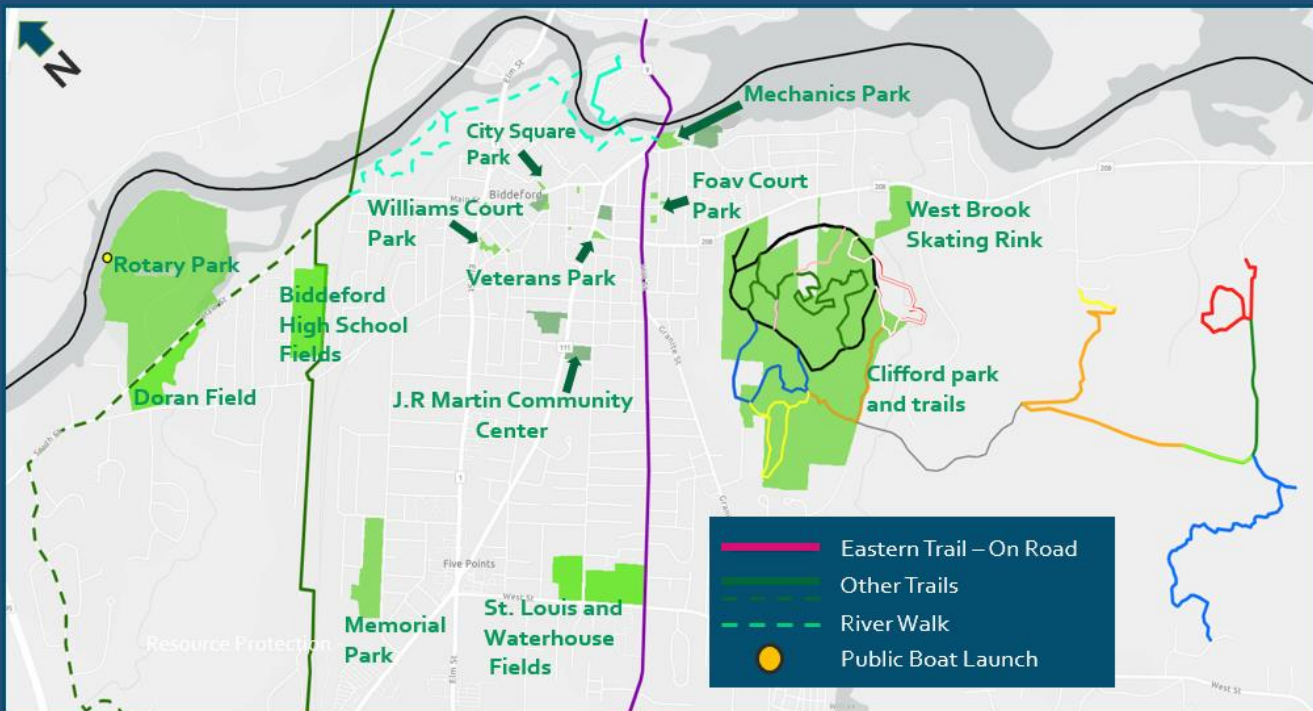
- Basketball
- Soccer
- Cheering
- Tennis
- Wrestling
- Parent-Child pre-school gym

Adult sports offerings include:

- Basketball
- Softball
- Volleyball
- Pickleball
- Fitness classes
- Outdoor adventure trips

The department offers an after school care program (Cub Care) serving grades K-5, vacation camps, summer day camp programs for youth and teens, a teen center, and special events such as the Community Halloween Party and Easter Egg Hunt. Adult activities include trips and wellness programs. The department also houses the 50 Plus Club Ross Center, which offers social opportunities for older adults.

The department also manages the J. Richard Martin Community Center, which houses organizations such as Adult Education, La Kermesse, the 50 Plus Club and St. Louis Alumni.



Parks and Community Facilities in Central Biddeford

Table 10-1: Park Conditions and Needs

Facility	Condition	Needs
Biddeford City Square / City Hall Plaza	N/A	None
Biddeford Pool Beach/Gilbert R. Boucher Memorial Park	Good	Additional Parking, Walkway Improvements
Biddeford River Walk	Excellent	Additional Seating
Cannon Park	Very Good	None
Clifford Park	Very Good	Trail Work, Signage
Diamond Match Park	N/A :Undeveloped	Work with private developer to enhance riverfront access
Fortunes Rocks Beach	Very Good	Additional Parking
Foav Court Park	Good	None
Liberty Park	Fair	General maintenance and rehabilitation
Mechanics Park	Good to Fair	Repairs and rehabilitation of lower level
Memorial Park Recreation Hall	Fair	New roof, New windows, interior renovation
Memorial Park Playground and Tennis Courts	Very Good	New playground equipment
Middle Beach	Very Good	Additional Parking,
Park in the Pines	Very Good	Additional water source
Pierson's Lane Playground	Good	New Fence, security cameras
Rotary Park Bathhouse	Good	Possible restroom expansion
Rotary Park Teen Center	Very Good	None
Rotary Park Fields	Fair	Dog park lights, invasive species control, security cameras, field improvements
Shevenell Park	Fair	Rehabilitation, security cameras
St. Louis Field	Good to Fair	New building doors, ADA compliant restrooms, fencing

Staples St. Beach	N/A	None
Town Landing	Fair	Signage
Vines Landing	Very Good	New boat ramp
Yates St. Park	N/A	None – Passive Park

4. Challenges and Opportunities

Regional Coordination and Partners

The City of Biddeford is fortunate to have a strong community of nonprofits, community groups and regional organizations that create and maintain public open spaces, trails and conservation areas. In total, over 700 acres of land in Biddeford is set aside for conservation and recreation.

Blanding's Park Wildlife Sanctuary

Blandings Park Wildlife Sanctuary was founded in 2006 as a public charity 501 (c) 3 grassroots land trust. It is located off Pool Street at Blanding's Way approximately one (1) mile east of Downtown Biddeford. The Sanctuary now has over 200+ acres of valuable wildlife habitat preserved which consists of a network of trails.

East Point Sanctuary

East Point Sanctuary is owned by the Maine Audubon and is located on the far eastern tip of Biddeford Pool - it is located directly North East of the Abanakee Golf Club. There is virtually no parking here and no restrooms but it is very well known for wildlife viewing, particularly birds.

Kennebunkport Conservation Trust

The Kennebunkport Conservation Trust owns .92 acres of land at 501 West Street and has a conservation easement over 99 acres of land at 880 Pool street (City of Biddeford Open Space Plan, November 2012).

Marblehead Boat Launch

Marblehead boat launch is a State of Maine facility located off Pool Street. It is heavily used particularly in the summer months. Restrooms are provided. There are two boat ramps and a pier at this location, which makes it an ideal location

for boat launching into the Saco River. There is parking for approximately 60 vehicles, including trailers.

Rachel Carson National Wildlife Refuge (U.S. Fish and Wildlife Service)

In Maine, the Rachel Carson National Wildlife Refuge was established in 1966 in cooperation with the State of Maine to protect valuable salt marshes and estuaries for migratory birds. Located along 50 miles of coastline in York and Cumberland counties, the refuge consists of eleven divisions between Kittery and Cape Elizabeth. It will contain approximately 14,600 acres when land acquisition is complete. The proximity of the refuge to the coast and its location between the eastern deciduous forest and the boreal forest creates a composition of plants and animals not found elsewhere in Maine. Major habitat types present on the refuge include forested upland, barrier beach/dune, coastal meadows, tidal salt marsh, and the distinctive rocky coast.

In Biddeford, there are two divisions of the Rachel Carson National Wildlife Refuge: the Biddeford Pool Division and the Little River Division. The Biddeford Pool Division controls property on the west side of Biddeford Pool off Old Pool Road. The Little River Division controls several properties on the east side of Little River in Granite Point including Timber Point and Timber Island. At the southernmost extent of Granite point Road, there is a small parking area that leads to what is referred to as Timber Point Trail which runs along the west side of Timber Point. At low tide, Timber Island can be accessed from the southernmost tip of this trail.

Rachel Carson's total acreage between the Little River Division and the Biddeford Pool Division is approximately 244.55 acres (City of Biddeford Open Space Plan, November 2012).

Saco Valley Land Trust

Saco Valley Land Trust owns or has easements on over 725 acres of land scattered throughout Biddeford (City of Biddeford Open Space Plan, November 2012).

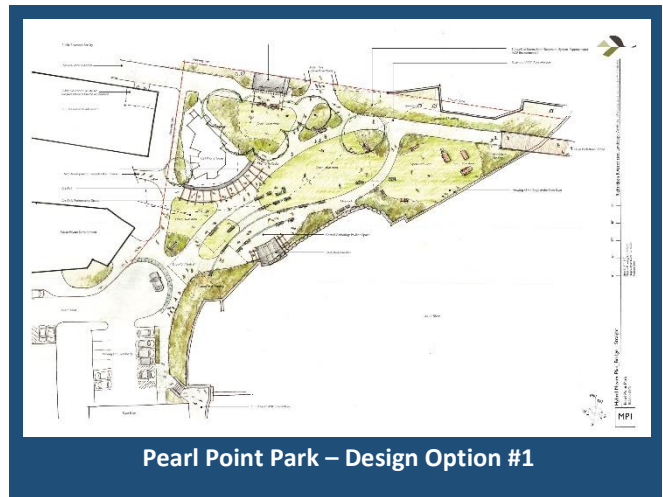
South Point Sanctuary

South Point Sanctuary includes a pathway that runs from 7th Street southwest and ultimately to Biddeford Pool Beach. The land is owned and maintained by the Biddeford Pool Land Trust.

Riverwalk & Pearl Point Park

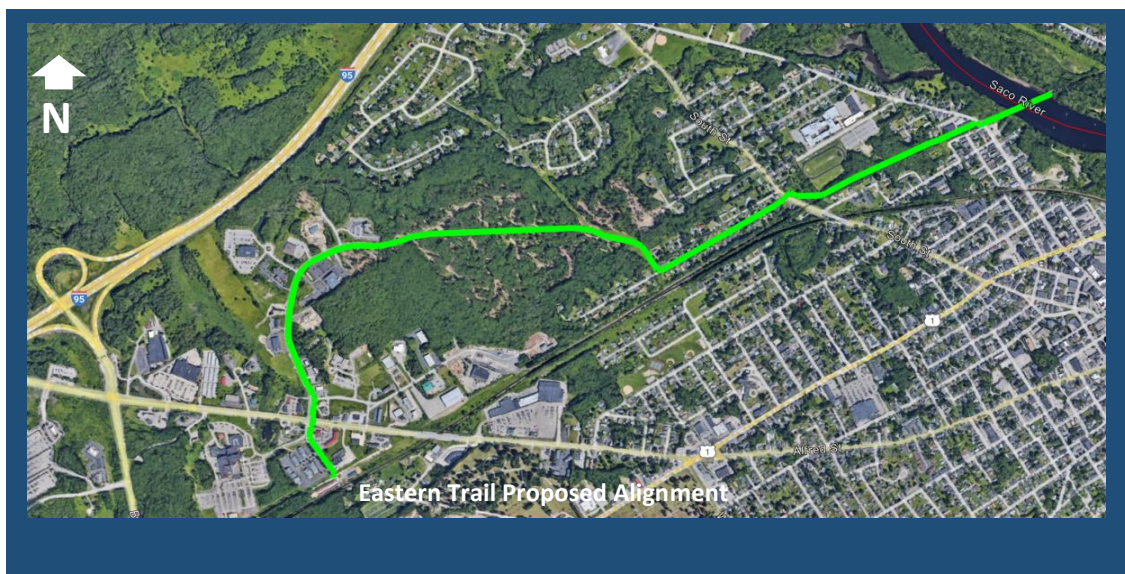
Working with private partners, the City is working to develop and expand the public riverwalk through the Mill District to connect the Diamond Match property, Pearl Point, and the Mill District. This expansion will greatly enhance public waterfront access and create enhanced connectivity to support new downtown development.

The Riverwalk will closely follow the Saco river, and will be anchored by a new signature downtown park to be named Pearl Point Park. This new park will connect Pearl Street with the riverfront, and will provide a direct connection to the Saco Transit Center via a new pedestrian bridge.



Eastern Trail

The Eastern Trail Alliance works to maintain, and promote the use of the Eastern Trail, a recreation and transportation greenway from Kittery to Portland. The Eastern Trail Alliance is currently in the planning phase of developing a new, off-road alignment for the trail through Biddeford and Saco. The proposed alignment would create new shared pathways along portions of Bara Rd, Westmore Ave. and a “rail with trail” alignment following the Saco Industrial Railroad. This new alignment would greatly improve trail connectivity and user safety while creating new recreational opportunities for our community.



New Conservation Areas

The City of Biddeford has worked with private land owners, land trusts and the community to set aside new areas for conservation and recreation. These partnerships will create approximately 350 acres of new open space in coming years.

- **~250 acres** of conservation land created as part of the Maine Water Company relocation project. This conservation easement will be publically accessible managed by the Maine Coast Heritage Trust.
- **~100 acres** of new publically accessible land added to Clifford Park as part of a private land exchange. This park expansion will be managed by the city

New Playground

The City is in the early stages of developing and planning for a signature playground facility for children in the community. This playground would be accessible year-round for children of all ages, backgrounds and ability levels. (e.g., mentally and/or physically challenged children) and would feature a wide variety of modern, safe and unique playground equipment.

Any new playground facility will be designed with equity and accessibility in mind to ensure that all children in the community are able to enjoy playground facilities regardless of background or physical and mental ability.

Open Space Master Plan

In order to fully understand the changing needs and opportunities for public parks, open spaces and community facilities in Biddeford, the City plans to develop an Open Space Master Plan in the near future. This plan would create a new framework for guiding investment in parks, trails, community facilities and recreation.

Improving Ocean and Water Access

Biddeford has a wide range of coastal and freshwater amenities open for public access including beaches, coastal wetlands, tidal estuaries and rivers.

However, accessibility remains an obstacle for some public shoreland areas, particularly beaches and coastal areas. Ensuring that our community has safe, easy and equitable water access is a foundation for building a healthy and attractive community.

In order to improve water access for our community, Barriers to access and how to address them need to be explored further.

Potential paths to improving water access include:

- Improving transit access to coastal areas
- Creating park-and-rides for beach access
- Creating new transient boat moorings and tie-up points
- New public boat launch points
- Installing bicycle storage facilities at beaches and boat landings to promote active transportation

Further exploration of the needs and challenges for community water access may be undertaken at a future point.

Recreation & Open Space –

What Comes Next?

Much of the programming the department offers is dependent on the wants and needs expressed by members of the community and feedback from the Recreation Commission. As the community changes, so will Recreation Department offerings.

Since the Covid-19 pandemic, there has been increased use of the public parks and trails as people search for options to stay healthy and active.



Goal 1

MAINTAIN AND UPGRADE

Existing recreational facilities and infrastructure as necessary to meet current and future needs

How We Get There:

- Develop a Recreation & Open Space Master Plan to address on-going maintenance needs as well as new facilities to meet current and future needs.
- Work with neighborhood groups to determine neighborhoods specific recreation needs and demands for consideration for future planning and implementation. Tie development requirements to these needs in the ordinance to best create an equitable distribution of recreation space.

- Identify one (1) recreational facility location for improvements to create a signature playground for children of all ages, backgrounds, and ability levels (e.g., mentally and/or physically challenged children).
- Support and fund needed renovations at the Rotary Park bathhouse to meet current needs, ADA requirements, and to ensure equitable access is available to all Biddeford residents.
- Explore combining the maintenance of School and City recreation facilities under one management unit.
- Identify and plan for either a replacement to the Westbrook Skating Rink (should one be necessary) or for a second outdoor public skating rink in Biddeford.
- Analyze and prioritize funding for lighting and Americans with Disabilities Act (mobility) improvements at existing City facilities for users and spectators
- Evaluate options to provide additional public restrooms in Biddeford, especially Downtown and within the city's park system. Consider composting toilets or other ecologically sound options.
- Ensure that potential upgrades to facilities include a consideration/assessment of environmental issues such as energy/resource usage, climate change, lighting and noise impacts, and wildlife/biodiversity.
- Ensure safe travel lanes and parking spaces for bicycles at beaches and other recreational areas, particularly where car parking is limited.

Goal 2

PRESERVE

Equitable access to open space for recreation and enjoyment

How We Get There:

- Provide educational materials regarding the benefits and protections for landowners allowing public recreational access on their property.
- Improve management, education and signage around Clifford Park trails and other City-owned areas to protect vernal pools, sensitive areas, and wildlife.

- Improve public transit to and from Biddeford's recreational areas and facilities.
- Develop a Recreation and Open Space Master Plan that includes opportunities for public access to farm and forest lands where appropriate (e.g., hiking, cross-country skiing, nature observation).

Goal 3

IMPROVE

Public access to the water for boating, fishing and swimming

How We Get There:

- Complete the RiverWalk and Diamond Match Park property to create better access to waterfront activities for the urban population of Biddeford. This includes the new park at 3 Lincoln Street.
- Seek funding to implement the Mechanics Park carry-in canoe/kayak boat launch already designed and ready for implementation.

11 Public Facilities

1. What's Happening?

People rarely think about Public Facilities, but rely on them every day: trash pickup, traffic safety, snow plowing, wastewater management and maintenance of fields, to name just a few. There are also important life and safety facilities, like police, fire and ambulance services in an emergency.

Hundreds of public facilities staff members make sure our community has access to vital and essential services. This chapter examines how Biddeford's public services work and how they meet the needs of our community now and in the future.

2. Public Facilities in Biddeford Today

24

Sewer pump stations

210,000

Feet

Of public sewer

131

Miles

Patrolled by BPD each day

6

Minutes

Average Fire Dpt. Response

3. Public Water

There are approximately 6,160 customers in Biddeford that are served by Public Water Supplies from either Maine Water (formerly the Biddeford and Saco Water Company) or by the Kennebunk, Kennebunkport and Wells (KKW) Water District.

Maine Water:

Maine Water (formerly the Biddeford and Saco Water Company) was established by Legislative Charter in the early 1980's. The system consists of a treatment plant, pump stations, distribution lines, fire hydrants, standpipes and a storage reservoir. In 2017 Maine Water constructed a new water supply facility south of South Street in Biddeford. According to its website, Maine Water supplies water to approximately 32,000 customers in Maine. This includes approximately 5,530 customers in Biddeford.

Table 11-1: MWD Customers

Type	# of Annual Customers (Accounts)
Residential Customers	4,548
Commercial Customers	983
Total Customers	5,531

Table 11-2: Maine Water Service Information

Information	Numbers
Water Customers	32,000
Water Treatment Facilities	11
Wells	14
Miles of Water Main	544
Public Water Systems (PWSIDs)	12
Employees	70

Source: Maine Water, Customer Service Supervisor, July 2018

Maine Water obtains its water from the Saco River. The two water intakes are located approximately 1 1/2 miles upstream from the dams in Biddeford and Saco. The Maine Water treatment plant is located approximately 1 1/2 miles west of the center of Downtown Biddeford. It was built in 1884, modernized in 1936. The facility was replaced in 2022 by a new state-of-the-art water treatment facility located on South Street. This new water treatment facility provides services for Biddeford, Saco and Old Orchard Beach.

Kennebunk, Kennebunkport and Wells Water District:

The Kennebunk, Kennebunkport and Wells Water District (KKWWD) was established in 1921 by the Maine Legislature. The District obtains its water from the Branch Brook in Kennebunk. The quantity of water which can be obtained from Branch Brook is limited and in the 1980's KKWWD installed a new line from Kennebunk to Biddeford. This enabled KKWWD to be able to bulk purchase treated water from Maine Water in times of peak water demand.

As of May 2018, KKWWD provided water to six-hundred and thirty-five (635) Biddeford customers ranging from Timber Point to Biddeford Pool (See Table X). Of the 635 customers, 612 are residential customers and 23 are commercial customers.

KKWD service area is limited by charter and policy to the land areas east of Route 9

Table 11-3: KKWD Customers

	# of Annual Customers	# of Seasonal Customers
Residential Customers	390	222
Commercial Customers	9	14
Total Customers	399	236

Source: KKW Water District, June 2018

4. Sewer, Storms and Wastewater

The Wastewater Division within the Department of Public Works is responsible for collection and treatment of wastewater within the City of Biddeford (with the exception of the University of New England, which has its own Wastewater collection system and treatment plant and private septic systems). The Wastewater Division is responsible for the Water Street Treatment Facility, Combined Sewer Overflow (CSO) Tank located at Mechanics park on water street, Biddeford Pool Stone Cliff Road Wastewater Treatment Facility, 24 wastewater pump stations, seven (7) combined sewer overflows, over 200,000 feet (37 miles) of sanitary sewer lines and combined sewer/stormwater lines.

The City privatized the operation and maintenance of the wastewater treatment facilities in November 1991. In 2011 the City of Biddeford reassumed full responsibility for the operation and maintenance of the wastewater treatment facilities.

Table 11-4. City of Biddeford Wastewater and CSO Characteristics:

Current sewer population:	15,000
Current number of residential users (connections to sewer):	4135
Current number of commercial/industrial users (connections to sewer):	594
Current number of Combined Sewer Overflow (CSO) locations:	7
Total sewer footage (feet):	209,000
Current total combined sewer footage (feet):	118,294
Current percentage of combined sewer to total sewer (%):	56.6

Source: *Maine Department of Environmental Protection Annual Report for 2021*

Water Street Wastewater Treatment Facility:

The City's treatment plant on Water Street was originally constructed in 1964. The plant was designed for a treatment capacity of 2.64 million gallons per day (MGD) and provides secondary treatment with an activated sludge process. Its current capacity is 7.5 MGD. The Water Street Treatment Plant currently serves 15,000 customers, 4,135 of which are residential and approximately 594 of which are non-residential.

The Water Street facility is uniquely vulnerable to the impacts of sea level rise and climate change. Additional study will be needed to determine what, if any, investment is needed to prepare the facility for the anticipated impacts of climate change.

Biddeford Pool (Stonecliff Road) Wastewater Treatment Facility:

The City's treatment plant on Stonecliff Road was constructed in 1989. The plant was designed for 30,000 gallons per day (GPD) and provides secondary treatment with a Rotating Biological Contractor (RBC). In conjunction with the construction of the Stonecliff Road Treatment Plant the City constructed a new sanitary sewer collection system in the village area of Biddeford Pool. The RBC plant receives flow from this new sanitary collection system. There is a separate storm drainage system which collects street runoff water and discharges it directly to the ocean waters. The activated sludge is transported to the treatment plant on Water Street for processing.

The current volume of dry weather flow received at the RBC plant is well under its design capacity for biological treatment. Seasonal fluctuations in residential population in the Biddeford Pool area accounts for corresponding variations in flows received at the RBC plant. During the periods of heaviest residential population, the plant receives

flows that are approximately 60% of its design capacity. The condition of the plant is good and its performance has been excellent, consistently meeting permit requirements

Collection System:

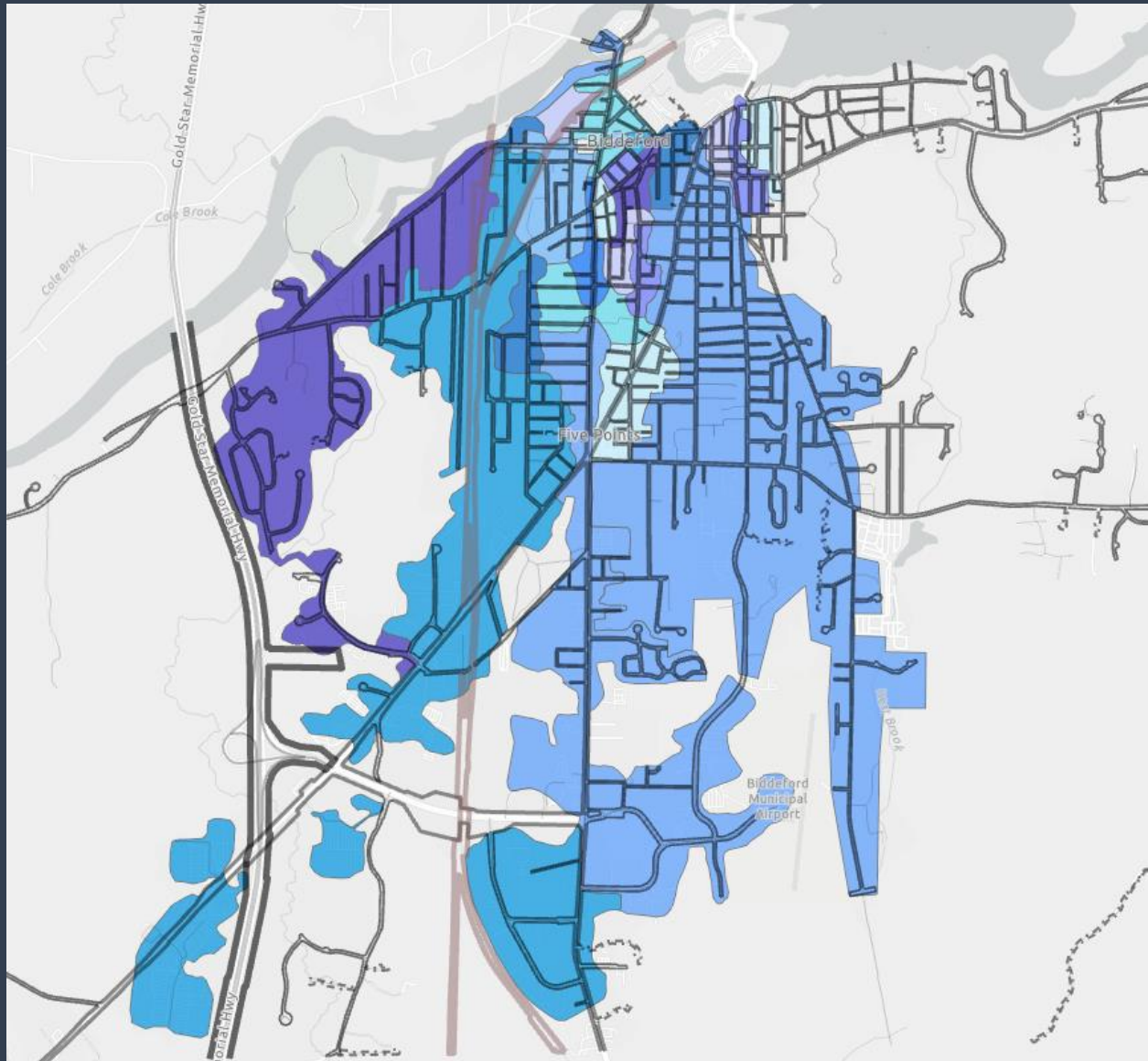
The City's collection system for wastewater is made up of sanitary sewers and combined sewers. Sanitary sewers carry only wastewater. Combined sewers carry wastewater and stormwater. The City's collection system is separated into two separate systems, one serving the central urban area discharging into the Water Street treatment plant and one serving the village area of Biddeford Pool discharging into the Stonecliff Road treatment plant.

Much of the collection system remains quite old and requires considerable maintenance to insure operability and to minimize impacts on other facilities such as the road surface above the system.

The Biddeford Pool sewer system is comprised of separate sanitary sewers which discharge into the Stone Cliff Road treatment plant. Until 1989, the system was an old combined system built from the 1800's on with discharges into the ocean. In 1989 the City constructed a new sanitary sewer collection system and turned the old system into a storm drain system. There is approximately 8,800 linear feet of sanitary sewers in this system.

Snow Removal

Biddeford Public Works operates a fleet of snow removal equipment and is responsible for clearing all public streets, sidewalks and pedestrian right-of-ways after snow events.



Where does your Wastewater go? Biddeford has 25 “sewersheds”.

5. Pump Stations and Storm Water

The City owns and is responsible for 25 pump stations located throughout the City. These stations collect and pump wastewater to the treatment plant sites from areas which cannot be served by gravity sewers. Many of these stations were originally built in the early 1960's when the Water Street Treatment Plant was constructed. Starting in the 1990's, the City began replacing older pump stations based on an established schedule.

Others have been built since that time as part of Industrial Park Developments, residential subdivision development, and through extensions of the sanitary sewer

system. The City of Biddeford is responsible for the operation and maintenance of these pump stations.

Stormwater

Stormwater Management issues within the City are not restricted to a specific geographic area of the City but are found citywide. Stormwater management efforts for the City are under the direction of the Manager of City Services. The Engineering, Wastewater, and Public Works Departments are responsible for the implementation of stormwater management practices, as directed by the Manager of City Services.

The City's existing stormwater management facilities consist of combined sewer/combined sewer overflows (CSO), storm drains, catchbasins/field inlets, culverts, ditches, and drainage ways. The central urban area between the Maine Turnpike and West Brook contains all of these facilities. The rural areas to the East and West of the central urban area contain storm drains, catch basins/field inlets, culverts, ditches and drainage ways but do not contain any combined sewers/CSO.

Table 11-5: CSO's

Combined Sewer Overflows (CSOs) - 2018	Environmental Protection Agency Number	Receiving Waters
Bradbury Street	004	Saco River
Western Avenue	005	Saco River
Horrigan Court	006	Saco River
Route One	007	Saco River
Water Street Treatment Plant	009	Saco River
Rumery's Boatyard	013	Saco River
Lafayette Street Pump Station	014	Saco River

6. Public Safety

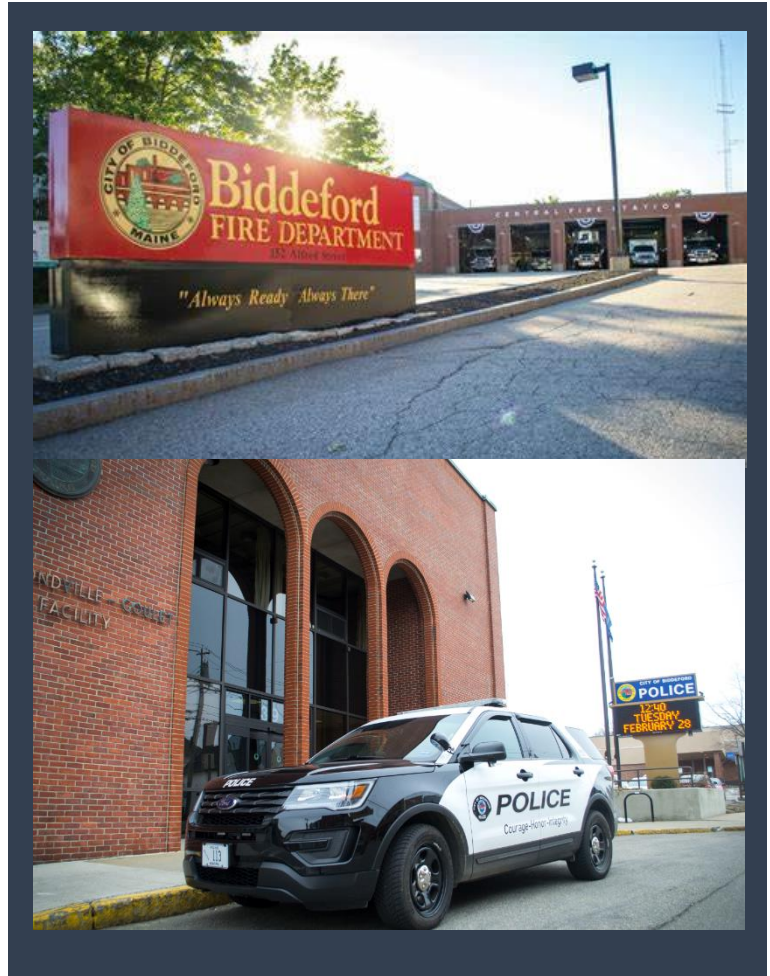
Biddeford Fire Department:

Fire protection in Biddeford is provided by the Central Fire Station. The station was built and completed in September 1990 and is located at 152 Alfred Street. It is manned 24 hours a day. There is a call force sub-station at Biddeford Pool. The Central Fire Station provides fire, EMS, and specialty rescue services to the community on a 24 hour basis.

In FY 2017, the Fire Department operated with an annual budget of 4.8 million dollars. There are 43 full-time firefighters, including a Chief, Assistant Chief, Deputy Chief and an Officer Manager. All full-time firefighters are cross trained on both fire and EMS; 31 of the members are paramedics. Career personnel are split over four separate shifts.

All fire, ambulance, rescue and emergency calls are received by the 911 Dispatcher located at the Biddeford Police Station. The average response time to in-town incidents from Central Station is about 4 minutes, although response times to some areas of the city are 10 to 14 minutes.

The City has automatic aid agreements with Old Orchard Beach, Goodwin Mills, Scarborough, Saco, Arundel and Kennebunkport. Additionally, the department has mutual aid agreements with other communities within the county and with Emergency Management.



Biddeford Police Department:

The Biddeford Police Department has a wide array of law enforcement roles and responsibilities in Biddeford, including traffic safety, criminal incident response, animal control, community welfare checks and more. The Biddeford Police Department is headquartered at 39 Alfred St. The Department has 57 law enforcement officers and 28 civilian employees. BPD also employs a full-time behavioral counselor.

The Biddeford Police Department is among only 5% of law enforcement agencies that are nationally accredited by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA).

In 2020, BDP responded to 3,073 criminal and non-criminal incidents.

7. Power and Gas

Central Maine Power

Electricity in the City of Biddeford is supplied by Central Maine Power. Three-phase power is currently supplied to the Robert G. Dodge Business Park, the Biddeford Industrial Park, and the Airport Industrial Park. Three-phase power may also be provided elsewhere in Biddeford, although exactly where it is currently located is somewhat unknown.

Unitil

Natural Gas in Biddeford is provided by Unitil. Unitil's Granite State Transmission Line runs through Biddeford from Arundel to the Saco River and is part of a major transmission line running through Southern Maine.

Local distribution lines convey natural gas throughout the downtown area as depicted on the Map, from Highland Avenue to the west, down Graham Street to feed the Central Fire Station on Alfred Street (fed from Graham Street), the Mill District, and the Water Street Sewage Treatment Plant to the east.

Local distribution lines also supply natural gas to the Wal-Mart area, the Robert G. Dodge Business Park, the YMCA on Pomerleau Street, 5-Points Shopping Center across from Edwards Avenue, the Biddeford Industrial Park, and the Airport Industrial Park.



8. Challenges and Opportunities

Project Canopy

The Project Canopy Committee aims to promote and enhance the quality of life for citizens of Biddeford through an appreciation and knowledge of the value of trees in an urban landscape ecosystem. Its purpose is “to promote and enhance the quality of life by planting trees along our streets, in our parks, in our neighborhoods and developing new green space.” The Project Canopy Committee has an annual budget of \$5,000. The maintenance of all street trees falls under the purview of the Department of Public Works, Parks.

East Biddeford Fire Department

The Biddeford Fire Department is in the early stages of planning and constructing a new fire station to serve the eastern and coastal areas of the city. This fire station would decrease response times in Biddeford’s coastal neighborhoods. As of early 2023, an exact location has not been identified.

Complete Streets

Complete Streets are designed and operated to enable safe access for all users: pedestrians, bicyclists, motorists, and public transportation users of all ages and abilities. Complete Streets make it easy to cross the street, walk to shops, and bicycle to work. They also allow buses to run on time and make it safe for people to walk to and from train stations. Cities and towns in Maine, large or small, can begin building a safer and more welcoming street network by adopting a Complete Streets Policy and then ensuring its full implementation.

As of 2019, Nine communities in Maine have adopted a local Complete Streets Policy.

A Complete Streets Policy does not dictate a one-size fits all approach. A Complete Street in a rural area will look quite different from one in an urban area. Both are designed to balance safety and convenience for everyone using the road. A Complete Street may include sidewalks, bike lanes, paved shoulders, comfortable and accessible



bus stops, safe crosswalks, median islands, curb extensions (bump-outs), narrower travel lanes, and more.

Climate Change and Sea Level Rise

Biddeford's public infrastructure is uniquely vulnerable to the Impacts of sea level rise and other climate change impacts such as storm surges, flooding and increasingly frequent severe weather events. In particular, the city's water treatment and stormwater infrastructure has the potential to be damaged or overburdened by increasingly strong storms and sea level rise.

Understanding the needs and challenges posed by sea level rise is an ongoing process. In coming years, the City will work collaboratively with Southern Maine Planning and Development Commission, as well as state partners to better understand the vulnerabilities facing Biddeford's public infrastructure and develop a framework for investment and adaptation to anticipated future climate-related challenges.

Public Facilities -

What Comes Next?

Biddeford's' public facilities are continuously changing and adapting to meet the needs of our growing community. As our city, state and world change, so too must our infrastructure.

Adapting to a growing population, new technologies and the impacts of climate change are key to ensuring our community has safe and reliable access to vital services.



Goal 1

MEET

Identified Public Facilities and service needs.

How We Get There:

- Identify any capital improvements needed to maintain or upgrade public services to accommodate the community's anticipated growth and changing demographics.
- Continue to explore opportunities for collaboration with the City of Saco and with partners in the region for the provision of public services.

Goal 2

PROVIDE

Public facilities and services in a manner that promotes and supports growth and development in identified growth areas

How We Get There:

- Strive to locate new public facilities comprising at least 75% of new municipal growth-related capital investments in designated growth areas.
- Work with the Biddeford Public Works Department (Wastewater Division), Maine Water Co., and Kennebunk Kennebunkport-Wells Water District to coordinate planned service extensions with the Future Land Use Plan.
- Continue to update and maintain the City's 5-Year Capital Improvement Program (CIP) related to priorities for public expenditures on the City's transportation network.
- Ensure the RiverWalk and connections to the RiverWalk are maintained and open to the public year-round.
- Ensure parks and playgrounds are given the same priority as fields with respect to maintenance and improvements.
- Continue to support the Eastern Trail by membership on the Eastern Trail Management District (ETMD) and maintaining the trail as required.
- Create a policy to facilitate renewable energy infrastructure (rooftop solar etc.) at public facilities.
- Ensure climate-oriented infrastructure (e.g. EV charging stations, bike racks) is included at all public parks, playgrounds, trails, and playing fields

Goal 3

ENSURE

Downtown streets are prioritized in capital planning and public improvement projects.

How We Get There:

- Evaluate Downtown side streets for adequate lighting provisions and make improvements where warranted.
- Ensure routes to and from all public parking facilities are adequately lit and maintained for pedestrian traffic.
- Ensure transit stops and access to transit stops is adequate, safe, and clear during winter weather.
- Ensure city maintenance and street cleaning on side streets is given the same attention as that on Main Street.

Goal 4

DISCOURAGE

The location of new public facilities in areas that are vulnerable to sea level rise and other climate impacts.

How We Get There:

- Use tools such as TIF and impact fees to fund capital improvements in growth areas and away from vulnerable areas.
- Limit public funding of infrastructure in vulnerable areas.

12 Agricultural & Forest Resources

1. What's happening?

When one thinks of Biddeford, they generally think of the Downtown and Mill District, or the coastal region. However, Biddeford continues to feature a diverse agricultural sector made up of rich farmlands and forests that are home to various types of small agricultural producers. Approximately fifty-three percent (53%) of the City is zoned as Rural-Farm (RF) suitable for agricultural and residential uses. Much of this area is forest that projects off roadways along private and public roads in the RF zone.

Biddeford's rural landscape is a byproduct of farming and forestry. It contributes to our sense of place, is defined by our history and our culture, by our downtown, and by our open spaces and scenic landscapes. Agriculture is essential to our quality of life in Biddeford. Local farms mean local foods. Ensuring that Biddeford remains a "farming-friendly" community is critical to ensuring long term sustainability, especially with the foreseeable impacts of climate change.

The common perception is that agriculture in the state of Maine and our region is dying. However, this is not true. In 2016, the USDA reported 8,200 farms in Maine, an increase of almost 14%. Maine also leads the nation in growth of organic farms, adding over 100 new organic farms from 2008-2014. In Biddeford, although we've lost our dairy industry recently, we've seen growth of small-scale subsistence farming as people have become more interested in growing their own food, collaborating with their neighbors, selling their products via direct-to-consumer sales and farmers markets, and sharing their excess with the community.

This growth isn't a guarantee. Agricultural land use has economic and operational challenges, along with an aging population that often has limited options for what to do with their land, which can lead to the loss of agricultural land to development. So what are the benefits of agriculture? And why should the City focus on supporting agriculture in the future?

- Agriculture ensures a diversified economy.
- Farms support and serve a broad base of local businesses with equipment, supplies, mechanics, and more.
- Agricultural land and forests creates opportunities for agritourism and farmer's markets.
- Farmlands and forests help counteract environmental impacts of development and climate change.
- Agriculture and forestry support biodiversity and create opportunities for pollinators at a landscape level.

A strong, healthy agricultural economy comes from supporting farms of ALL types – traditional dairy and crop farms, and smaller-scale farms growing produce, herbs, flowers, seedlings, meats or other specialty products. Given the aerification of the American west, the depletion of its aquifers and reservoirs, and increasing transportation costs, local agricultural production is likely to become more of a strategic necessity in the near future.

2. What the Community is Saying

“Everyone thinks of Biddeford as a city. Very few understand that more than half of our city consists of beautiful, productive farmland and forests. ”

“Our community is capable of producing a tremendous amount of local, healthy food. Food doesn’t just miraculously come from the store – it originates from farmland and the efforts of a farmer. No farms – no food. It’s that simple.”

“Folks don’t seem to realize the value rural farmlands provide to our environment. Their ability to filter carbon and runoff from roads can’t be replaced.

“Our farm and forest land should be preserved through conservation easements and programs that keep the land as it is. Once it’s developed – it’s gone forever. We can’t make more land.”

“We have to do a better job educating the public about the importance of our agricultural lands in Biddeford. ”

“The reality of farming is that it’s really difficult to make a living at it. I want to be a full-time farmer but I can’t afford to do that. So I farm and work a night job in the winter months to make ends meet. ”

3. Agricultural & Forest Resources in Biddeford Today

53%

Of Biddeford

Is zoned Rural Farm (RF)

1,179

**Biddeford Residents
Have Fishing Licenses**

1,446

Acres

Of Farmland parcels (2016)

53.6

Acres

Average farm size



Did You Know?

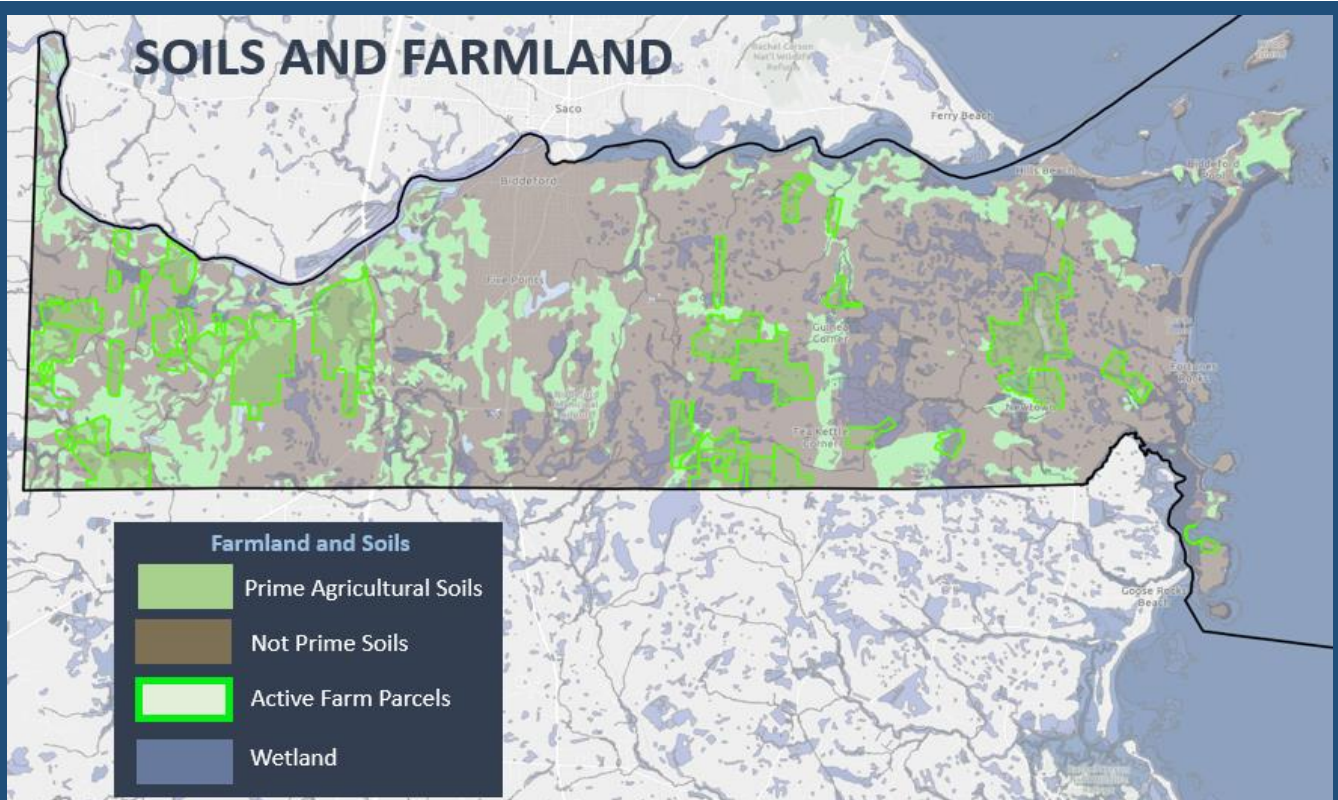
Farms in Biddeford produce a wide variety of products including beef, chicken, pork, milk and dairy products, corn, honey, maple syrup and a wide variety of fruits and vegetables.

Farmland in Biddeford

Farms in Biddeford once provided many of the foods that were consumed by local markets. Biddeford once was filled with dairy operations. However, that all changed with the introduction of new transportation methods and the expansion of grocery supply chains. As the world modernized and our economy grew, the economics of farming weakened over time, causing these operations to transition to other forms of production to remain viable, or sell off parcels of land to help pay the bills.

Biddeford is still home to several large multigenerational family farms where the older generation is retiring from farming. The next generation often must balance working a full-time job off the farm while maintaining a smaller farming operation and raising their families. These once large multipurpose farming operations have scaled back from large dairy or beef production to only a few head of animals to sell locally and feed their families. Several farms have transitioned to equestrian stables and hay production.

Because these farms are considered agriculturally important soils to the state of Maine, it is critical for them to remain available as open land in the event they are ever needed again for the purpose of producing locally available foods for our community and our state. Biddeford's farm and forest landowners also make it possible for residents of the city to partake in outdoor activities such as hunting and fishing, with landowner permission.



Soils and Farmland in Biddeford

Current State of Farming in Biddeford

The 26 parcels of farmland registered in Biddeford include the following properties with current uses. The pressure to sell land to developers for residential housing, energy production, or other higher value uses is significant because farming offers a very low return on investment. This puts Biddeford's rural farmlands and forests at great risk of being sold for large scale development.

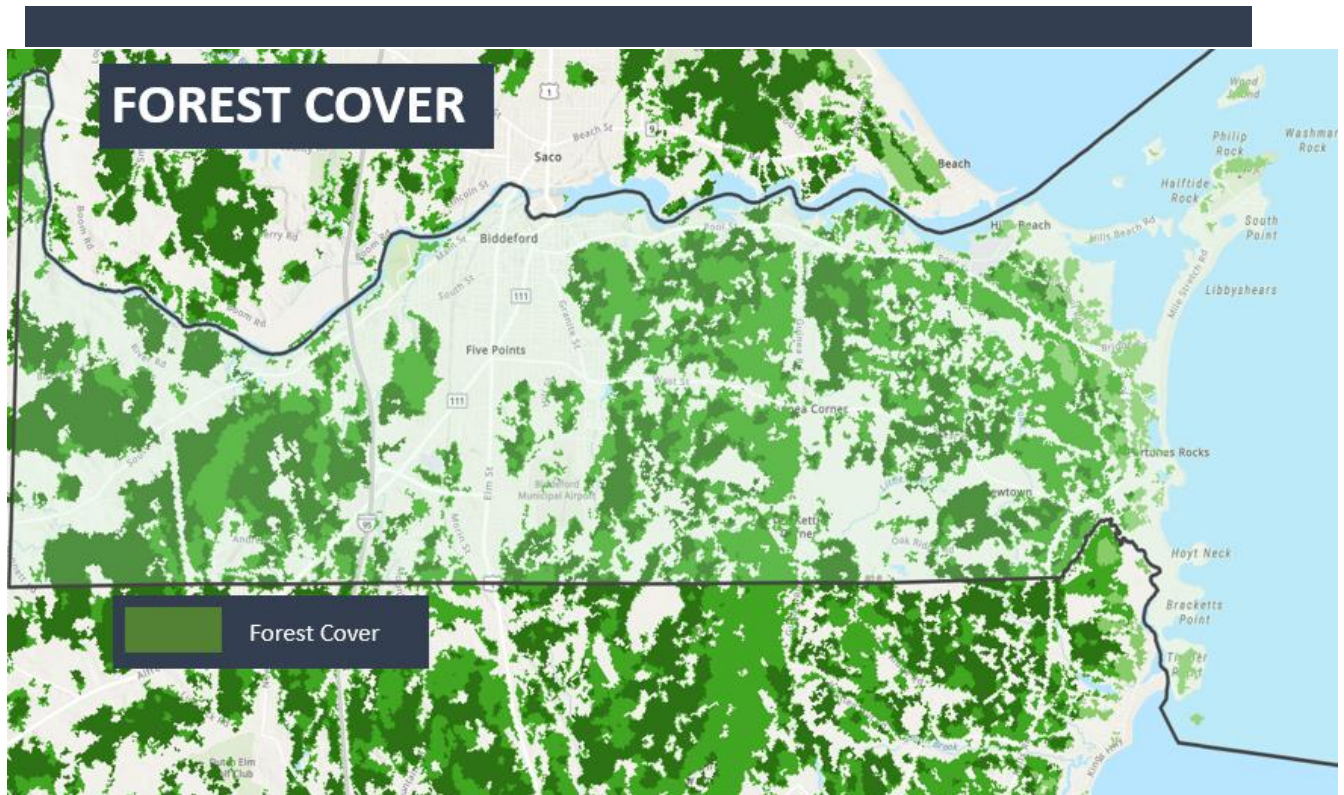
Table 10-1. Current Farmland Parcels in Biddeford (2016)

Owner's Last Name	Owner's First Name	Address	Current Use	Acreage
Jerome	Mona & Bradford	463 West St.	Horse farm	60.00
Labonte	Richard D. & Roger E.	697 South St.	Hay	22.50
Girard	Ryan R.	558 South St.	Beef/Hay	13.00
Girard	Ryan R.	570 South St.	Beef/Hay	57.00
Girard	Ryan R.	39 Wadlin Rd.	Beef/Hay	39.00
Sherman	Charles A. IV	36 Wadlin Rd. 16 Meetinghouse Rd.	Wood/Hay	94.47
Cote	Roger G. & Claire C.	677 South St.	Produce	45.50
Rioux	Denis E. & Daphne	731 South St.	Beef/Hay/Wood	96.00
Labonte	Richard D. & Jean E.	6 Wadlin Rd.	Hay	17.50
Boisvert	Norman R., Heirs Of	50 Buzzell Rd.	Hay	33.00
Hussey	Betty J.	43 Buzzell Rd.	Hay/Produce/Wood	4.50
Hussey	Betty J.	575 South St.	Hay/Produce/Wood	85.50
Girard	Raymond N.	10 West Loop Rd.	Hay	24.00
Rhames	Richard E.	95 River Rd.	Produce/Wood	88.40
Dutton	Jeffrey C. and Lois M.	23 Oak Ridge Rd.		5.40
Baker	David L. & Lisa C.	South St.	Hay / Wood	36.00
Clair	Michael S. Esther & Timber Point Trust	1-2 Timber Point Rd.		12.00
Ewing	Andrea	65 Proctor Rd.	Wood	13.16
Curro	Michael J. & Susan L.	538 South St.	Hay/Wood	192.07
Lowell	Michael J. & Susan L.	521 South St.	Hay/Wood	7.01
Lowell	Michael J. & Susan L.	501 South St.	Hay/Wood	37.34
Lowell	Kenneth A. & Sandra M.	134 River Rd.	Hay/Wood	5.40
Hussey	M.	551 South St.	Hay	16.14
Paquette	Stephen A. & Lynn M.	83 Oak Ridge Rd.	Hay	66.00
Brown	Alan C.	439 West St.	Hay/Wood	26.70
York	Miles S.	1 Moxie Ln.	Hay / Wood	330.00
Wing	Lisa M.			21.00
TOTAL				1,446.17

4. Forestry and Tree Growth

Forestry is a crucial sector of the green industry and continues to grow as a popular solution to both ecological and social issues in rapidly evolving urban landscapes.

As shown in the forest cover map, Biddeford has a significant amount of tree growth area that provides a wide range of economic, environmental and social benefits including air pollution removal, stormwater reduction and carbon sequestration, wildlife habitat, working woodlots and hunting ground. Half of the dry weight of wood is carbon that has been removed from the atmosphere. Maine's forests currently sequester an amount of carbon equal to at least 60% of the state's annual carbon emissions. Encouraging new growth and limiting soil disturbance keeps carbon in forests and out of our atmosphere.



5. Challenges and Opportunities

Current Use Programs

As is the case with all of New England, Maine has four (4) “current use” programs that offer landowners a reduction in their assessed value: Farm Land, Open Space, Tree Growth, and Working Waterfront. These programs create value for agricultural land beyond its development value to make farming and forestry more economically viable. Many agricultural producers already take advantage of these programs, but the City can increase awareness and support landowners in the application process. By having these lands under these programs, the City benefits by lowering its assessment value at the state level, which makes Biddeford more eligible for state aid for education, revenue sharing, etc.

Local Agriculture

Biddeford is home to small-scale agricultural producers who are involved in vegetable production, flowers, herbs, honey, beef, Christmas trees and maple syrup production. Local farms also support equestrian stables and lesson programs and small-scale goat and sheep farming.

The challenge with local agriculture is that farming is an expensive endeavor and never more so than in today’s economy when the price of feed, fertilizer, equipment, fuel and labor is at an all-time high.



With an average median age in Maine of 57, our farmers are rapidly aging out of the workforce and looking for ways to retire. To combat the aging out of farmers and attempt to attract a younger demographic to farming, the local, state and federal governments have made changes to their grant and loan programs to make it easier for small and mid-sized producers to access capital, manage risk, manage land, achieve food safety certification and access educational resources that help inform planning efforts to improve the long-term sustainability of their farms.

Climate Change

Farmers are especially affected by changing weather patterns caused by climate change and are constantly looking at climate trends to adapt to changing weather conditions. One of the most challenging parts of climate change is that it looks different almost every season. Most recently, Maine is experiencing periods of drought then periods of heavy precipitation, along with significant temperature shifts. Changing

temperatures is bringing more extreme weather to Maine, threatening the viability of crops and farming practices. Plants can grow faster up to a certain temperature, but growth declines with additional warming. Different crops have different ideal temperatures. USDA is warning Mainers that projected warming from climate change may reduce some crop yields by 25-35% in coming years.

Warmer temperatures also bring new pests that damage crops. Many of the plant diseases that used to be confined to southern states are making their way into Maine. Viruses that are transported by southern bugs that would normally be killed off by frost are gaining ground moving north. Warming temperatures and humidity also stress livestock, undermining their health, impacting their productivity and growth.

Climate change is also bringing more extreme weather with more intense, sporadic rainfall. During the growing season, intense rains wash out newly planted fields, damage growing crops, bring more soil erosion and nutrient run-off, and leave soil less fertile by washing away nutrients. This, in turn, causes significant challenges in our streams, rivers and the ocean as nutrients are washed into estuaries, negatively impacting fish and shellfish habitat. Intense rain also floods fields throughout the growing season, making it a challenge to get crops out of the ground at the optimum harvest time. Farmers are required to constantly adjust their agricultural practices based on changing weather patterns.

In order to help agricultural producers to adapt to the changing climate and plan for the future, the State of Maine has developed the Healthy Soils Program to connect farmers with key resources and equip them with the tools and knowledge they need to begin voluntarily using healthy soils practices – an important climate adaptation strategy. Information includes: healthy soils land management practices; technical assistance services offered by agricultural support providers to help them use these practices; connections to other farmers already using these practices successfully; and funding opportunities to support the use of these practices. The societal implications of climate change are compounded by agricultural needs for water, power, and other adaptations. Socializing the availability of new climate adaptation programs and services will be key to helping Biddeford's agricultural community adapt with our constantly changing climate.

Conservation Easements

Allowing landowners to limit the type or amount of development on agricultural or forestry land while retaining private ownership through easements placed on the property deed. There are multiple approaches to protecting agricultural land from development that include:

- Donated easements
- Purchased easements (through non-profit partnerships)

- Buy/Protect/Sell (through non-profit partnerships)
- Sale of Development Rights (landowner payouts)

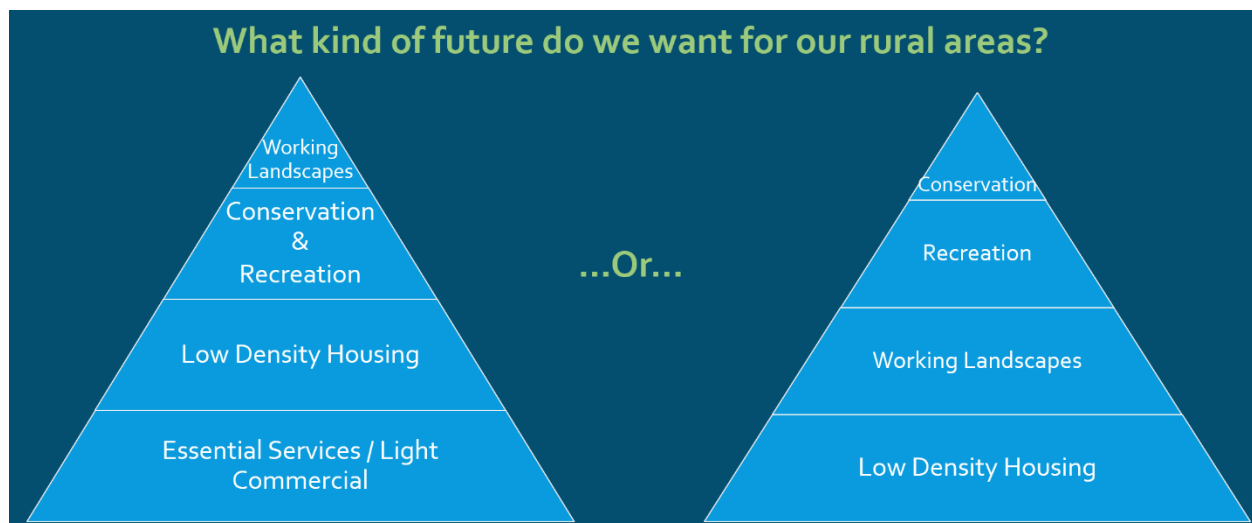
Placing an easement on property can provide permanent protection of natural resources and ensure good stewardship in perpetuity.

Rural Farm Zoning Changes

The City is exploring zoning and ordinance changes within the Rural Farm (RF) zone which would preserve farm and forest land and promote working landscapes. The City should choose to explore the possibility of creating a “hierarchy of uses” within the RF zone to promote working landscapes and conservation while limiting low-density residential or commercial development. Additionally, new open space and setback requirements should be created to minimize the impacts of low-density residential development on adjacent farmland, forests or open areas.

Developing a hierarchy of uses within the RF zone could be a tool to effectively manage competing and sometimes conflicting land uses and balance working landscapes, conservation, recreation and housing.

What could a Hierarchy of Uses in Biddeford’s Rural Farm areas look like??



Two hypothetical examples of what a hierarchy of uses could look like for our Rural Farm Zone

Protecting Forest and Farmland

Ensuring forest and farmland continue to be available within our city goes beyond cataloging the available land. There are pressures and threats on agriculture lands from environmental conditions (drought), invasive species (Japanese Knotweed, Hemlock

Woolly Adelgid), housing development, and the overall economic viability of operations for landowners.

Acknowledging the multitude of challenges landowners face and keeping these considerations top of mind when evaluating development proposals and efforts to conserve agricultural land will ensure better outcomes for Biddeford long into the future.

Agricultural & Forest Resources

What Comes Next?

Goal 1

SAFEGUARD

Lands capable of supporting agriculture and forestry from development which threatens those resources.

How We Get There:

- Consult with the Maine Forest Service district forester when developing any land use regulations pertaining to forest management practices as required by 12 M.R.S.A. §8869.
- Consult with Soil and Water Conservation District staff when developing any land use regulations pertaining to agricultural management practices.
- Conduct a city-wide agricultural and forestry resources inventory and create a farm and forestry overlay map to identify prime agricultural soils, active farmland and other active land uses
- Update the Cluster Subdivision and Net Density Performance Standards in the Zoning Ordinance to protect agricultural and forest lands in the Rural Farm Zone
- Continue to deduct prime agricultural soils and soils of statewide significant from net density calculations in the RF Zone.
- Conduct a Cost of Community Services (COCS) study to evaluate costs versus revenues for different land uses in Biddeford, and amend the Zoning Ordinance to require a fiscal impact analysis for any subdivision larger than 5 acres.
- Identify city owned parcels surrounding or adjacent to large conservation tracts with the goal to expand conservation land.
- Collect annual data to evaluate what percentage of development is built in designated growth areas in Biddeford, per the Future Land Use Plan, to enable

continual assessment of the effectiveness of policies and strategies toward protecting working and natural landscapes.

- Set a goal to increase conservation lands in the city of Biddeford, either in fee or through easement, by land trusts in Maine who work with willing land owners to conserve land for public use and enjoyment.
- Develop a Recreation and Open Space Master Plan that includes the preservation of prime agricultural lands and c-value commercial forest lands.
- Ensure agricultural and forest lands are included in design considerations for development projects located throughout the City of Biddeford.
- Consider a local Transfer of Development Rights and/or a Purchase of Development Rights program to direct development toward designated growth areas and away from agricultural and forestry operations.

Goal 2

SUPPORT

Agricultural land, farmland, and forests with incentives to improve economic viability and reduce pressures to sell land into development.

How We Get There:

- Promote and support landowner enrollment in the current use taxation programs.
- Leverage city staff to help with education and assistance in filing for conservation easements - creating fast-track programs to help landowners move land into conservation or other programs more easily.
- Create a City of Biddeford Land Bank to be administered by a land bank commission for the purpose of holding and managing agriculture or forest lands.
- Explore the development of revenue streams to establish a Land Bank Fund by creating a codified revenue stream to support funding for incentive programs or the purchase or partnership to acquire land by the City for select parcels of vital importance.
- Develop program(s) or tax incentives to encourage local restaurants or businesses to purchase local agricultural or forest products sourced in Biddeford.

Goal 3

SUPPORT

And promote farming and working forests through amendments to RF zoning ordinances.

How We Get There:

- Continue to deduct prime agricultural soils and soils of statewide significance from net density calculations and direct development away from such soils.
- Revise land use ordinance to discourage development of limited growth areas to help preserve forests, farmland, and other natural resources.
- Remove restrictive ordinance language and permitting processes for farm operations including changes to provisions relating to: setbacks, signs, commercial sale of products grown, and required parking for farm stores / stands.
- Prioritize and actively encourage and incentivize agriculture, forestry operations, and land conservation that supports them in local or regional economic development plans.
- Amend the Zoning Ordinance to allow additional permitted and conditional uses in the Rural Farm Zone on active farm properties to allow for supplemental incomes for farm operators. Ensure, at a minimum, that land use activities such as roadside stands, greenhouses, firewood operations, sawmills, log buying yards, and pick-your-own operations are permitted.

Goal 4

DEVELOP

Resources to support local agritourism and farmland or forest economies.

How We Get There:

- Promote resources to educate farmers and working forest owners on opportunities for agritourism.

- Create a fast-track program for City evaluation and any permitting required for agritourism.
- Promote agritourism operations within Biddeford through City-owned channels and outside partnerships to increase awareness within Biddeford and tourist communities.

13 Marine Resources

1. What's Happening?

Marine resources are a critically important natural resource for the City of Biddeford, providing a multitude of commercial and recreational opportunities to residents and surrounding communities. To provide context, Biddeford has a total area of 59.08 square miles, of which 28.99 square miles are covered by water. Our proximity to the Atlantic Ocean and Saco River makes Biddeford a highly desirable community to live, work and play.

The Saco River and Biddeford coast provide vital habitats for a variety of plant and wildlife species, and its miles of river frontage and coastline provide many recreational opportunities to local residents and tourists alike. Although the importance of Biddeford's marine resources has declined from a commercial perspective, there still exists a number of commercial operations that are resource dependent. As we look to the future, it will be critically important to balance commercial and recreational activities with the desires and goals of the community as we plan for anticipated climate related impacts to our marine environment. Although man plays an important role in securing and protecting the health and vitality of our community's marine resources, our greatest threat is coming from Mother Nature herself.

As defined in the Climate Change chapter, Biddeford's coastline is facing severe consequences of sea level rise and the rapid warming of the Gulf of Maine. Because storms tend to intensify over warm water, Maine is experiencing an increase in the severity and impacts of coastal storms. But it's not only the coastline that is potentially vulnerable. Heavy rainfall across the state impacts the Saco River, making our community more vulnerable to flooding and catastrophic impacts to municipal infrastructure. Some of our most treasured community assets, our beaches, parks, estuaries and water access points, and important, life-sustaining infrastructure, our water and wastewater and transportation infrastructure, are our most vulnerable.

2. What the Community is Saying

“The Saco River and the estuary is one of the best kept secrets in York County. Its abundance of birds and fish species make it a beautiful place to experience being on the water. We need to protect this resource for future generations.”

“Biddeford’s beaches are changing as the environment changes. Erosion is a huge challenge for homeowners and the city. We need to be more proactive about how we’re going to handle damage from future storms.”

“It would be nice to have easier access to Biddeford’s beaches. Parking is hard to find in the summer.”

“I’d like to see more access for kayaks and canoes on the Saco River”

“I’d love to see the City develop a Town Landing for boats to visit the downtown area. I think it would attract a lot of people who are curious about Biddeford’s new food scene”



“We need to ensure future generations have access to the water. Too many property owners think the beach is exclusively for them. They are public assets everyone should be able to enjoy”

3. What are Biddeford's Marine Resources?

In order to better understand the challenges that lie ahead, we must first understand how we define and categorize Biddeford's marine resources. Much of the detail behind each of the following uses may be found in the Appendices of this document.

A. Water Dependent Uses in Biddeford:

The following represent the major water dependent uses in Biddeford who gain economic benefit from the Saco River and the coastal waters surrounding Biddeford.

1. Shellfish Harvesting at Biddeford Pool
2. Commercial Boat Yard on the Saco River
3. Biddeford Pool Yacht Club
4. Biddeford Pool Fishermen's Association
5. University of New England – Department of Marine Sciences and Center for Excellent in the Marine Sciences
6. Brookfield Renewable
7. Commercial processors

B. Current Land Use Regulations On or Near the Shoreline:

The following are responsible for land use regulations near the shoreline. Virtually any activity or use must be reviewed and/or approved by the following list of organizations. Detailed descriptions of each entity may be found in the Appendices.

1. Saco River Corridor Commission
2. Maine DEP Site Law (Site Location of Development)
3. Natural Resources Protection Act
4. Biddeford's Shoreland Zoning

C. Marine Facilities

The following is a list of public and private marine facilities in the City of Biddeford and Biddeford Pool. Detailed descriptions may be found in the Appendices.

1. Biddeford Pool Beach/Gilbert R. Boucher Memorial Park
2. Biddeford Pool Yacht Club
3. Fortunes Rocks Beach
4. Marblehead Boat Launch
5. Mechanics Park
6. Middle Beach

7. Park in the Pines
8. Rotary Park
9. Town Landing
10. Vines Landing
11. Wood Island
12. Biddeford RiverWalk
13. Diamond Match Park
14. East Point Sanctuary
15. Staples Street Beach
16. Yates Street Park
17. Rachel Carson National Wildlife Refuge



4. Challenges and Opportunities

Biddeford has been actively engaged in coastal water quality monitoring, water pollution planning, restoration of the clam flats, protecting water dependent uses, addressing land-use conflicts, reviewing land use zoning for working waterfronts, participating in regional and local future land use planning efforts, working with the U.S. Army Corps of Engineers to dredge the Saco River and Biddeford Pool/Wood Island Gut, and ensuring that the public has access to Biddeford's marine waters for years to come. Much of this work is on-going and will be in-process for many years to come. A significant vulnerability to the completion of this work is public interest and engagement.

Ocean Acidification and its Impacts on Biddeford

Ocean and coastal acidification (OCA) presents a unique set of chronic sustainability challenges at the human-ecological interface along the coast of Maine. It threatens the livelihoods of coastal communities through its current and future negative impacts on commercially important species such as oysters, clams, and lobsters and the delivery of ecosystem services like controlling climate and disease.

Ocean and coastal acidification is primarily driven by global carbon dioxide emissions caused by human activity. However, recent evidence has made it clear that local-scale factors are also important: low alkalinity river runoff, excessive nutrients in water bodies, and the intrusion of deep ocean waters can exacerbate localized coastal acidification. Biddeford has made significant investments in municipal water and wastewater infrastructure to mitigate many of these challenges. Our goal is to be part of the solution, and reduce our contribution to the problem.

Maine is particularly vulnerable because of its position in the Gulf of Maine, which has a lot of freshwater inflow and is very cold. Both of those physical factors mean we're already close to the edge compared to other locations dealing with ocean acidification. From the social perspective, Maine has communities that are heavily reliant on fisheries like commercially important shellfisheries; shellfish are particularly susceptible to ocean acidification. Biddeford Pool's shellfish habitat is particularly vulnerable to coastal acidification and climate change. The community's participation in the Maine Sea Grant program and Maine Ocean and Coastal Acidification Partnership can help Biddeford integrate best practices for climate change adaptation at a local and regional scale.

Water Quality

Biddeford collaborates with the Maine Department of Environmental Protection to monitor water quality and protect public health. Section 303(c) of the federal Clean Water Act (CWA) as implemented in the Code of Federal Regulation ([40 CFR Part 131](#) federal rules, off-site) requires all States to develop and maintain Water Quality Standards. These standards describe the intended uses of a waterbody, for example recreation in and on the water, fishing, and as habitat for aquatic organisms. Standards also include narrative or numeric criteria and an antidegradation policy that ensures that those uses can be achieved. The Maine DEP's Marine Unit monitors and assesses the health of marine waters (estuarine and coastal areas) through the collection of physical, chemical, and biological samples as related to attainment of Maine's water quality standards. The Marine Environmental Monitoring Program monitors the extent and effect of industrial contaminants and pollutants on marine and estuarine ecosystems and to determine compliance with and attainment of water quality standards. Monitoring efforts are focused on ambient water quality, nutrients, and eutrophication indicators, in particular near wastewater discharges.

Beach Monitoring

The Maine Healthy Beaches Program (MHB) is a partnership between the Maine Department of Environmental Protection and local municipalities/state parks. The program is funded by the U.S. Environmental Protection Agency (EPA) through the Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000. MHB is a statewide effort to monitor water quality and protect public health at Maine's participating coastal saltwater beaches. There are over 60 participating beaches in the program spanning approximately 200 miles from Kittery to Acadia National Park. Biddeford has four beaches in this program: Hills Beach, Gil Bouche Park – Biddeford Pool, Middle Beach, and Fortunes Rocks Beach.

The Maine Healthy Beaches Program was established to ensure that Maine's saltwater beaches remain safe and clean. The program brings together communities to perform standardized monitoring of beach water quality, notifying the public of potential health risks and educating residents and visitors on what they can do to help keep Maine's beaches healthy.

Coastal Flooding and Resilience

Coastal Flooding is one of the most significant natural hazards impacting Maine's coast and is expected to become more severe with increasing precipitation, astronomically high tides, and sea level rise. Biddeford's coastline and low lying areas are already experiencing the effects of climate change as evidenced by coastal erosion, flooding, and inundation near critical infrastructure. But just how prepared is Biddeford for what is anticipated to come?

In order to prepare for these threats, local decision-makers need information and tools that allow them to better understand vulnerabilities and identify proactive steps to increase flood resistance. Biddeford is fortunate to have access to Southern Maine Regional Planning and Development Commission Coastal Resilience team. Their Senior Land Use Planner and Coastal Resilience Coordinator co-authored the Maine Flood Resilience Checklist, a voluntary, non-regulatory self-assessment tool designed to assist Maine communities to evaluate how well positioned they are to prepare for, respond to, and recover from flooding events and sea level rise. It offers an integrated and practical framework for examining local flood risk, evaluating vulnerability of the natural, build, and social environments, and identifying opportunities to enhance flood resilience. The Checklist can help Biddeford integrate sea level rise considerations into local floodplain ordinances, and incorporate resilience activities into capital improvement plans. The Checklist also provides direct links to helpful and informative state and federal resources that can inform the planning and decision making process.

Dredging of the Saco River and Biddeford Pool

Biddeford is home to two Federal Navigation Projects (FNP) that are maintained by the United States Army Corps of Engineers (USACE): the Saco River FNP and the Wood Island Gut/Biddeford Pool FNP. FNP's and their associated federal anchorages make it possible for safe marine navigation. USACE's DV Murden attempted dredging the head of the falls in the Saco River in 2017 but was forced to cease operations due to early icing in the river. A mechanical dredge completed the job in 2018/2019. USACE contracted a hydraulic suction dredge at the mouth of the river which provided beach nourishment to the beach at Camp Ellis in Saco. Wood Island Gut/Biddeford Pool FNP and anchorage were dredged in 2018/2019 by mechanical dredge. Biddeford Pool Yacht Club conducted a private dredge by USACE's contractor to increase water depth at the fishermen's wharf and anchorage.

Biddeford must compete with 64 other FNP's along Maine's coastline for maintenance dredging services. Communities that utilize their FNP's for commercial transportation have a stronger case for support than communities that utilize their FNP's for recreational purposes. Obtaining the necessary federal funding resources to survey, plan, design, engineer and contract dredging services is a constant challenge. Biddeford can improve its case for support by regularly conducting economic assessments at regular intervals to quantify the economic impact of the FNP's in the community.

Marine Resources

What Comes Next?

In order to best protect Biddeford's Marine Resources for future generations, the city will need to adopt policies, supported by strategies and tactics to accomplish specific goals. It will take hard work, but future generations are sure to be thankful for the efforts.

Goal 1

PROTECT

The State's and Biddeford's marine resources industry, ports and harbors from incompatible development and provide access to the shore for commercial fishermen and the public.

How We Get There:

- Identify needs for additional recreational and commercial access (which includes parking, boat launches, docking space, fish piers, and swimming access)
- Promote the maintenance, development, and revitalization of the State's ports and harbors for fishing, transportation and recreation.
- Foster water-dependent land uses and balance them with other complementary land uses.
- Maintain and, where warranted, improve harbor management and facilities.
- Provide information about the Working Waterfront Access Pilot Program and current use taxation program to owners of waterfront land used to provide access to or support the conduct of commercial fishing activities.
- If applicable, provide sufficient funding for and staffing of the harbormaster and/or harbor commission.

- Support shoreline management that gives preference to water-dependent uses over other uses, that promotes public access to the shoreline and that considers the cumulative effects of development on coastal resources.
- Work with local property owners, land trusts, and others to protect major points of physical and visual access to coastal waters, especially along public ways and in public parks.

Goal 2

PROTECT

Maintain and, where warranted, improve marine habitat and water quality.

How We Get There:

- Ensure that land use ordinances are consistent with applicable state law regarding important natural resources.
- Encourage owners of marine businesses and industries to participate in clean marina/boatyard programs.
- Manage the marine environment and its related resources to preserve and improve the ecological integrity and diversity of marine communities and habitats.
- Expand our understanding of the productivity of the Gulf of Maine and coastal waters and to enhance the economic value of the State's renewable marine resources.
- Encourage and support cooperative state and municipal management of coastal resources.
- Restore and maintain the quality of our fresh, marine and estuarine waters to allow for the broadest possible diversity of public and private uses.
- Support the implementation of local and regional harbor and bay management plans.

Goal 3

PROTECT

And manage critical habitat and natural areas of state and national significance and maintain the scenic beauty and character of the coast even in areas where development occurs.

How We Get There:

- Restore and maintain coastal air quality to protect the health of citizens and visitors and to protect enjoyment of the natural beauty and maritime characteristics of the Maine coast.
- Discourage growth and new development in coastal areas where, because of coastal storms, flooding, landslides or sea-level rise, it is hazardous to human health and safety.
- Expand the opportunities for outdoor recreation and encourage appropriate coastal tourist activities and development.
- Protect, maintain and, where warranted, improve physical and visual public access to the community's marine resources for all appropriate uses including fishing, recreation, and tourism.

14 Climate Change

1. What's Happening?

Climate Change is the most pressing issue of our time. It will dictate how we live and work over the coming decades. Mitigation and adaptation strategies to climate change will be essential to meet the challenges that lie ahead. The City of Biddeford recognizes the great work that must be done to meet these challenges, and is developing a Climate Action Plan for Biddeford that outlines specific vulnerabilities and recommends strategies to mitigate and adapt to the impacts of climate change.

Sea level rise is one of the most recognized consequence of climate change, and as a coastal community, Biddeford faces severe consequences if this issue is not addressed. Sea level has risen 7.4 inches since 1912, as measured in Portland.¹ The Gulf of Maine has warmed faster than 99% of the rest of the world's oceans.² But our coastline is not the only vulnerability we face as a community. Northern New England is becoming warmer faster than most of the United States, with the state of Maine already observing 3.2°F of warming since 1895.³ Our climate will become not only warmer, but less predictable and more extreme – with observed increases in heavy rainfall events and extended heat waves expected to worsen in the future.⁴ When we do experience droughts, higher temperatures may increase the chances of wildfires.⁵ These climate changes will impact our daily weather, the natural world, our health, and the economy.

¹ Barndollar, Hadley. "NOAA Says New England's Temps are Warming, Sea Levels Rising Faster Than the Global Average." The Providence Journal, February 18, 2022. Accessed November 28, 2022.

² *Ibid.*

³ Maine Climate Council. 2020. Scientific Assessment of Climate Change and Its Effects in Maine. A Report by the Scientific and Technical Subcommittee (STS) of the Maine Climate Council (MCC). Augusta, Maine. pp 370.

⁴ *Ibid.*

⁵ *Ibid.*

The City first recognized the importance of taking action in October of 2020 when the City Council declared by Resolution a Climate Emergency. This declaration led to the immediate creation of the Biddeford Climate Task Force, which has a mandate to develop a Climate Action Plan for Biddeford. Through the Task Force, the City joined the international organization *ICLEI – Local Governments for Sustainability*, an organization that provides technical assistance to our action planning. Using ICLEI’s resources, the City conducted its first ever greenhouse gas emission inventory in the summer of 2021.

City Council again displayed leadership in climate action by approving a resolution in March of 2022 to participate in the Governor’s Office of Policy, Innovation, and the Future’s Community Resilience Partnership. This partnership supports community-driven leadership and action in Maine to reduce greenhouse emissions and build Biddeford’s resilience to the impacts of climate change.

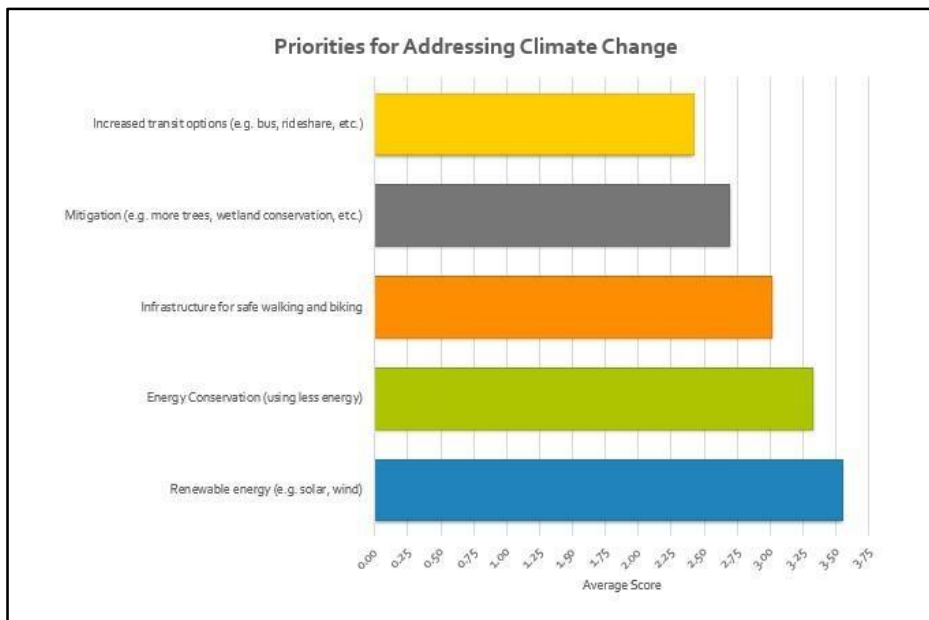
Participating in this partnership has allowed the City to join Southern Maine Planning and Development Commission (SMPDC) and the communities of Kennebunk, Kennebunkport, and Kittery to develop a climate action plan as a cohort. Creating a plan in this manner allows economies of scale, providing a resource-intensive, cost-efficient method of producing a plan that meets the specific needs and vulnerabilities unique to Biddeford.

But a completed climate action plan is just the beginning of the work that must be done in the coming years. Through rigorous public engagement, the plan will enumerate Biddeford’s vulnerabilities and present strategies for reducing greenhouse gas emissions and adapting to climate impacts that are already underway and expected to increase. Hard work and investment will be required to make Biddeford a resilient community as we move into the middle of the 21st century.

Biddeford’s Climate Action Plan is expected to be completed by September 2023.

2. What the Community is Saying

The Comprehensive Plan public engagement survey asked several questions regarding climate change, including about residents' priorities for actions and investments toward addressing climate change. The responses are shown in graph form below.



Please rank the following ways to address climate change from 1 to 5, with 1 being the area the City should focus on first.

Based on this survey, residents' top three priorities for climate action are

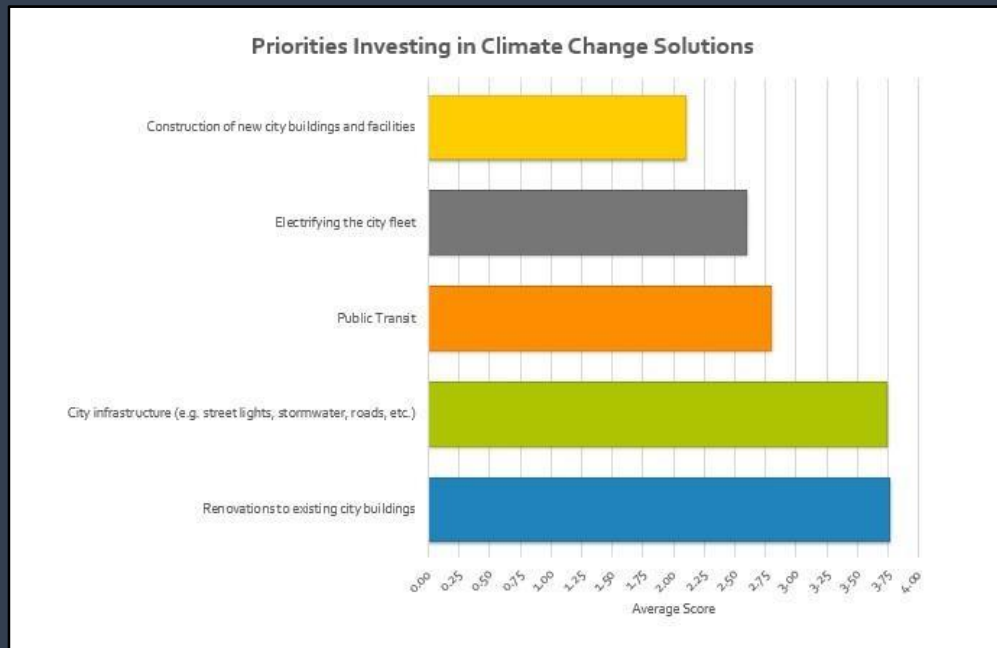
- **renewable energy**
- **energy conservation, and**
- **walking and biking infrastructure.**

The top three priorities for climate-related investments were

- **renovating existing city buildings**
- **city infrastructure, and**
- **public transit.**

In addition to the Comprehensive Plan survey, the Climate Task Force also conducted a public workshop in February 2022 as part of the State of Maine's Climate Resilience Partnership program at which residents were asked to share their perspectives on climate action priorities. During the workshop, attendees prioritized strategies for: enhancing renewable energy; reducing vehicle miles traveled; increasing access to electric vehicles and related infrastructure; and improving infrastructure, especially for stormwater, wastewater, and drinking water; and protecting public health.

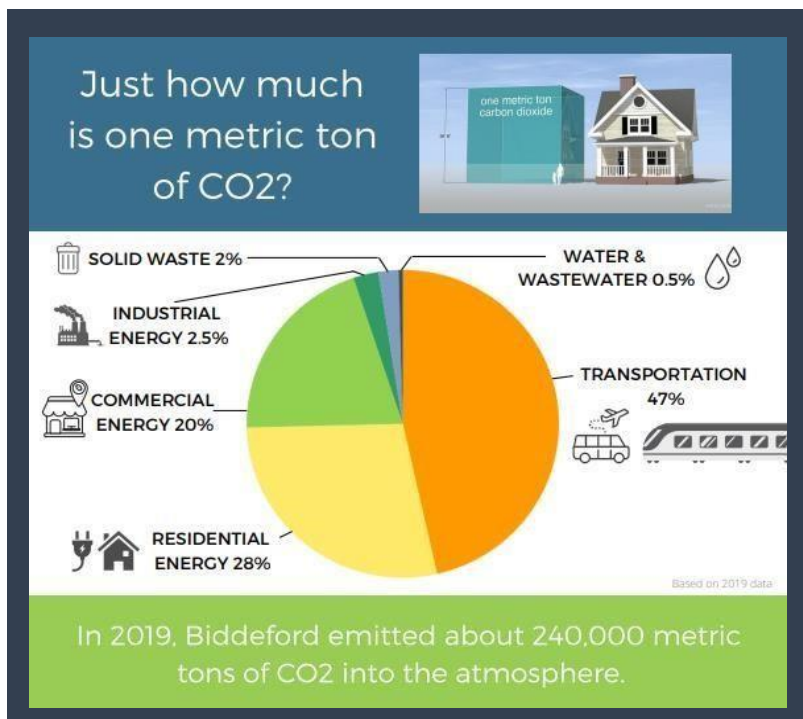
Through the Climate Action Plan process, the Biddeford Climate Task Force will undertake rigorous public engagement so that residents' perspectives and priorities are what drive the plan and its implementation. This will include a series of public workshops, as well as multiple interactive events that will be designed to enhance opportunities for harder-to-reach groups to participate in the planning process.



The city plans to invest in climate change solutions. Please rank these in order of important from 1 to 5, with 1 being the most important.

3. Biddeford's Greenhouse Gas Emissions

In 2019 the City conducted its first greenhouse gas emission inventory under the technical guidance of ICLEI. The results mirror those of the State of Maine overall: the greatest source of greenhouse gases is transportation (46%), followed by residential energy (28%). In total, the City emitted 240,000 metric tons of carbon dioxide (CO₂) into the atmosphere. To gain perspective, a metric ton is about equivalent to a small two-story house.



Conducting this inventory provides important information about how Biddeford can take the most effective action to reduce its carbon emissions, while also serving as a baseline dataset against which future progress in reducing emissions can be measured.

4. Challenges and Opportunities

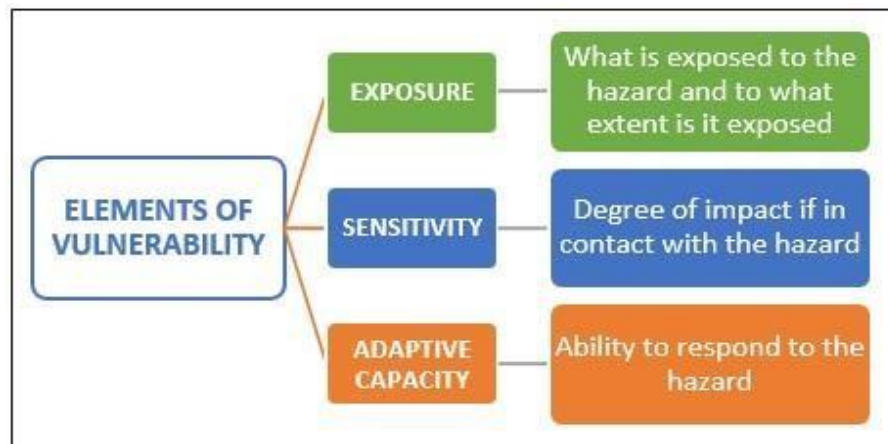
Public Engagement

Stakeholder and community engagement is a critical component of developing our climate action plan. Reaching groups of people that are often underrepresented in public decision-making is especially important, as these people may face the greatest vulnerabilities to climate change. But once the plan is completed, Biddeford residents must be involved in all aspects of climate mitigation and adaptation policy for successful implementation of the final action plan's goals and strategies. This work will be ongoing over the coming years as the effects of climate change become ever more apparent. Because climate change can be an overwhelming issue for some, it is important that public engagement focus on opportunities for action at both the individual- and community-level.

Biddeford's Climate Vulnerabilities

When completed, Biddeford's Climate Action Plan will provide a detailed outline of our climate-related vulnerabilities. Our city's vulnerability is determined not only by our physical exposure to climate hazards, but also by how sensitive people and places are to these impacts and the available capacity to respond (see figure below).

Our vulnerability analysis will include a comprehensive analysis of physical climate threats (exposure) resulting from flooding, extreme storms, extreme temperatures, drought, and changing marine conditions.



Importantly, some individuals and groups within Biddeford may experience greater vulnerability to the physical impacts of climate change due to socioeconomic factors. As such, the vulnerability analysis will also assess differing levels of susceptibility to climate hazards (sensitivity) and abilities to respond (adaptive capacity).

Some characteristics that can shape sensitivity and adaptive capacity to climate impacts include: income level, age, educational attainment, and level of linguistic isolation. For example, young children (below age 5) and elderly adults (age 65 or older) living alone may be more sensitive to floods and extreme heat events. Households with lower incomes or higher linguistic isolation may have less capacity to adapt to climate risks. Therefore, attention must especially be paid to Biddeford's low- to moderate-income residents, as well as other vulnerable groups, to ensure that they are not disproportionately affected by the impacts of climate change.

Transportation

The Greenhouse Gas Emission Inventory has shown that transportation is the leading sector of greenhouse gas emissions in Biddeford. In addition to encouraging transition to electric vehicles (EVs), reducing overall vehicle miles travelled (VMT) here is an important mitigation strategy. There are many opportunities to reduce VMT in Biddeford, and in turn reduce carbon emissions.

As outlined in the chapter entitled *Transportation*, adopting local Complete Streets policies is an important step toward emission reduction in the transportation sector. Too often, streets are designed primarily for motor vehicles, especially single occupancy vehicles. Employing Complete Street principles make streets safer and more accessible for all users: pedestrians, bicyclists, and bus riders.

New investment in mass transit infrastructure, especially, and incentives to encourage greater ridership is another important step toward reducing emissions in the transportation sector. Biddeford Saco Old Orchard Beach Transit is now transitioning to electric buses, with two electric vehicles in service now. An additional 2 electric buses are planned. BSOOB's goal is to have a zero-emission fleet in service by 2045. Continual improvement in

Climate Change:

What Comes Next?

mass transit service and infrastructure is both an opportunity and a challenge in the effort for emission reductions.

Mixed-Use Development and Redevelopment

Land use can have strong influence over reducing reliance on transportation. With a very dense downtown and adjacent Mill District, Biddeford is well positioned to take advantage of mixed uses development to lower carbon emissions. Over the past 15 years, former mill buildings have been redeveloped into mixed uses where residences and places of employment are in proximity.

With Main Street nearby, most daily activities can take place without reliance on a vehicle.

Continued redevelopment of mixed uses in the Mill District (i.e. Pearl Street and Upper Falls Road) and other development opportunities in the downtown will strengthen the walkability of Biddeford's urban core, and reduce dependence on single-occupancy vehicle use.

Biddeford's upcoming Climate Action Plan will outline Biddeford's climate vulnerabilities and will propose actions that can be taken for mitigation (reducing greenhouse gas emissions) and adaptation (actions that can manage the risks of climate change impacts).

A robust and comprehensive public engagement process for planning climate action will achieve multiple objectives: it will educate the public about the causes and impacts of climate change, it will inform them of the work that the Biddeford Climate Task Force is doing with regard to this serious issue, and it will inform the final Climate Action Plan and help with implementation of the plan.

Climate Change will undoubtedly bring increased risk of flooding to the vulnerable coastal areas of Biddeford Pool, Hills Beach, and Fortunes Rocks among other places. For these areas, it is important to strengthen existing infrastructure and make other improvements to protect and defend the coastal development from flooding. Also, discouraging new development in the most vulnerable coastal areas will improve Biddeford's overall resilience.

Other areas of the city will be affected as well. Situated along the Saco River, some parts of downtown are as vulnerable to flooding as the coast. Extreme storms, temperatures and drought can be expected to affect all parts of Biddeford. Working within the city, or in a regional capacity with other communities and/or organizations, there are many measures that can be taken to mitigate and adapt to climate change. This is long-term work.

Every resident, worker, or visitor of Biddeford bears some responsibility in the fight against climate change.

Goal 1

PLAN FOR, MITIGATE, AND ADAPT

To climate change impacts to Biddeford's natural and built environment, including its shoreline and adjacent land uses from rising sea levels.

How We Get There:

- Adopt a Biddeford Climate Action Plan that recommends strategies to mitigate and adapt to the impacts of climate change, especially those related to sea level rise.
- Monitor available information from federal, State, regional (such as Southern Maine Planning and Development Commission) and local sources on rising sea levels along Biddeford's coastline.

- As part of the Climate Action Plan, develop a public engagement program to enhance the awareness of climate change and sea level rise impacts on particularly vulnerable populations and groups.
- Continue to support local and regional cooperation for emergency response, the protection of water supply and sewer systems, adaptation measures, and other climate related hazard prevention and preparedness.
- Implement strategies that protect Biddeford's shoreline and enhance Biddeford's resilience to impacts from sea level rise.
- Evaluate existing infrastructure located in vulnerable areas to reduce the potential impacts from sea level rise, including but not limited to, in-place improvements and relocation of infrastructure outside of vulnerable areas.
- Evaluate all proposed new infrastructure investments by the city within the context of climate change and sea level rise before design and implementation.
- Encourage private property owners to implement measures to protect against the impacts of climate change and sea level rise in vulnerable areas.
- Reduce Vehicle Miles Travelled in the City by internal combustion engine vehicles, particularly for single-occupancy personal vehicles.
-

15 Fiscal Capacity & Capital Improvement Plan

1. What's Happening?

In Maine and New England, local government serves as the primary deliverer of critical services for the citizens. Unlike the majority of the municipalities in the rest of the country, it is the municipality, not County government, that serves that role.

The annual exercise of balancing the collective needs and wants within the community with the ability of those that pay the bills is at the core of the budgeting process. Through this process, the community establishes that which it will address and that which it will defer. Community leaders will often focus on service delivery as the priority over the responsibility of maintaining the capital assets.

The financial viability of the City of Biddeford requires intentional attention to capital assets and planning for the maintenance and replacement of those assets. This Fiscal Capacity chapter provides information about the financial challenges that are foreseen over the next several years. It also provides information regarding the ability of the City to meet those challenges based on the information known at the time of adoption of the Comprehensive Plan.

2. Capital Assets

Annually, in accordance with Governmental Accounting Standards Board (GASB) Statement No. 34, every local government is required to publicly report the total capital assets of the municipality. On June 30, 2021 (the most current audit), the City of Biddeford reported the capital assets shown within.

This initial list does not include activities of the City that are considered 'enterprise accounts'. Simply stated, enterprise accounts are treated by GASB as business type operations. As such, the financial reporting is treated differently than the general operating fund. The enterprise activity of the City is the Waste Water Treatment Plant (WWTP). These capital assets are also listed after the municipal list. It should be noted while GASB requires some different reporting standards for enterprise activity, those reporting differences does not impact GASB 34.

In accordance with GASB Statement No. 34, the City has reported all capital assets, including infrastructure in the Government-wide Statement of Net Position.

Capital asset activity for the year ended June 30, 2021 was as follows:

	Balance June 30, <u>2020</u>	<u>Increases</u>	<u>Decreases</u>	Balance June 30, <u>2021</u>
Governmental activities:				
Capital assets not being depreciated:				
Capital assets not being depreciated:				
Land - City	\$6,408,776	-	(2,155)	6,406,621
Land - School	827,675	-	-	827,675
Construction in progress - City	2,074,030	-	(6,440)	2,067,590
<u>Construction in progress - School</u>	<u>166,188</u>	<u>-</u>	<u>-</u>	<u>166,188</u>
<u>Total capital assets not being depreciated</u>	<u>9,476,669</u>	<u>-</u>	<u>(8,595)</u>	<u>9,468,074</u>
Capital assets being depreciated:				
Buildings and improvements - City	10,698,505	91,120	-	10,789,625
Buildings and improvements - School	67,448,755	-	-	67,448,755
Vehicles and equipment - City	14,449,406	1,152,676	(172,729)	15,429,353
Vehicles and equipment - School	3,886,090	734,441	(156,411)	4,464,120
Infrastructure - City	69,018,171	256,352	(42,446)	69,232,077
<u>Infrastructure - School</u>	<u>526,959</u>	<u>-</u>	<u>-</u>	<u>526,959</u>
<u>Total capital assets being depreciated</u>	<u>166,027,886</u>	<u>2,234,589</u>	<u>(371,586)</u>	<u>167,890,889</u>
Less accumulated depreciation for:				
Buildings and improvements - City	6,884,371	275,385	-	7,159,756
Buildings and improvements - School	25,460,527	1,630,974	-	27,091,501
Vehicles and equipment - City	8,509,218	737,758	(165,321)	9,081,655
Vehicles and equipment - School	2,603,120	218,046	(156,411)	2,664,755
Infrastructure - City	33,382,200	1,678,395	(41,906)	35,018,689
<u>Infrastructure - School</u>	<u>402,108</u>	<u>12,847</u>	<u>-</u>	<u>414,955</u>
<u>Total accumulated depreciation</u>	<u>77,241,544</u>	<u>4,553,405</u>	<u>(363,638)</u>	<u>81,431,311</u>
<u>Total capital assets being depreciated, net</u>	<u>88,786,342</u>	<u>(2,318,816)</u>	<u>(7,948)</u>	<u>86,459,578</u>
<u>Governmental activities capital assets, net</u>	<u>\$98,263,011</u>	<u>(2,318,816)</u>	<u>(16,543)</u>	<u>95,927,652</u>

Depreciation expense was charged to functions of the governmental activities as follows:

General government	\$ 84,856
Public services	184,427
Public safety	360,375
Public works, including depreciation of general infrastructure assets	2,061,880
Education	1,861,868
<u>Total depreciation expense – governmental activities</u>	<u>\$ 4,553,406</u>

	Balance June 30, 2020	Increases	Decreases	Balance June 30, 2021
Business-type activities:				
Land	\$ 204,275	-	-	204,275
<u>Construction in progress</u>	<u>9,485</u>	<u>-</u>	<u>-</u>	<u>9,485</u>
<u>Total capital assets not being depreciated</u>	<u>213,760</u>	<u>-</u>	<u>-</u>	<u>213,760</u>
Capital assets being depreciated:				
Building and improvements	4,632,484	-	-	4,632,484
Vehicles and equipment	15,811,486	76,230	-	15,887,717
<u>Infrastructure</u>	<u>22,314,874</u>	<u>-</u>	<u>-</u>	<u>22,314,874</u>
<u>Total capital assets being depreciated</u>	<u>42,758,844</u>	<u>76,230</u>	<u>-</u>	<u>42,835,075</u>
Buildings and improvements	2,213,344	139,863	-	2,353,207
Vehicles and equipment	8,184,910	446,536	-	8,631,446
<u>Infrastructure</u>	<u>8,137,141</u>	<u>532,066</u>	<u>-</u>	<u>8,669,207</u>
<u>Total accumulated depreciation</u>	<u>18,535,395</u>	<u>1,118,464</u>	<u>-</u>	<u>19,653,860</u>
<u>Total capital assets being depreciated, net</u>	<u>24,223,449</u>	<u>(1,042,234)</u>	<u>-</u>	<u>23,181,215</u>
<u>Business-type activities capital assets, net</u>	<u>\$24,437,209</u>	<u>(1,042,234)</u>	<u>-</u>	<u>23,394,975</u>
<u>Total capital assets being depreciated, net</u>	<u>24,223,449</u>	<u>(1,042,234)</u>	<u>-</u>	<u>23,181,215</u>

Depreciation expense was charged to programs of the business-type activities as follows:

Wastewater Fund	\$ 1,118,464
-----------------	--------------

Total depreciation expense – business-type activities	\$ 1,118,464
--	---------------------

Funding To Replace and/or Maintain Capital Assets

The City of Biddeford has increased the annual allocation from the operating budget significantly since a low of \$176,098 in FY13. The Council established an annual allocation goal of \$2,500,000 in 2018 to be phased in over a five year period. Beginning with the FY18 budget, the City allocated \$1,500,000 with planned \$250,000 annual incremental increases. The City met the incremental FY19 goal.

COVID slowed the progress, reducing the FY20 allocation to \$1,595,547 and FY21 allocation to \$1,361,047.

Inflationary pressures, particularly in the construction industry, are causing the City to evaluate the need to increase the goal to \$4,500,000 by FY29. This is an ongoing discussion during the upcoming FY24 budget preparation.

In an analysis completed in January of 2023, it was estimated that \$7,935,281 is needed annually to maintain all capital assets. This estimate was arrived by applying the following replacement schedule to the total net assets of the City.

<i>Category</i>	<i>Replacement Basis</i>	<i>Book Value (FY22)</i>	<i>Annual Requirement</i>
<i>Buildings</i>	30 years	\$24,935,071	\$831,169
<i>Vehicles & Equipment</i>	12 years	\$49,030,169	\$4,085,847
<i>Infrastructure</i>	45 years	<u>\$135,822,630</u>	<u>\$3,018,281</u>
<i>Total</i>		<u>\$209,787,229</u>	<u>\$7,935,297</u>

It is rare for a municipality to meet its capital needs from annual appropriations within the operating budget. Like other communities, Biddeford makes up for the majority of the difference by the use of various methods to pay over time. The two instruments that the City uses are traditional bond issuance or lease/purchases. The City has also had a very good track record of securing grant funding to reduce the burden on property taxpayers and WWTP rate payers. Finally, it uses sheltered tax incremental financing (TIF) funds for capital needs as well.

The City has capacity to continue to use a mix of these historical sources to address the future needs of the City. The following current conditions and trends are provided to support the conclusion.

3. Conditions and Trends

Debt limits

The State of Maine has a statutory limit on the total amount of debt that a community may issue.¹ The total limit of all debt is 15% of a municipality's most recent full valuation.² Half of that limit (7.5%) is limited for general obligations. The balance is reserved for other uses, such as storm and sanitary sewers, educational purposes, airports and others. The total indebtedness of the City is significantly under the statutory limits, as shown by the chart below.

¹ Title 30-A MRSA §5702

² Biddeford's total 2023 state valuation is \$3,595,900,000 as reported January 18, 2023

CITY OF BIDDEFORD, MAINE
Ratios of General Bonded Debt Outstanding
Last Ten Fiscal Years

(amounts expressed in thousands, except per capita amount)

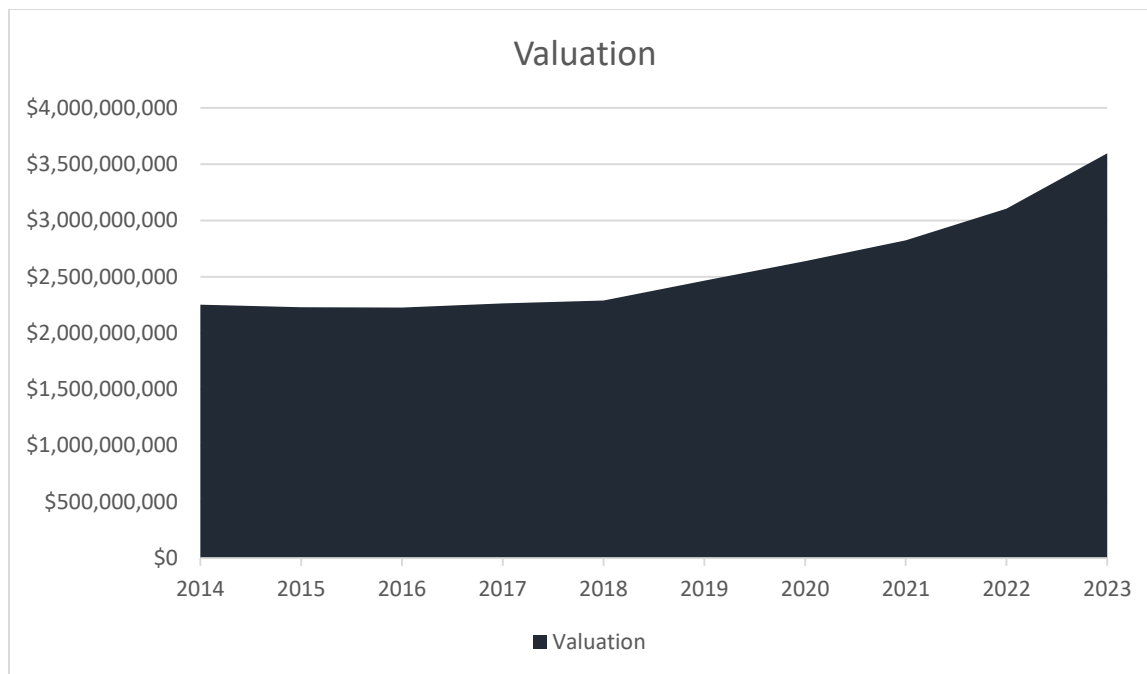
Fiscal Year	Total General Obligation Bonds/ Notes	Percentage of Estimated Actual Taxable Value of Property	Per Capita
2021	\$ 47,675	1.7%	2,114
2020	52,357	2.0%	2,441
2019	57,320	2.3%	2,664
2018	61,400	2.7%	2,857
2017	65,056	2.9%	3,045
2016	59,917	2.7%	2,813
2015	63,881	2.9%	2,994
2014	67,541	3.0%	3,172
2013	71,753	3.1%	3,367
2012	66,722	2.8%	3,120

Total Valuation of City

The local and state valuation of the City has grown exponentially in large part because of the economic development strategy employed by the City over the last decade. The following chart captures both the local valuation as well as the state valuation. It should be noted that the state valuation is determined by market conditions that are at least two years old.

Year Ending June 30	Local Valuation	State Valuation
2021	\$2,419,982,000	\$2,823,900,000
2020	\$2,417,771,000	\$2,639,350,000
2019	\$2,392,413,000	\$2,464,750,000
2018	\$2,280,812,000	\$2,288,700,000
2017	\$2,255,928,000	\$2,263,350,000
2016	\$2,257,633,000	\$2,226,350,000
2015	\$2,237,280,000	\$2,228,800,000

The most recent state valuation numbers demonstrate the rapid increase in the value within the community. The following chart captures these changes.



Communities increase in value in two ways. The most obvious is when land and property is improved. This form of economic development is beneficial. There are new net tax dollars that are being provided for every dollar of new value.

The second way that value increases is from appreciation of the existing properties. It is normally expected that the valuation increases because of appreciation would be at the same pace as other communities in the area. Expressed differently, the appreciation change because of general market conditions should be similar in an area regardless of a community's border.

Biddeford's appreciation is outpacing our neighboring communities. Recognizing that the growth is a concrete example of the improvement in the reputation and perceived value of living within the community, it does have downsides. Significant state tax policy is driven by state valuation. A higher valuation of a community is reflected in less state revenues to the community and an increased county tax burden. Over the next few years, the state valuation will continue to climb at a rate that is higher than that of the other communities in the area. This shift is likely to adversely impact the community because of Maine's tax policy.

Fund Balance

One of the primary focuses has been to meet the City goal of maintaining an unassigned fund balance equal to or greater than 12.5% of operating expenditures. Since this effort began in 2015, the City has increased this balance 575% from \$1,723,143 (FY14) to the current balance of \$11,636,817 (FY21). In FY21, the City reached the goal. Effective that year, the City has established the policy to use 100% of the funds above the goal exclusively for investments in capital assets.

The following chart provides the historical change in all general fund balances, including the unassigned fund balance discussed above.

	2015	2016	2017	2018	2019	2020	2021
General Fund							
Nonspendable	602,379	\$ 563,695	\$ 594,951	\$ 736,672	\$ 1,133,081	\$ 1,436,893	\$ 1,295,421
Restricted	2,351,559	2,858,214	2,285,096	2,408,164	2,394,089	3,451,767	3,946,564
Assigned	580,487	1,129,196	1,316,840	2,387,140	3,477,238	2,139,154	2,466,066
Unassigned	1,723,143	2,310,409	2,983,231	2,222,152	4,577,271	6,991,373	11,636,817
Total general fund	5,257,568	\$ 6,861,514	\$ 7,180,118	\$ 7,754,128	\$ 11,581,679	\$ 14,019,187	\$ 19,344,868

Revenues and Expenditures

The following is the most recent audited financial statement for the City's general fund. It captures the major revenues and the major expenditures for the community, as well as the capital investments.

CITY OF BIDDEFORD, MAINE
Changes in Fund Balances of Governmental Funds
Last Ten Fiscal Years
(modified accrual basis of accounting)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Revenues										
Taxes	\$ 39,978,359	\$ 43,406,442	\$ 44,483,148	\$ 45,672,627	\$ 47,484,477	\$ 48,511,496	\$ 49,974,308	\$ 51,245,771	\$ 52,394,437	\$ 53,139,898
Licenses, permits, fees and charges for svcs.	3,663,434	3,550,933	3,576,888	3,980,054	3,862,824	3,715,708	4,090,855	3,842,118	4,669,305	4,512,519
Intergovernmental	20,814,410	18,797,612	18,454,544	19,153,635	18,980,848	19,953,890	22,397,047	24,113,760	28,504,343	44,827,691
Investment earnings	119,876	277,076	190,932	114,977	125,731	260,023	262,168	368,396	609,674	427,669
Other	1,235,803	754,995	1,134,349	1,229,823	896,986	1,995,719	1,303,436	889,364	1,174,982	4,043,627
Total revenues	\$ 65,811,882	\$ 66,787,058	\$ 67,839,861	\$ 70,151,116	\$ 71,350,866	\$ 74,436,836	\$ 78,027,814	\$ 80,459,409	\$ 87,352,741	\$ 106,951,404
Expenditures										
General government	3,948,051	4,233,407	4,454,329	4,417,062	4,556,574	4,700,174	9,158,195	9,536,842	10,641,164	11,353,917
Public services and libraries	1,567,639	1,653,722	1,686,415	1,651,031	1,610,272	1,687,658	1,523,494	1,975,653	3,254,974	8,101,574
Public safety	10,076,847	10,675,805	11,085,652	11,866,596	11,742,905	12,474,899	9,756,561	10,361,398	10,739,015	15,003,834
Public works	4,736,391	5,088,601	5,510,515	5,722,488	5,429,610	5,757,532	4,611,914	4,626,237	4,599,516	4,828,733
Education	29,201,826	30,235,540	30,705,072	31,982,549	32,088,859	33,452,802	35,983,638	35,794,180	40,620,541	48,668,997
County tax	1,281,101	1,303,501	1,896,950	1,250,633	1,228,999	1,217,090	1,235,647	1,221,062	1,282,292	1,323,152
Other	1,413,925	344,488	503,433	851,523	588,703	134,603	837,272	131,157	-	-
Debt service (including education debt service):										
Principal	4,121,378	4,180,705	4,197,644	3,921,765	4,321,073	5,448,700	4,430,357	5,108,556	5,319,405	5,757,885
Interest	2,395,263	1,971,850	2,306,996	2,439,097	1,950,048	1,171,200	1,516,124	1,591,507	1,462,125	690,038
Capital outlays	14,648,309	12,502,294	1,771,893	3,939,996	2,833,882	5,467,769	4,905,325	7,055,138	7,584,766	4,801,883
Equipment and Supplies, other than General Fund	906,405	794,809	896,144	968,394	793,311	906,221	739,071	905,131	-	-
Program expenditures, other than Gen. Fund	5,274,175	3,641,620	3,330,340	3,584,154	3,411,437	3,426,205	3,359,221	3,889,567	-	-
Contracted services, other than Gen. Fund	288,256	295,287	244,678	538,673	1,491,732	1,451,066	1,256,207	3,413,004	-	-
Total expenditures	\$ 79,859,566	\$ 76,921,629	\$ 68,590,061	\$ 73,133,961	\$ 72,047,405	\$ 77,295,919	\$ 79,313,026	\$ 85,609,432	\$ 85,503,798	\$ 100,530,013
Excess (deficiency) of revenues over (under) expenditures	(14,047,684)	(10,134,571)	(750,200)	(2,982,845)	(696,539)	(2,859,083)	(1,285,212)	(5,150,023)	1,848,943	6,421,391
Other financing sources (uses)										
Transfers - in	44,384	88,109	105,006	247,077	202,215	466,295	1,929,557	2,313,026	2,123,118	1,895,617
Transfers - out	(806,884)	(628,109)	(605,006)	(787,077)	(742,215)	(1,006,295)	(2,570,698)	(2,725,723)	(2,465,734)	(2,277,000)
Use of escrow funds	15,762	-	-	-	-	-	-	-	-	-
Payment to refunding escrow	-	-	-	-	-	(27,256,283)	-	-	-	(2,655,543)
Proceeds from bond/note sales	-	8,960,205	-	-	-	34,584,462	346,844	966,315	43,923	731,386
Proceeds from bond premium	-	106,207	-	600,000	-	3,450,402	-	-	-	-
Payment to refinancing lease	-	-	-	-	(1,369,541)	-	-	-	-	-
Proceeds from capital leases	381,374	1,331,654	-	577,598	1,725,860	866,414	-	2,884,313	-	8,224,411
Sale of City property	-	-	-	-	-	-	-	30,817	100,000	4,963
Total other financing sources (uses)	(365,364)	9,858,066	(500,000)	637,598	(183,681)	11,104,995	(294,297)	3,468,748	(198,693)	5,923,834
Net change in fund balances	\$ (14,413,048)	\$ (276,505)	\$ (1,250,200)	\$ (2,345,247)	\$ (880,220)	\$ 8,245,912	\$ (1,579,509)	\$ (1,681,275)	\$ 1,650,250	\$ 12,345,225
Debt service as a percentage of noncapital expenditures	10.0%	9.6%	9.7%	9.2%	9.1%	9.1%	7.9%	8.7%	8.6%	6.9%

4. What is a Capital Improvement Program?

The Capital Improvement Program (**CIP**) is the City's long-range plan for spending on major infrastructure projects throughout the community. The CIP guides investment in streets, sidewalks, parks, sewer and stormwater systems, public transportation, public safety facilities and equipment and more.

The City of Biddeford maintains a five-year CIP that is updated annually. Although a long-term program does not necessarily commit the City to a particular expenditure in a particular year.

Why is a Capital Improvement Program Important?

Many aspects of the Capital Improvement Program can have profound impacts on the development of the City and the fiscal integrity of the government. Programs expanding or improving public services can influence the timing and location of new development while fostering preferred long-time growth patterns. In addition, the Capital Improvement Program represents the community's approach to implementation of the Comprehensive Plan.

WHAT IS A CAPITAL IMPROVEMENT?

A common definition of a capital improvement includes new or expanded physical facilities that are relatively large, expensive, and permanent. An extremely important fiscal planning principle underlying this definition is that capital improvements should include only those expenditures for physical facilities with relatively long-term basis or through grants acquired from other governmental agencies.

Capital improvements should not include expenditures for equipment or services that prudent management defines as operating budget items and which should be financed out of current revenue resources.

BENEFITS OF A CAPITAL IMPROVEMENT PROGRAM

An effective capital improvement programming process can:

- **Ensure that plans for community facilities are carried out**
- **Allow improvement proposals to be tested against the community's policies and objectives**
- **Better schedule public improvements that require more than one year to construct**
- **Provide an opportunity, assuming funds are available, to purchase facilities for future municipal use**

- **Help stabilize tax rates through intelligent debt management;**
- **Offer an opportunity for citizens and public interest groups to participate in decision-making**
- **Contribute to a better management of City affairs**
- **Permit a thorough technical evaluation of the justification for each improvement**
- **Enhance the orderly growth of the revenue base**
- **Provide a basis for-desired urban growth.**

FISCAL POLICIES

Careful fiscal analysis and the adoption of specific fiscal policies must be the foundation of the Capital Improvement Program. Long-range financial studies and forecasts must be made. At a minimum, such analyses should include the preparation of tables showing the amortization of all outstanding debts. These forecasts focus on the local general economic situation and the extent to which it may affect long-term local government revenues. Anticipated revenues must then be compared with anticipated expenditures for capital improvements and personnel services, and other costs must be projected to determine whether projected revenues and expenditures are in balance, or whether surpluses or deficits, and forecast the effect.

Fiscal policies address such issues as:

- **The maximum amount of debt the local government is willing to assume**
- **The type of revenue devices that will or will not be used**
- **The annual amount of debt service that the operating budget can absorb**
- **The specific types of projects or facilities that must be self-sufficient through user fees or other charges**
- **The degree to which the City will see State or Federal grant-in-aid.**

Fiscal policies may be related to strategic community objectives--such as expenditures Targeted in support of economic development objectives that are most likely to maintain or attract an industrial or commercial base, create new jobs, or generate private investments in neighborhood revitalization.

CHOICE OF PRIORITIES

The setting of priorities continues to be a vexing problem. Choosing what project will be built is the most crucial step in the Capital Improvement Program process. Projects should be evaluated with regard to their effectiveness in achieving community goals.

The evaluation should consider factors such as:

- How the proposal complements the Comprehensive Plan and desired long-term urban growth patterns
- Whether the proposal will help implement the Strategic Plan to be developed and adopted by the City Council
- The extent that the proposal will encourage capital investment, improve the City's tax base, improve job opportunities, attract consumers to the City, or produce public or private revenues
- Whether the proposal is be cost-effective in terms of capital and probable operating cost
- The extent that the proposal eliminates or reduces conditions detrimental to health, safety, and general welfare of the community
- How the proposal meets a community obligation to serve a special need
- If the proposal cost is justified in terms of number of persons to be benefitted;

2023-2027 5-YEAR CAPITAL IMPROVEMENT PLAN

Entry No.	Department	CIP Name	Est Total Cost	Description
1	Airport	Tile Floor Replacement - Lobby & Bathrooms	\$ 20,000	Tile (ASBESTOS?) floor in public area breaking up / free tile chips at entrance door threshold. If asbestos mitigation required, likely the largest part of replacement. If not, floor cost should be significantly less.
2	Airport	ADA Building Update	\$ 30,000	ADA update to airport "terminal" building for public use (offices/lobby/bathrooms.)
3	Airport	Apron Design and Reconstruction	\$ 800,000	Apron (aka - parking/movement area) design and reconstruction (phase 1 - west apron)
4	Airport	Aviation Gasoline System Replacement	\$ 400,000	Fuel farm replacement with current tank removal. SCHEDULE 2027
123	Economic Development & Planning	Second Pedestrian Bridge	\$ 5,300,000	Construct, in cooperation with the City of Saco, a second pedestrian bridge across the Saco River connecting to Pearl Point Park and the rest of the Riverwalk.
124	Economic Development & Planning	Riverwalk	\$ 3,000,000	Construction of the Riverwalk from Laconia Plaza to Pearl Point Park.
125	Economic Development & Planning	Pearl Point Park	\$ 1,500,000	Build out of Pearl Point Park, at the end of Pearl Street
126	Economic Development & Planning	Climate Change Action Plan	\$ 65,000	To build on the work of the Climate Change Task Force, the Task Force recommending a budget of \$65,000 to create a climate change plan.
127	Economic Development & Planning	Public Art Seed funding	\$ 100,000	The DDC will provide Council with a report in December for the establishment of an Arts Council. That Council will begin developing an action plan during the next fiscal year.

10	Engineering	Electrical-Lincoln Street	\$ 180,000	Complete underground Electrical
11	Engineering	Utilities/Re-construction	\$ 3,320,000	Street drainage improvements. Utilities, lights, storm water
12	Engineering	Bumps Outs and Cross Walks Lower Main St	\$ 510,000	Repair/replace/update downtown street scape from Alfred to Water St
13	Engineering	Hill/Main/Water	\$ 3,047,000	Intersection redesign and improvements at Hill, Main, Water
14	Engineering	Thatcher Brook 319 Phase III	\$ 220,000	Thatcher Brook Watershed 319 Grant implantation of phase #3
15	Engineering	Thatcher Brook Watershed Mgt Plan Phase-II	\$ 475,000	Thatcher Brook Watershed retrofit/improvement program
16	Engineering	Engineering Design/Inspection Services	\$ 800,000	Engineering design and inspection services for upcoming projects
17	Engineering	Intersection Elm & Pearl	\$ 2,049,125	Intersection redesign and improvements at Elm and Pearl St
18	Engineering	Green Infrastructure, Install LID Devices and Structures	\$ 1,000,000	Install Green infrastructure, storm water flow reduction devices
19	Engineering	River Wall Repair, Mechanics Park	\$ 400,000	Repair/replace river wall along Mechanics Park
20	Engineering	Sidewalks - Adams St	\$ 200,000	Sidewalk replacement
21	Engineering	Sidewalks - Alfred Street Phase I	\$ 1,261,390	Sidewalk replacement, new street lights, crosswalks. Main to Jefferson 600'long 6'wide
22	Engineering	Sidewalks - Alfred St Phase II	\$ 1,261,390	Sidewalk replacement
23	Engineering	Crosswalks/Lights/Sidewalks - Washington St	\$ 624,000	Sidewalk replacement, new lights, cross walks
24	Engineering	River Wall Repair Next to Zanton Property	\$ 2,000,000	Stones missing to river current due too heavy rains
25	Engineering	Harbor Access/Boat Launch - Vines Landing	\$ 425,000	Reconstruct boat launch at Vines Landing
26	Engineering	West Brook Skating Area Improvements	\$ 1,720,000	Repair/Reconstruct berm along West Brook to protect skating area
27	Engineering	Climate Resiliency Initiatives	\$ 300,000	Look at climate needs for the future of the plant
28	Engineering	Granite Point Culvert Replacement	\$ 469,000	Culvert replacement Granite Point Road
29	Engineering	Landry Street Culvert	\$ 150,000	Replace culvert Landry street Corrective action to resolve identified ADA deficiencies from 2021 ADA Self-Evaluation and Transition Plan document.
30	Facilities	Community ADA Compliance	\$ 21,277,700	

				Placeholder for future demolition of the communications tower at 3 Lincoln Street (former Maine Energy Recovery Company property)
31	Facilities	3 Lincoln Communications Stack	\$ 1,100,000	
32	Facilities	CC Community Center	\$ 1,677,790	Community Center renovations including heating.
33	Facilities	CH City Hall Renovations	\$ 1,000,000	City Hall renovations for building maintenance and ADA compliance
34	Facilities	DPW Replace Garage Doors	\$ 90,000	Replace large overhead doors over 3 year period.
35	Facilities	DPW Front Doors Replacement	\$ 15,000	Replace both front entry doors at Public works.
36	Facilities	DPW Hallway/Lunch Room Flooring	\$ 17,500	New flooring in Hallway and Break room.
37	Facilities	DPW Recycling Cardboard Storage	\$ 15,000	Recover Cardboard storage with stronger vinyl material.
38	Facilities	FD Rubber Roof Replacement	\$ 120,000	Replacement of rubber roof. It has reached its lifespan and has had multiple issues with leaking that have had to be repaired. The roof is original from when the station was built in 1990.
39	Facilities	FD Driveway Replacement	\$ 275,000	Our current drive way has not been replaced or sealed since it was installed in 1990. It currently has large cracks throughout and is sinking in front of the apparatus bay doors. Catch basins are also caving in. DPW has worked to try and do repairs over the last few years, but the driveway has multiple concerns and it at the end of its life span.
40	Facilities	FD Station Brick work	\$ 40,000	The fire station is 31 years old and the brick work is in need of repair. Water has caused damage and the station brickwork needs to be re-pointed.
41	Facilities	FD Duct Work Service	\$ 15,000	This request if for funding to service and clean the station duct work. This was done about 10 years ago, the duct work has been inspected and is in need of professional cleaning.
42	Facilities	FD Window Replacement Phase 1	\$ 30,000	This request is for phase 1 of a two phase project. This phase

				would replace the windows on the 2nd floor of the station.
43	Facilities	FD Window Replacement Phase 2	\$ 30,000	This request is for phase 2 of the FD window replacement plan. It would replace the windows on the first floor.
44	Facilities	FD Interior Floor Replacement	\$ 30,000	Replacement of the of the common areas flooring.
45	Facilities	FD Landscape Improvements	\$ 25,000	This request would provide funding to remove 8 large trees on the side of the building and install a lawn in that area.
46	Facilities	FD Apparatus Floor Re-Surface	\$ 18,000	This floor was originally resurfaced in 2012 because of slipping and safety issues. It is has become worn and it needs to be resurfaced to continue to offer the safety protection.
128	Facilities	FD Coastal Station Initial Development Cost	\$ 200,000	Initial development cost for a coastal station design
129	Facilities	FD Coastal Station	\$ 2,500,000	Construction of new coastal fire station.
47	Fire Department	Battery Extrication Tools	\$ 50,000	This would be used to update our vehicle extrication tools. Our current tools on SQ-28 are over 21 years old. These tools are used to extricate victims from vehicles at car accidents. Additionally, these new battery tools could be used for things like industrial accidents with people that may be trapped in machinery, building collapse incidents, and firefighter rescue. These new tools would be battery operated and not require the use of a large hydraulic pump like our current tools that do not allow us to operate them inside the building.
48	Fire Department	EMS CPR Compression Devices	\$ 30,000	This is a mechanical device that is attached to patients that are in cardiac arrest that delivers chest compressions. This device delivers compressions at a uniformed rate consistently to the patient allowing personnel to work on other needed medical

interventions. Additionally, this device improves on responder safety, often responders need to perform CPR compressions in positions that are not safe such as driving down the road in the back of ambulance. In addition CPR compressions could now be performed if needed while moving the patient, such as down a flight of stairs.

49	Fire Department	Rescue Boat	\$ 50,000	This request is to allow us to replace our current rescue boat. This boat is a 1964 aluminum boat that does not meet the needs of a rescue boat.
50	Fire Department	EMS Stretcher Lifting Device	\$ 50,000	This request is for two EMS stretcher lifting devices that would go into each of the two remaining ambulances that we have that do not have these devices. This devices assists with lifting the stretcher with the patient on in into the ambulance.
51	Fire Department	Hydraulic Rescue Pump	\$ 15,000	This project is to replace our current hydraulic rescue tool pump. This pump operates our hydraulic vehicle extrication tools. This pump was purchased in 2003.
52	Fire Department	Replace Rescue Ropes and Harnesses	\$ 15,000	Replacement of much of our high angle, below grade, and rescue ropes and harnesses. These items have reached the end of their manufacturer recommended service life and need to be replaced.
53	Fire Department	EMS Equipment	\$ 75,000	Replacement program for EMS stretchers, stair chair, cardiac monitors. All three of our ambulances and our front line fire apparatus have cardiac monitors. These monitors are computers that get used often and need to be on a replacement plan to stay up with the latest technology and most advanced patient care. Monitors are circulated from

				ambulance to fire apparatus as they are replaced. This program would allow a cardiac monitor to be in service for about 18 years before it is taken out of service. EMS stretchers and stair chairs take a lot of abuse and need constant maintenance and repairs. This program would allow a stretcher and stair chair to be in service for 9 years before being taken out of service.
				This funding would replace our hydraulic rescue tool located on our 2nd Engine used in vehicle extrications.
54	Fire Department	Replace Hydraulic Rescue Tools	\$ 40,000	
				Erect stand-alone 200 foot telecommunications tower to service the western part of the City.
55	Police Department	Andrews Road Radio Tower	\$ 1,000,000	
		Modular Vehicle Barrier System	\$	Portable vehicle barrier system to prevent vehicle ramming events
122	Police Department		35,350.00	
		Vehicle Maintenance 5 Year Vehicle/Equip Replacement Program	\$	5 year vehicle/equipment replacement program
56	Public Works		5,875,000	
		Street Maintenance - Capital Paving Program	\$	Resurfacing of app 6 miles of roadway
57	Public Works		3,596,618	
		Sidewalks	\$	Sidewalk repair throughout city as needed.
58	Public Works		487,500	
59	Public Works	Granite Point Culvert		
				Install drainage syst. Sidewalks paving from the Spur to Arundel line
60	Public Works	Rte. 1 Improvements	\$ 845,000	
				Implementation of a multiyear program to manage and maintain a healthy tree inventory within the city. Focus on Main Street the year of 2023
61	Public Works	Tree Management Plan	\$ 200,000	
				Road widener will allow city staff to do all gravel shoulder work and loam placement after hot top has been completed. This will speed up projects and completions. Gives for a better quality finish product.
62	Public Works	Road Widener	\$ 67,500	
			\$	Put auto gate on Bus entrance side.
63	Public Works	Auto gate	55,000	

64	Public Works	Cemetery Software Program	\$ 40,000	Software program for burial inventory.
65	Public Works	Sign inventory	\$ 40,000	Supplies for new signage throughout the city.
66	Recreation	Clifford Park	\$ 72,000	Maine Conservation Corp projects, skate park repair, park shelters, trail work, court resurface.
67	Recreation	Community Center Playground	\$ 68,000	Community Center Playground upgrades and replacement.
68	Recreation	Doran Field	\$ 30,000	Field reconfiguration, facility completion, elimination of aged playground, relocation of batting cage, dugout repairs.
69	Recreation	Seasonal Ice Rink	\$ 30,000	Temp ice for Mechanics Park.
70	Recreation	Memorial Park	\$ 33,800	Improve Challenger Field dugouts (Middle Field), playground updates.
71	Recreation	Park Fence Repair	\$ 14,000	Clifford Park Fence repairs near parking lot and tennis court, St. Louis interior fence, Maintenance gate at Rotary Park.
72	Recreation	Park in the Pines Seawall	\$ 40,000	Engineering and repair work for seawall.
73	Recreation	Pierson's Lane Playground	\$ 30,000	Playground upgrades and fencing repair and addition of stockade fence between playground and Bacon Street Apt.
74	Recreation	Pool Beach Ramp	\$ 25,000	Ramp improvements for the bathhouse.
75	Recreation	Portable Stage	\$ 12,000	Portable stage for community events.
76	Recreation	Property Purchase- Gagne	\$ 150,000	Gagne Property Purchase.
77	Recreation	Rotary Park Complex	\$ 1,635,250	Work off master plan and replacing Martel Field Backstop.
78	Recreation	Shevenell Park	\$ 152,519	Park Renovation.
79	Recreation	Park Amenities-1	\$ 35,000	Addition and replacement of items such as grills, picnic tables, benches, kiosk and bike racks.
80	Recreation	Mobile Restroom	\$ 25,000	Use for special events.
81	Recreation	St Louis Field Complex	\$ 2,200,000	Field I seating, perimeter fencing replacement on Hill, South and Prospect Streets, Field II bleacher replacement, irrigation field I.

				Restroom renovation at St. Louis facility.
82	Recreation	Splash Pad	\$ 500,000	Recreational Splash pad.
83	Recreation	Community Center Myrtle Street Lot	\$ 75,000	Regrade and pave myrtle Street lot.
84	Wastewater Treatment Plant	Private I/I	\$ 1,500,000	Assist in removal of private I/I from flat roofs and sump pumps
85	Wastewater Treatment Plant	GIS Mapping	\$ 625,000	General improvement on sewer/storm map accuracy including field verification and data collection on elevations.
86	Wastewater Treatment Plant	Sewer Pipe Rehab	\$ 1,750,000	Trenchless lining projects to begin to rehabilitate the collections system
87	Wastewater Treatment Plant	Flow Monitoring	\$ 400,000	System flow monitoring
88	Wastewater Treatment Plant	CSO Phase III Master Plan	\$ 300,000	CSO Phase III Master Plan
89	Wastewater Treatment Plant	CSO Separation - Alfred St-1	\$ 1,560,000	Sewer separation on Alfred St. from Main to Pool
90	Wastewater Treatment Plant	CSO Separation - Alfred St-2	\$ 910,000	Sewer separation on Alfred St. from Pool to Summer
91	Wastewater Treatment Plant	CSO Separation - Summer St	\$ 650,000	Sewer separation on Summer St from Alfred to Foss
92	Wastewater Treatment Plant	CSO Separation - Alfred St-4	\$ 650,000	Sewer separation on Alfred St. from Porter to Myrtle
93	Wastewater Treatment Plant	CSO Separation - Center St	\$ 1,692,158	CSO Separation Project
94	Wastewater Treatment Plant	CSO Separation-Elm St	\$ 1,190,000	Elm Street sewer separation work. Cutts to South
95	Wastewater Treatment Plant	CSO Separation-Pool and Foss Road	\$ 900,000	CSO Separation Project
96	Wastewater Treatment Plant	CSO Storage Tank-Horrigan's Court/Gooch St Area	\$ 3,000,000	CSO Storage Tank
97	Wastewater Treatment Plant	FMI Pump Station	\$ 450,000	Replacement of Morin St FMI pump station
98	Wastewater Treatment Plant	Horrigans Court Pump Station	\$ 6,000,000	New pump station to replace existing station at Horrigan's Court
99	Wastewater Treatment Plant	Bypass Pump	\$ 60,000	Replacement of 6" bypass pump for emergency backup pumping
100	Wastewater Treatment Plant	Bidd Pool WWTF Disinfection Upgrade	\$ 80,000	Replace sodium hypochlorite disinfection with UV system
101	Wastewater Treatment Plant	Effluent Pump Station	\$ 1,260,000	Install new Effluent Pumping Station at WWTF

102	Wastewater Treatment Plant	CSO#9 Tank Pumps	\$ \$50,000	Replacement of pumps at CSO#9 capture tank and automate pumps/valves
103	Wastewater Treatment Plant	Biotower Media Replacement	\$ 1,050,000	Replace media in bio-reactor
104	Wastewater Treatment Plant	Concrete Repair on Aeration Basins	\$ 60,000	Repairing concrete, Sandblasting and painting of two (2) aeration tanks at WWTF
105	Wastewater Treatment Plant	WWTF Modifications for Nitrogen Removal	\$ 300,000	Baffles, Mixers, Recirculation pumps and instrumentation for two aeration tanks at WWTF to allow the facility to better remove nitrogenous wastes
106	Wastewater Treatment Plant	CSO Separation-South St	\$ 1,690,000	South St. sewer separation. Wentworth to Adams
107	Wastewater Treatment Plant	Grit Removal System	\$ 242,000	Replacement of grit washing units
108	Wastewater Treatment Plant	Updating PLC	\$ 30,000	Replacement of remaining PLC5 with new Allen Bradley PLC
109	Wastewater Treatment Plant	WWTF Roofing	\$ 75,000	Replacement of Admin. Building 1, 2, 9 roofing
111	Wastewater Treatment Plant	Sewer Upgrade - Diamond Match Park	\$ 1,300,000	Replacement of cross country pipe that runs along the river on the east side of the Horrigan's pump station.
112	Wastewater Treatment Plant	Effluent Flow Meter	\$ 40,000	Replacement of 24" effluent flow meter at WWTF
113	Wastewater Treatment Plant	CSO Separation - Alfred St-3	\$ 2,080,000	Sewer separation on Alfred St from Summer St. to Porter St.
114	Wastewater Treatment Plant	WAS/RAS Pump Replacement	\$ 82,000	Replacement of two waste pumps and one return pump
115	Wastewater Treatment Plant	9th St Drainage	\$ 750,000	French drain causing flooding during heavy rain. Needs new drainage run to connect to. Home owners keep calling to complain.
116	Wastewater Treatment Plant	CSO Separation - Cutts St	\$ 432,000	CSO Separation Project
117	Wastewater Treatment Plant	CSO Separation - Mason/Bradbury	\$ 1,056,000	CSO Separation Project
118	Wastewater Treatment Plant	Expand Capacity on Water St	\$ 150,000	New pipe on Water St to increase capacity to CSO tank and WWTF.
119	Wastewater Treatment Plant	CSO Separation - Lower Main	\$ 422,500	Pipe repairs on lower Main
120	Wastewater Treatment Plant	CSO Separation - Main St	\$ 800,000	Sewer separation from Lunt to Highland
110	Wastewater Treatment Plant	Elm St Pumps Station	\$ 3,000,000	New pump station on Elm St at river

121	Wastewater Treatment Plant	Supervisor Vehicle	\$ 40,000	Replacement of Wastewater Supervisor vehicle
5	Biddeford Ice Arena	Bleachers	\$ 245,000	Replace Bleachers
6	Biddeford Ice Arena	Right Side Wall Repair	\$ 38,502	Repair existing damage to East Wall.
7	Biddeford Ice Arena	New Roof	\$ 149,621	Repair existing damage to roof an upgrade.
8	Biddeford Ice Arena	Replace old Baxi Boilers	\$ 84,920	Replacement of existing Baxi boilers that have exceeded life expectancy.
9		Community Gateways		
			\$ 114,942,133	

**BIDDEFORD PLANNING BOARD
RULES OF PROCEDURE AND CODE OF ETHICS**

Adopted: November 7, 2007
Effective: January 1, 2008

1. GENERAL

A. Authority:

These Rules of Procedure and Code of Ethics are supplementary to the provisions of the *Part III (Land Development Regulations), Article X (Planning Board)* as it relates to the procedures of the Planning Board.

B. Purpose:

The purpose of these Rules of Procedure and Code of Ethics is as follows:

- i. To establish a reasonable and consistent process for the Planning Board to consider, hear, and act upon the duties and responsibilities as outlined in *Part III (Land Development Regulations), Article X (Planning Board)*;
- ii. To ensure fair and impartial treatment of each Applicant, Respondent, or Person who is interested in any proposed action of the Board;
- iii. To promote the orderly and efficient conduct of public proceedings convened to decide such matters; and
- iv. To comply with applicable federal, state, and local laws.

C. Scope:

These Rules apply, effective January 1, 2008, to the Planning Board's conduct of the consideration and action on:

- i. Comprehensive Plan Adoption and Amendment Public Hearings;
- ii. Proposed Zoning Amendment Public Hearings;
- iii. Subdivision Applications (Conceptual, Preliminary, and/or Final Reviews);
- iv. Site Plan Review Applications (Conceptual and/or Final Reviews);
- v. Conditional Use Permit Applications (Conceptual and/or Final Reviews);
- vi. Shoreland Zoning Permit Applications (Conceptual and/or Final Reviews);
- vii. Other development plans as required by the Ordinance; and
- viii. Any combination of the above.

The Rules will guide the Planning Board's conduct of all other matters, as appropriate.

2. ADOPTION AND AMENDMENTS

These Rules of Procedure and Code of Ethics shall be adopted and may be amended following a Public Hearing by the Board. The Public Hearing shall be legally noticed in a newspaper of general circulation in the city at least seven (7) days prior to the date of hearing. The notice shall contain the time, date, and place of hearing, and sufficient detail about the proposed changes as to give adequate notice of their content and import. If the proposed changes are extensive, a brief summary of the changes, together with an indication that a full text is available at the city clerk's office, shall be deemed adequate notice, provided that in fact sufficient copies of the text are made available.

3. MEMBERSHIP, TERMS OF OFFICE, REMOVAL FROM OFFICE, BOARD OFFICERS, VACANCIES, AND ALTERNATES

All requirements related to Planning Board Membership and related topics are contained in *Part III (Land Development Regulations), Article X (Planning Board) Sections C-F*.

4. MEETINGS

A. Regular Meetings

- i. Regular Meetings of the Planning Board (hereafter referred to as the "Board") are posted in a Board approved schedule available online at www.biddefordmaine.org/planning. Regular Meetings are generally the first (1st) and third (3rd) Wednesday of every month, with exceptions as indicated on the posted schedule.
- ii. Regular Meetings start at 6:00 PM. If a Public Hearing or Site Walk is scheduled prior to a Regular Meeting, the Regular Meeting shall start at 7:00 PM. **No new agenda items will begin after 9:30 PM except for scheduled Workshops and items pertaining to local ordinances, Board operations, and long-range planning.**
- iii. Agenda items remaining after the 9:30 PM cut-off time shall be automatically tabled to the next regularly scheduled meeting or to another date and time determined by the Board.
- iv. At 9:00 PM, the Board shall, if necessary, temporarily suspend consideration of the agenda item currently under review in order to determine whether remaining agenda items will likely be reached before 9:30 PM. The Board shall at that time notify those in attendance for those agenda items which will not be reached that the items will be postponed until the next regularly scheduled meeting or at another date and time determined by the Board. Any item postponed under the provisions of this rule shall be considered as Unfinished Business at the next regularly scheduled meeting or at the meeting date specified by the Board.

- v. The Regular Meeting of the Board follows the following Order of Proceedings:
 - A. Pledge of Allegiance
 - B. Declaration of Quorum and determination of which associate member (s), if needed, will be voting.
 - C. Adjustments of the Agenda
 - D. Planner's Business
 - E. Consent Agenda
 - F. Unfinished Business
 - G. New Business
 - H. Other Business
 - I. Adjournment
- B. Workshops:
 - i. The purpose of Workshops is to discuss the Comprehensive Plan, Land Development Regulations (Zoning Ordinance), Subdivision Regulations, and overall development review policies and procedures.
 - ii. Workshops are also used for educational opportunities for the Board.
 - iii. Workshops can either be a separate meeting or can be a part of a Regular Meeting.
 - iv. Since the purpose of Workshops is for Board discussion, input from the general public is not permitted. Input from City Staff, Boards, and Commissions is permitted at the discretion of the Chairperson, or upon motion, by majority vote of the Board.
- C. Special Meetings:
 - i. Special Meeting may be called by the Chairperson, a majority of the Board, or by the Municipal Officers.
 - ii. Notice of Special Meetings shall be served in person to the residence of each Board member at least 48 hours prior to such a meeting.
 - iii. Whenever possible, notice of a Special Meeting shall be announced at a prior meeting of the Board.
 - iv. Notice of a Special Meeting shall also be posted as required by *Part III (Land Development Regulations), Article X (Planning Board)*, except that notice in a newspaper of general circulation seven (7) days prior is not required. Notification shall be provided, however, to local representatives of the media at the same time notification is provided to Board members.
- D. Site Walks
 - i. Site walks may be scheduled at the discretion of the Board or the City Planner.

- ii. The purpose of a Site Walk is for collecting information related to the physical factors of a site under consideration by the Board.
- iii. The Board shall not make decisions during a Site Walk. Deliberation on the Site Walk may occur at the next meeting for which the application is posted.
- iv. Members of the public may attend Site Walks, but generally are not permitted to provide input or to ask questions unless allowed by the Chairperson. Such comments and questions shall only be provided through the Chairperson.
- v. The applicant and their agent are expected to attend a Site Walk. In the event that the applicant and/or their agent fails to appear at a scheduled Site Walk, the Planning Board may postpone said Site Walk until another time, to be determined by the Chairperson.

5. APPLICATION REVIEW, PUBLIC INPUT AND PUBLIC HEARINGS

A. Public Input at Regular Planning Board Meetings:

- i. The Planning Board seeks public input in a fair and efficient manner that permits a thorough exploration of the issues of fact and law to be decided. Notice of meetings will be provided to Applicants and the public in order for them to review and prepare comments on staff reports and applications related to Subdivision Applications (Conceptual, Preliminary, and/or Final Reviews), Site Plan Review Applications (Conceptual and/or Final Reviews), Conditional Use Permit Applications (Conceptual and/or Final Reviews), and/or Shoreland Zoning Permit Applications (Conceptual and/or Final Reviews).
- ii. Notice Requirements:
 - a. The Planning Office shall notify all abutters within 250 feet (minimum) of a project parcel. Notice shall also be provided to the applicant and all other parties who have requested notification.
 - b. Applications shall also be legally noticed at least once in a newspaper of general circulation in the city at least seven (7) days prior to the date of the meeting for which it will be considered.
 - c. The notice shall contain the time, date, and place of the meeting, and a brief description of the item for which the meeting is held. Notice shall also indicate that application materials are available at the Planning Office for public review.
 - d. Additional notice may be provided at the discretion of the City Planner.
- iii. The decisions of the Planning Board on applications will be based on conformance with applicable legal standards, Federal, State, and local laws and ordinances, and the evidence and argument submitted into the record of the meetings, whether in written, oral, or exhibit form. The Board may also rely on the knowledge, experience, and observations of its members, and matters of common knowledge.

B. Formal Public Hearings:

- i. The Planning Board seeks to conduct public hearings in a fair and efficient manner that permits a thorough exploration of the issues of fact and law to be considered. Notice of hearings will be provided to Applicants and the public in order for them to review and prepare comments on staff reports and Comprehensive Plan Adoption/Amendments and Zoning Amendments.
- ii. Notice requirements for Comprehensive Plan Adoption/Amendments and Zoning Amendments shall be pursuant to Part III (Land Development Regulations), Article XIII (Amendments).
- iii. The Planning Board may also choose to hold a Public Hearing, upon majority vote, for any other item covered in the Scope of these Rules of Procedures (Section 1.C above).
- iv. The decisions of the Planning Board on applications will be based on conformance with applicable legal standards, Federal, State, and local laws and ordinances, and the evidence and argument submitted into the record of the meetings, whether in written, oral, or exhibit form. The Board may also rely on the knowledge, experience, and observations of its members, and matters of common knowledge.

C. Presiding Officer:

- i. The Chairperson is the presiding officer at any public meeting or hearing held by the Planning Board and has broad discretion to conduct meetings and hearings in any manner that establishes a complete administrative record and provides a reasonable opportunity for interested parties to be heard. In the event the Chairperson is absent for any reason, the Vice-Chairperson or another member, as elected, of the Board will preside.

D. General Conduct of Public Hearings and Meetings:

- i. General:
 - a. The Board welcomes testimony from the public and interested parties at its meetings and hearings. Where persons wish to bring to the Board's attention complex data, reports, or arguments, it will be helpful to the Board's consideration of this material if it is submitted in writing seven (7) days in advance of the hearing.
 - b. Those providing input at public hearings and meetings are advised to observe general rules of decorum and address only the issues before the Board. Persons disrupting the proceeding may be asked to leave the room by the Chairperson.

- c. All questions from the public regarding an application shall be directed through the Chairperson. No direct discussion between the public and the applicant or their agents is permitted.
 - d. Individuals and organizations with comparable positions in support or opposition are encouraged to be brief and not provide duplicative comments.
 - e. Representatives of organizations such as City Commissions, Homeowner's Associations, etc. must state for the record at the outset of their presentation whether the organization has authorized the substance of what is being presented.
 - f. Individuals and organizations that have provided written comments or materials for Planning Board consideration are encouraged to avoid unnecessary duplication of the record by reading verbatim text as oral comments. They should instead use their oral comments to highlight important points contained in that text, or supplement the written comments with additional information that is relevant to the Planning Board decision.
- ii. Order of Proceedings and Time Limits:
 - a. In any meeting or hearing convened where the Planning Board receives public comment the order of proceedings and time limits for presentations/comments shall be as presented in Table 1.
 - b. The time limits imposed shall take into account the total amount of time available to conduct the meeting or hearing, the number of persons likely to be heard, and the overall breadth and complexity of the matters to be considered by the Planning Board.
 - c. The Chairperson will announce any time limits imposed as soon as possible, but no later than when the public input session or hearing is convened.
 - d. Upon request, at the discretion of the Chairperson, the time limits may be lengthened if it will serve to better present information to aid the Board in its decisions.
- iii. Rebuttal Testimony:
 - a. The Chairperson may grant the request of any organization, group, or person to offer a verbal rebuttal. Rebuttals shall be very brief and shall only be offered to directly refute comments made by others during the public meeting or hearing. Anyone allowed to offer a rebuttal shall state their name, state whom it is they are rebutting, and state what statement(s) they are rebutting prior to providing the rebuttal.
- iv. Cross-examination:
 - a. Requests for cross-examination may be granted if, in the Chairperson's judgment, the matter proposed for cross-examination cannot reasonably be addressed through rebuttal testimony, or if the denial of a request to cross-examine a witness would cause undue prejudice under the circumstances.

- b. In the event a request to cross-examine is granted, the questions on cross-examination must (a) be brief, (b) pertain only to the previous comments (c) be interrogatory in nature (and not argumentative), and (d) not be preceded by statements, nor may they contain allusions to personality or motives.
 - c. The Chairperson may sustain objections to or strike any question as out of order or objectionable.
 - d. The Chairperson reserves the right to rescind the granting of cross-examination if it no longer serves a useful purpose in the Planning Board's consideration of an item.
- v. Planning Board Questions:
 - a. A question by a member of the Planning Board will be in order at any time during a public meeting (before and after the public comment period) or public hearing. Board members are encouraged to consolidate the questions put to any party in a manner that is efficient under the circumstances of each meeting or hearing.
 - b. In order to maintain order, all questions from members of the Planning Board shall be through the Chairperson. At the discretion of the Chairperson, Board members may be permitted to directly ask questions of individuals or groups, if it felt that the doing so will benefit the Board in making its decision.
- vi. Exhibits:
 - a. Any exhibit, model, or demonstrative evidence presented by Planning Staff, the Applicant, or any other Person as an element of its oral or written testimony before the Planning Board, become the property of the City of Biddeford and will not be returned.
 - b. Persons who expect to present exhibits or other demonstrative evidence are encouraged to advise Planning Staff prior to the hearing so that appropriate arrangements can be made for its presentation.
- vii. Continuance:
 - a. The Planning Board may continue a public hearing or an application to another date, place, and time.
 - b. A motion for continuance may be made by any member of the Planning Board on the member's own initiative, upon request or recommendation of the Planning Staff, or at the request of the Applicant.
 - c. A motion to continue a public hearing or application to another time must be approved by a vote of a majority of the members of the Board present and voting.
 - d. Continued items on a regular Board agenda shall be continued to another regularly scheduled meeting, unless the item is continued to a site walk, in which case the date, time, and place shall be announced and no further notice is required other than announcement on the City Website.

- e. Public Hearings can be continued to any date, time, and place and if said date, time, and place is announced on the record, no further notice shall be required other than announcement on the City Website.
- viii. Staff, Applicant, and Planning Board Responses and Planning Board Deliberations:
 - a. Members of the public may respond to new issues or substantive changes that are presented after the public comment period or public hearing is closed. It shall be within the discretion of the Chairperson to determine whether a response is appropriate. In making this determination, the Chairperson shall decide whether the response constitutes facts or information that could not have been presented during the public comment period and are related to such new issues or substantive changes.
- ix. Planning Board Decisions:
 - a. As to any matters not requiring a Public Hearing, the Board may meet and deliberate at any properly called meeting, regardless of the presence of a quorum, or may continue consideration of such matter to any later meeting. However, no final action shall be taken on such a matter without a quorum being present.
 - b. A quorum shall be three (3) members of the Planning Board, including Alternates if sitting in place of a Regular Member of the Board.
 - c. No member absent from a significant portion of a public hearing or review of an application shall be qualified to vote upon the matter heard unless that member first certifies for the record that they have reviewed the entire record of any such portion of the hearing or review of an application during which they were absent and has fully informed themselves of the essential facts and issues of the matter being heard so as to be able to cast an informed and independent vote.
 - d. The Planning Board may approve, with or without conditions, or disapprove an application or item on the motion by any Planning Board member other than the Presiding Officer. Any motion for approval of an Application subject to conditions shall specify the conditions to which the approval is subject by either stating the Conditions or by Reference to the Planning Staff's Report.
 - e. Where a vote on a matter results in a failure to approve, the Board shall immediately vote upon a motion to either table or deny the project. A motion to table shall specify what would be required in order for the Board to consider removing the item from the table for future consideration.
 - f. Any one or more members of the Board may file minority or dissenting reports in support of any position concerning any matter brought before the Board.

- x. Reconsideration:
 - a. When a vote is completed, it shall be in order for any member who voted in the majority, or otherwise on the prevailing side, to move for reconsideration thereof at the same time or at the next regular meeting but not afterwards
 - b. When the motion for reconsideration is decided, that vote shall not be reconsidered.
 - c. No motion to reconsider a vote completed at a previous meeting shall be in order for consideration at the next regular meeting unless an item to that effect is contained on the agenda for such regular meeting or unless four (4) members (this can include the Chairperson) consent to such reconsideration.
 - d. Any item finally acted upon and not thereafter reconsidered shall not again be considered for a period of one year succeeding the Board's final action on the original item if the Board determines it to be in the same or substantially the same form.
- xi. Signatures of Plans, Findings of Fact, and Minutes
 - a. All Board members, including Alternate Members, present for a decision that requires Board signatures shall sign all mylar and paper copies of approved plans.
 - b. The Chairperson shall sign all approved Minutes and Findings of Fact. In the event that the Chairperson is absent, the Vice-Chairperson will sign the approved minutes and Findings of Fact.

TABLE 1. GUIDELINES FOR SEQUENCE AND TIME ALLOTMENTS FOR PUBLIC INPUT AT MEETINGS AND HEARINGS	Time Limit (minutes)
A. Staff Report - Description of the Project/Proposal - Summary of Regulatory Standards - Summary of Staff Analysis and Recommendations	15
B. Applicants Presentation (if applicable)	15
<i>OPEN PUBLIC COMMENT/HEARING</i>	
C. Input/Questions from State and Local Government Bodies	10
D. Input/Questions from Abutters and Other Interested Persons	5
E. Public Rebuttal Testimony at the Chairperson's Discretion	3
<i>CLOSE PUBLIC COMMENT/HEARING</i>	
F. Staff, Applicant, and Planning Board Response	-
G. Planning Board Deliberation Including Questions of Applicant, Staff, and Other Person Who Have Provided Input	-

6. CONSENT AGENDA

- A. Scope of Rule:
 - i. The Planning Board may act without a public hearing to adopt any number of the following items consolidated for its consideration into a Consent Agenda:
 - a. To approve Minutes of Meetings; and
 - b. To approve of the Release/Reduction of Performance Guarantees so long as said release is supported by Planning Staff and is unopposed by any persons; and
 - c. To determine whether proposed subdivision applications are either major or minor subdivisions; and
 - d. To approve, with or without conditions, an amendment to a previously approved application if the proposed amendment and any conditions to it are supported by Planning Staff and are unopposed by any persons; and
 - e. To adopt findings of fact or agree to sign mylars related to an application that has been previously approved by the Board.
- B. General Provisions:
 - i. There will be no public testimony and no debate or discussion by any member of the Planning Board regarding any item on the Consent Agenda, provided that a member of the Planning Board may seek clarification regarding a Consent Agenda item from the Planning Staff.
 - ii. The Planning Board shall act on any items on the Consent Agenda upon a single motion for approval supported by a vote in the affirmative by a majority of the members of the Planning Board present and voting provided that Planning Board members may not vote on a item if they did not participate in, or review the record of, the underlying Planning Board action.
 - iii. The vote to adopt a motion to approve the Consent Agenda constitutes the approval and adoption of each item included just as if it had been acted upon individually. If any Consent Agenda is not approved by the Board, each item included on it is deemed severed and must be considered separately as items under unfinished Business.
- C. Abstention from Certain Items:
 - i. A Planning Board member may abstain from the vote on any item or items included on the consent agenda, while still voting on the Consent Agenda itself. The abstaining member should state on the record his or her reason for abstaining (including because the member was absent during the public hearing when the Planning Board considered or voted on the item). A Planning Board member's abstention under this Rule does not require severance of the item for separate consideration unless the number of members abstaining results in the absence of a quorum.
- D. Removal of Items from Consent Agenda for Hearing:
 - i. Any item proposed for action by Consent Agenda may be removed from that agenda at the request of any member of the Planning Board. Any

- member of the public may request that an item be removed from Consent Agenda
- ii. Prior to taking up a motion for approval of any Consent Agenda, the Chairperson will entertain the request by any member of the Planning Board to sever any item from consideration in connection with that agenda.
- iii. Upon a request, the item shall be removed from the Consent Agenda, and the Board may act on the matter under Unfinished Business.

7. CODE OF ETHICS

A. Policy:

It is the policy of the Planning Board of Biddeford to ensure that Board members:

- i. Are aware of their Responsibilities as Board Members and representatives of the City of Biddeford;
- ii. Are aware of and avoid what constitutes a conflict of interest or breach of trust; and
- iii. Are aware of and avoid what constitutes an "Ex Parte (outside) communication".

B. Board Member Responsibilities:

- i. To Serve the Public Interest:
 - a. The Planning Board's purpose is to implement the Comprehensive Plan and to foster coordinated and harmonious development of the City of Biddeford that will, in accordance with present and future needs, best and most efficiently promote the public health, safety, and general welfare.
 - b. Appointment to the Planning Board, therefore, represents a public trust, giving a Board member a responsibility to care for the general welfare of the City and an opportunity to help in shaping the present and future quality of life in the City of Biddeford.
 - c. Each Board member's primary responsibility is to represent the best interests of the City as a whole. Board members are therefore expected to keep consideration of the general public interest foremost during their deliberations. They should consider the interests of particular individuals or groups only in the context of their relationship to the general public interest.
 - d. Board members are also expected to retain an open mind to all viewpoints. They should not act as delegates of the particular neighborhoods, occupations, interest groups, or socio-economic groups of which they are a part.
 - e. Furthermore, the Planning Board often serves as a public forum for citizen participation and discussion of planning issues important to the community. At such times, the Board should attempt to draw out and clarify the positions of people on all sides of the issue, and to identify the relationship of such positions to the public interest.

- ii. To Acquire Adequate Information and Knowledge:
 - a. Each Planning Board member has the responsibility to acquire whatever information and knowledge is necessary to fully understand and make wise decisions and recommendations in the interest of the City. To this end, a Board member is expected to depend on both his or her own personal background, experience, expertise, and familiarity with the City (especially that part of the City in which he or she resides), as well as the expertise and knowledge of, and information available to, City staff members.
 - b. Board members are expected to have a full understanding of the City's Comprehensive Plan. They are expected to be familiar with the general scope, applicability, and organization of the City's Land Development Regulations (Zoning Ordinance), Subdivision Regulations and review procedures.
 - c. Members are encouraged to expand their knowledge and understanding of planning issues through such means as attending planning workshops and conferences and reading planning-related literature. Board members may join the American Planning Association, which offers a number of workshops and conferences and provides the monthly Planning magazine. Furthermore, Board members may review books, periodicals, and other documents located in the Planning Office's small reference library.
 - d. Members are also encouraged to improve their understanding of current applications and issues by discussing them individually with Planning Staff, either over the phone or in person.
 - e. At Board meetings, members have the responsibility to insist that they are provided (by an applicant, interested party, or the staff) information of sufficient scope and depth to allow them to fully understand the issues before the Board and the alternative actions available to the Board. If the application, staff report, and other documents submitted to the Board regarding a particular item are insufficient to enable a Board member to fully understand the issues immediately before the Board, that Board member has the responsibility to ask questions of, or request additional information from, the applicant, other interested parties, and the staff (as appropriate) to acquire the necessary understanding.
- iii. To Be Fair:
 - a. The Board also has the responsibility to ensure that its decision-making process is fair. This means that persons likely to be interested in a particular subject coming before the Board must be provided adequate and timely notice of the meeting at which the Board will review the subject, an opportunity to attend that meeting and present views and information concerning the subject, and an opportunity to know the information and considerations on which the Board bases its action concerning the subject.

- b. Fairness also requires that Board members avoid any bias or the appearance of any conflict of interest in their decisions, that the Board act in a timely manner, that the Board keep full and accurate records of its proceedings, and that the Board establish and make available the ground rules under which it conducts business (I.e., Rules of Procedure).
 - iv. To Make Rational Decisions:
 - a. The Planning Board has the responsibility to ensure that the decision-making process it applies to any issue before it is not only rational, but is also perceived as rational. This means the Board's decision should consist of conclusions that are based on findings related to the standards, policies, and considerations applicable to the particular type of decision.
 - b. Furthermore, such findings should be supported by information available to the Board, whether it is information contained in an application, staff report, or other document submitted to the Board, or included in any testimony presented before the Board, or explicitly stated by a Board member from his or her personal observations, knowledge, or experience.
 - v. To Take a Broad Perspective:
 - a. Board members have the responsibility to recognize the comprehensive and long-range nature of many of the Board's decisions. They must consider, as well as balance and integrate, not only the many physical aspects of the issue being decided, but often also its economic and social aspects. They must consider not only the decision's immediate impacts on those persons most affected, but also its future and secondary impacts on the City as a whole. The Board should thus explicitly evaluate all facts, alternatives, means, and consequences relevant to its decisions.
 - b. As the City's body of elected officials, the City Council is principally occupied with resolving pressing current problems that usually demand immediate action and that often involve the need to balance competing interests. The City Council, therefore, rely on the Planning Board to give them advice that reflects a broader and longer-range viewpoint than that demanded of them.
- C. Conflict of Interest:
 - i. To preserve public confidence in the integrity of the Planning Board and the City's governmental process, each Board member shall have the duty to avoid even the appearance of a conflict of interest. A Board member, therefore, shall ask to be excused from participation in any matter before the Board in which the member's impartiality might reasonably be questioned, including, but not limited to, instances where:
 - a. Maine Statutory Conflict of Interest (Title 30-A, Section 2605):
The Board member (1) is an "officer, director, partner, associate, employee or stockholder of a private corporation, business or other

- economic entity” which is making the application to the board and (2) is “directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least a 10% interest in the business or other economic entity”; or
 - b. The Board member has a personal bias or prejudice concerning any interested party, or representative of a party, to a matter before the Board; or
 - c. The Board member has a close personal or financial relationship with any party or party representative; or
 - d. The Board member, or a member of the member’s household, has a personal or financial interest that may be substantially affected (directly or indirectly) by the Board’s action on the matter.
 - ii. If a Planning Board member feels that they may have a conflict of interest on a particular item or issue, they shall declare the nature of such conflict and ask to be excused from participating on the item or issue related to the conflict. The remaining Planning Board members, by majority vote, shall determine whether such a conflict exists and whether said member may excuse themselves from further deliberations on the item or issue.
 - iii. If any other person questions the impartiality of a Board member before or during the Board’s consideration of a matter, the Chairperson shall treat this as a request that the member be excused from participation. Any request that a Board member be excused from participation must disclose the basis for the request. The remaining Planning Board members, by majority vote, shall determine whether such a conflict exists and whether said member may excuse themselves from further deliberations on the item or issue. If the Board finds that an actual or apparent conflict of interest does not exist, the member shall be allowed to fully participate in the matter. No actual or apparent conflict of interest shall be deemed to exist where the matter would similarly affect all citizens of the City of Biddeford, or where Maine Statutory Conflict of Interest does not exist or that the Board member’s bias, prejudice, relationship, or interest is so insignificant or so remote that it is unlikely to affect the member’s actions in any way.
 - iv. If excused from participation in a matter, a Board member may not sit with the Board during its consideration of the matter, and may not vote on the matter, but may take a seat in the audience and participate as a member of the public.
 - v. In no instance shall a Planning Board member be excused from deliberations and voting on an item or issue merely due to unwillingness to vote on the issue at hand and where no conflict of interest is found to exist.
- D. Ex Parte (Outside) Communications:
- i. To preserve public confidence in the fairness of Planning Board deliberations and decisions, the Board should ensure that the public and interested parties have the opportunity to know, and respond to, all

- information the Board considers in making its decisions. The Board should also ensure that each Board member has the opportunity to know and consider the information available to other Board members.
- ii. When considering items or issues in the public process, the Board deals with parties who are directly affected by the Board's decision (such as the applicant and neighbors of a proposed project). Each of these interested parties need the assurance that other interested parties will not have unfair advantage in presenting their version of the relevant facts or concerns to the Board. In such cases, therefore, Board members shall avoid communicating with applicants or other interested parties about the proposal except at the Board meetings (I.e., an "Ex Parte communication") at which the proposal is being considered.
 - iii. Ex Parte communications can occur in person, via telephone, fax, e-mail, or other method of communication.
 - iv. A Board member who is approached with an Ex Parte communication should actively discourage the person from doing so and encourage the person to submit the information to the board in writing or through oral testimony at a board meeting. The board member should explain that, by providing information outside the public meeting, the person may be causing constitutional due process problems with the board's process and that the board may not legally be able to consider the information the person is trying to present.
 - v. If a Board member receives unsolicited communications about an item or issue, outside of a Board meeting, the member has the duty to reveal the communications during the Board's consideration of the proposal. This ensures that the communicated information will become part of the record and that other Board members and interested parties will have an opportunity to consider and refute the information.
 - vi. Comprehensive Plan, Zoning Ordinance, or Subdivision Regulation amendments are legislative determinations to be made by the City Council, and when considering such matters the Planning Board's role is purely advisory. When the Board considers such issues it often finds access to a broad range of public input helpful in making a decision on the issue. In such cases, therefore, Board members may communicate with interested persons outside of the meetings at which the issue is being considered, but each member has the duty to reveal the general nature and scope of relevant information and opinions gleaned from such communications during the Board's consideration of the issue. To ensure that each Board member's decision is based on the full range of information and public opinion available to the Board, members should avoid committing themselves to a position on the issue during any outside communications.
 - vii. Under no circumstances should Board members meet with someone representing just one side of an item or issue outside a Public Meeting setting. Further, Board members should not discuss an application with a Code Enforcement Officer, City Engineer, or other City of Biddeford Staff

Member, other than Planning Staff, outside a Public Board meeting in order to avoid due process problems. If a Board member has questions that involve City of Biddeford Staff Members, other than Planning Staff, they shall only be directed through Planning Staff.

- viii. Planning Staff shall ensure that any communications between Board members and themselves that constitutes an Ex Parte communication is revealed to the entire Planning Board at the next available Public Meeting for which that item is discussed.

I hereby acknowledge receiving, reading and understanding these Planning Board Rules of Procedure and Code of Ethics. I fully understand the provisions contained herein and will perform my duties as a Biddeford Planning Board Member in accordance with these Rules of Procedure and Code of Ethics.

Planning Board Member Signature

Date

Roberts Rules of Order – Simplified

Guiding Principles:

Everyone has the right to participate in discussion if they wish, before anyone may speak a second time.

Everyone has the right to know what is going on at all times.

Only urgent matters may interrupt a speaker.

Only one thing (motion) can be discussed at a time.

A **motion** is the topic under discussion (e.g., “I move that we add a coffee break to this meeting”). After being recognized by the Chair, any member can introduce a motion when no other motion is on the table. A motion requires a second to be considered. If there is no second, the matter is not considered. Each motion must be disposed of (passed, defeated, tabled, referred to committee, or postponed indefinitely).

How to do things:

You want to bring up a new idea before the group.

After recognition by the Chair, present your motion. A second is required for the motion to go to the floor for discussion, or consideration.

You want to change some of the wording in a motion under discussion.

After recognition by the Chair, move to amend by

- adding words,
- striking words or
- striking and inserting words.

You like the idea of a motion being discussed, but you need to reword it beyond simple word changes.

Move to substitute your motion for the original motion. If it is seconded, discussion will continue on both motions and eventually the body will vote on which motion they prefer.

You want more study and/or investigation given to the idea being discussed.

Move to refer to a committee. Try to be specific as to the charge to the committee.

You want more time personally to study the proposal being discussed.

Move to postpone to a definite time or date.

You are tired of the current discussion.

Move to limit debate to a set period of time or to a set number of speakers. Requires a 2/3rd vote.

You have heard enough discussion.

Move to close the debate. Also referred to as “calling the question.” This cuts off discussion and brings the assembly to a vote on the pending question only. Requires a 2/3rd vote.

You want to postpone a motion until some later time.

Move to table the motion. The motion may be taken from the table after 1 item of business has been conducted. If the motion is not taken from the table by the end of the next meeting, it is dead. To kill a motion at the time it is tabled requires a 2/3rd vote. A majority is required to table a motion without killing it.

You believe the discussion has drifted away from the agenda and want to bring it back.
 “Call for orders of the day.”

You want to take a short break.
 Move to recess for a set period of time.

You want to end the meeting.
 Move to adjourn.

You are unsure the Chair announced the results of a vote correctly.
 Without being recognized, call for a “division of the house.” A roll call vote will then be taken.

You are confused about a procedure being used and want clarification.
 Without recognition, call for "Point of Information" or "Point of Parliamentary Inquiry." The Chair will ask you to state your question and will attempt to clarify the situation.

You have changed your mind about something that was voted on earlier in the meeting for which you were on the winning side.
 Move to reconsider. If the majority agrees, the motion comes back on the floor as though the vote had not occurred.

You want to change an action voted on at an earlier meeting.
 Move to rescind. If previous written notice is given, a simple majority is required. If no notice is given, a 2/3^{rds} vote is required.

Unanimous Consent:

If a matter is considered relatively minor or opposition is not expected, a call for unanimous consent may be requested. If the request is made by others, the Chair will repeat the request and then pause for objections. If none are heard, the motion passes.

You may INTERRUPT a speaker for these reasons only:

- to get information about business – point of information to
- get information about rules – parliamentary inquiry
- if you can't hear, safety reasons, comfort, etc. – question of privilege
- if you see a breach of the rules – point of order
- if you disagree with the Chair's ruling – appeal
- if you disagree with a call for Unanimous Consent – object

Quick Reference					
	Must Be Seconded	Open for Discussion	Can be Amended	Vote Count Required to Pass	May Be Reconsidered or Rescinded
Main Motion	√	√	√	Majority	√
Amend Motion	√	√		Majority	√
Kill a Motion	√			Majority	√
Limit Debate	√		√	2/3 ^{rds}	√
Close Discussion	√			2/3 ^{rds}	√
Recess	√		√	Majority	
Adjourn (End meeting)	√			Majority	
Refer to Committee	√	√	√	Majority	√
Postpone to a later time	√	√	√	Majority	√
Table	√			Majority	
Postpone Indefinitely	√	√	√	Majority	√

City of Biddeford
Planning Board
May 31, 2023 6:00 PM City Hall
Meeting Minutes
DRAFT

STATUS: Planning Board Meeting, Wednesday, May 31, 2023 6:00 PM, Council Chambers & Zoom

1. PLEDGE OF ALLEGIANCE

2. DECLARATION OF QUORUM/VOTING MEMBERS

In attendance: Larry Patoine, Chair, Susan Deschambault, Roch Angers, Sean Tarpey, Alexa Plotkin & Steve Beaudette (Alternate Member)

Staff: David Galbraith & Nan Whitten

3. ADJUSTMENTS TO THE AGENDA

Item 7B will be presented before 7A

4. PLANNER'S BUSINESS

None

5. CONSENT AGENDA

5.A. Approve both sets of Meeting Minutes from May 17, 2023

MOTIONS: 6:05PM

Angers-Motion-To approve Consent Agenda as presented

Deschambault-Second-Motion passed unanimously

6. UNFINISHED BUSINESS

7. NEW BUSINESS

7.A. 2023.21 Public meeting and take comments regarding a Preliminary Site Plan Conditional Use Application for True Storage to redevelop Building 36 into a self-storage facility at 32 Main Street (Tax Map 71, Lot 10-5) in the MSRD 3 zone.

- Matt Sullivan from True Storage introduced the project.
- The facility will be staffed from 8-7 and the units can be accessed by key card until 9:00 PM.
- Heat pumps have been suggested for temperature control.
- The areal bridges will not be accessible and will be removed.
- Additional egress points are being added
- All buildings will be sprinkled
- Matt Rabasco of Gorrill Palmer also spoke on the project
- He said all roof drains will remain but be disconnected.
- Fire Department has approved the plans
- There are two waivers being requested:
 - 1) parking waiver of 54 parking stalls
 - 2) a waiver for a stormwater management analysis and report
(Board will hold off on voting on this waiver)

MOTIONS: 7:31PM

Plotkin-Motion-To approve the requested parking waiver for True Storage

Angers-Second Motion passed 3-1 (Deschambault, Angers & Plotkin in favor; Tarpey against)

~~Deschambault-Motion~~-To approve the Preliminary Site Plan and Conditional Use Permit (Case # 2023.10) for True Storage LLC, a self-storage facility, to be located at 32-40 Main Street (PID# 71-10-5) within the Pepperell Mill Campus / / Self-storage Facility. Sketch Site Plan for the proposal located at Building 36, 32-40 Main Street (Tax Map 71, Lot 10-5), within the Main Street Revitalization District 3 (MSRD-3) zoning district, as presented

Plotkin-Second-Motion passed unanimously

- 7.B. 2023.10 Public Meeting and take comments regarding Master Parking Plan for the Pepperell Mill Development, LLC. The plan will encompass the entire Pepperell Mill Campus.

- Chris Rhoades of Presidium & Al Palmer of Gorrill Palmer began the introduction to the project
- The Pepperell Mill system is 44% occupied.
- They have adequate parking today but with the sale of a couple of buildings they may need more parking.
- Mr. Galbraith, City Planner, talked about the numerous waivers for these structures. He said the research has been a nightmare.
- As a Board and Department they need to be proactive for future parking requests and keep the numbers up to date.
- The parking issue has become a predicament due to past decisions of Planning Board & City Council as well as growth of the City.
- A baseline will be created for going forward to go in a more controlled progression.
- Parking needs to be counted for the entire complex not individual buildings
- If there is a change of use of the building and parking spaces need to be increased the owner must come back to Planning Board if the parking spaces are decreased they do not have to come to Planning Board.
- The Planning Board has asked for two things:
 - 1) A parking Plan
 - 2) Occupancy report for the garage

- 7.C. 2023.24 Discussion of the proposed "Back Lot" ordinance in preparation to send it to the City Council.

Mr. Galbraith gave the Planning Board an overview of the proposed Back Lot Ordinance that is coming to them next meeting.

8. OTHER BUSINESS

The Chair commended the Board on their hard work, they have has 4 Planning Board Meetings in 6 weeks.

9. ADJOURN 7:43PM

X

Planning Board Chair

Planning Board Meeting Minutes are not intended to be verbatim.

DRAFT

City of Biddeford
Planning Board
June 07, 2023 6:00 PM
MEETING MINUTES
DRAFT

STATUS: Planning Board Meeting, Wednesday, June 7, 2023, 6:00 PM, City Council Chambers & Zoom

Chair brought the meeting to order at 6:00 PM

1. PLEDGE OF ALLEGIANCE

2. DECLARATION OF QUORUM/VOTING MEMBERS

Attending: Larry Patoine (Chair), Susan Deschambault, Roch Angers, Sean Tarpey, Alexa Plotkin & Steve Beaudette (Alternate Member)

Staff: David Galbraith, Eric Freeman & Nan Whitten

3. ADJUSTMENTS TO THE AGENDA-None

4. PLANNER'S BUSINESS

Mr. Galbraith announced the following:

- The Comprehensive Plan has been adopted by the Council, it now goes to the State for approval
- The Smith Street Right-of-Way Easement for Plan East & Saco-Lowell LLC was approved by the Council
- The Contract Zone (#21) and Conservation Easement for Devine Capital was also approved by the City Council.
- Greg Mitchell will be making a presentation to the DEI Committee about Inclusionary Zoning on June 12th
- We will have a quorum on July 5 so we will have our regular Planning Board Meeting.
- Mr. Galbraith is working on scheduling 3 site walks that have been requested in the past:
 - a) University of New England
 - b) A Marijuana cultivation and kitchen facility
 - c) The Collapsed portion of the River Walk.
- SMPDC is having the 58th Annual Meeting on June 20th, you can register to attend on their website.

5. UNFINISHED BUSINESS-None

6. NEW BUSINESS

6.A. 2023.31 Public Hearing and take comments to review a Sketch Plan Subdivision Application for Diversacorp Holdings, LLC. The property is located at 20 Clifford Street (Tax Map 39, Lots 303-1 & 304) in the R2 Zone. The applicants propose to construct a building containing 4 residential units.

- Eric Freeman noted an error on the Staff Report saying that the project needs a stormwater permit when in fact it is not needed.
- Austin Fagan from BH2M presented the project.
- A more formal design will come the next time they appear before the Board.

- All water will come in from Tibbetts Street and the site will be accessed via Tibbetts Street as well.
- No Public Comments
- Mr. Tarpey commented that this is a very challenging site, the runoff and vehicles in the winter will be items to watch.
- Ms. Plotkin commented on the 4 driveways and asked for the applicant to consider some kind of parking area instead of the driveways.
- Ms. Deschambault talked about the density of the site and parking.
- Mr. Angers asked about the comments from engineering and traffic on Tibbetts.
- Mr. Fagan mentioned that each unit will have 4 parking spots 2 for tenants and 2 for guests.
- Mr. Tarpey asked the applicant to hold off on taking trees down until they appear before the Planning Board again.
- Ms. Deschambault advised the applicant to call public works and find out exactly how trash and snow removal would be handled for this site.

6.B. 2023.28 Public Hearing and take comments to review an Amended Subdivision Application for Tom Watson & Co. The property is located at 10, 20 & 30 Upper Falls Road formerly known as Gooch Street (Tax Map 40, Lots 55, 55-3, & 56-1) in the MSRD-3 Zone and in the Shoreland Zone GD-1. The applicants would like to amend the previously approved request approved in January 2023. The amendment to the application includes increasing the unit count at 20 Upper Falls Road from the previously approved 16-unit building to 20-units. The revised building will include (12) 2-bedroom units and (8) 1-bedroom units. Additionally, a division of land to formally divide 26 Upper Falls Road from 20 Upper Falls Road is included as part of the amendment request. 26 Upper Falls Road will be the location of the previously approved (11) townhomes.

- Mike Barton & John Laliberte of Tom Watson & CO & Peter Heil of Acorn Engineering presented the project
- There are no additional permits required for this amendment, they verified this with DEP, SRCC, and ACOE.
- No Public Comments
- Mr. Patoine asked why they are making these changes. Mr. Barton said they feel that this will give them a better unit mix and make the project more viable.
- Mr. Tarpey confirmed that this was just an internal split and asked if the new units will be affordable housing. They will be market rate. Mr. Tarpey had wanted to see the JDA & the Amendment. They were not in the packet therefore they received them by email during the meeting.
- The Outfall BMPs were discussed at length by the Board & engineer.
- Mr. Laliberte asked if he could answer any questions about the JDA, but it is important for the Board to read and digest it themselves.

MOTIONS: 6:34 PM

Plotkin-Motion- Approve the parking waiver request for the proposal located at 20 Upper Falls Road (Tax Map 40, Lots 55), within the Main Street Revitalization District 3 (MSRD-3) zoning district.

Deschambault-Second- Motion passed 3-1 (Deschambault, Tarpey, Plotkin in favor; Angers against)

Plotkin-Motion- To Approve the waiver request of the open space requirement for new residential development, as required by the City's site plan ordinance due to the project being located within Biddeford's urban core.

Deschambault-Second- Motion passed 3-1 (Deschambault, Tarpey, Plotkin in favor; Angers against)

Plotkin-Motion- To Approve the Final Site Plan and Subdivision amendment for the proposal located at 10, 20, 26 & 30 Upper Falls Road (Tax Map 40, Lots 55, 55-3, and 56-1), within the Main Street Revitalization District 3 (MSRD-3) zoning district, including the Staff recommended Conditions of Approval (COA) providing the JDA and Amendment have no impact and or implications on the amendments to the previously approved project.

Deschambault-Second Motion passed 3-2 (Patoine, Deschambault & Plotkin in favor; Angers & Tarpey against)

6.C. 2023.24 Continued discussion of the proposed "Back Lot" ordinance in preparation to send it to the City Council.

- Mr. Galbraith began talking about this proposed ordinance. He is looking for comments, suggestions & questions.

- Public Comments

Guy Gagnon-Biddeford Housing Authority-he would like the back lots tied to first time home buyers in some way. He also wanted to know why the sprinkler requirement was removed.

Peter Robbins of Newtown Road-he wants to know why this would be allowed in RF Zone. This decision goes against what is written in the Comp Plan.

Richard Rhames of West Loop Road spoke about LD2003 and how it will not help with the housing crisis. The west is running out of water and those people are coming to the Northeast. Providing more dwelling units will not lower prices. LD2003 is a tool to create sprawl.

- Mr. Galbraith said he debated whether or not to include the RF zone and due to the overwhelming response from the Planning Board he will remove that zone from the back lots.
- There were questions regarding single and duplexes on the back lots.
- Mr. Galbraith thought that they should start small and modify as they go along.
- Mr. Gagnon from BHA would like these lots tied to 1st Time Home Buyers using MSHA financial limits.
- Mr. Rhames of West Loop Road asked about ADUs and how they fit into this Back Lot change. He urged the Board to make rational decisions, he is not seeing any planning going on he feels like it's the Wild West.
- Mr. Robbins of Newtown Road would like to know how the City is going to limit the number of units with ADUs being added to structures on the back

lots. He would like the word “family” defined as in a single family home. He is concerned because of a situation where both sides of a duplex is being rented out to various people none of which are related to each other, this is not considered a family. Mr. Galbraith said the City cannot regulate who lives where.

- If any Board members have language they want used or suggestions send them to Mr. Galbraith for his next draft.

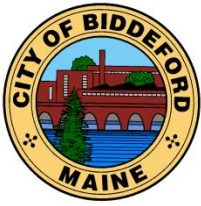
7. **OTHER BUSINESS-None**

8. **ADJOURN-8:01 PM**

Planning Board Chair/Vice Chair

Date

Planning Board Meeting Minutes are not intended to be verbatim.



CITY OF BIDDEFORD

Planning and Development Department

David C.M. Galbraith
Deputy Director/City Planner
205 Main Street
P.O. Box 586
Biddeford, ME 04005
(207) 284-9115

David.Galbraith@biddefordmaine.org

PLANNING BOARD STAFF REPORT

TO: Chair Patoine and Members of the Biddeford Planning Board

EC: Matt Rabasco, Project Engineer - Gorrill Palmer mrabasco@gorrillpalmer.com
Megan Higgins, Presidium (property owner) mhiggins@presidiumre.com
Josh Sullivan, True Storage (Applicant) jsullivan@truestorage.com

FROM: David C.M. Galbraith, Deputy Director/City Planner

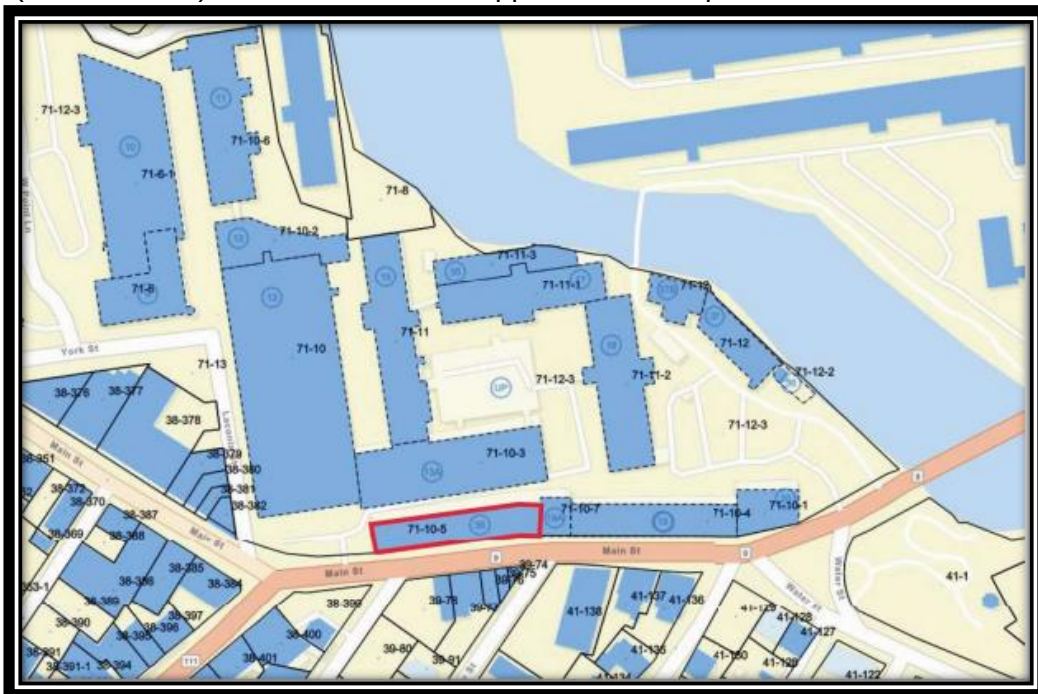
DATE: June 13, 2023

RE: **2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.**

MEETING DATE: June 21, 2023 at 6:00 PM

1. INTRODUCTION:

The Applicant, True Storage LLC and their Authorized Agent, Matt Rabasco, Project Manager / Engineer of Gorrill Palmer Consulting Engineers, are seeking Final Site Plan and Conditional Use Permit (CUP) approval to convert the currently vacant 8-story building, into 827 self-storage units located at 32-40 Main Street (PID# 71-10-5), located within the Pepperell Mill Campus.



Case #: 2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.

Planning Board Hearing date: June 21, 2023.

Below, shown in italics, is the Applicant's project narrative outlining the proposed redevelopment:

The project site is Building 36 of the Pepperell Mill, located at 32-40 Main Street and identified as Parcel ID 71-10-5 on the City of Biddeford's Assessor's Map. Building 36 lies on a 3.5-acre parcel which is located in the Main Street Revitalization District 3 (MSRD3). As the parcel abuts the Saco River, the Shoreland Overlay Zone covers a portion of the parcel, however Building 36 itself is located outside of the Shoreland Overlay boundary. The building contains eight levels (including the basement) with a gross floor area of approximately 108,128 square feet. True Storage has executed a Purchase & Sale agreement to acquire Building 36 and the land that it sits on, with easement rights for the use of on-site drive aisles, parking, walkways, and utilities. There are no minimum space and bulk requirements for the site. This project does not proposed to make any alterations that would result in changes to the space and bulk dimensions of the structure from their current state.

BUILDING, PARKING, AND LOADING

The proposed storage facility would have eight (8) floors of storage units with approximately 827 units in total. The facility would be staffed from 8AM to 6PM on weekdays and until 7PM on weekends. Electronic keycards would allow customers access until to about 9PM, but would not accommodate 24 hour access. Primary access into the building is proposed on the west side of the building, where there is an existing man-door. A new loading overhead door is also proposed on the west side of the building. There is an existing loading dock in the rear (north) of the building that is proposed to be extended/reconstructed so that a vehicle can pull up parallel to the building while accessing the bay. Finally, a loading ramp for non-vehicular loading (dollys, etc.) is proposed on the rear alley. See the attached plans for further information. The proposed loading bays will adequately meet the anticipated needs of the facility. An existing freight elevator inside the building would allow for transport of bulky items to upper floors of the facility. There is an existing parking lot on the west side of Building 36 that contains about 19 parking spaces, including 2 ADA spaces. This parking area currently serves the businesses that occupy Building 13. There is additional on street parking on Main St along the frontage of Building 36. Based on the operations of the applicant's other facilities, it is not anticipated that additional parking will be necessary to serve the proposed development. As a result, the applicant is requesting a waiver for the off-street parking requirement. Further detail on this request is provided in the Waivers section of this letter.

2. PROJECT DATA/INFORMATION

1.	Applicant:	True Storage, LLC 670 N. Commercial Street Manchester, NH 03101
2.	Owner of Property:	Pepperell Mill Development, LLC 3100 McKinnon St., Suite 250 Dallas, TX
3.	Agent:	Gorrill Palmer Matt Rabasco, Project Engineer 390 US Route 1, Unit 10 Falmouth, ME 04105
4.	Surveyor:	Same as above
5.	Project Location:	Pepperell Mill Campus
6.	Project Tax Map #/Lot #:	Tax Map 71-10-5
7.	Lot Size:	3.5
8.	Base Zoning:	MSRD3
9.	Overlay Zoning:	N/A

Case #: 2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.

Planning Board Hearing date: June 21, 2023.

10.	Existing Use:	Vacant
11.	Proposed Use:	Self-storage Facility
12.	Approvals Required:	Site Plan and Conditional Use Permit (CUP)
13.	Uses in the Vicinity:	Mixed
14.	Waivers Needed:	a. Parking b. Drainage
18.	Waivers Granted:	a. None
22.	Other Non-City Permits Required:	
23.	SP & CUP Attachment A: Fees Paid:	Final Review Fees paid
25.	Planning Board Review History: Preliminary Approval obtained May 31, 2023	

3. REVIEW PROCESS

Per City ordinance, this application is subject to the following:

A. Site Plan (Land Development Regulations, Article XI) review and approval by the Planning Board.

B. Historic Preservation:

The applicant appeared before the Historic Preservation Commission (HPC) on March 8th for the request of a Certificate of Appropriateness for the proposed alterations to Building 36. The Commission ultimately approved the exterior modifications are proposed on April 13, 2023. A copy of the HPC Notice of Decision (NOD) is attached with this Staff report.



36 Pepperell Mill – True Storage self-storage facility – West Elevation Existing Conditions



36 Pepperell Mill – True Storage self-storage facility – West Elevation Proposed Conditions

The proposed façade improvements are limited to the west elevation of the building where a canopy over a new overhead door and a new man-door are being proposed as the primary entrances to the building.

- C. The proposal is for a self-storage facility which is regulated under the City's Conditional Uses Ordinance (Article VII Conditional Uses). Conditional uses are subject to 19 specific criteria, which the Planning Board shall approve the application or approve it with conditions if the application meets the following standards:
1. The proposed use meets specific requirements set forth in this ordinance and would be in compliance with applicable state or federal laws;
 2. The proposed use would not create fire safety hazards by providing adequate access to the site, or to the buildings on the site, for emergency vehicles and would not create hazards through the storage of chemicals and wastes;
 3. The proposed exterior lighting, where allowed, would not create hazards to motorists traveling on adjacent public streets or is adequate for the safety of occupants or users of the site or would not damage the value and diminish the usability of adjacent properties;

Case #: 2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.

Planning Board Hearing date: June 21, 2023.

4. The provisions for buffers and on-site landscaping provide adequate protection to neighboring properties from detrimental or unsightly features of the development;
5. The proposed use would not have a significant, detrimental effect on the use and peaceful enjoyment of abutting property as the result of noise, vibrations, fumes, odor, dust, glare, hours of operation, or other causes;
6. The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets would not create hazards to public safety or traffic congestion;
7. The proposed use would generate a volume of traffic that can reasonably be accommodated by the existing road network, or would not create unreasonable traffic hazards or would not exacerbate an existing traffic hazard, or would not create unreasonable traffic congestion;
8. The proposed use would not have a significant, detrimental effect on the value of adjacent properties which could be avoided by reasonable modification of the proposal;
9. The proposed use would not have an adverse impact on the privacy of the residents of the immediate area (within 500 feet) which could be avoided by reasonable modification of the proposal;
10. The proposed use would be in compliance with Biddeford's Comprehensive Plan;
11. The proposed use would not have an adverse impact on the immediate neighborhood or the community relative to architectural design, scale, bulk and building height, identity and historical character, or visual integrity, which could be avoided by reasonable modification of the proposal;
12. The design of the site would not result in significant flood hazards or flood damage or would be in conformance with applicable flood hazard protection requirements;
13. Adequate provision has been made for disposal of wastewater or solid waste or for the prevention of ground or surface water contamination;
14. Adequate provision has been made to control erosion or sedimentation;
15. Adequate provision has been made to handle stormwater runoff or other drainage problems on the site; and the proposed development will not unduly burden off-site surface water systems;
16. The proposed water supply would meet the demands of the proposed use for fire protection purposes;
17. Adequate provision has been made for the transportation, storage, and disposal of hazardous substances and materials as defined by state law;
18. The proposed use would not have an adverse impact on scenic vistas or on significant wildlife habitat or wetland areas and water bodies which could be avoided by reasonable modification of the proposal;
19. When located in the Shoreland Zone, the proposed use would meet the purposes of Shoreland Zoning as identified in Article XIV, Section 1 (Purposes) of this ordinance.

4. APPLICATION REVIEW STANDARDS:

- **APPLICATION COMPLETENESS:** The applicant has submitted a complete application, featuring all required elements as specified under Section 66-35 (Required Information for Final Plan Submissions). As part of the staff's review comments, we've identified aspects of the plan submission to be revised or clarified, which we suggest being made a condition of approval.
- **ZONING:** The proposed use as a self-storage facility is a Conditional Use within the MSRD-3 Zone. The proposal is to be located within an existing, vacant mill building and other than some minor exterior modifications (overhead door etc.) no modifications are being made to the site.

- **REVIEW STANDARDS:**

In general, staff found the application to satisfy City site plan and Conditional Use Permit (CUP) requirements. The major site details such as building, parking, landscaping, are not being modified. However, City Staff and the City's third party civil engineer, identified a number of technical plan elements which need to be addressed by the Applicant prior to a Pre-construction meeting being scheduled by the City.

- **WAIVERS:** The Applicant is seeking two (2) waivers, 1) The applicant has requested a waiver of the off-street parking requirements as detailed above; 2) The applicant is also seeking a waiver to related to site drainage.
 - 1) Drainage Part III - Article XI – Section 5.B.1 – Drainage Section 5.B.1: The Application includes a waiver request to Part III - Article XI – Section 5.B.1 – Drainage Section 5.B.1 of the Site Plan Review requirement which states that “a written engineering report describing the impacted watershed area, projected runoff, and any projected downstream impact shall be required.” As explained in the Application, “there is no additional impervious area proposed as part of this application, nor any significant alterations to the site's existing drainage patterns, the applicant is respectfully requesting a waiver for a stormwater management analysis and report”.

Staff concurs with these statements and is supportive of the Applicants request. Therefore, Staff recommends granting this waiver request.

5. STAFF RECOMMENDATION:

Staff is comfortable moving forward with the Board's preliminary approval of the project, with the understanding that the remaining engineering issues will be resolved, to the satisfaction of the Public Works Director and Engineering Director, prior to a Preconstruction Meeting being scheduled. A Condition of Approval (COA), of this nature, has been included within the Findings of Fact (FOF) / COA. Therefore, Staff recommends the Planning Board GRANT preliminary approval of the re-development project plans as presented, with the proposed Conditions of Approval (COA).

6. DRAFT CONDITIONS OF APPROVAL:

- A. The parking waiver, shall run with the proposed use / building and the parking waiver is not transferable to another use, to other uses within Pepperell Mill, or redevelopment of the subject building. Therefore, should the property be redeveloped in the future, or the use of the building is

Case #: 2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.
Planning Board Hearing date: June 21, 2023.

changed, as determined by the Director of Code Enforcement, the new use shall provide adequate on-site parking, a signed shared parking agreement, and / or a parking waiver would need to be granted by the Planning Board.

- B. All vehicle maneuvering must occur on-site and may not utilize Main Street for backing into / out of the property.
- C. Delivery vehicles may not block the Main Street curb-cut or prevent other vehicles from entering / exiting the adjacent multi-tenant parking lot.

7. SAMPLE MOTIONS

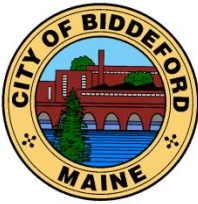
A. Motion to Approve: *I motion to APPROVE the Final Site Plan and Conditional Use Permit (Case # 2023.10) for True Storage LLC, a self-storage facility, to be located at 32-40 Main Street (PID# 71-10-5) within the Pepperell Mill Campus / Self-storage Facility. Sketch Site Plan for the proposal located at Building 36, 32-40 Main Street (Tax Map 71, Lot 10-5), within the Main Street Revitalization District 3 (MSRD-3) zoning district, as presented.*

B. Motion to Deny: *I motion to DENY the Final Site Plan and Conditional Use Permit (Case # 2023.10) for True Storage LLC, a self-storage facility, to be located at 32-40 Main Street (PID# 71-10-5) within the Pepperell Mill Campus / Main Street Revitalization District 3 (MSRD-3) zoning district, for the following reasons:*

- 1) _____.
- 2) _____.
- 3) _____.

C. Motion to Table: *I motion to TABLE the Final Site Plan and Conditional Use Permit (Case # 2023.10) for True Storage LLC, a self-storage facility, to be located at 32-40 Main Street (PID# 71-10-5) within the Pepperell Mill Campus / Main Street Revitalization District 3 (MSRD-3) zoning district, for the following reasons:*

- 1) _____.
- 2) _____.
- 3) _____.



CITY OF BIDDEFORD

Planning and Development Department

205 Main Street
P.O. Box 586
Biddeford, ME 04005
(207) 284-9115

FINDINGS OF FACT AND CONCLUSIONS OF LAW

True Storage 32-40 Main Street (PID# 71-10-5)

Pepperell Mill Campus

Site Plan and Conditional Use Permit / Self-storage Facility.

Final Site Plan Approval

RE: 2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.

Pursuant to the provisions of the City of Biddeford Code of Ordinances Land Development Regulations, Article XI (Site Plan Review), and Article VII (Conditional Use) approval, the Biddeford Planning Board has considered the application of Based on its review, including supportive data, public hearing testimony and related materials contained in the record, the Planning Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

1.	Applicant:	True Storage, LLC 670 N. Commercial Street Manchester, NH 03101
2.	Owner of Property:	Pepperell Mill Development, LLC 3100 McKinnon St., Suite 250 Dallas, TX
3.	Agent:	Gorrill Palmer Matt Rabasco, Project Engineer 390 US Route 1, Unit 10 Falmouth, ME 04105
4.	Surveyor:	Same as above
5.	Project Location:	Pepperell Mill Campus
6.	Project Tax Map #/Lot #:	Tax Map 71-10-5
7.	Lot Size:	3.5
8.	Base Zoning:	MSRD3
9.	Overlay Zoning:	N/A
10.	Existing Use:	Vacant
11.	Proposed Use:	Self-storage Facility
12.	Approvals Required:	Site Plan and Conditional Use Permit (CUP)
13.	Uses in the Vicinity:	Mixed
14.	Waivers Needed:	a. Parking b. Drainage
18.	Waivers Granted:	a. Parking b. Drainage (Per Eng. Dept. COA have been included)
22.	Other Non-City Permits Required:	
23.	SP & CUP Attachment A: Fees Paid:	Final Review Fees paid
25.	Planning Board Review History: Preliminary Approval obtained May 31, 2023	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RE: 2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.

Date: June 21, 2023

CONCLUSIONS OF LAW:

The proposal is for a self-storage facility which is regulated under the City's Conditional Uses Ordinance (Article VII Conditional Uses). Conditional uses are subject to 19 specific criteria, which the Planning Board has approved with specific Conditions of Approval (COA). Based upon the Application materials, staff reports, public comment, and deliberations during the review of the Application, the Planning Board determined that the application meets the following standards:

1. The proposed use meets specific requirements set forth in this ordinance and would be in compliance with applicable state or federal laws;
2. The proposed use would not create fire safety hazards by providing adequate access to the site, or to the buildings on the site, for emergency vehicles and would not create hazards through the storage of chemicals and wastes;
3. The proposed exterior lighting, where allowed, would not create hazards to motorists traveling on adjacent public streets or is adequate for the safety of occupants or users of the site or would not damage the value and diminish the usability of adjacent properties;
4. The provisions for buffers and on-site landscaping provide adequate protection to neighboring properties from detrimental or unsightly features of the development;
5. The proposed use would not have a significant, detrimental effect on the use and peaceful enjoyment of abutting property as the result of noise, vibrations, fumes, odor, dust, glare, hours of operation, or other causes;
6. The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets would not create hazards to public safety or traffic congestion;
7. The proposed use would generate a volume of traffic that can reasonably be accommodated by the existing road network, or would not create unreasonable traffic hazards or would not exacerbate an existing traffic hazard, or would not create unreasonable traffic congestion;
8. The proposed use would not have a significant, detrimental effect on the value of adjacent properties which could be avoided by reasonable modification of the proposal;
9. The proposed use would not have an adverse impact on the privacy of the residents of the immediate area (within 500 feet) which could be avoided by reasonable modification of the proposal;
10. The proposed use would be in compliance with Biddeford's Comprehensive Plan;
11. The proposed use would not have an adverse impact on the immediate neighborhood or the community relative to architectural design, scale, bulk and building height, identity and historical character, or visual integrity, which could be avoided by reasonable modification of the proposal;
12. The design of the site would not result in significant flood hazards or flood damage or would be in conformance with applicable flood hazard protection requirements;

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RE: 2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.

Date: June 21, 2023

13. Adequate provision has been made for disposal of wastewater or solid waste or for the prevention of ground or surface water contamination;
14. Adequate provision has been made to control erosion or sedimentation;
15. Adequate provision has been made to handle stormwater runoff or other drainage problems on the site; and the proposed development will not unduly burden off-site surface water systems;
16. The proposed water supply would meet the demands of the proposed use for fire protection purposes;
17. Adequate provision has been made for the transportation, storage, and disposal of hazardous substances and materials as defined by state law;
18. The proposed use would not have an adverse impact on scenic vistas or on significant wildlife habitat or wetland areas and water bodies which could be avoided by reasonable modification of the proposal;
19. When located in the Shoreland Zone, the proposed use would meet the purposes of Shoreland Zoning as identified in Article XIV, Section 1 (Purposes) of this ordinance.

APPROVAL GRANTED:

Based on the evidence available and the conclusions above, the Biddeford Planning Board approves the proposed project summarized within the attached Staff report and pursuant to the provisions of the City of Biddeford Code of Ordinances Land Development Regulations, Article XI (Site Plan Review), and Article VII (Conditional Uses). The Biddeford Planning Board has approved the application for Site Plan and Conditional Use Approval for True Storage a self-storage facility with approximately 827 storage units located within the eight (8) story building.

This application involves redevelopment of Building # 36, within the Pepperell Mill Campus, located at 32-40 Main Street (PID# 71-10-5) within the *Main Street Revitalization District 3 (MSRD3)*. The Planning Board granted approval of the parking waiver request which was granted at the Board's March 15, 2023 meeting. The Planning Board approves the project subject to these Findings of Fact (FOF) with the adoption of the following Conditions of Approval (COA):

1. Standard Conditions of Approval apply.
2. The parking waiver, shall run with the proposed use / building and the parking waiver is not transferable to another use, to other uses within Pepperell Mill, or redevelopment of the subject building. Therefore, should the property be redeveloped in the future, or the use of the building is changed, as determined by the Director of Code Enforcement, the new use shall provide adequate on-site parking, a signed shared parking agreement, and / or a parking waiver would need to be granted by the Planning Board.
3. All vehicle maneuvering must occur on-site and may not utilize Main Street for backing into / out of the property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RE: 2023.10 True Storage / 32-40 Main Street (PID# 71-10-5) / Pepperell Mill Campus / Site Plan and Conditional Use Permit / Self-storage Facility.

Date: June 21, 2023

4. Delivery vehicles may not block the Main Street curb-cut or prevent other vehicles from entering / exiting the adjacent multi-tenant parking lot.
5. The City's Public Works and Engineering Department have been working with the Applicant and have determined the proposed gas and water connection locations acceptable. The City will require the installation of the gas and water connections within Main Street be completed at the same time as the City's Combined Sewer Overflow (CSO) project; estimated for Spring 2024. The applicant should coordinate with the Public Works and Engineering Department accordingly.
6. The Applicant shall provide interior storm and sanitary plumbing plans, confirming both gravity systems are separated and have separated downstream connections within the City's infrastructure. If the interior storm and sanitary piping are not separated or do not outfall into separated systems, the Applicant shall provide formal separation plans, including disconnection of roof drains / downspouts. The submitted plans shall be reviewed and approved by the City's Director of Engineering prior to the issuance of any building or plumbing permits.

Larry Patoine
Planning Board Chair

Date

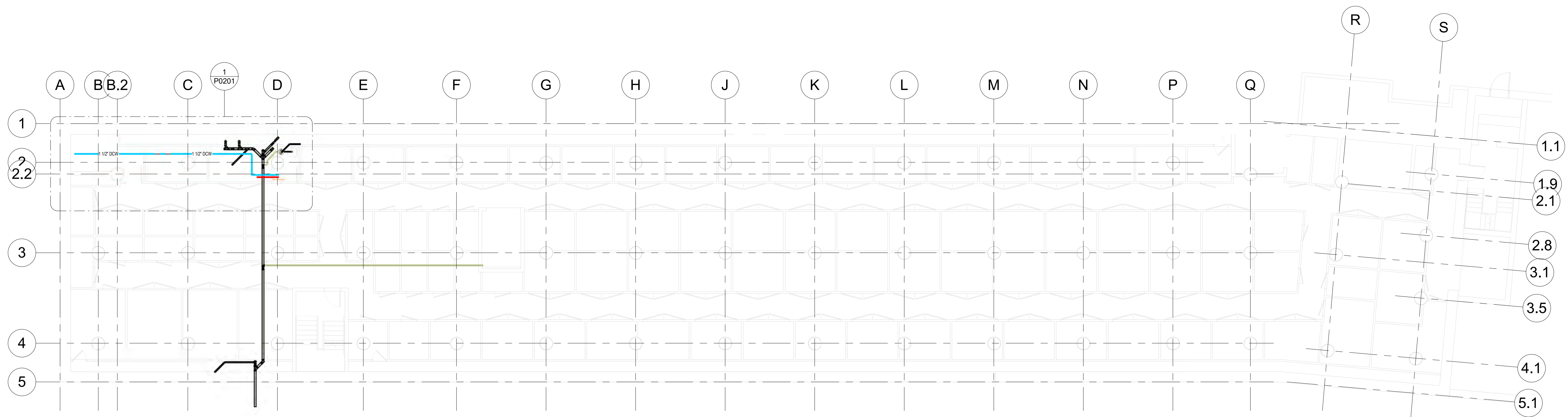


Consultant
Address
Address
Phone
Fax
e-mail

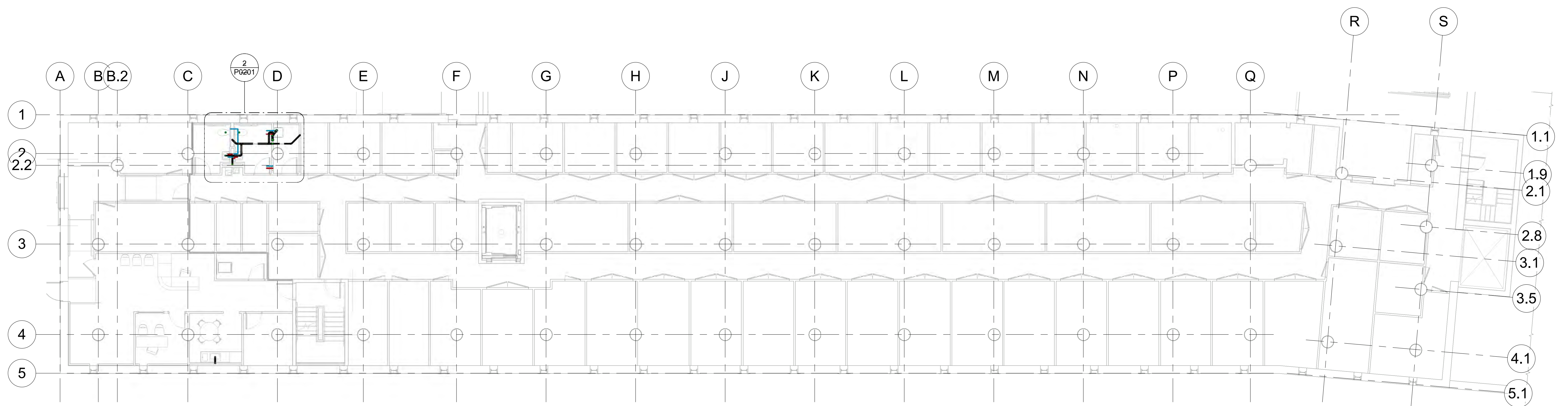
[illegible]

Scale	3/32" = 1'-0"
-------	---------------

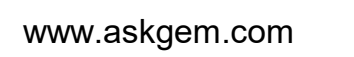
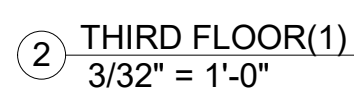
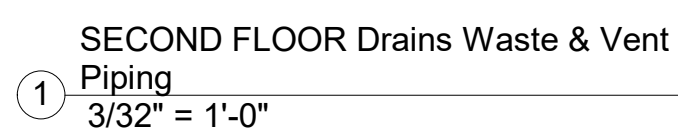
1A114C:CC:Z C707/41/10



2 BASEMENT PLUMBING
3/32" = 1'-0"



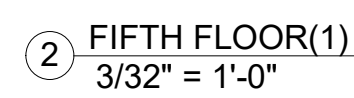
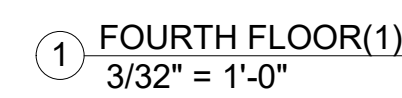
① LEVEL 01 PLUMBING 90 PERCENT
3/32" = 1'-0"

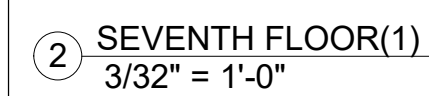
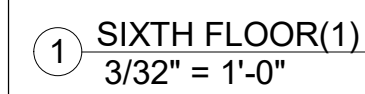


Consultant
Address
Address
Phone
Fax
e-mail

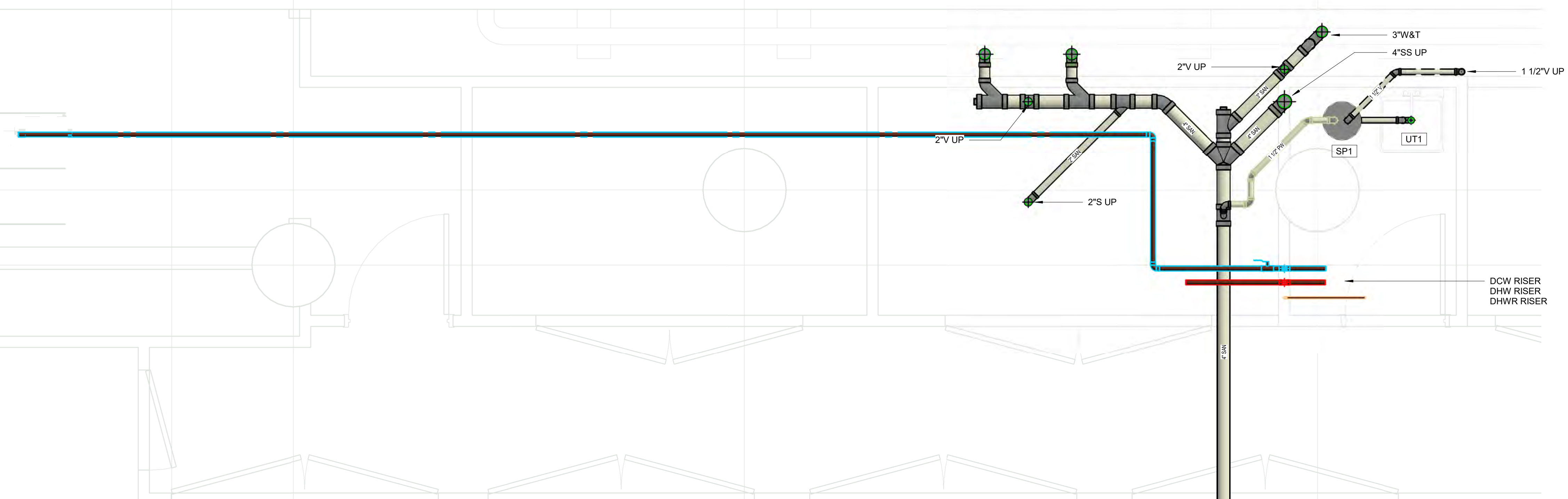
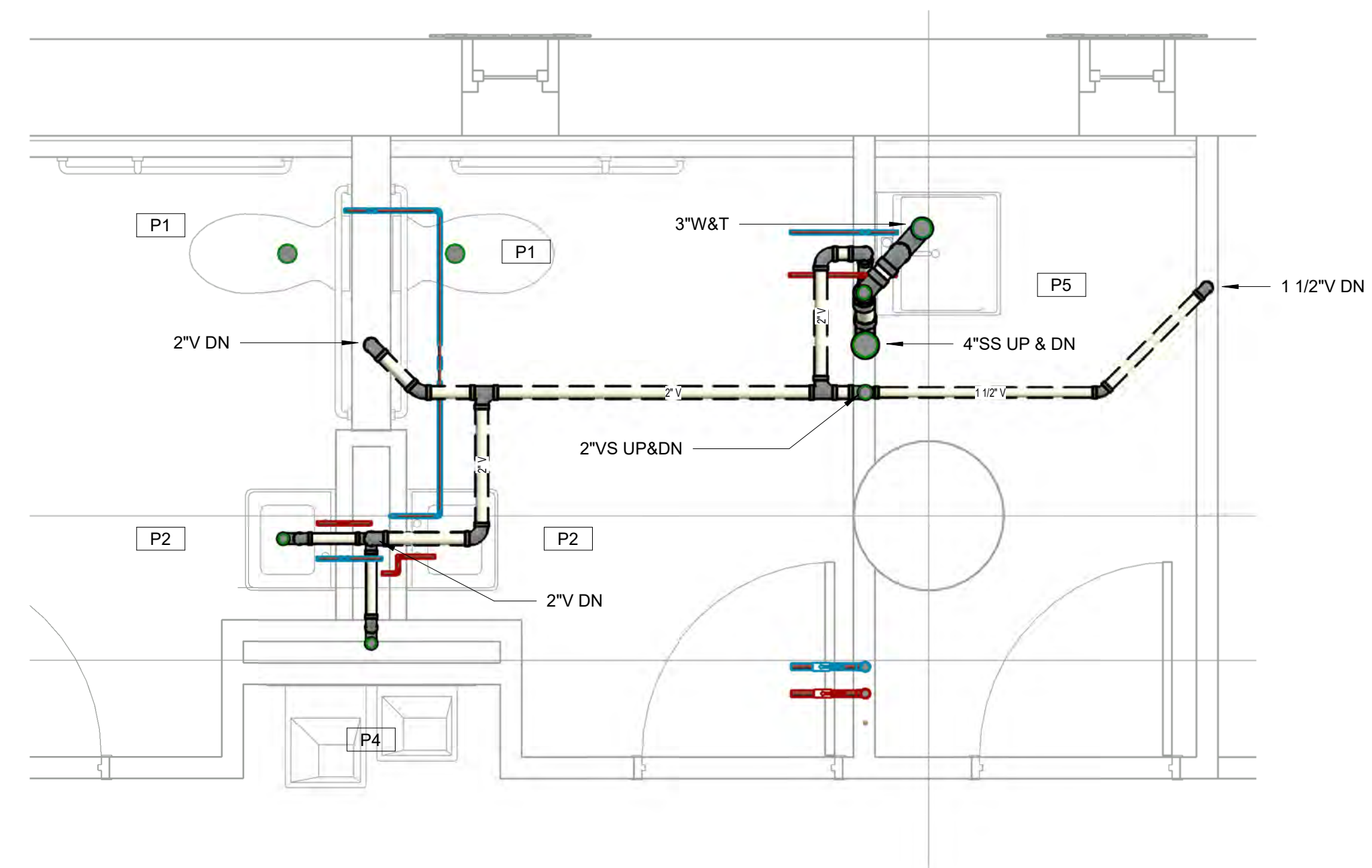
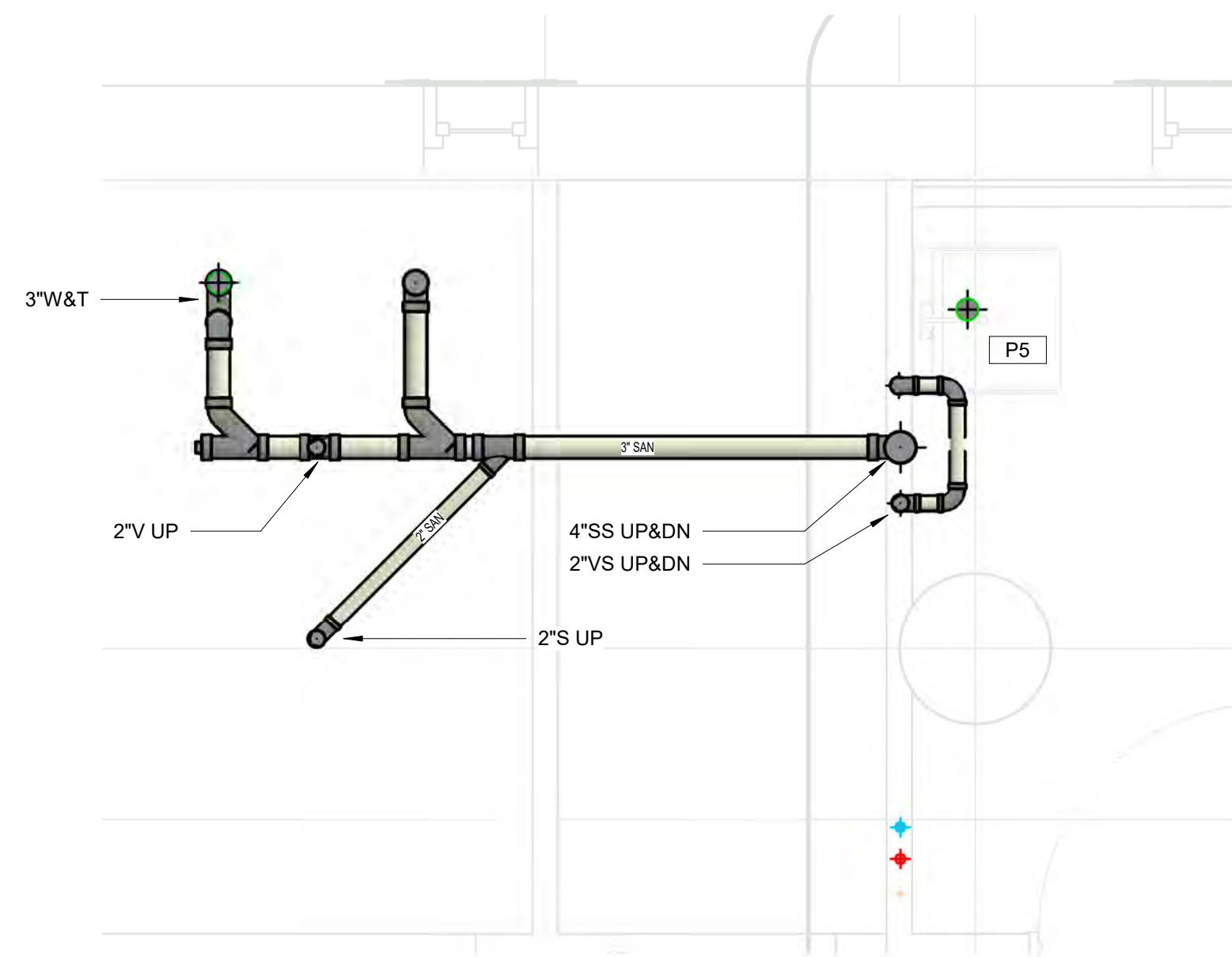
[illegible]

Scale	$3/32" = 1'-0"$
-------	-----------------





Consultant
Address
Address
Phone
Fax
e-mail

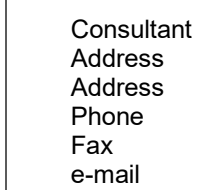


Consultant
Address
Address
Phone
Fax
e-mail

Consultant
Address
Address
Phone
Fax
e-mail

Consultant
Address
Address
Phone
Fax
e-mail

[illegible]

[illegible]

Scale	1/2" = 1'-0"
-------	--------------

③ SIXTH FLOOR PLUMBING ENLARGED
1/2" = 1'-0"

5 SEVENTH FLOOR PLUMBING ENLARGED
1/2" = 1'-0"

① THIRD FLOOR PLUMBING ENLARGED
1/2" = 1'-0"

② FOURTH FLOOR PLUMBING ENLARGED
1/2" = 1'-0"

④ FIFTH FLOOR PLUMBING ENLARGED
1/2" = 1'-0"

ABBREVIATIONS

ALL ABBREVIATIONS SHOWN ARE NOT NECESSARILY USED

AFF	ABOVE FINISH FLOOR
AD	ACCESS DOOR
ARCH	ARCHITECT
BFP	BACKFLOW PREVENTER
BLDG	BUILDING
BTU	BRITISH THERMAL UNITS
BTUH	BTU PER HOUR
CFH	CUBIC FEET PER HOUR
CFM	CUBIC FEET PER MINUTE
CO	CLEANOUT
CO2	CARBON DIOXIDE
COP	CENTER OF PIPE
CTE	CONNECT TO EXISTING
CW	COLD WATER
CV	CHECK VALVE
DCO	DANDY CLEANOUT
DIA	DIAMETER
DN	DOWN
DWG	DRAWING
DHW	DOMESTIC HOT WATER
DHWH	DOMESTIC HOT WATER HEATER
EXT	EXISTING
EC	ELECTRICAL CONTRACTOR
EFF	EFFICIENCY
ELV	ELEVATION
ET	EXPANSION TANK
FCO	FLOOR CLEANOUT
FD	FLOOR DRAIN
FOS	FUEL OIL SUPPLY
FOR	FUEL OIL RETURN
FT	FEET
GAL	GALLONS
GALV	GALVANIZED
GC	GENERAL CONTRACTOR
GGO	GRADE CLEANOUT
GP	GALLONS PER FLUSH
GPM	GALLONS PER MINUTE
HB	HOSE BIB-SEE DETAIL
HP	HORSE POWER
HVAC	HEATING, VENTILATION, AND AIR CONDITIONING
HW	HOT WATER
IW	INDIRECT WASTE
IN	INCHES
KW	KILOWATT
LF	LINEAR FEET
MAU	MAKE UP AIR UNIT
MBH	THOUSANDS OF BTUs PER HOUR
MECH	MECHANICAL
MXV	MIXING VALVE
N/A	NOT APPLICABLE
NC	NORMALLY CLOSED
NIC	NOT IN CONTRACT
NO	NORMALLY OPEN
NTS	NOT TO SCALE
OD	OUTSIDE DIAMETER
PC	PLUMBING CONTRACTOR
PLG	PLUMBING
PSI	POUNDS PER SQUARE INCH
PRV	PRESSURE REDUCING VALVE
RE	RETURN
RE	REMOVE EXISTING
RPM	ROTATIONS PER MINUTE
RBPB	REDUCED PRESSURE BACKFLOW PREVENTER
RTU	ROOF TOP UNIT
SC	SITE CONTRACTOR
SD	STORM DRAIN
SF	SQUARE FEET
SQ	SQUARE
SS	STAINLESS STEEL
STL	STEEL
TBD	TO BE DETERMINED
T&P	TEMPERATURE AND PRESSURE RELIEF VALVE
TYP	TYPICAL
UG	UNDERGROUND
UV	ULTRAVIOLET
V	VENT
VB	VACUUM BREAKER
VFD	VARIABLE FREQUENCY DRIVE
VTR	VENT THROUGH ROOF
W	WITH
W&T	WASTE AND TRAP
W/O	WITHOUT
WCO	WALL CLEANOUT
WHA	WATER HAMMER ARRESTOR
WH	WATER HEATER
WMS	WIRE MESH SCREEN
ZV	ZONE VALVE

GENERAL NOTES

1. SCOPE OF WORK SHALL INCLUDE ALL LABOR, MATERIALS, TOOLS, EQUIPMENT, TRANSPORTATION, HOISTING, RIGGING, INSURANCE, ETC., TO PERFORM THE WORK AS INDICATED ON THE DRAWINGS AND HEREIN SPECIFIED FOR A COMPLETE INSTALLATION. ALL WORK SHALL BE IN ACCORDANCE WITH NATIONAL, STATE AND LOCAL CODES AND ORDINANCES HAVING JURISDICTION, AS INTERPRETED BY THE ARCHITECT / ENGINEER.
2. PLUMBING EQUIPMENT AND SUCH OTHER APPARATUS AS MAY REQUIRE MAINTENANCE AND OPERATION FROM TIME TO TIME SHALL BE MADE EASILY ACCESSIBLE. ALTHOUGH THE EQUIPMENT MAY BE SHOWN ON THE DRAWING IN CERTAIN LOCATIONS, THE CONSTRUCTION MAY DISCLOSE THAT SUCH LOCATION DO NOT MAKE ITS POSITION READILY ACCESSIBLE. IN SUCH CASES, THE OWNER OR HIS REPRESENTATIVE SHALL BE NOTIFIED BEFORE ADVANCING THE CONSTRUCTION TO A STAGE WHERE A CHANGE WILL REFLECT ADDITIONAL EXPENSE.
3. THE DRAWINGS SHOW THE LAYOUT OF THE PLUMBING SYSTEMS AND INDICATE THE APPROXIMATE LOCATIONS OF PIPING, BRANCHES AND ELBOWS, AND EQUIPMENT. THE RUNS AND QUANTITY OF PIPING, OFFSETS AND ELBOWS AS SHOWN ON THE DRAWINGS ARE DIAGNOSTIC ONLY. THE EXACT ROUTING OF QUANTITY PIPING, OFFSETS AND ELBOWS SHALL BE DETERMINED BY THE STRUCTURAL CONDITIONS, POSSIBLE OBSTRUCTIONS AND COORDINATION DRAWINGS. THIS SHALL NOT BE CONSTRUED TO MEAN THAT THE DESIGN OF THE SYSTEMS MAY BE CHANGED, BUT REFERS ONLY TO EXACT ROUTING BETWEEN GIVEN POINTS.
4. IT SHALL BE THE RESPONSIBILITY OF THE PLUMBING CONTRACTOR TO STUDY ALL DRAWINGS AND DETAILS SO THAT THE INSTALLATION OF ALL NEW WORK CAN BE FULLY COORDINATED. COORDINATE WITH ALL TRADES TO AVOID INTERFERENCE BETWEEN THE PLUMBING INSTALLATION AND THE SYSTEMS AND EQUIPMENT OF OTHER TRADES.
5. PLUMBING WORK AS INDICATED DIAGRAMMATICALLY. EXACT LOCATION OF ALL COMPONENTS ARE TO BE DETERMINED IN THE FIELD AND BY THE ACTUAL BUILDING CONDITIONS. EQUIPMENT OR PIPES INTERFERING WITH OTHER INSTALLATIONS SHALL BE RELOCATED AS REQUIRED AT NO ADDITIONAL COST.
6. PLUMBING CONTRACTOR SHALL COORDINATE ALL WALL, CEILING, FLOOR, ROOF AND BEAM PENETRATIONS WITH ARCHITECT AND STRUCTURAL ENGINEER.
7. PRODUCTS REQUIRED BY CONSTRUCTION BUT NOT SPECIFICALLY DESCRIBED HEREIN SHALL BE AS SELECTED BY THE CONTRACTOR SUBJECT TO THE APPROVAL OF THE A/E.
8. PROVIDE AND INSTALL ALL MATERIALS, LABOR, EQUIPMENT, AND ACCESSORIES FOR COMPLETE AND OPERABLE SYSTEMS AND AS REQUIRED BY THE EQUIPMENT MANUFACTURER'S INSTALLATION INSTRUCTIONS AND AS INDICATED ON THE DRAWINGS.
9. INSTALLATION OF THE PLUMBING SYSTEM SHALL PERMIT ACCESSIBILITY FOR SERVICE AND/OR REPLACEMENT OF EQUIPMENT.
10. PROVIDE ACCESS PANELS FOR ALL CLEANOUTS, VALVES, ALL OTHER CONCEALED ACCESSORIES REQUIRING ACCESS SUCH AS CONTROL VALVES, PRESSURE REDUCERS, WATER HAMMER ARRESTORS, AND AT ALL OTHER LOCATIONS WHERE COMPONENTS ARE INSTALLED WITHIN TIGHT LOCATIONS REQUIRING MAINTENANCE OR ADJUSTING REGARDLESS OF WHETHER OR NOT AN ACCESS IS INDICATED ON THE FLOOR PLANS.
11. ALL MISCELLANEOUS STRUCTURAL SUPPORTS REQUIRED FOR PIPING EQUIPMENT INSTALLATION SHALL BE PROVIDED BY PLUMBING CONTRACTOR.
12. INSTALL ALL PIPING BELOW DUCTWORK UNLESS CLEARANCE CONDITION REQUIRES PIPING TO BE ABOVE.
13. WHERE PIPING PENETRATES ANY SMOKE AND/OR FIRE RATED PARTITIONS PROVIDE UL LISTED FIRE STOP ASSEMBLY TO MAINTAIN RATING OF ASSEMBLY. INSTALL FIRE STOPPING PER MANUFACTURER REQUIREMENTS. ALL FIRE STOPPING TO BE PROVIDED BY UL CERTIFIED OR MANUFACTURER CERTIFIED FIRE STOPPING CONTRACTOR.
14. ALL CEILING MOUNTED EQUIPMENT SHALL BE INSTALLED IN SUCH A WAY THAT LIGHTS, PIPING, AND DUCTWORK DO NOT BLOCK ACCESS TO UNITS RELATED ACCESSORIES.
15. THE PLUMBING CONTRACTOR MUST COORDINATE THE COMPONENTS AND PROGRAMMING OF THE EQUIPMENT WITH THE ELECTRICAL SUBCONTRACTORS. CONTROL SEQUENCES SHALL BE TESTED AND CORRECTED TO THE SATISFACTION OF THE OWNER AND ENGINEER.
16. NEW WATER, WASTE & VENT PIPING SHALL BE HYDROSTATICALLY TESTED IN ACCORDANCE WITH THE LOCAL PLUMBING INSPECTORS REQUIREMENTS AND AS PER THE STATE PLUMBING CODE.
17. ALL PLUMBING FIXTURES SHALL BE LISTED AND APPROVED FOR MASSACHUSETTS

PLUMBING LEGEND	
SYMBOL	DESCRIPTION
	SANITARY WASTE PIPING
	SANITARY VENT PIPING
	STORM DRAIN PIPING
	STORM OVERFLOW DRAIN PIPING
	CONDENSATE WASTE PIPING
	DOMESTIC COLD WATER PIPING
	DOMESTIC HOT WATER PIPING
	DOMESTIC HOT WATER RETURN PIPING
	NATURAL GAS PIPING
	PROPANE GAS PIPING
	FLOOR DRAIN
	ROOF DRAIN
	FLOOR CLEANOUT
	FLOOR SINK
	REDUCED PRESSURE BACKFLOW PREVENTER
	DOMESTIC WATER METER
	BALL VALVE
	GATE VALVE
	DOMESTIC HOT WATER RECIRCULATION PUMP
	CIRCUIT SOLVER BALANCING VALVE
	CONNECT TO EXISTING

○ PLUMBING
1/4" = 1'-0"

○ GENERAL
1/4" = 1'-0"

○ ABBREVIATED
1/4" = 1'-0"



Consultant
Address
Address
Phone
Fax
e-mail

Consultant
Address
Address
Phone
Fax
e-mail

Consultant
Address
Address
Phone
Phone
Fax
e-mail

[illegible]

TRUE STORAGE
BIDDEFORD
22 Main Street Bldg.
#36 Biddeford, ME
04005

LEGEND NOTES ABBREVIATIONS	
Project number	0000
Date	6/14/23
Drawn by	JC
Checked by	KS
P0302	
Scale	1/4" = 1'-0"

P0302		
<table style="width: 100%; border: none;"> <tr> <td style="border: none; width: 50%;">Scale</td> <td style="border: none; width: 50%; text-align: right;">1/4" = 1'-0"</td> </tr> </table>	Scale	1/4" = 1'-0"
Scale	1/4" = 1'-0"	

666

1.01 GENERAL CONDITIONS

- ## 1.02 SCOPE OF WORK

- ## PART 11 PRODUCTS

- ## 2.01 BIDDING CONFLICTS

- ## 2.02 SHOP DRAWINGS AND EQUIPMENT SUBMISSIONS

- ## 2.03 APPROVALS AND SUBSTITUTIONS

- ## 2.04 PIPING

- ## 2.05 EQUIPMENT

- ## 2.06 SMOKE AND FIRESTOPPING

- ## PLUMBING SPECIFICATIONS AND

NOTES PAGE 1

2.07 INSULATION:

- ## 2.08 ACCESS PANELS:

- ## 2.09 IDENTIFICATION, MARKING AND TAGGING:

- ## 2.10 SLEEVES, INSERTS AND ESCUTCHEONS:

- ## PART 111 EXECUTION

- ### 3.01 WATER SYSTEMS

- ### 3.02 DRAINAGE SYSTEMS:

- 
- GEM™**
MECHANICAL SERVICES

www.askgem.com

Consultant
Address
Address
Phone
Fax
e-mail

Consultant
Address
Address
Phone
Fax
e-mail

Consultant
Address
Address
Phone
Fax
e-mail

[illegible]

22 Main Street Bldg.
#36 Biddeford, ME
04005

Project number	0000
----------------	------

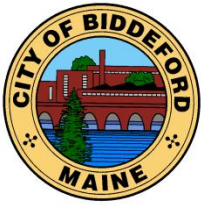
Date 6/14/23

Drawn by JC

Checked by KS

P0303

Scale $1\frac{1}{2}'' = 1'-0''$



CITY OF BIDDEFORD

Planning and Development Department

David C.M. Galbraith
Deputy Director/City Planner
205 Main Street
P.O. Box 586
Biddeford, ME 04005
(207) 284-9115

David.Galbraith@biddefordmaine.org

PLANNING BOARD STAFF REPORT

TO: Chair Patoine and Members of the Biddeford Planning Board

FROM: David C.M. Galbraith, Deputy Director/City Planner

DATE: June 14, 2023

RE: **2023.33 Sketch Plan Review** for Beachwood Development LLC, to create an 8-Lot residential single family home subdivision on 781 Pool Street (Tax Map 5, Lot 17-2) in the Coastal Residential zone and shoreland overlay.

MEETING DATE: June 21, 2023 at 6:00 PM

1. INTRODUCTION

The Beachwood Development LLC would like to create an 8-lot single family residential subdivision on 781 Pool Street in the vicinity of Maddox Pond Rd. and Peter Pond Ln. This project would include a private street connected to Pool Street. The net residential area of the parcel is 8.93 acres

This application involves redevelopment of property at 781 Pool Street (Tax Map 5, Lot 17-2), located within Coastal Residential zone and partially within the Limited Residential coastal overlay. Additionally, this parcel abuts a stream protection overlay although the overlay does not extend to the parcel itself.

The development triggers Maine Site Law Review, for which the City of Biddeford has Municipal Capacity Authority.

Case 2023.33: 781 Pool Street /Sketch Plan Review, Subdivision (Tax Map 5, Lots 17-2) in the CR zone and Shoreland Overlay zone.

Planning Board Hearing date: June 21, 2023.



The current site

2. PROJECT DATA/INFORMATION

1.	Applicant:	Beachwood Development LLC 92 York Street geoff@bowleybuilders.com
2.	Owner of Property:	Same as applicant
3.	Agent:	Michael Tadema-Wielandt PE 565 Congress Street, Suite 201 Portland, ME 04101
4.	Surveyor:	Same as above
5.	Project Location:	781 Pool Street
6.	Project Tax Map #/Lot #:	Tax Map 5, Lot 17-2
7.	Lot Size:	25.45 Acres
8.	Base Zoning:	CR
9.	Overlay Zoning:	LR (partial)
10.	Existing Use:	Vacant Land
11.	Proposed Use:	8-Lot Residential Single-Family Subdivision
12.	Approvals Required:	Sketch Plan Review
13.	Uses in the Vicinity:	Single-Family Residential. Resource Protection
14.	Waivers Needed:	a. None
18.	Waivers Granted:	a. None
22.	Other Non-City Permits Required:	N/A
23.	LDR Attachment A: Fees Paid:	Yes
25.	Planning Board Review History:	None

Case 2023.33: 781 Pool Street /Sketch Plan Review, Subdivision (Tax Map 5, Lots 17-2) in the CR zone and Shoreland Overlay zone.

Planning Board Hearing date: June 21, 2023.

3. REVIEW PROCESS

Per City ordinance, this application is subject to Site Plan (Land Development Regulations, Article XI) review and approval by the Planning Board.

4. Departmental Review Comments:

A. Planning:

1. Although outside of the proposed developed area, this parcel abuts Stream Protection and Limited Residential overlay zones.
2. There are several wetlands and non-significant vernal pools within the proposed development area. More detail is needed on how those will be impacted.
3. Grading, drainage and RoW will need to be shown in more detail in future applications.

B. Code Enforcement:

1. None

C. Public Works:

1. None

D. Engineering:

1. Future plans will need to show Right-of-Way, utilities, sidewalks, ect.
2. Potential for runoff into Lords Pond or Etherination Pond

E. Police:

1. None

F. Fire:

1. None

G. Traffic Peer Review:

1. None

H. Engineering Peer Review:

1. We note that there does not appear to be a test pit for wastewater disposal on lot 1, and possibly others.
2. Several of the lots include wetlands within the building windows. Is it the intent that these areas will be permitted to be filled/disturbed?
3. Is the applicant planning on developing the house lots, or the road only?

Case 2023.33: 781 Pool Street /Sketch Plan Review, Subdivision (Tax Map 5, Lots 17-2) in the CR zone and Shoreland Overlay zone.

Planning Board Hearing date: June 21, 2023.

1. STAFF REVIEW

- **APPLICATION COMPLETENESS:** The applicant has submitted a complete application, featuring all required elements as specified under Section 66-35 (Required Information for Final Plan Submissions). As part of the staff's review comments, we've identified aspects of the plan submission to be revised or clarified, which we suggest being made a condition of approval.
- **ZONING:** The proposed uses, Commercial, Residential, and Restaurant, are permitted uses within the Coastal Residential (CR) Zone. Similarly, with respect to applicable dimensional requirements, the project would comply with all applicable requirements, including building height, building setback, frontage, and lot coverage requirements.

- **REVIEW STANDARDS:**

In general, staff found the application to satisfy City subdivision and site plan requirements. The major site details such as building, parking, landscaping, designs and locations have been finalized so the plan being reviewed the Board are what will be constructed on the face of the earth. However, City Staff and the City's third party civil engineer, identified a number of technical plan elements which need to be addressed by the Applicant prior to a Pre-construction meeting being scheduled by the City. However, the necessary engineering modifications are specialized in nature and are being addressed with the Applicant and Staff and the recommended Conditions of Approval (COA) reflect these requirements.

- Maine DEP Stormwater Permit: The project requires a Maine DEP Stormwater Permit.
- WAIVERS: None Requested

2. STAFF RECOMMENDATION

Staff is comfortable moving forward with the Board's review of the project, with the understanding that the remaining engineering issues will be resolved, to the satisfaction of the Public Works Director and Engineering Director, prior to a Preconstruction Meeting being scheduled. A Condition of Approval (COA), of this nature, has been included within the Findings of Fact (FOF) / COA.



May 23, 2023

Project #23-023

David Galbraith, City Planner; Director of Planning & Development
City of Biddeford
205 Main Street
Biddeford, ME 04005

**Subject: Pool Street Subdivision
Sketch Plan Submission**

Dear David:

On behalf of Beachwood Development Fund LP, attached are a sketch plan and supporting information for a proposed 8-Lot residential subdivision on Pool Street in Biddeford. The following narrative includes information on the existing project site and the proposed development.

EXISTING PROJECT SITE

The project site is approximately 25.45 acres in size and is identified as Lot 17-2 on Biddeford Tax Map 5. The site is located in the Coastal Residential District with small areas in the Stream Protection and Limited Residential Overlay Zones.

The parcel is undeveloped woodland with pockets of freshwater wetlands.

A wetland and vernal pool study was conducted on the site by Longview Partners in the spring of 2022. There are approximately 3.8 acres of forested freshwater wetlands on the site.

Seven potential vernal pools were identified on the site and studied in accordance with Maine DEP guidance. The pools were found to not have a high habitat value and are regulated as typical forested wetlands by the Maine Department of Environmental Protection under the Natural Resources Protection Act.

Longview Partners also conducted an examination of potential wastewater disposal sites. The report shows the viability of subsurface disposal sites and a copy of this is attached herein.

The net residential area of the parcel is 8.93 acres. The minimum lot size within the CR district is based on Chart 9B1 which characterizes minimum lot size based on soil profile and condition. Conservatively this gives a minimum lot size of 40,000 sf. The test pit analysis of the site shows all soil profiles are between 2-3 with a soil condition ranging from All to All/C. According to these calculations, which are provided directly on the attached sketch plan, the site can support up to 9 lots.

PROPOSED PROJECT

The applicant is proposing to develop a single-family residential subdivision on the site. All lots will be served by public water and subsurface wastewater disposal systems. The lots will connect to the 12" water main located on Fortune Rocks road, and through Maddox Pond Road and Peter Pond Lane to serve the proposed development.

Lot sizes range from approximately 48,000 square feet to 93,000 square feet. A 930 linear foot road is proposed with a 50' right-of-way. The subdivision conforms to all dimensional standards for the C-R Zone, such as minimum lot area, frontage, and setbacks.

CLOSURE

In addition to the information described above, attached are a copy of the property deed, and the local USGS map with the project site identified. A check for \$7,096.92 for the application fee will be delivered along with seven copies of the sketch plan.

We respectfully request to be added to the Planning Board's next available meeting agenda so we may present the sketch plans to the Board and solicit feedback. In the interim, if you have any questions or require additional information, please contact me.

Sincerely,
TERRADYN CONSULTANTS LLC



Michael Tadema-Wielandt, P.E.
Vice President

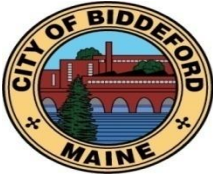
Attachments:

1. Application
2. USGS Map
3. Deed
4. Soil Test Pit Log
5. Vernal Pool Analysis
6. Sketch Plan

cc. Geoff Bowley, Beachwood Development Fund LP

ATTACHMENT 1

APPLICATION



City of Biddeford – Planning Department

Planning Board Application

P.O. Box 586, 205 Main Street Biddeford, Maine 04005
207-284-9115

Type of Application:

☐ Shoreland Zoning Permit ☐ Site Plan Review ☐ Extraction
☐ Conditional Use Permit ☒ Subdivision ☐ Private Way
☐ Other: _____

Applicant Information:

Name: Beachwood Development LLC
 Mailing Address: 92 York Street
 Telephone: (207) 985-3646
 Email: geoff@bowleybuilders.com
 What is your legal interest in the property?
☒ Owner ☐ Potential Buyer with Contract ☐ Lease/Rental Agreement

Owner's Information:

Name: Beachwood Development LLC
 Mailing Address: 92 York Street
 Telephone: (207) 985-3646
 Email: geoff@bowleybuilders.com

Agent's Information:

Name: Michael Tadema-Wielandt, P.E.
 Mailing Address: 565 Congress Street Suite 201
 Telephone: 207-632-9010
 Email: mtw@terradyconsultants.com

Engineer/Surveyor's Information:

Name: Michael Tadema-Wielandt, P.E.
 Mailing Address: 565 Congress Street Suite 201
 Telephone: 207-632-9010
 Email: mtw@terradyconsultants.com

Project Location and Lot Information:

Street Address: 781 Pool Street Drainage Watershed: Etherington Pond
Tax Map: 5 Lot: 17-2
Current Zoning: Coastal Residential Shoreland Zoning: Stream Protection, Limited Residential
 Size of Lot: 25.45 ☒ acres () s.f. Lot Frontage: 1,066 ft Pool Street
 Existing Use of Property: Undeveloped Woodland

Property currently serviced by:

☒ City Road ☐ Public Sewer ☐ Public Water ☐ Public Trash
☐ Private Road ☐ Septic System ☐ Private Well ☐ Private Hauler

Slope Conditions in Area of Construction (if applicable):

☐ Flat (0-3% slope) ☒ Rolling (3-8% slope) ☐ Hilly (8-15% slope) ☐ Steep (15%+ Slope)

Are there any wetlands or waterbodies on the site? ☒ (Yes) ☐ (No) if yes attach information

Is the project within the 100-year floodplain? ☐ (Yes) ☒ (No) if yes attach information

Do you plan to bring fill onto the lot? ☐ (Yes) ☒ (No) If yes attach information

Description of proposed use of property:

Project/Proposed Use:

Undeveloped Woodland

Property to be Serviced by:

☐ City Road ☐ Public Sewer ☒ Public Water ☐ Public Trash
☒ Private Road ☒ Septic System ☐ Private Well ☒ Private Hauler

Limits of Disturbance: 4.74 ☒ acres () s.f.

Net change in impervious cover: 1.43 ☒ acres () s.f.

Is this project part of a larger project? ☐ (Yes) ☒ (No)

Is the project proposing a new Private or Public Road? ☒ (Yes, Private) ☐ (Yes, Public) ☐ (No)

Is this project within the Urbanized Area/MS4 (see [City Drainage Map](#)) ☐ (Yes) ☒ (No)

Is the project proposing any Stormwater facilities/BMPs? ☒ (Yes) ☐ (No)

Will a Traffic Movement Permit (TMP) be required?: ☐ (Yes) ☒ (No)

If in a Shoreland Zone:

Percent of residential lot coverage (Max 20%): _____

Percent of structure expansion (Max 30%): _____

☒ If Subdivision Review, number of lots proposed: 8

☒ If a Private Way is proposed, number of lots served: 8

If Site Plan Review, you must provide the following information:

Total new square feet footprint of structure: _____

Total new square feet paving/parking: _____

Waiver Requests (attach details):

1. _____
2. _____
3. _____
4. _____
5. _____

Required Submittal Attachments:

A. Letters of Approval

☐ Fire Department – Contact Chief or Deputy Chief – 282-9986

☐ Ability to Serve for Water Service – Maine Water – 282-1543

☐ Ability to Serve for Sewer Service – Engineering Department – Tom Milligan 284-9118

☐ Police Department – e-911 Road Name Designation – Contact Joanne Fisk 282-5127

B. Letter to Planning Board describing project, Waiver requests, proposed improvements, addressing permit requirements, etc.

C. Photographs of Site.

D. Architectural renderings/drawings of proposed buildings, as required.

E. Engineering Plans, as required.

F. Stormwater Management Report, as required.

Fees (Due at time of Submission):

- \$75 Nonrefundable Administration Fee is required for every application.
- Refer to “Attachment A Fees and Charges” of the Land Development Regulations for more information. Consult with Planning Staff if you have questions.

Required Signatures:

By signing this application, as the foresaid applicant or authorized agent:

- I certify that I have read and completely understand the application;
- I certify that the information contained in this application and its attachments are true and correct;
- I understand that all information provided on this form and all other documents submitted as part of my proposal is a matter of public record;
- I understand that copies of this information may be supplied upon request to an interested party.
- I understand that additional funds may be required through the course of the review for special studies, legal review costs, and/or engineering review.
- I understand that by submitting an application I am not guaranteed a place on any particular agenda. I further understand that the City Planner will place me on an agenda for review when the application is deemed substantially complete.

Will the proposed project cause 1 acre or more of site disturbance?: ☒ (Yes) ☐ (No)

- **If Yes, applicant is responsible for any required Maine Construction General Permits and shall comply with the requirements of DEP Chapter 500 Stormwater Regulations, as they apply.**

Signature of Applicant: _____

Date 5/23/2023

Signature of Property Owner: _____

Date 5/23/2023

DIGITAL SUBMITTAL REQUIREMENTS FOR ALL SUBMITTALS:

A) PDF OF SIGNED APPLICATION

B) PDFs OF ALL DRAWING SETS AND OTHER REQUIRED SUBMITTAL ATTACHMENTS NOTED ABOVE

HARD-COPY SUBMITTAL REQUIREMENTS FOR PLANNING BOARD APPLICATIONS:

A) SEVEN (7) FULL-SIZE PAPER COPIES OF DRAWING SETS

DIGITAL SUBMITTAL REQUIREMENTS FOR FINAL APPROVAL:

A) INDIVIDUALLY NAMED PDFs OF EACH DRAWING (NOT A COMBINED PDF SET)

- *Individual Drawing PDF Naming Format: 'PROJECT/SHEETSET NAME_INDIVIDUAL DRAWING NAME.pdf'*

B) PDF COPIES OF ALL PERMIT APPROVALS, APPLICATIONS, REPORTS, NARRATIVES, LETTERS, ETC.

C) FINAL CAD REFERENCE FILES IN DWG FORMAT (SURVEY & PROPOSED DESIGN LINEWORK)

- *All drawings & CAD reference files must be to-scale and within the following coordinate systems:*

- *MAINE STATE PLANE WEST NAD83 (Horizontal Datum) & NAVD88 (Vertical Datum)*

HARD-COPY SUBMITTAL REQUIREMENTS FOR FINAL APPROVAL:

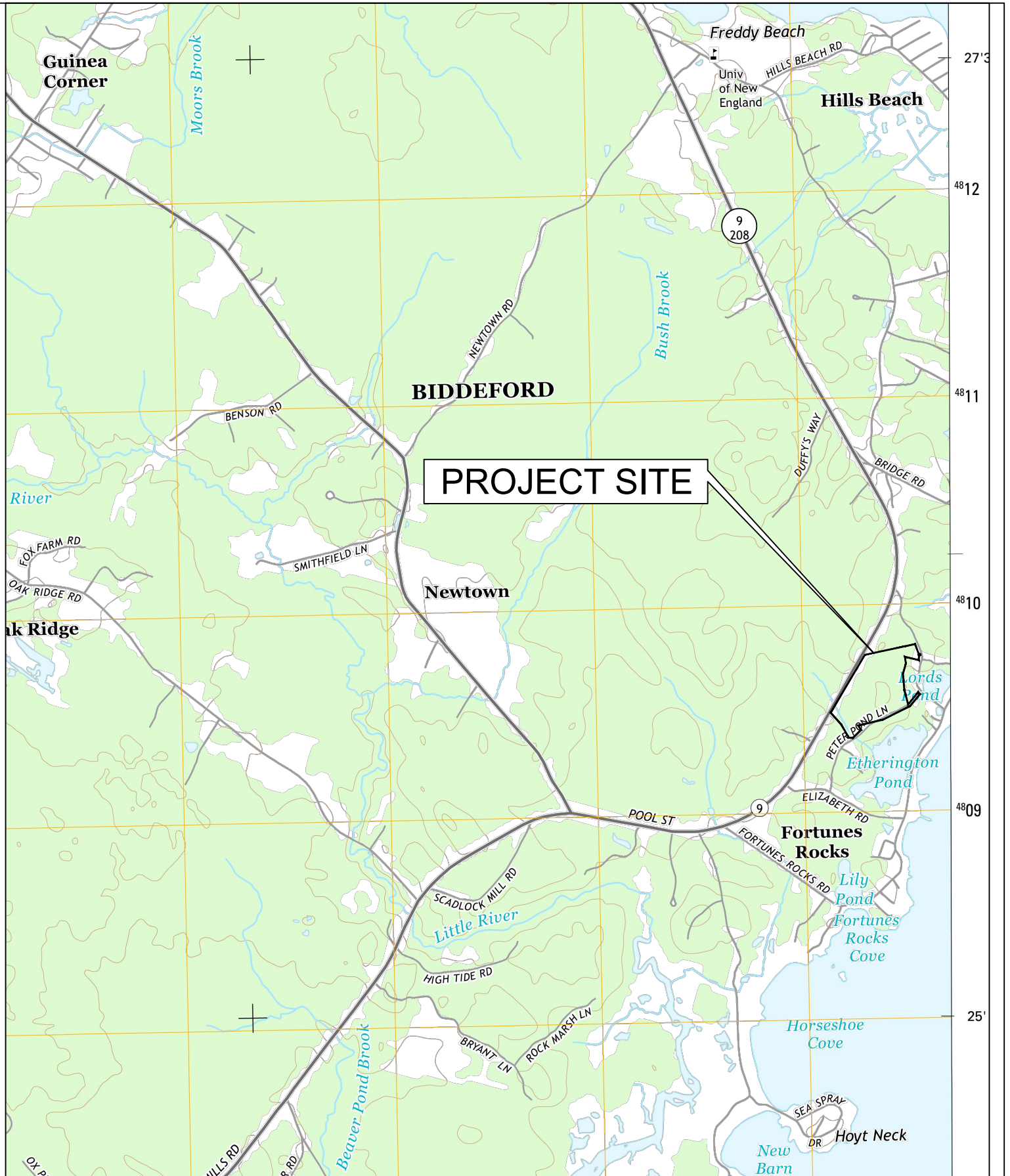
A) THREE (3) FULL-SIZE PAPER COPIES OF INDIVIDUAL DRAWINGS REQUIRING BOARD SIGNATURE

B) ONE (1) FULL-SIZE PAPER COPY OF ENTIRE DRAWING SET FOR ENGINEERING RECORDS

PLEASE CONFIRM WITH PLANNING STAFF FOR CLARIFICATION

ATTACHMENT 2

USGS MAP



USGS BIDDEFORD QUADRANGLE MAP

PROJECT:
POOL STREET SUBDIVISION
BIDDEFORD MAINE

PREPARED FOR:
BEACHWOOD DEVELOPMENT FUND
92 YORK STREET
KENNEBUNK, MAINE 04043



Civil Engineering | Land Surveying | Geomatics
Stormwater Design | Land Planning | Environmental Permitting

ADDRESS:
41 CAMPUS DRIVE, SUITE 301
NEW GLOUCESTER, ME 04260
PHONE:
(207) 926-5111
WEB SITE:
www.terradynconsultants.com

PROJECT NO.

22-023

DATE

5/16/2023

SCALE

1" = 2,000'

SHEET

1

OF

5

ATTACHMENT 3

DEED

1002340232460

After recording return to:
Woodman Edmands, PA
234 Main St., PO Box 468
Biddeford ME 04005

Maine R.E. Transfer Tax Paid

----- (Space Above This Line For Recording Data) -----

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, **KINGFISHER BEACH LLC**, a Maine limited liability company duly organized and existing under the laws of the State of Maine, FOR CONSIDERATION PAID, hereby grants to **BEACHWOOD DEVELOPMENT FUND**, a Maine limited partnership duly organized, with a mailing address of PO Box 261, Kennebunk ME 04043, with Warranty Covenants, a certain lot or parcel of land, together with any improvements thereon and all rights appurtenant thereto, located in the City of Biddeford, York County, Maine; being more particularly described as follows:

SEE EXHIBIT A ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE

{SIGNATURE PAGE FOLLOWS}

IN WITNESS WHEREOF, **KINGFISHER BEACH LLC** has caused this instrument to be executed by Anette L. Gosnell, the Manager, thereunto duly authorized as of this 24 day of April, 2023

[Signature]
WITNESS

KINGFISHER BEACH LLC
Anette L. Gosnell
Anette L. Gosnell, Manager
thereunto duly authorized

STATE OF Maine
York County, ss.

Date: April 24, 2023

Personally appeared the above-named Annette L. Gosnell, Manager **KINGFISHER BEACH LLC** and acknowledged the foregoing instrument to be her free act and deed duly authorized in said capacity.

Before me,

[Signature]
Attorney at Law/Notary Public
Print: _____
[SEAL]

JEFFREY S. ZDUNCZYK
Notary Public, State of Maine
My Commission Expires Mar. 20, 2030

Exhibit A

A certain lot or parcel of land, situated in the City of Biddeford, County of York and State of Maine, bounded and described as follows:

Beginning at an iron rod driven into the ground on the southeasterly side of the Pool Road (also known as State Route #9) as shown on a 'Maine State Highway Commission, Right-of-Way Map, State Aid Highway '2", sheet 2 of 5 M.S.H.C. file #16-137 dated December 1961 and recorded at the YCRD in Plan Book 39, Page 8 at the westerly corner of land described in a deed to James C. Lauzier dated March 31, 1977 and recorded at said Registry in Book 2177, Page 222; said iron rod bears South 45° -23' West, a distance of 115.83 feet from a granite highway monument found set in the ground at M.S.H.C. Station 274 + 50 (said course is shown as South 47° -46' West on said M.S.H.C. Plan);

Thence by said land, now or formerly, of James C. Lauzier by the following five (5) courses and distances; South 89° -37' -15" East, a distance of 146.43 feet to the westerly end of a stonewall;

Thence South 83° -44' East, by said stonewall, 59.85 feet;

Thence South 89° -26' -15" East, by said stonewall, 161.35 feet;

Thence North 87° -06' -30" East, by said stonewall, 151.26 feet;

Thence South 85° -09' -15" East, by said stonewall, 99.26 feet to an iron pipe found driven into the ground;

Thence South 88° -39' East, by land described in a deed to John W. Fowler, dated July 24, 1986 and recorded at said Registry in Book 3939, Page 53 and by said stonewall, 200 feet to an iron rod with survey cap driven into the ground;

Thence South 06° -04' East, by the westerly side of the Maddox Road (also known as the Old Pool Road) and by a stonewall, 165.00 feet to a drilled hole set in said stonewall;

Thence South 12° -03' -30" West, by said westerly side of the Maddox Road and said stonewall, 100.32 feet to an iron pipe found driven into the ground;

Thence North 77° -40' -30" West, by land described in the deed to Carol A. Reidy et al dated September 11, 1967 and recorded at said Registry in Book 1782, Page 778 and shown as lot on a 'Plan Showing Lots Belonging to L. Gordon Adamson Et Al', dated January 16, 1967 made by Libby & Dow Engineers and recorded at said Registry in Plan Book 43, Page 26, a distance of 224.19 feet to an iron pipe found driven into the ground;

Thence South 05° -52' -45" West, by said lot #5 and said land, now or formerly of Reidy, 109.72 feet to an iron pipe found driven into the ground;

Thence South $38^{\circ}-25'-45''$ West partly by said lot #5 and said land, now or formerly of Reidy and partly by lot #4 as shown on said Adamson Plan and described in a deed to Marjorie A. Jamback et al, dated September 11, 1967 and recorded at said Registry in Book 1782, Page 775, a distance of 161.38 feet to a drill hole set in ledge;

Thence South $9^{\circ}-10'$ West by the northwesterly side of lot #3 as shown on said Adamson Plan and land described in a deed to said Marjorie A. Jamback dated May 22, 1973 and Registry in Book 2102, Page 349, a distance of 230.92 feet to an iron pipe found driven into the ground;

Thence South $02^{\circ}-30'-30''$ East, by said lot #2 and land, now or formerly of Spear and partly by lot #1 as shown on said Adamson Plan and land described in a deed to Katherine B. Cox et al dated April 7, 1973 and recorded at said Registry in Book 1988, Page 71, a distance of 230.65 feet to an iron pipe found driven into the ground;

Thence North $55^{\circ}-26'-45''$ East, by said lot #1 and land, now or formerly of Cox, 254.09 feet to an iron pipe found driven into the ground;

Thence South $28^{\circ}-50'-30''$ East, by said westerly side of the Maddox Road, 40.18 feet to an iron pipe found driven into the ground;

Thence South $55^{\circ}-26'-45''$ West, by land described in a deed to Pauline V. Natale dated May 29, 1969 and recorded at said Registry in Book 1840, Page 327, a distance of 250.00 feet to an iron pipe found driven into the ground,

Thence South $83^{\circ}-27'$ West, by land described in a deed to Dorothy H. Matheson dated September 15, 1982 recorded at said Registry in Book 2981, Page 302, and partly by land described in a deed to said Dorothy H. Matheson dated October 25, 1985 and recorded at said Registry in Book 3673, Page 117, and shown as lot #2 on a 'Sketch Showing Land Surveyed for Richard Banfield, Jr.' dated September 18, 1981 last revised August 9, 1985 made by Dow & Coulombe, Inc. (said course being called South $83^{\circ}-52'-30''$ West in said Matheson deeds), a distance of 315.43 feet to an iron rod with survey cap driven into the ground;

Thence South $75^{\circ}-42'$ West, by said land of Matheson and partly by land described in a deed to Arthur J. Gosnell et al dated May 24, 1986 and recorded at said Registry in Book 3787, Page 218 (said course being called South $76^{\circ}-09'$ West in said Matheson and Gosnell deeds) and by lot #1 shown on said 'Sketch Showing Land Surveyed for Richard Banfield, Jr.', 397.24 feet to an iron rod with survey cap driven into the ground;

Thence South $63^{\circ}-17'-15''$ West, by said land, now or formerly of Gosnell (said course being called South $63^{\circ}-44'$ West in said Gosnell deed), 144.76 feet to an iron pipe found driven into the ground;

Thence by land described in a deed to Thomas L. Parks et al dated June 16, 1983 recorded at said Registry in book 3109, page 19 and shown on a 'Plan Showing Land Conveyed by Linnell T. Madden' dated December 3, 1970 made by Libby & Dow Engineers by the following two (2) courses and distances; South $61^{\circ}-13'$ West (said course being called South $62^{\circ}-35'$ West in said Parks deed and Linnell to Madden plan), 108.62 feet to an iron pipe found driven into the ground;

Thence South $84^{\circ}-45'-30''$ West (said course being called South $85^{\circ}-59'$ West in said Parks deed to Linnell to Madden Plan) 76.69 feet to a iron rod with survey cap driven into the ground;

Thence by remaining land of this grantor by the following three (3) courses and distances; North $69^{\circ}-20'$ West, a distance of 61.71 feet;

Thence North $13^{\circ}-01'$ West, a distance of 236.46 feet;

Thence North $24^{\circ}-10'-30''$ West, a distance of 257.85 feet;

Thence North $45^{\circ}-23'$ East, by said southeasterly side of the Pool Road as shown on said M.S.H.C. Plan, 1,034.84 feet to the point of beginning. Containing 25.30 acres.

The above-described parcel is conveyed subject to easements and rights-of-way described in the following deeds:

Book 2981, Page 302; Book 3673, Page 117; Book 3787, Page 218; Book 3109, Page 19; Book 2352, Page 142; Book 1256, Page 417; Book 3622, Page 123; Book 4598, Page 131; Book 3832, Page 230 and Book 2016, Page 42.

Subject to mineral rights reservations and utility easements appearing of record.

The above courses are magnetic and of the year 1973.

Reference is made to a plan entitled 'Peter Pond, Phase 2', Plan Showing a Standard Boundary Survey made for Richard W. Banfield: dated April 3, 1989 revised August 3, 1989 made by Libby & Coulombe, Inc.

Also conveying herewith all Grantor's right, title and interest in and to that six (6) foot wide pedestrian easement as described in deed to Arthur J. Gosnell and Margaret C. Gosnell, recorded in the York Registry of Deeds in Book 3787, Page 218.

Being the premises conveyed to the within Grantor by deed of Annette L. Gosnell, Judith G. Kempe, Gretchen G. Wood, and Cary L. Harrison dated January 17, 2007 and recorded in York Registry of Deeds in Book 15090, Page 867.

ATTACHMENT 4

TEST PIT LOG



MDEP JURISDICTIONAL
STREAM CHANNEL (75'
SETBACKS FOR CONSTRUCTION/
SOIL DISTURBANCE)

PETER POND LANE

POOL STREET

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 35,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 30,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 30,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 30,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 30,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 35,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 30,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 30,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 35,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 35,000 SQ. FT.
LOT SIZE REQUIRED)

POTENTIAL
WASTEWATER
DISPOSAL SITE
(MIN. 30,000 SQ. FT.
LOT SIZE REQUIRED)

DELINEATION NOTES:
WETLAND STUDY CONDUCTED APRIL 13, & 20, 2022

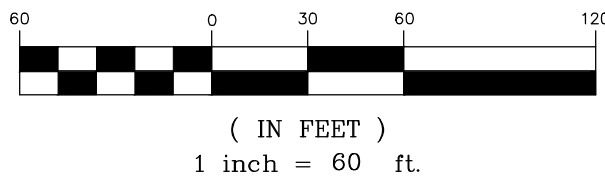
VERNAL POOL STUDY CONDUCTED APRIL 13 & 20, & MAY 9, 2022. NO "SIGNIFICANT"
VERNAL POOL HABITAT WAS IDENTIFIED DURING 2022 STUDY

PLAN NOTES:
THIS PLAN IS A COMPOSITE OF PROPERTY BOUNDARY INFORMATION PER A SURVEY
PLAN BY DOW & COULOMBE, INC. DATED APRIL 3, 1989, MAINE OFFICE OF GIS 2'
TOPOGRAPHIC CONTOURS & AERIAL PHOTOGRAPH, AND SUBMETER GPS LOCATION
OF WETLAND BOUNDARIES & OTHER SITE FEATURES AS DEPICTED BY LONGVIEW
PARTNERS, LLC.

MAP IS FURNISHED FOR PLANNING PURPOSES ONLY AND SHALL NOT BE
REPRODUCED OR UTILIZED BY ANYONE OTHER THAN THE PARTIES NAMED WITHOUT
EXPRESS WRITTEN CONSENT OF LONGVIEW PARTNERS, LLC.

- LEGEND:
- FRESHWATER WETLAND AREA (LOCATED BY LONGVIEW PARTNERS, LLC SUBMETER GPS)
 - VERNAL POOL EXTENTS (LOCATED BY LONGVIEW PARTNERS, LLC SUBMETER GPS)
 - SURFACE WATER RUNOFF (LOCATED BY LONGVIEW PARTNERS, LLC SUBMETER GPS)
 - MDEP JURISDICTIONAL STREAM CHANNEL (REQUIRES 75' SETBACK FOR CONSTRUCTION/SOIL DISTURBANCE)
 - SOIL TEST PIT (LOCATED BY LONGVIEW PARTNERS, LLC SUBMETER GPS)
 - POTENTIAL WASTEWATER DISPOSAL SITE

GRAPHIC SCALE



NOTE:
MINIMUM LOT SIZES AS SHOWN ARE FOR LOTS
SERVED BY PUBLIC WATER. LOTS MUST BE
80,000 SQ. FT. MINIMUM IF SERVED BY PRIVATE
WATER SUPPLIES. (SEE BIDDEFORD ORDINANCE)

**WETLAND DELINEATION &
POTENTIAL WASTEWATER
DISPOSAL PLAN
PREPARED FOR
ANNETTE GOSNELL
781 POOL STREET
(MAP 5, LOT 17-2)
BIDDEFORD, MAINE**

LONGVIEW
PARTNERS, LLC

ENVIRONMENTAL PERMITTING SPECIALISTS

DRAFT: BO SCALE: 1" = 60' CHECKED: JL PLAN DATE: 6/13/22

SOIL TEST PIT PROFILE DESCRIPTIONS

LONGVIEW PARTNERS, LLC
6 SECOND STREET BUXTON, MAINE

Town, City, Plantation

BIDDEFORD

Street, Road, Subdivision

781 POOL STREET

Owner's Name

ANNETTE GOSNELL

SOIL DESCRIPTION AND CLASSIFICATION (PER STATE OF MAINE SUBSURFACE WASTEWATER DISPOSAL RULES)

Observation Hole TP 1 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil

SOIL TEST PIT BY BACKHOE

Texture	Consistency	Color	Mottling
0		DARK BROWN	
	FRIABLE		
10		STRONG BROWN	NONE EVIDENT
20			
30			
40			
50			

Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth
2 AIII Profile Condition TUNBRIDGE	%	30 "	

Observation Hole TP 2 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil

SOIL TEST PIT BY BACKHOE

Texture	Consistency	Color	Mottling
0			
		DARK YELLOWISH BROWN	
10	FRIABLE		NONE EVIDENT
20		YELLOWISH BROWN	
30			
40			
50			

Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth
2 AIII Profile Condition TUNBRIDGE	%	34 "	

SOIL DESCRIPTION AND CLASSIFICATION (PER STATE OF MAINE SUBSURFACE WASTEWATER DISPOSAL RULES)

Observation Hole TP 3 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil

SOIL TEST PIT BY BACKHOE

Texture	Consistency	Color	Mottling
0		DARK BROWN	
	FRIABLE		
10		DARK YELLOWISH BROWN	
20	SOMEWHAT FIRM	MIXED DARK YELLOWISH BROWN	COMMON FAINT
30	FIRM	OLIVE BROWN	COMMON DISTINCT
40			
50			

Soil Classification	Slope	Limiting Factor	☒ Ground Water ☐ Restrictive Layer ☐ Bedrock ☐ Pit Depth
3 C Profile Condition SKERRY	%	18 "	

Observation Hole TP 4 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil

SOIL TEST PIT BY BACKHOE

Texture	Consistency	Color	Mottling
0		DARK BROWN	
10		DARK YELLOWISH BROWN	
20	FRIABLE	OLIVE BROWN	COMMON FAINT
30			
40			
50			

Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth
2 AIII/C Profile Condition TUNBRIDGE	%	25 "	

James Logan
SIGNATURE

237/213

LSE/CSS #

5/24/22

DATE

SOIL TEST PIT PROFILE DESCRIPTIONS

LONGVIEW PARTNERS, LLC
6 SECOND STREET BUXTON, MAINE

Town, City, Plantation

BIDDEFORD

Street, Road, Subdivision

781 POOL STREET

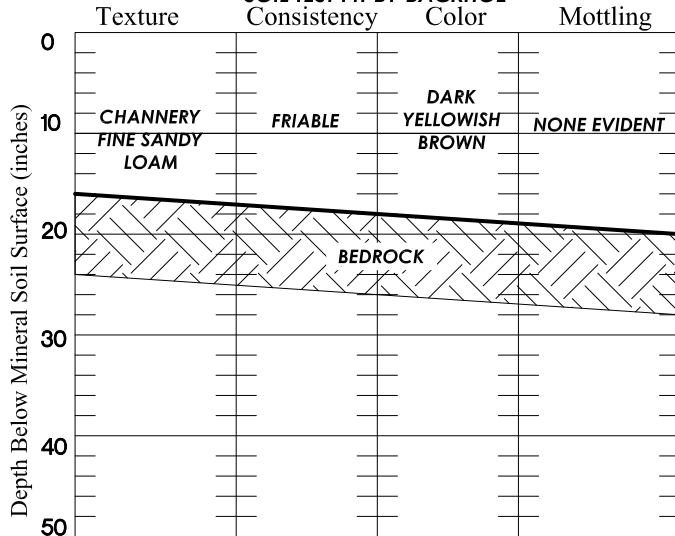
Owner's Name

ANNETTE GOSNELL

SOIL DESCRIPTION AND CLASSIFICATION (PER STATE OF MAINE SUBSURFACE WASTEWATER DISPOSAL RULES)

Observation Hole TP 5 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil

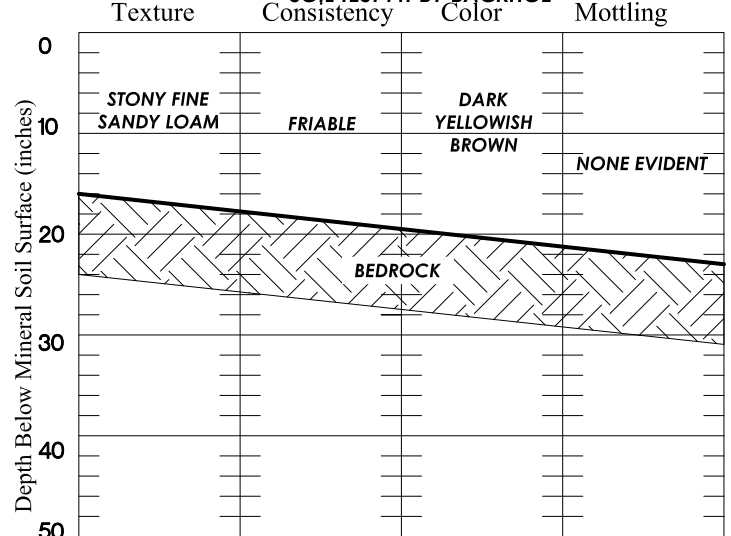
SOIL TEST PIT BY BACKHOE



Soil Classification	Slope	Limiting Factor	☒ Ground Water ☐ Restrictive Layer ☐ Bedrock ☐ Pit Depth
2 AIII Profile Condition	%	16-20"	
LYMAN			

Observation Hole TP 6 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil

SOIL TEST PIT BY BACKHOE

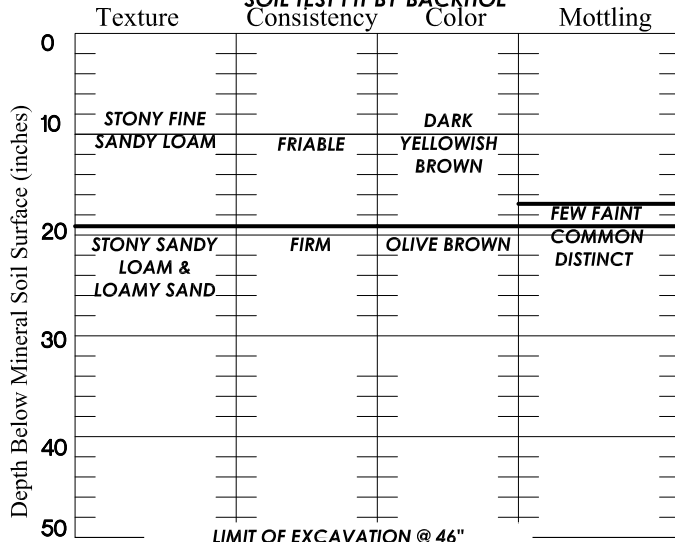


Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth
2 AIII Profile Condition	%	16-23"	
LYMAN			

SOIL DESCRIPTION AND CLASSIFICATION (PER STATE OF MAINE SUBSURFACE WASTEWATER DISPOSAL RULES)

Observation Hole TP 7 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil

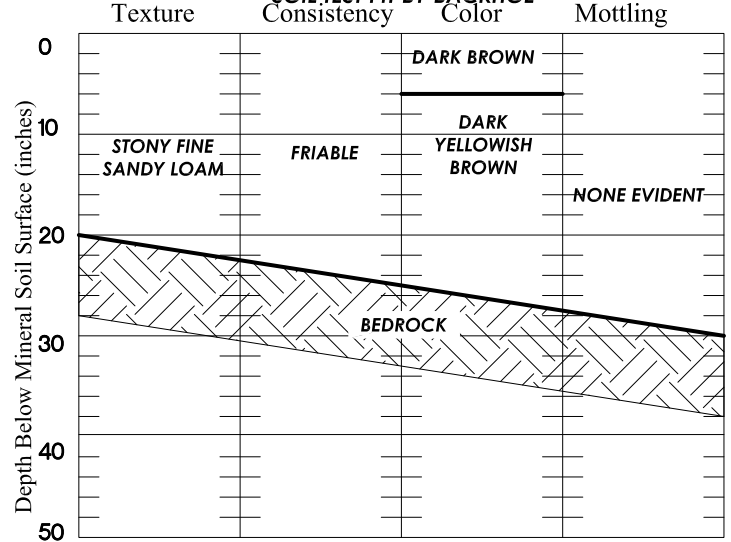
SOIL TEST PIT BY BACKHOE



Soil Classification	Slope	Limiting Factor	☒ Ground Water ☐ Restrictive Layer ☐ Bedrock ☐ Pit Depth
3 C Profile Condition	%	17"	
SKERRY			

Observation Hole TP 8 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil

SOIL TEST PIT BY BACKHOE



Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth
2 AIII Profile Condition	%	20-30"	
TUNBRIDGE			

James Logan
SIGNATURE

237/213

LSE/CSS #

5/24/22

DATE

SOIL TEST PIT PROFILE DESCRIPTIONS

LONGVIEW PARTNERS, LLC
6 SECOND STREET BUXTON, MAINE

Town, City, Plantation

Street, Road, Subdivision

Owner's Name

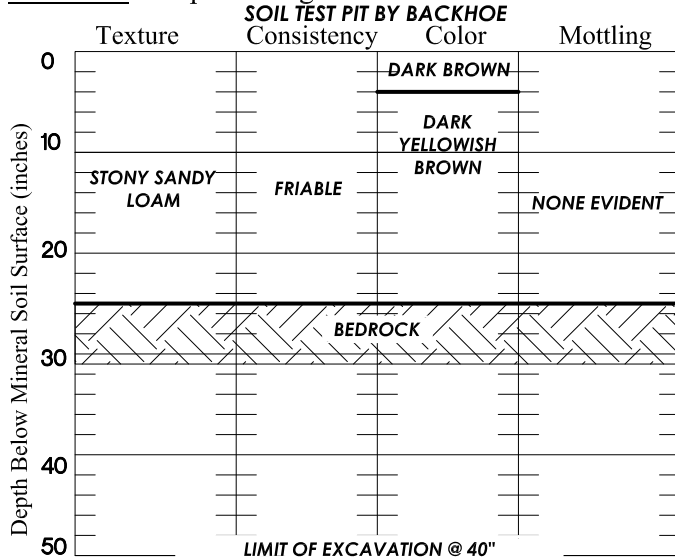
BIDDEFORD

781 POOL STREET

ANNETTE GOSNELL

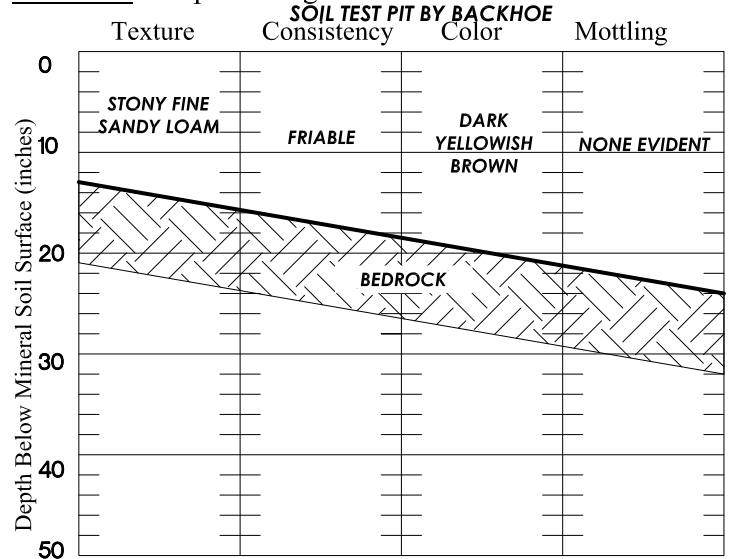
SOIL DESCRIPTION AND CLASSIFICATION (PER STATE OF MAINE SUBSURFACE WASTEWATER DISPOSAL RULES)

Observation Hole TP 9 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil



Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth
2 AIII Profile Condition TUNBRIDGE	%	25 "	

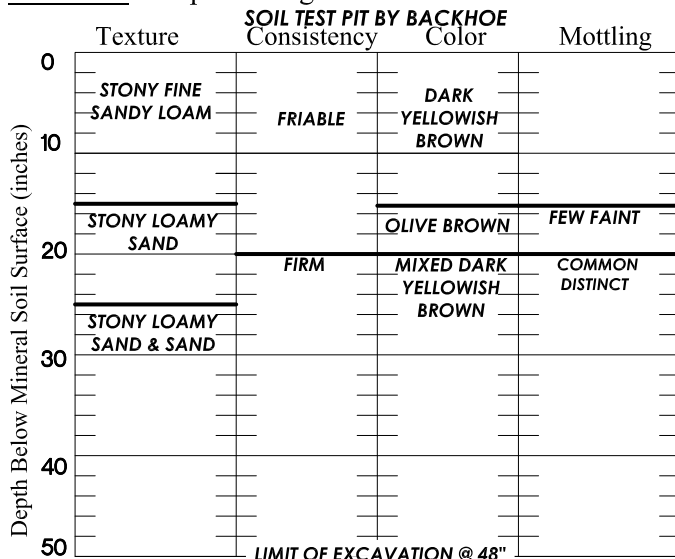
Observation Hole TP 10 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil



Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth
2 All Profile Condition LYMAN	%	13-24 "	

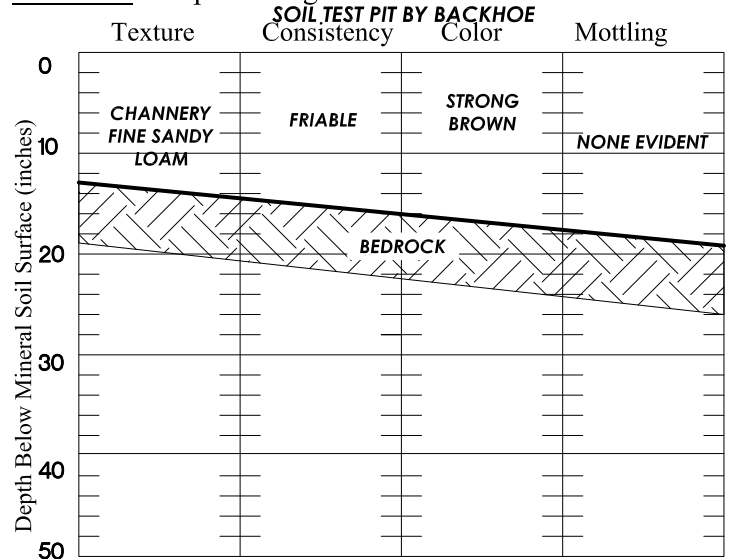
SOIL DESCRIPTION AND CLASSIFICATION (PER STATE OF MAINE SUBSURFACE WASTEWATER DISPOSAL RULES)

Observation Hole TP 11 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil



Soil Classification	Slope	Limiting Factor	☒ Ground Water ☐ Restrictive Layer ☐ Bedrock ☐ Pit Depth
3 C Profile Condition SKERRY	%	15 "	

Observation Hole TP 12 ☒ Test Pit ☐ Boring
" Depth of Organic Horizon Above Mineral Soil



Soil Classification	Slope	Limiting Factor	☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth
2 All Profile Condition LYMAN	%	13-19"	

James Logan
SIGNATURE

237/213
LSE/CSS #

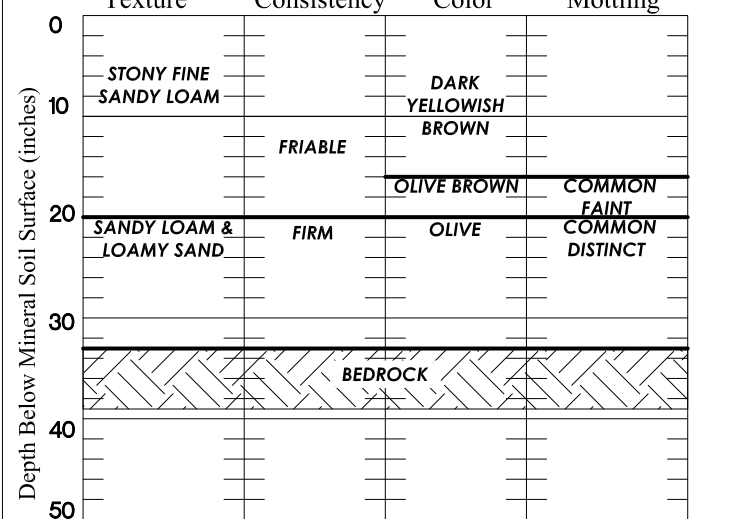
5/24/22
DATE

<i>SOIL TEST PIT PROFILE DESCRIPTIONS</i>	<i>LONGVIEW PARTNERS, LLC</i> <i>6 SECOND STREET BUXTON, MAINE</i>
--	---

Town, City, Plantation	Street, Road, Subdivision	Owner's Name
BIDDEFORD	781 POOL STREET	ANNETTE GOSNELL

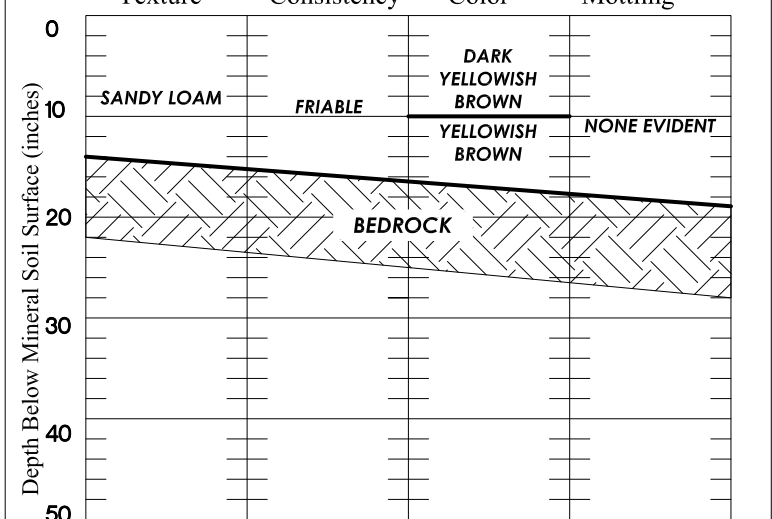
Observation Hole TP 13 ☒ Test Pit ☐ Boring
 _____ " Depth of Organic Horizon Above Mineral Soil

	SOIL TEST PIT BY BACKHOE			
Texture	Consistency	Color	Mottling	



Soil Classification 3 Profile	AIII/C Condition	Slope _____ %	Limiting Factor 16 "	☒ Ground Water ☐ Restrictive Layer ☐ Bedrock ☐ Pit Depth
--	---------------------	------------------	--------------------------------	--

Observation Hole TP 14 ☒ Test Pit ☐ Boring
 _____" Depth of Organic Horizon Above Mineral Soil

[illegible]

Soil Classification 2 AIII Profile Condition LYMAN	Slope _____ %	Limiting Factor ☐ Ground Water ☐ Restrictive Layer ☒ Bedrock ☐ Pit Depth 14-19"
--	------------------	--

Observation Hole TP 15 ☒ Test Pit ☐ Boring
 _____" Depth of Organic Horizon Above Mineral Soil

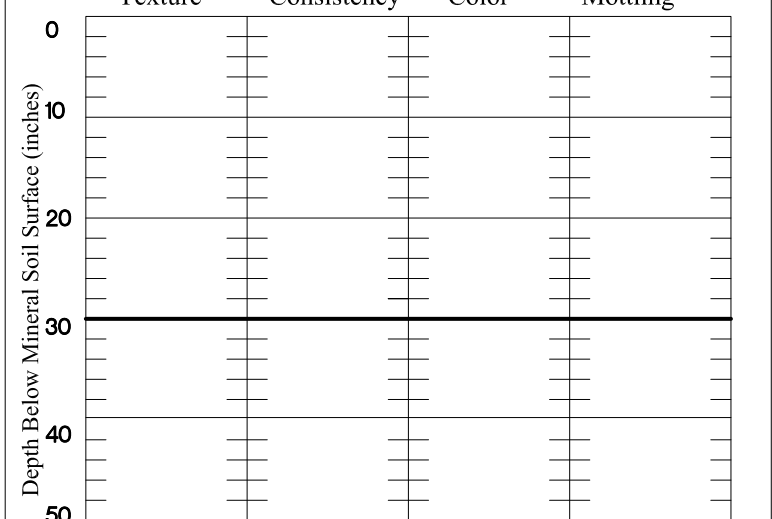
	Texture	Consistency	Color	Mottling
Topsoil				
Subsoil				



Soil Classification 2 Profile	Slope ____ %	Limiting Factor 30 "	☒ Ground Water ☐ Restrictive Layer ☐ Bedrock ☐ Pit Depth
--	-----------------	--------------------------------	--

Observation Hole _____ ☐ Test Pit ☐ Boring
 _____ " Depth of Organic Horizon Above Mineral Soil

Texture	Consistency	Color	Mottling
---------	-------------	-------	----------



Soil Classification	Slope	Limiting	☐ Ground Water
<u> </u> <u> </u>	<u> </u> %	Factor	☐ Restrictive Layer
Profile Condition			☐ Bedrock
		<u> </u> "	☐ Pit Depth

James Logan
SIGNATURE

237/213

LSE/CSS #

5/24/22
DATE

ATTACHMENT 5

VERNAL POOL ANALYSIS



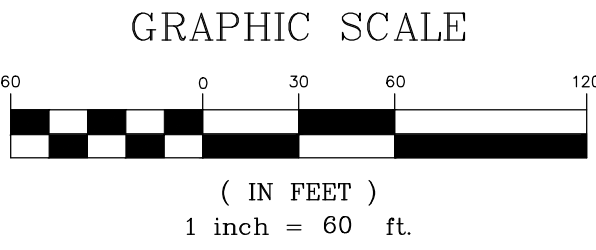
DELINEATION NOTES:
WETLAND STUDY CONDUCTED APRIL 13 & 20, 2022. VERNAL POOL STUDY CONDUCTED APRIL 13 & 20, AND MAY 9, 2022.

PLAN NOTES:
THIS PLAN IS A COMPOSITE OF PROPERTY BOUNDARY INFORMATION PER A SURVEY PLAN BY DOW & COULOMBE, INC. DATED APRIL 3, 1989, MAINE OFFICE OF GIS 2' TOPOGRAPHIC CONTOURS & AERIAL PHOTOGRAPH, AND SUBMETER GPS LOCATION OF WETLAND BOUNDARIES & OTHER SITE FEATURES AS DEPICTED BY LONGVIEW PARTNERS, LLC.

MAP IS FURNISHED FOR PLANNING PURPOSES ONLY AND SHALL NOT BE REPRODUCED OR UTILIZED BY ANYONE OTHER THAN THE PARTIES NAMED WITHOUT EXPRESS WRITTEN CONSENT OF LONGVIEW PARTNERS, LLC.

LEGEND:

- FRESHWATER WETLAND AREA (LOCATED BY LONGVIEW PARTNERS, LLC SUBMETER GPS)
- VERNAL POOL EXTENTS (LOCATED BY LONGVIEW PARTNERS, LLC SUBMETER GPS)
- SURFACE WATER RUNOFF (LOCATED BY LONGVIEW PARTNERS, LLC SUBMETER GPS)
- MDEP JURISDICTIONAL STREAM CHANNEL (REQUIRES 75' SETBACK FOR CONSTRUCTION/SOIL DISTURBANCE)



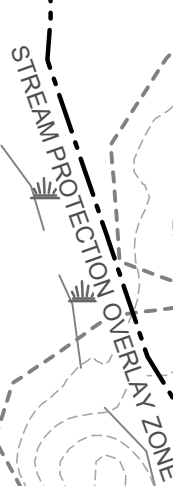
**WETLAND DELINEATION &
VERNAL POOL LOCATION PLAN**
PREPARED FOR
ANNETTE GOSNELL
781 POOL STREET
(MAP 5, LOT 17-2)
BIDDEFORD, MAINE

LONGVIEW
PARTNERS, LLC
ENVIRONMENTAL PERMITTING SPECIALISTS

DRAFT: BO	SCALE: 1" = 60'	CHECKED: JL	PLAN DATE: 6/3/22
--------------	--------------------	----------------	----------------------

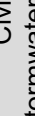
ATTACHMENT 6

SKETCH PLAN



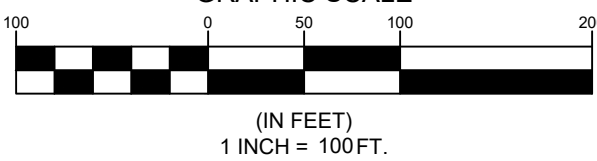
- NON-SIGNIFICANT VERNAL POOL
- WETLAND AREA

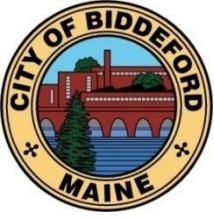
1. THE RECORD OWNER IS BEACHWOOD DEVELOPMENT FUND, LLC BY DEED DATED APRIL 24, 2023 AND RECORDED IN THE YORK COUNTY REGISTRY OF DEEDS IN BOOK 19226, PAGE 730.
2. THE PROPERTY IS LOCATED ON POOL STREET IN BIDDEFORD, MAINE AND IS DESCRIBED AS LOT 17-2 ON THE CITY OF BIDDEFORD ASSESSOR'S TAX MAP 5.
3. THE PROPERTY IS LOCATED IN THE COASTAL RESIDENTIAL (CR) ZONING DISTRICT.
4. TOTAL AREA OF PARCEL: 25.45 AC.
5. SPACE AND BULK INFORMATION FOR COASTAL RESIDENTIAL ZONE (CR):
TRADITIONAL SUBDIVISION:
MIN. LOT AREA: . 40,000 S.F.
MIN. LOT WIDTH: . 150 FT
MIN. FRONT SETBACK: . 40 FT
MIN. SIDE SETBACK: . 10 FT
MIN. REAR SETBACK: . 10 FT
MAX. BUILDING HEIGHT: . 35 FT



TERRADYN
CONSULTANTS, LLC

Civil Engineering | Land
Stormwater Design | Land Planning





CITY OF BIDDEFORD

PLANNING DEPARTMENT

David C.M. Galbraith
Deputy Director/City Planner
205 Main Street
Biddeford, ME 04005
(207) 284-9115
David.Galbraith@Biddefordmaine.org

PLANNING BOARD REPORT

TO: Larry Patoine, Chair & Members of the Biddeford Planning Board
FROM: David C.M. Galbraith, Deputy Director / City Planner
DATE: June 15, 2023
RE: Case # 2021.42: Hidden Hills Housing Park - Preliminary Plan Review for 195-unit manufactured housing park subdivision at 413 South Street (Tax Map 7/Lot 8) in the RF, SR-1 zones and MHP Overlay Zone / Environmental Review and Peer Review.
MEETING DATE: June 21, 2023

I. INTRODUCTION / UPDATE:

This project was last before the Planning Board on May 17, 2023 where the Board approved a six-month extension of the Preliminary Subdivision Approval for South Street Village LLC to create a 195 unit manufactured housing park at 413 South Street in the SR1, RF Zones and in the Mobile Home Park Overlay. South Street Village, LLC owns the property and the name of the development is Hidden Hills. The granted extension requires the Applicant to submit to the Planning Office a final plan no later than six months after the date of the extension from the prior approval of June 7, 2023. Therefore, the deadline for the Final Plan submittal is December 7, 2023.

As previously discussed before the Planning Board, the Application has experienced some delays particularly as it relates to the following:

- A. Sidewalk Design: During the Application review process the Board desired a sidewalk be placed along South Street and on Waterworks Drive. City Staff has been working on the design of the sidewalks, which has taken longer to develop than originally anticipated primarily due to some of the steep slopes.
- B. Maine Department of Environmental Protection (MDEP): The Applicant has not yet received MDEP approval of the project. The Applicant has been waiting for this approval prior submitting for Final Plan Approval.
- C. Environmental Review: One of the main issues that has delayed this project is the two (2) environmental studies which have been reviewed and discussed by the Board. As you may recall, the Applicant submitted a Habitat Assessment (Attachment 13) of the project area, which was conducted by Erik Lema, owner / principal of Basswood Environmental. The Applicant also conducted an environmental study of the proposed development area which was prepared by Mark Hampton of Mark Hampton Associates, Inc.

Case # 2021.42: Hidden Hills Housing Park - Preliminary Plan Review for 195-unit manufactured housing park subdivision at 413 South Street (Tax Map 7/Lot 8) in the RF, SR-1 zones and MHP overlay zone / Environmental Review and Peer Review.

Planning Board Meeting date: June 21, 2023

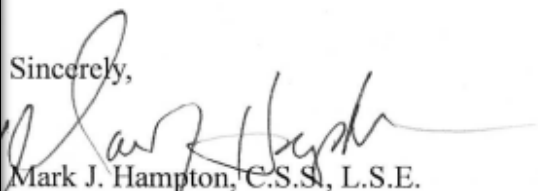
As the Board may recall, during the review of the project, members of the Conservation Commission spoke in opposition to the project and informed the Board that they had conducted an independent the environmental assessment of the property which was completed by their consultant Mark Ward. The Planning Board requested a copy of Mr. Ward's report, called "Rapid Reconnaissance Survey of Two Parcels in Western Biddeford 2022" which was provided to the Board by the Planning Department. Mr. Hampton reviewed Mr. Ward's report and offered the following letter on November 11, 2022:

At your request, I have reviewed the document you forwarded to me entitled, "Rapid Reconnaissance Survey of Two Parcels in Western Biddeford, 2022", prepared by Mr. Mark Ward and prepared for the Biddeford Conservation Commission. Based upon the comments made in the report, the consultant, at the request of the Biddeford Conservation Commission, made two cursory, 1-day walkovers of two parcels totaling more than 300 acres once in 2007 and then 15 years later, in August of this year. It is clear that the consultant did not have any documents related to the project under consideration for development of the property, which were of public record at the time of the field review and which should have been the focus of his reconnaissance.

Consequently, all the comments made in this document have to be taken as a broad brush assessment, and not detailed in anyway to make any judgment of the work I completed for you. I spent more than 21 days on the northern half of the property, the location of the proposed housing development, completing a full range of natural resource assessments. All of the issues raised by the consultant noted in photos and waypoint locations shown in figures in his report are located in the southern half of the total parcel.

In my professional opinion, this document should not be any negative impact on the local and state review of your project. It is very clear that the consultant had few if any issues with the northern half of the overall parcel, which is exactly where your proposed project is located.

Sincerely,


Mark J. Hampton, C.S.S., L.S.E.
Certified Soil Scientist, #216
Licensed Site Evaluator #263

Case # 2021.42: Hidden Hills Housing Park - Preliminary Plan Review for 195-unit manufactured housing park subdivision at 413 South Street (Tax Map 7/Lot 8) in the RF, SR-1 zones and MHP overlay zone / Environmental Review and Peer Review.

Planning Board Meeting date: June 21, 2023

The primary difference between the studies was the project scope area. The Applicant's consultant focused their efforts on the project area (approximately 150 acres) and the Conservation Commission's consultant conducted a cursory review that focused on the entire 312+/- acres.

The two environmental studies, and the confusion that their different conclusions certainly has delayed the project. As directed, Staff issued a Request for Proposals (RFP) and the Board determined that the verbiage within the RFP didn't adequately address the Board's desires. As outlined above, the study submitted by the Conservation Commission (CC), which was conducted by the Commission's independent third-party reviewer, studied the entire 312-acre parcel rather than the actual study area. It isn't a surprise that the studies yielded different results.

II. STAFF RECOMMENDATION: The Applicant's consultant is a recognized environmental specialist, who focused their study area to the development area and as such the Board should accept their findings. Further, Staff agrees with Mr. Hampton's assessment of Mr. Ward's study for the Conservation Commission. Within the City's Site Plan Review Ordinance, Section 2, Item C discusses "Reports and Fees" which states:

(1). The applicant shall be responsible for providing any additional report that may be required by the Planning Board. *Any report submitted shall be reviewed by City staff and may be reviewed by the Southern Maine Regional Planning Commission or other individual or firm deemed as expert by the Board. The cost for the development and subsequent reviews of these reports shall be borne by the applicant. (*Note: Emphasis added).

Staff interprets the above as the Planning Board having the rights to seek a 3rd party consultant to review the environmental report submitted by the Applicant, but the Board *not having the rights* to hire a 3rd party reviewer to conduct a new completely independent study. The Peer Review Consultant would have the ability to review the submitted study and provide feedback to the Board. The feedback would likely take the form of confirming (or not) that the submitted study had been conducted utilizing accepted industry standards, that the report is complete and that the findings are sound.

The division of the land simplifies the project as it focuses the environmental review on the actual development area rather than an additional 150-vacant acres that is not connected to the project area nor under the same ownership. Further, South Street Village does not have the authority to trespass onto other's land so it should not be required to include the excess divided land within their environmental study. The Applicant's consultant studied the land within the development area and the Board should accept their findings. However, City Staff is in favor of having a Peer Reviewer assess the Applicant's study.

Case # 2021.42: Hidden Hills Housing Park - Preliminary Plan Review for 195-unit manufactured housing park subdivision at 413 South Street (Tax Map 7/Lot 8) in the RF, SR-1 zones and MHP overlay zone / Environmental Review and Peer Review.

Planning Board Meeting date: June 21, 2023

The primary objective of this memorandum and for bringing this project back before the Planning Board is to discuss the environmental study and the Peer Review of such, and at the conclusion of the meeting, hopefully determining a clear path forward. This action does not require a formal vote, but Staff would like to present our position, moving forward with the application, and getting Planning Board feedback.

Respectfully submitted,

David C.M. Galbraith

David C.M. Galbraith
Deputy Director / City Planner

Attachment 13

Habitat Assessment



January 9, 2022

Mr. Jeff Amos, P.E.
Terradyn Consultants, LLC
41 Campus Drive, Suite 101
New Gloucester, ME 04260

Re: South Street Village, Biddeford: Rare Plant Habitat Assessment

Mr. Amos,

An experienced botanist with Basswood Environmental LLC (Basswood) visited the parcel identified on Biddeford Tax Maps as Lot 8 on Map 7, located on the south side of South Street, west of I-95. The purpose of the site visit was to assess the area for potential habitat for endangered plant species with an emphasis on those identified by the Maine Natural Areas program (MNAP) in their review dated November 10, 2021.

Review and Background

The approximately 160-acre site is located in Biddeford, Maine, which overlaps the northern extent of the range for many plant species considered rare by MNAP. This site is also in close proximity to a large red maple swamp that is considered by MNAP to be an exemplary natural community and contains a high potential for rare plant species. The MNAP review identified 44 occurrences of 31 total species considered rare, threatened or endangered, as well as 8 rare or exemplary natural communities that have been located by past surveys within 4 miles of the parcel. It should be noted that this proximity includes some well-known habitats for rare species that are not relevant to this survey, such as the Saco Heath (raised level bog ecosystem, Atlantic white cedar bog, pitch pine bog), the Saco River (freshwater tidal marsh), and The Kennebunk Plains (sand barren habitat, pitch pine woodland).

A 2007 survey was performed by the Biddeford Conservation Commission of the lands to the west of the site that are associated with the exemplary red maple swamp identified on the MNAP review. This survey also included a portion of the current project area (identified as the Claire Property). The reviewer indicates that much of the site is in an early-successional state and lacks the diversity of the lands to the west, but may provide good habitat for wildlife species. The extent to which the surveyor explored all areas of the site in question is unclear from this report, however it does appear that at least some evaluation was performed across much of the parcel.

Site Description

The site possesses an interspersed of upland and wetland habitats throughout the area surveyed. Broad wetland swales are present in the areas between often dramatic local relief consisting of large bedrock outcrops and hills scattered throughout the site. The majority of the site has been disturbed at some point, with the southern portions having been recently cleared for timber harvesting. Exceptions to this are areas around small streams and drainages, and stands of small diameter trees, often hemlock (*Tsuga canadensis*) that were not cut. Other small pockets of intact forest are present surrounding Thacher Brook, which passes through the eastern portion of the site.

The northern half of the site has received more disturbance and has been maintained as a patchwork of cleared fields and unmaintained roads. This portion of the site exhibits old and ongoing excavations, an old farm pond/impoundment, a development site, and a small transmission line. Having been subject to greater disturbance over a longer period of time, these areas also exhibit greater infestation from invasive plant species such as Asian bittersweet (*Celastrus orbiculatus*) and multiflora rose (*Rosa multiflora*) than recently cleared areas in the south.

The wetlands on site are typically dominated by herbaceous vegetation consisting of disturbance tolerant species such as woolly bulrush (*Scirpus cyperinus*), fringed sedge (*Carex crinita*), loosened soft rush (*Juncus effusus* ssp. *solutus*), creeping bentgrass (*Agrostis stolonifera*), and sensitive fern (*Onoclea sensibilis*). Permanently saturated areas also commonly supported broad-leaved cattail (*Typha latifolia*), blue vervain (*Verbena hastata*), and marsh fern (*Thelypteris palustris* var. *pubescens*). Some scrub-shrub wetlands are present, most notable in the floodplain area around Thacher Brook. These are dominated by a mixture of speckled alder (*Alnus incana* ssp. *rugosa*), silky dogwood (*Cornus amomum* var. *amomum*), smooth arrowwood (*Viburnum dentatum* var. *lucidum*), and meadowsweet (*Spiraea alba* var. *latifolia*). Red maple (*Acer rubrum*) saplings are common throughout both upland and wetland portions of the site in association with the recently cleared areas as well.

Uplands in the recently cleared areas are dominated by typical pioneer species such as common blackberry (*Rubus allegheniensis*), sapling red maple, quaking aspen (*Populus tremuloides*), and intermittent stands of small diameter hemlock. Intact upland forested areas, such as those surrounding some portions of Thacher Brook and other small streams on site, consist of a mixed canopy of hemlock, white pine (*Pinus strobus*), red maple, red oak (*Quercus rubra*), and balsam fir (*Abies balsamea*). Upland forests in the northern portion of the site do not appear to have been subject to a recent harvest, however the species composition is that of pioneer and secondary species such as red maple and quaking aspen, indicating that much of this area is currently in an early-successional phase. Blue Ridge sedge (*Carex lucorum*) and New England sedge (*Carex novae-angliae*) are well represented throughout the uplands on site, as well as lowbush blueberry (*Vaccinium angustifolium*) and bristly blackberry (*Rubus hispidus*).

Maintained fields are composed of typical field species including an array of goldenrods (*Solidago* spp.), asters (*Symphyotricum* and *Doellingeria* spp., in part) and grasses such as lace lovegrass (*Eragrostis capillaris*), field meadow-foxtail (*Alopecurus pratensis*), common Timothy (*Phleum pratense*), and orchard grass (*Dactylis glomerata*). Wet swales within the fields exhibit similar marsh vegetation found elsewhere on site

RTE Plant Habitat Survey Results

Of the 8 natural communities identified by MNAP as rare or exemplary, none were located during the course of the site walk. An area of mapped Adams loamy sand in the northwestern interior portion of the site was investigated for sand barren habitat but none was located. Additionally, no peatland systems were located during the course of the site walk despite the large amount of wetland areas present. Some of the wetland areas that have been subject to tree clearing may have been dominated by a red maple overstory, however these do not exhibit any discernible direct connection to the exemplary red maple swamp to the west of the site, and no other indicators of rare or exemplary habitat were found within them. Of the 31 species thus identified by MNAP as occurring in the vicinity of the project area, 19 are associated with habitat that is not present on site. The remaining 12 species documented from the area cannot be ruled out due to either the presence of their typical habitat within the project area (e.g. old fields), or because they are a generalist species at the northern edge of their natural range, such as clothed sedge (*Carex vestita*), which is found in disturbed, open areas in southern Maine. Table 1 summarizes the species that would require a formal field survey during the appropriate time to locate on site. Note that several species, including button sedge, Long's bulrush, and sweet pepper-bush are included on this list, although it is in the author's opinion that the likelihood of these species being on this site are very low due to a lack of ideal habitat.

Table 1: Species Identified by MNAP with Suitable Habitat On-site

Scientific Name	Common Name	Optimal Survey Window	Comments
<i>Carex bullata</i>	Button sedge	June-October	Open wetlands, acidic bogs, unlikely to occur but possible
<i>Carex vestita</i>	Clothed sedge	May-July	Disturbed areas, ATV trails, transmission corridors
<i>Selaginella apoda</i>	Creeping spike moss	May-October	Open wetlands, roadsides, disturbed wet areas
<i>Scirpus georgianus</i>	Georgia bulrush	June-August	Open wetlands
<i>Scirpus longii</i>	Long's bulrush	May-October	Unlikely - associated with fen habitat
<i>Kalmia latifolia</i> *	Mountain laurel	Year-round	Rocky woodland species
<i>Platanthera flava</i> <i>var. herbiola</i>	Pale green orchis	July	Wetlands throughout site may support species
<i>Scirpus pendulus</i>	Pendulous bulrush	July-August	Open wetlands, found associated with disturbance
<i>Quercus coccinea</i>	Scarlet oak	May-October	Potentially found in intact woodlands

<i>Calamagrostis cinnoides</i>	Small reed grass	August-October	Wetlands in old fields may provide habitat
<i>Ilex laevigata</i>**	Smooth winterberry holly	May-October	Suitable habitat along Thacher Brook
<i>Clethra alnifolia</i>	Sweet pepper-bush	July-September	Associated with calcareous soils - unlikely to occur on site

**Kalmia latifolia* is an evergreen shrub that is identifiable year-round, but was not observed during the initial site walk.

**It is possible to identify *Ilex laevigata* as long as fruit are present (through early January), although none were located during the site walk. Survey during the growing season is preferred for better possible detection.

If there is additional detail or clarity that Basswood can provide regarding the summary report, please do not hesitate to contact Erik Lema at erik@basswoodenv.com.

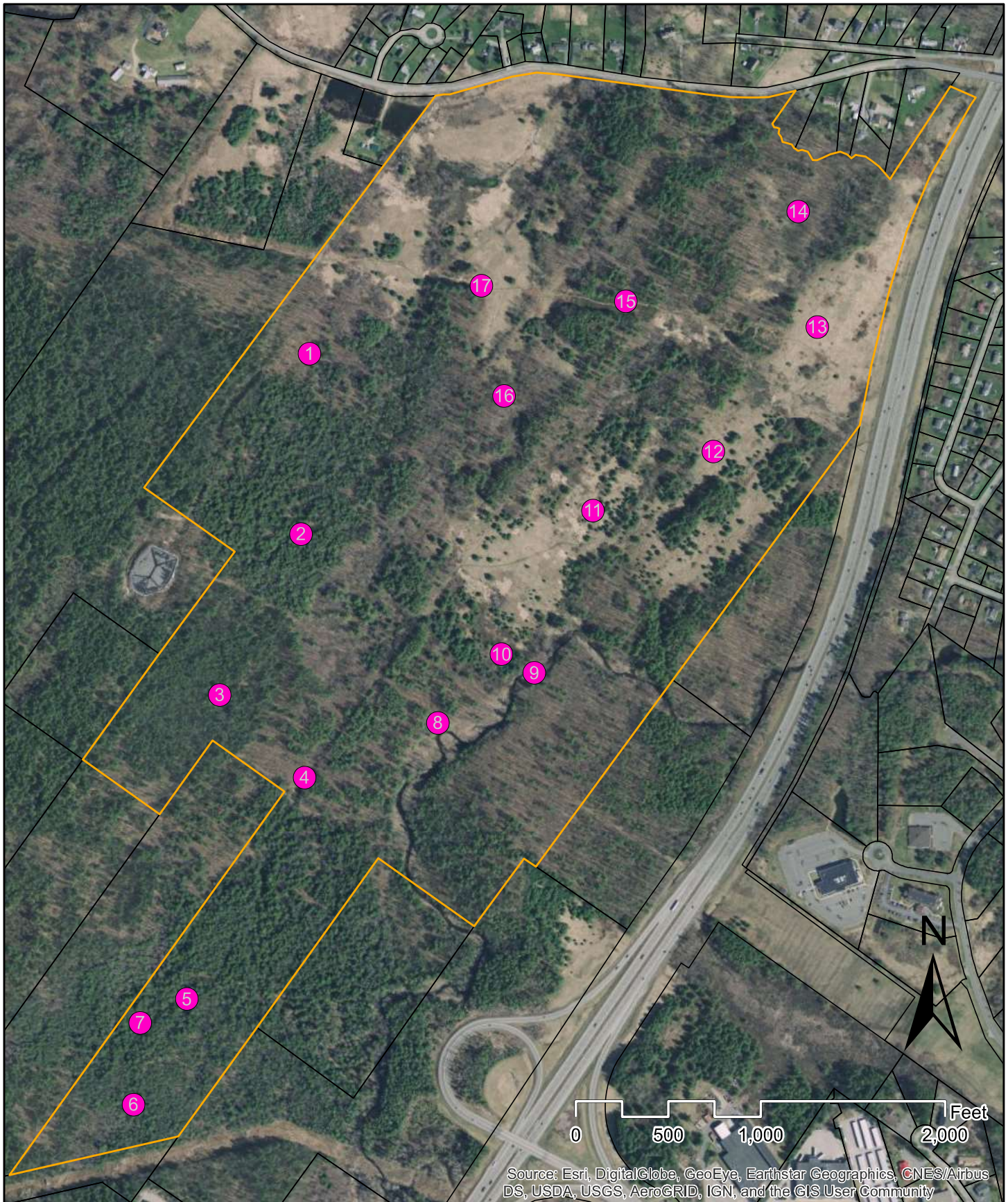
Best regards,



Erik Lema NHCWS#286, Owner/Principal
Basswood Environmental LLC

Attachments:

- 1: Index Map and Photolog
- 2: MNAP Review.



Proposed South Street Village

Rare Plant Species Habitat Survey



Parcel Boundary (MEGIS)



Photo Locations

Note: Aerial image taken circa 2019, prior to extensive tree clearing



BASSWOOD
ENVIRONMENTAL

South Street Village: Plant Habitat Survey

	Photo 1: Recently logged area, early successional shrub and forb vegetation.
	Photo 2: Typical wet swale area in the recently harvested portion of the property. Highly disturbed. Many of these areas were likely not wetlands prior to harvest and disturbance.
	Photo 3: Inundated portion of harvested area, potential vernal pool.

South Street Village: Plant Habitat Survey



Photo 4: Former seldom used ATV trail according to the 2007 Biddeford Conservation Commission report, now approximately 25-foot-wide logging road.



Photo 5: Potential vernal pool, low quality, likely too shallow.



Photo 6: Naturally occurring wetland at far southern end of property, some sphagnum/peat development.

South Street Village: Plant Habitat Survey



Photo 7: Wetland impounded by adjacent logging road, some amphibian habitat.

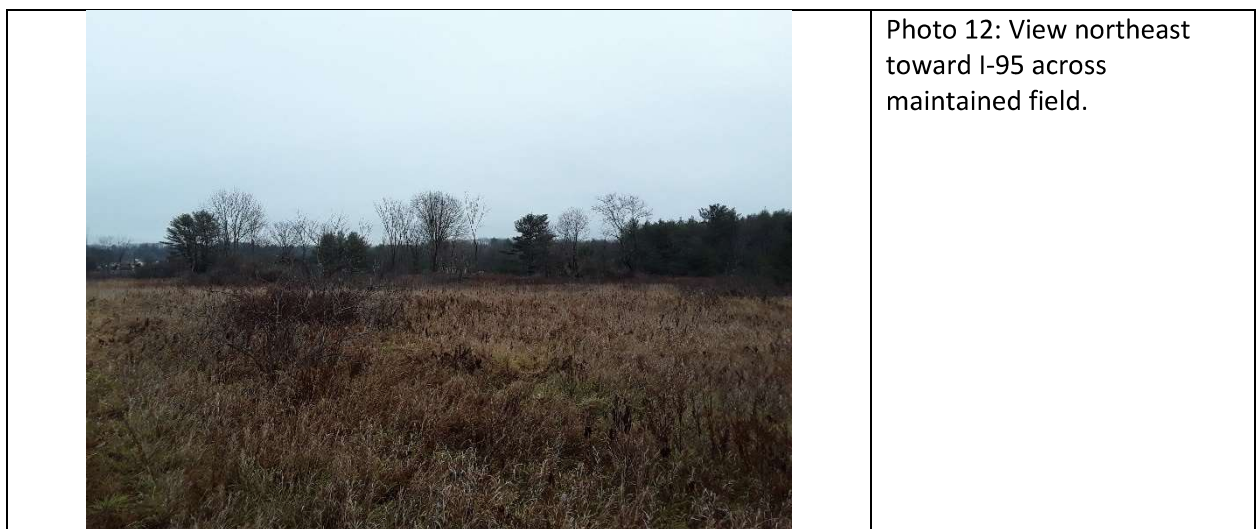


Photo 8: Thacher Brook from intact buffer area. Note scrub-shrub floodplain around brook.

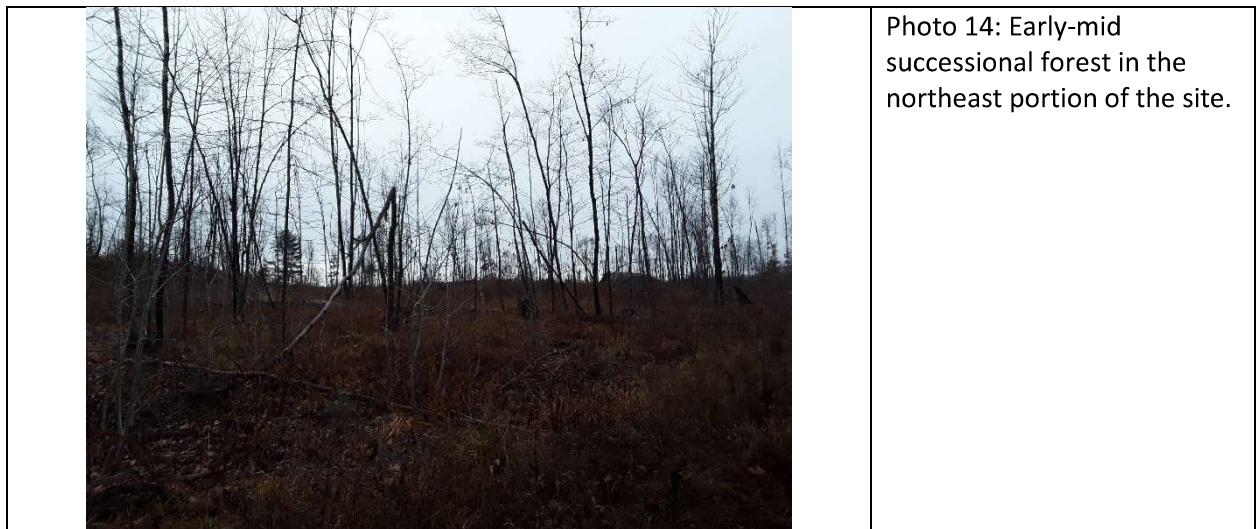


Photo 9: View of harvested area across Thacher Brook at crossing point. Inaccessible by foot at time of survey.

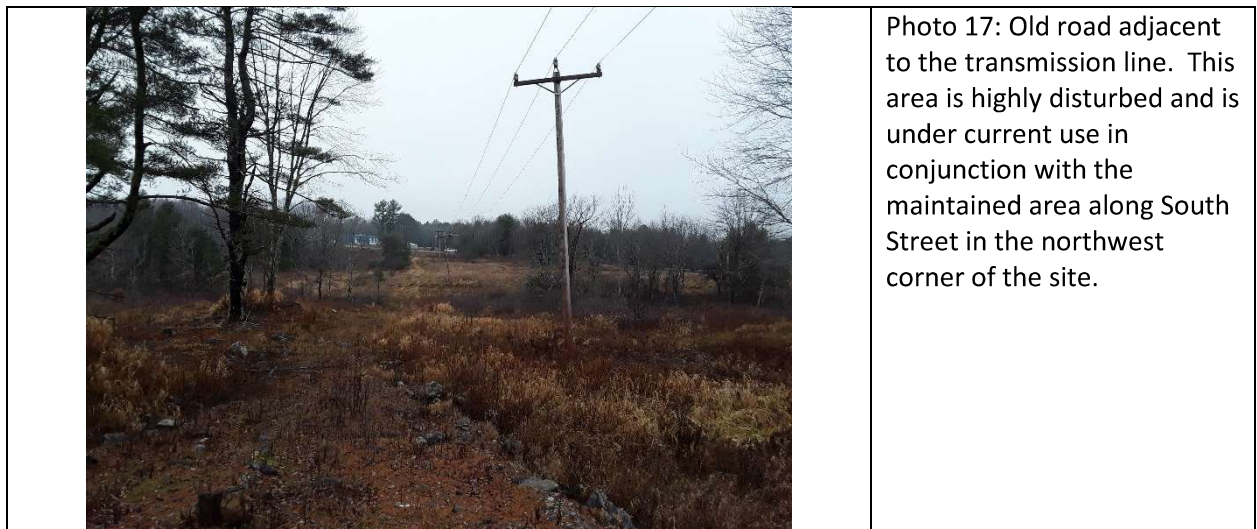
South Street Village: Plant Habitat Survey



South Street Village: Plant Habitat Survey



South Street Village: Plant Habitat Survey





STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
177 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

November 10, 2021

Jeff Amos
Terradyn Consultants
565 Congress Street, Suite 201
Portland, ME04101

Via email: jeff@terradyconsultants.com

Re: Rare and exemplary botanical features in proximity to: Hidden Hills Manufactured Housing Park, 413 South Street, Biddeford, Maine

Dear Mr. Amos:

I have searched the Maine Natural Areas Program's Biological and Conservation Data System files in response to your request received October 20, 2021 for information on the presence of rare or unique botanical features documented from the vicinity of the property in Biddeford, Maine. Rare and unique botanical features include the habitat of rare, threatened, or endangered plant species and unique or exemplary natural communities. Our review involves examining maps, manual and computerized records, other sources of information such as scientific articles or published references, and the personal knowledge of staff or cooperating experts.

Our official response covers only botanical features. For authoritative information and official response for zoological features you must make a similar request to the Maine Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, Maine 04333.

According to the information currently in our Biological and Conservation Data System files, the property is in close proximity to a mapped Red Maple Swamp. Activities within 250-feet of wetlands associated with this Red Maple Swamp can adversely impact this exemplary wetland. MNAP recommends avoiding development activity within 250-feet of the Red Maple Swamp and its associated mapped wetlands. Please see the table below, attached map, and attached factsheet for more information.

Feature	State Status	State Rank	Global Rank	Occurrence Rank	Site
Red Maple Swamp (Red Maple – Sensitive Fern Swamp)	N/A	S5	G3G5	A Excellent	West Biddeford Black Gum Swamp

If a field survey of the project area is conducted, please refer to the enclosed supplemental information regarding rare and exemplary botanical features documented to occur in the vicinity of the project site. The list may include information on features that have been known to occur historically in the area as well as recently field-verified information. While historic records have not been documented in several years, they may persist in the area if suitable habitat exists. The enclosed list identifies features with potential to occur in the area, and it should be considered if you choose to conduct field surveys.

MOLLY DOCHERTY, DIRECTOR
MAINE NATURAL AREAS PROGRAM
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-8044
WWW.MAINE.GOV/DACF/MNAP

This finding is available and appropriate for preparation and review of environmental assessments, but it is not a substitute for on-site surveys. Comprehensive field surveys do not exist for all natural areas in Maine, and in the absence of a specific field investigation, the Maine Natural Areas Program cannot provide a definitive statement on the presence or absence of unusual natural features at this site.

The Maine Natural Areas Program (MNAP) is continuously working to achieve a more comprehensive database of exemplary natural features in Maine. We would appreciate the contribution of any information obtained should you decide to do field work. MNAP welcomes coordination with individuals or organizations proposing environmental alteration or conducting environmental assessments. If, however, data provided by MNAP are to be published in any form, the Program should be informed at the outset and credited as the source.

The Maine Natural Areas Program has instituted a fee structure of \$75.00 an hour to recover the actual cost of processing your request for information. You will receive an invoice for \$225.00 for three hours of our services.

Thank you for using MNAP in the environmental review process. Please do not hesitate to contact me if you have further questions about the Natural Areas Program or about rare or unique botanical features on this site.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Puryear".

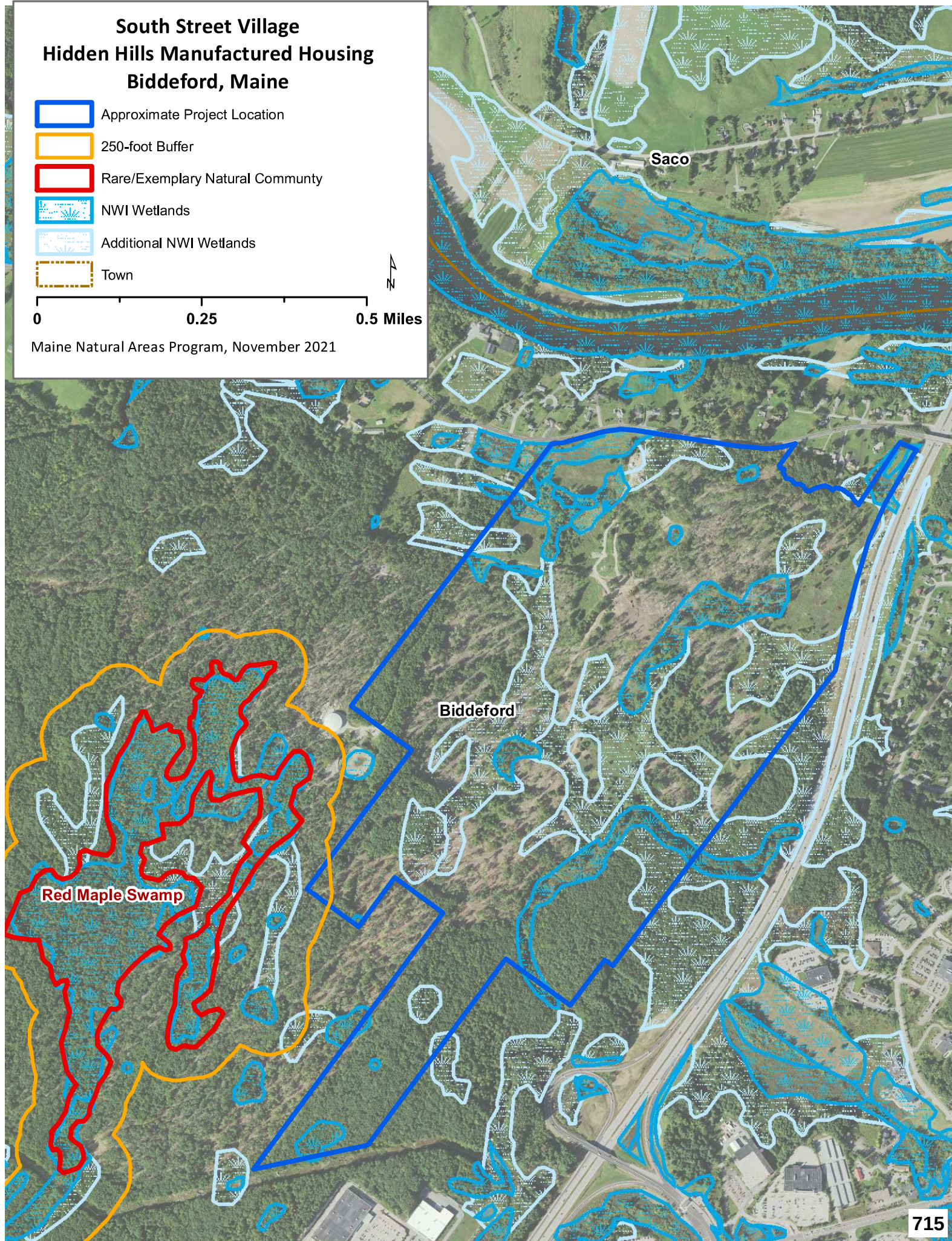
Kristen Puryear | Ecologist | Maine Natural Areas Program
207-287-8043 | kristen.puryear@maine.gov

South Street Village Hidden Hills Manufactured Housing Biddeford, Maine

- Approximate Project Location
- 250-foot Buffer
- Rare/Exemplary Natural Community
- NWI Wetlands
- Additional NWI Wetlands
- Town

0 0.25 0.5 Miles

Maine Natural Areas Program, November 2021





Red Maple Swamp

State Rank *S5*

Community Description

Red maple dominates the somewhat open to nearly closed canopy (20-90% closure), sometimes with a relatively large component (up to 40% cover) of balsam fir, red spruce, or northern white cedar. Green ash and yellow birch are common, but rarely abundant, associates. The maples may be widely spaced with multiple trunks and arching crowns. The shrub layer is patchy; winterberry is common and various other shrubs may be locally abundant. The herb layer is well developed and dominated by herbs, with dwarf shrubs <20% of herb cover. Bluejoint and sensitive fern are characteristic herbs. The bryoid layer is usually <35% cover; peat mosses are typical but do not form extensive, deep carpets as they do in peatlands.

Soil and Site Characteristics

Sites occupy mineral soils or well decomposed organic material over mineral soil on flats or gentle slopes in small basins, often on floodplains of streams to small rivers. Soils are typically 30-60 cm deep, loamy to silty in texture, sometimes with well decomposed muck over the mineral fraction, and pH 4.8-5.4.

Diagnostics

These are mineral soil wetlands in which



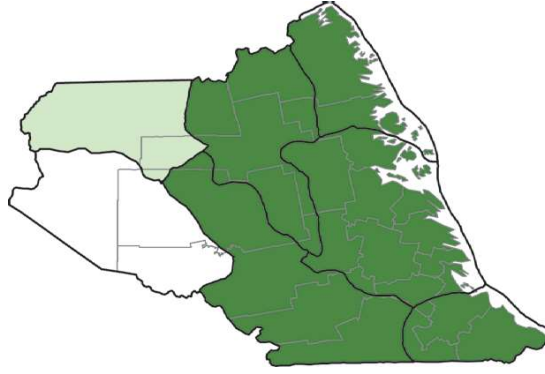
Red Maple Flowers

red maple dominates the canopy or is co-dominant with conifers other than black spruce or larch. The seasonally flooded soils usually remain saturated through the growing season.

Similar Types

Red Maple Wooded Fens are similar, but either occur in association with large peatlands or occupy small somewhat peaty basins; they do not occur on mineral soils. Some small Northern White Cedar Swamps and Spruce - Fir - Cinnamon Fern Forests, particularly along the coast, include a fair amount of red maple but have cedar or spruce/fir, respectively, as the most abundant canopy species. Silver Maple Floodplain Forests are dominated by silver maple and generally occur along larger

Location Map



Red Maple Swamp

rivers, but the two types can intergrade on some floodplains.

Conservation, Wildlife, and Management Considerations

Maintaining the hydrologic integrity of these stream drainages with upland buffers is key. These swamps typically have had few conflicting uses, although some have been recently harvested. ATV use has been observed at some sites.

Red maple swamps often provide habitat in which spotted turtles hibernates. If wet Sphagnum hummocks are present, four-toed salamanders may breed in this community. Examples that occur on floodplains of streams and small rivers may contain wood turtles, which overwinter in the stream channel and forage in the floodplain. The silver-haired bat often roosts in riparian habitats in trees with loose bark. The northern waterthrush is a common associate of this community type. In the southern part of the state, the Louisiana waterthrush and yellow-throated vireo may be associates if the canopy is closed or nearly so.

Distribution

Statewide, but most common in the southern half of state. Extends southward and southwestward from Maine; eastward distribution unknown.

Landscape Pattern: Large Patch

Characteristic Plants

These plants are frequently found in this community type. Those with an asterisk are often diagnostic of this community.

Canopy

Balsam fir
Gray birch
Northern white cedar
Red maple*
Red spruce

Sapling/shrub

Arrowwood*
Balsam fir
Gray birch*
Red spruce
Speckled alder*
Winterberry*

Herb

Bluejoint*
Flat-topped white aster*
Interrupted fern
Tussock sedge
Royal fern*
Sensitive fern*

Bryoid

Sphagnum mosses*

Associated Rare Plants

Smooth winterberry holly
Spicebush
Swamp saxifrage
Swamp white oak
Sweet pepper-bush

Associated Rare Animals

Spotted turtle
Wood turtle

Examples on Conservation Lands You Can Visit

- Kennebunk Plains Preserve – York Co.
- Mt. Agamenticus – York Co.
- Steep Falls Wildlife Management Area – Cumberland Co.
- Waterboro Barrens Preserve – York Co.

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Atlantic White Cedar	SC	S2	G4	2017-07-26	3	Forested wetland
Atlantic White Cedar Bog	<null>	S1	G3G4	2017-07-26	3	Forested wetland
Beach Plum	E	S1	G4	1932-09	12	Rocky coastal (non-forested, upland)
	E	S1	G4	1933-06-21	9	Rocky coastal (non-forested, upland)
Brackish Tidal Marsh	<null>	S3	GNR	2009-07-29	1	Tidal wetland (non-forested, wetland)
Button Sedge	SC	S2	G5	1880-09-06	2	<null>
	SC	S2	G5	2017-07-26	5	<null>
	SC	S2	G5	2000-08-15	3	<null>
Clothed Sedge	E	S1	G5	2006-06-07	7	Dry barrens (partly forested, upland)
	E	S1	G5	2006-06-16	8	Dry barrens (partly forested, upland)
Creeping Spike-moss	E	S2	G5	1920-07-30	6	Open wetland, not coastal nor rivershore (non-forested, wetland), Old field/roadside (non-forested, wetland or upland)
Estuary Bur-marigold	SC	S3	G4	2009-07-30	35	Tidal wetland (non-forested, wetland)
Freshwater Tidal Marsh	<null>	S2	G4?	2009-07-30	1	Tidal wetland (non-forested, wetland)

Rare and Exemplary Botanical Features within 4 miles of
Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Georgia bulrush	SC	SU	G5	2007-08-22	4	<null>
Horned Pondweed						
	SC	S2	G5	1907-08-18	10	Tidal wetland (non-forested, wetland)
	SC	S2	G5	2000-08-28	15	Tidal wetland (non-forested, wetland)
Lilaeopsis						
	SC	S2	G5	2012-10-21	10	Tidal wetland (non-forested, wetland)
Long's Bulrush						
	T	S2	G3	2017-07-26	10	Open wetland, not coastal nor rivershore (non-forested, wetland)
Long-spined Sandbur						
	PE	SH	G5	1984	1	Rocky coastal (non-forested, upland)
Mountain-laurel						
	SC	S2	G5	1991-09-28	11	Conifer forest (forest, upland), Hardwood to mixed forest (forest, upland)
Mudwort						
	SC	S3	G5	2009-07-30	35	Tidal wetland (non-forested, wetland)
Northern Blazing Star						
	T	S1	G5?T3	1916-08-10	3	Dry barrens (partly forested, upland)
Pale Green Orchis						
	SC	S2	G4?T4Q	2008-06-27	52	Non-tidal rivershore (non-forested, seasonally wet), Open wetland, not coastal nor rivershore (non-forested, wetland)
	SC	S2	G4?T4Q	2008-06-27	53	Non-tidal rivershore (non-forested, seasonally wet), Open wetland, not coastal nor rivershore (non-forested, wetland)
	SC	S2	G4?T4Q	2008-06-27	54	Non-tidal rivershore (non-forested, seasonally wet), Open wetland, not coastal nor rivershore (non-forested, wetland)
Parker's Pipewort						

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Pendulous Bulrush	SC	S3	G3	2017-08-31	33	Tidal wetland (non-forested, wetland)
Pitch Pine Bog	SC	S2	G5	2008-06-28	8	Open wetland, not coastal nor rivershore (non-forested, wetland), Old field/roadside (non-forested, wetland or upland)
Pitch Pine Woodland	<null>	S2	G3G5	2017-07-26	4	Forested wetland, Coastal non-tidal wetland (non-forested, wetland)
Pocket Swamp	<null>	S2	G3G5	2015-09-29	20	Forested wetland, Coastal non-tidal wetland (non-forested, wetland)
Pygmyweed	<null>	S3	G2	2016-08-09	30	Rocky summits and outcrops (non-forested, upland)
Raised Level Bog Ecosystem	SC	S2S3	G5	2009-07-29	25	Open water (non-forested, wetland)
Red Maple Swamp	<null>	S4	GNR	2017-07-26	3	Forested wetland, Open wetland, not coastal nor rivershore (non-forested, wetland)
Saltmarsh False-foxglove	<null>	S5	G3G5	2007-06-05	17	Forested wetland
Scarlet Oak	SC	S3	G5	1982	8	Tidal wetland (non-forested, wetland)
	SC	S3	G5	1982	12	Tidal wetland (non-forested, wetland)
	SC	S3	G5	1982	9	Tidal wetland (non-forested, wetland)
	E	S1	G5	1916-08	4	Hardwood to mixed forest (forest, upland)

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Schreber's Wood-aster						
Slender Blue Flag	PE	SX	G4	1894-09	1	Rocky coastal (non-forested, upland)
Small Reed Grass						
	T	S2	G4G5	1879-08	4	Tidal wetland (non-forested, wetland)
Smooth Winterberry Holly						
	SC	S3	G5	1998-01-01	9	Old field/roadside (non-forested, wetland or upland)
	SC	S3	G5	2000-08-15	12	Old field/roadside (non-forested, wetland or upland)
Southern Slender Ladies'-tresses						
	SC	S3	G5	1916-08-10	10	Forested wetland
	SC	S3	G5	2018-09-15	24	Forested wetland
	SC	S3	G5	2009-07-05	39	Forested wetland
	SC	S3	G5	2004	36	Forested wetland
Spongy-leaved Arrowhead						
	PE	SH	G5T4T5	1918-08-27	1	Dry barrens (partly forested, upland)
Stiff Arrowhead						
	SC	S3	G5T4	2012-10-21	42	Tidal wetland (non-forested, wetland)
Sweet Pepper-bush						
	SC	S2	G5	2006-06-16	15	Tidal wetland (non-forested, wetland)
Water Pimpernel						
	SC	S2	G5	1917-09	9	Hardwood to mixed forest (forest, upland), Forested wetland
	SC	S3	G5T5	2012-10-21	26	Tidal wetland (non-forested, wetland)

Rare and Exemplary Botanical Features within 4 miles of
Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
White-topped Aster	E	S1	G5	1916-08-10	4	Dry barrens (partly forested, upland)
Yellow Wild Indigo	PE	SH	G5	1960-06-21	2	Dry barrens (partly forested, upland), Hardwood to mixed forest (forest, upland)

Conservation Status Ranks

State and Global Ranks: This ranking system facilitates a quick assessment of a species' or habitat type's rarity and is the primary tool used to develop conservation, protection, and restoration priorities for individual species and natural habitat types. Each species or habitat is assigned both a state (S) and global (G) rank on a scale of 1 to 5. Factors such as range extent, the number of occurrences, intensity of threats, etc., contribute to the assignment of state and global ranks. The definitions for state and global ranks are comparable but applied at different geographic scales; something that is state imperiled may be globally secure.

The information supporting these ranks is developed and maintained by the Maine Natural Areas Program (state ranks) and NatureServe (global ranks).

Rank	Definition
S1 G1	Critically Imperiled – At very high risk of extinction or elimination due to very restricted range, very few populations or occurrences, very steep declines, very severe threats, or other factors.
S2 G2	Imperiled – At high risk of extinction or elimination due to restricted range, few populations or occurrences, steep declines, severe threats, or other factors.
S3 G3	Vulnerable – At moderate risk of extinction or elimination due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors.
S4 G4	Apparently Secure – At fairly low risk of extinction or elimination due to an extensive range and/or many populations or occurrences, but with possible cause for some concern as a result of local recent declines, threats, or other factors.
S5 G5	Secure – At very low risk of extinction or elimination due to a very extensive range, abundant populations or occurrences, and little to no concern from declines or threats.
SX GX	Presumed Extinct – Not located despite intensive searches and virtually no likelihood of rediscovery.
SH GH	Possibly Extinct – Known from only historical occurrences but still some hope of rediscovery.
S#S# G#G#	Range Rank – A numeric range rank (e.g., S2S3 or S1S3) is used to indicate any range of uncertainty about the status of the species or ecosystem.
SU GU	Unrankable – Currently unrankable due to lack of information or due to substantially conflicting information about status or trends.
GNR SNR	Unranked – Global or subnational conservation status not yet assessed.
SNA GNA	Not Applicable – A conservation status rank is not applicable because the species or ecosystem is not a suitable target for conservation activities (e.g., non-native species or ecosystems).
Qualifier	Definition
S#? G#?	Inexact Numeric Rank – Denotes inexact numeric rank.
Q	Questionable taxonomy that may reduce conservation priority – Distinctiveness of this entity as a taxon or ecosystem type at the current level is questionable. The “Q” modifier is only used at a global level.
T#	Intraspecific Taxon (trinomial) – The status of intraspecific taxa (subspecies or varieties) are indicated by a "T-rank" following the species' global rank.

State Status: Endangered and Threatened are legal status designations authorized by statute. Please refer to MRSA Title 12, §544 and §544-B.

Status	Definition
E	Endangered – Any native plant species in danger of extinction throughout all or a significant portion of its range within the State or Federally listed as Endangered.
T	Threatened – Any native plant species likely to become endangered within the foreseeable future throughout all or a significant portion of its range in the State or Federally listed as Threatened.
SC	Special Concern – A native plant species that is rare in the State, but not rare enough to be considered Threatened or Endangered.
PE	Potentially Extirpated – A native plant species that has not been documented in the State in over 20 years, or loss of the last known occurrence.

Element Occurrence (EO) Ranks: Quality assessments that designate viability of a population or integrity of habitat. These ranks are based on size, condition, and landscape context. Range ranks (e.g., AB, BC) and uncertainty ranks (e.g., B?) are allowed. The Maine Natural Areas Program tracks all occurrences of rare plants and natural communities/ecosystems (S1-S3) as well as exemplary common natural community types (S4-S5 with EO ranks A/B).

Rank	Definition
A	Excellent – Excellent estimated viability/ecological integrity.
B	Good – Good estimated viability/ecological integrity.
C	Fair – Fair estimated viability/ecological integrity.
D	Poor – Poor estimated viability/ecological integrity.
E	Extant – Verified extant, but viability/ecological integrity not assessed.
H	Historical – Lack of field information within past 20 years verifying continued existence of the occurrence, but not enough to document extirpation.
X	Extirpated – Documented loss of population/destruction of habitat.
U	Unrankable – Occurrence unable to be ranked due to lack of sufficient information (e.g., possible mistaken identification).
NR	Not Ranked – An occurrence rank has not been assigned.

Visit the Maine Natural Areas Program website for more information
<http://www.maine.gov/dacf/mnap>



Attachment 14

MDIF & Unusual Natural Areas Correspondence



STATE OF MAINE
DEPARTMENT OF
INLAND FISHERIES & WILDLIFE
353 WATER STREET
41 STATE HOUSE STATION
AUGUSTA ME 04333-0041



December 16, 2021

Craig Sweet
Terradyn
565 Congress Street, Suite 201
Portland, ME 04101

RE: Information Request – Hidden Hills Manufactured Housing Park Project, Biddeford

Dear Craig:

Per your request received on November 08, 2021, we have reviewed current Maine Department of Inland Fisheries and Wildlife (MDIFW) information for known locations of Endangered, Threatened, and Special Concern species; designated Essential and Significant Wildlife Habitats; and inland fisheries habitat concerns within the vicinity of the *Hidden Hills Manufactured Housing Park* project in Biddeford. Please note that as project details are lacking our comments should be considered preliminary. Per your letter, no Significant Vernal Pools were found on site; note that all survey forms should be submitted to our Agency for review well before the submission of any necessary permits. Our Department will need to review and verify any vernal pool data prior to final determination of significance.

Our Department has not mapped any Essential Habitats that would be directly affected by your project.

Endangered, Threatened, and Special Concern Species

Bat Species – Of the eight species of bats that occur in Maine, the three *Myotis* species are protected under Maine's Endangered Species Act (MESA) and are afforded special protection under 12 M.R.S. §12801 - §12810. The three *Myotis* species include little brown bat (State Endangered), northern long-eared bat (State Endangered), and eastern small-footed bat (State Threatened). The five remaining bat species are listed as Special Concern: big brown bat, red bat, hoary bat, silver-haired bat, and tri-colored bat. While a comprehensive statewide inventory for bats has not been completed, based on historical evidence it is likely that several of these species occur within the project area during migration and/or the breeding season. However, our Agency does not anticipate significant impacts to any of the bat species as a result of this project.

Blanding's Turtle - Multiple occurrences of Blanding's turtles, a State Endangered species, have been documented in the immediate vicinity and within the proposed project area. In Maine, Blanding's turtles are found most frequently in complexes of small, vernal pools, acidic wetlands and larger marsh complexes in large blocks of forested habitat. Development activity that compromises riparian integrity or migration permeability among seasonally critical wetlands can lead to degradation of habitat quality and potential loss of local populations. Additionally, development projects that lead to significant increases in local traffic volume will likely lead to increased roadkill and possible extirpation of the local population. If these habitats are present in the project area, we recommend that they be avoided and adequately buffered with a 250-foot undisturbed, intact vegetative cover. MDIFW is willing to work closely with the applicant to design a project that attempts to limit potential impacts to this listed species.

Significant Wildlife Habitat

Deer Wintering Areas (DWAs) – The project search area intersects with a DWA. DWAs contain habitat cover components that provide conditions where deer find protection from deep snow and cold wind, which is important for overwinter survival. MDIFW recommends that development projects be designed to avoid losses or impacts to the continued availability of coniferous winter shelter. Any removal of vegetation should be conducted in such a way that improves the quality and vigor of the coniferous species providing this winter shelter.

Fisheries Habitat

We recommend that 100-foot undisturbed vegetated buffers be maintained along streams. Buffers should be measured from the edge of stream or associated fringe and floodplain wetlands. Maintaining and enhancing buffers along streams that support coldwater fisheries is critical to the protection of water temperatures, water quality, natural inputs of coarse woody debris, and various forms of aquatic life necessary to support conditions required by many fish species. Stream crossings should be avoided, but if a stream crossing is necessary, or an existing crossing needs to be modified, it should be designed to provide full fish passage. Small streams, including intermittent streams, can provide crucial rearing habitat, cold water for thermal refugia, and abundant food for juvenile salmonids on a seasonal basis and undersized crossings may inhibit these functions. Generally, MDIFW recommends that all new, modified, and replacement stream crossings be sized to span at least 1.2 times the bankfull width of the stream. In addition, we generally recommend that stream crossings be open bottomed (i.e. natural bottom), although embedded structures which are backfilled with representative streambed material have been shown to be effective in not only providing habitat connectivity for fish but also for other aquatic organisms. Construction Best Management Practices should be closely followed to avoid erosion, sedimentation, alteration of stream flow, and other impacts as eroding soils from construction activities can travel significant distances as well as transport other pollutants resulting in direct impacts to fisheries and aquatic habitat. In addition, we recommend that any necessary instream work occur between July 15 and October 1.

This consultation review has been conducted specifically for known MDIFW jurisdictional features and should not be interpreted as a comprehensive review for the presence of other regulated features that may occur in this area. Prior to the start of any future site disturbance we recommend additional consultation with the municipality, and other state resource agencies including the Maine Natural Areas Program, Maine Department of Marine Resources, and Maine Department of Environmental Protection in order to avoid unintended protected resource disturbance.

Please feel free to contact my office if you have any questions regarding this information, or if I can be of any further assistance.

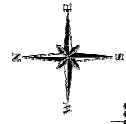
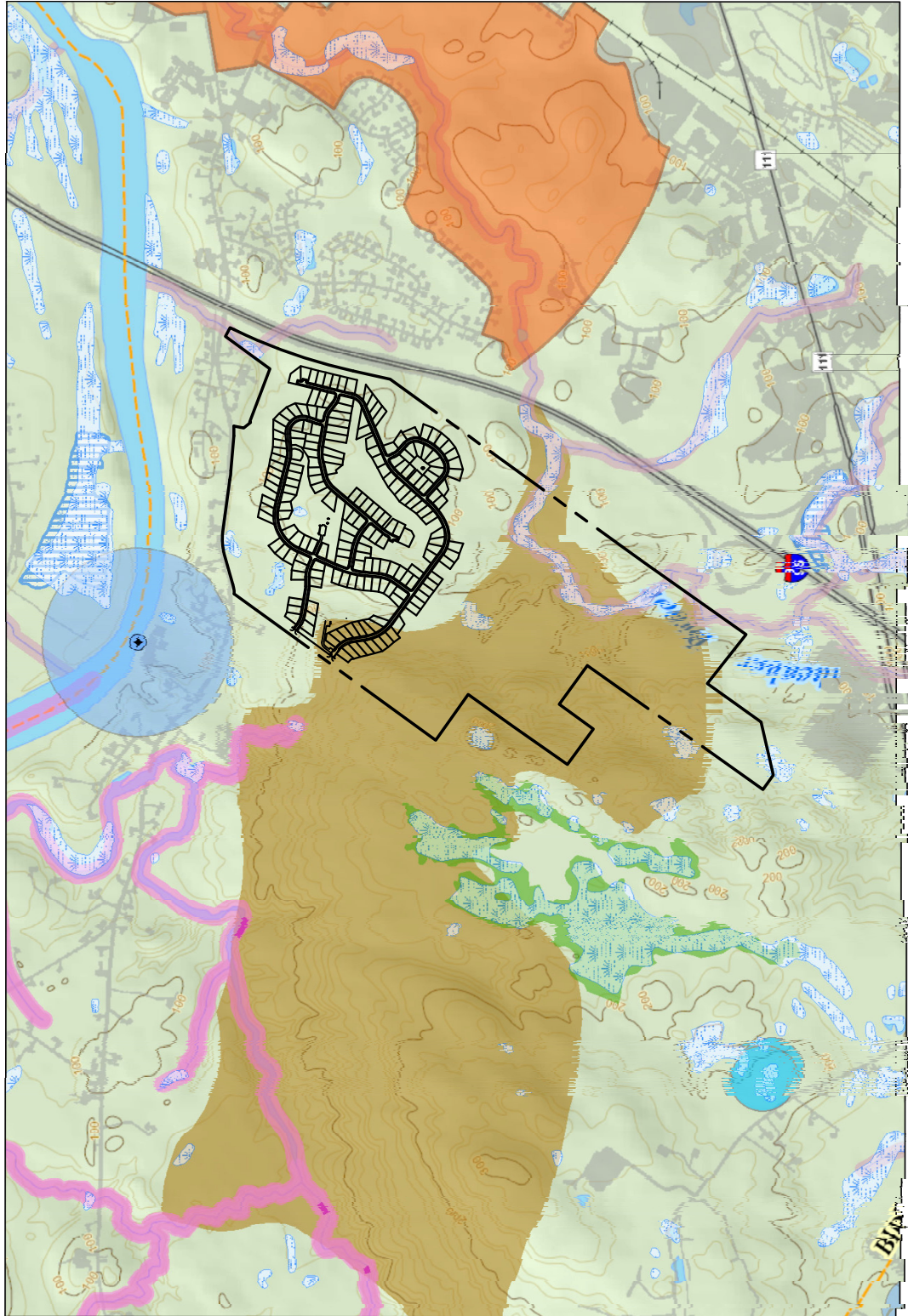
Best regards,



Becca Settele
Wildlife Biologist



Legend



Supported in
part by Loon
Conservation
Plate funds

Prepared by Maine
Department of Inland
Fisheries & Wildlife
October 2021

**Pineland**

Cumberland Hall
41 Campus Drive, Suite 301
New Gloucester, ME 04260

Portland

565 Congress Street, Suite 201
Portland, ME 04101

October 20, 2021

2113

Lisa St. Hilaire, Information Manager
Maine Natural Areas Program
Department of Agriculture, Conservation and Forestry
93 State House Station
Augusta, ME 04333

**REQUEST FOR PROJECT REVIEW
HIDDEN HILLS MANUFACTURED HOUSING PARK
413 SOUTH STREET, BIDDEFORD, MAINE**

Dear Lisa:

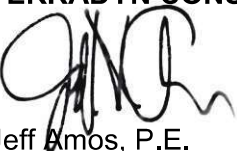
Terradyn Consultants, LLC has been retained by South Street Village, LLC to prepare civil-site plans and permit applications for a proposed manufactured housing park on a portion of their property in Biddeford, Maine located on the south side of South Street, just west of the Maine Turnpike. The applicant's property is approximately 312 acres and is shown as Lot 8 on the City of Biddeford Tax Map 7, but the project is limited to approximately 160 acres that is located within a manufactured housing park overlay zone. The project will include the development of approximately 190 manufactured housing lots as well as the associated road network, utilities, stormwater facilities & amenities.

Freshwater wetlands and streams as well as a vernal pool assessment were identified on the project site by Mark Hampton Associates, Inc. There were no significant vernal pools found on the project site. Thatcher Brook is located on the back portion of the property but is not located within the development area.

We are requesting an environmental site review to determine if the project will have an impact on resources or habitat in the vicinity of the proposed project. Attached is an excerpt of the USGS topographic map with the project site identified.

Please contact me at jeff@terradyconsultants.com or (207) 272-7571 if you have any questions or if you need additional information to complete your review.

Sincerely,
TERRADYN CONSULTANTS, LLC



Jeff Amos, P.E.



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
177 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

November 10, 2021

Jeff Amos
Terradyn Consultants
565 Congress Street, Suite 201
Portland, ME04101

Via email: jeff@terradyconsultants.com

Re: Rare and exemplary botanical features in proximity to: Hidden Hills Manufactured Housing Park, 413 South Street, Biddeford, Maine

Dear Mr. Amos:

I have searched the Maine Natural Areas Program's Biological and Conservation Data System files in response to your request received October 20, 2021 for information on the presence of rare or unique botanical features documented from the vicinity of the property in Biddeford, Maine. Rare and unique botanical features include the habitat of rare, threatened, or endangered plant species and unique or exemplary natural communities. Our review involves examining maps, manual and computerized records, other sources of information such as scientific articles or published references, and the personal knowledge of staff or cooperating experts.

Our official response covers only botanical features. For authoritative information and official response for zoological features you must make a similar request to the Maine Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, Maine 04333.

According to the information currently in our Biological and Conservation Data System files, the property is in close proximity to a mapped Red Maple Swamp. Activities within 250-feet of wetlands associated with this Red Maple Swamp can adversely impact this exemplary wetland. MNAP recommends avoiding development activity within 250-feet of the Red Maple Swamp and its associated mapped wetlands. Please see the table below, attached map, and attached factsheet for more information.

Feature	State Status	State Rank	Global Rank	Occurrence Rank	Site
Red Maple Swamp (Red Maple – Sensitive Fern Swamp)	N/A	S5	G3G5	A Excellent	West Biddeford Black Gum Swamp

If a field survey of the project area is conducted, please refer to the enclosed supplemental information regarding rare and exemplary botanical features documented to occur in the vicinity of the project site. The list may include information on features that have been known to occur historically in the area as well as recently field-verified information. While historic records have not been documented in several years, they may persist in the area if suitable habitat exists. The enclosed list identifies features with potential to occur in the area, and it should be considered if you choose to conduct field surveys.

MOLLY DOCHERTY, DIRECTOR
MAINE NATURAL AREAS PROGRAM
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-8044
WWW.MAINE.GOV/DACF/MNAP

This finding is available and appropriate for preparation and review of environmental assessments, but it is not a substitute for on-site surveys. Comprehensive field surveys do not exist for all natural areas in Maine, and in the absence of a specific field investigation, the Maine Natural Areas Program cannot provide a definitive statement on the presence or absence of unusual natural features at this site.

The Maine Natural Areas Program (MNAP) is continuously working to achieve a more comprehensive database of exemplary natural features in Maine. We would appreciate the contribution of any information obtained should you decide to do field work. MNAP welcomes coordination with individuals or organizations proposing environmental alteration or conducting environmental assessments. If, however, data provided by MNAP are to be published in any form, the Program should be informed at the outset and credited as the source.

The Maine Natural Areas Program has instituted a fee structure of \$75.00 an hour to recover the actual cost of processing your request for information. You will receive an invoice for \$225.00 for three hours of our services.

Thank you for using MNAP in the environmental review process. Please do not hesitate to contact me if you have further questions about the Natural Areas Program or about rare or unique botanical features on this site.

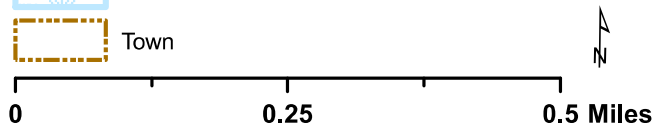
Sincerely,



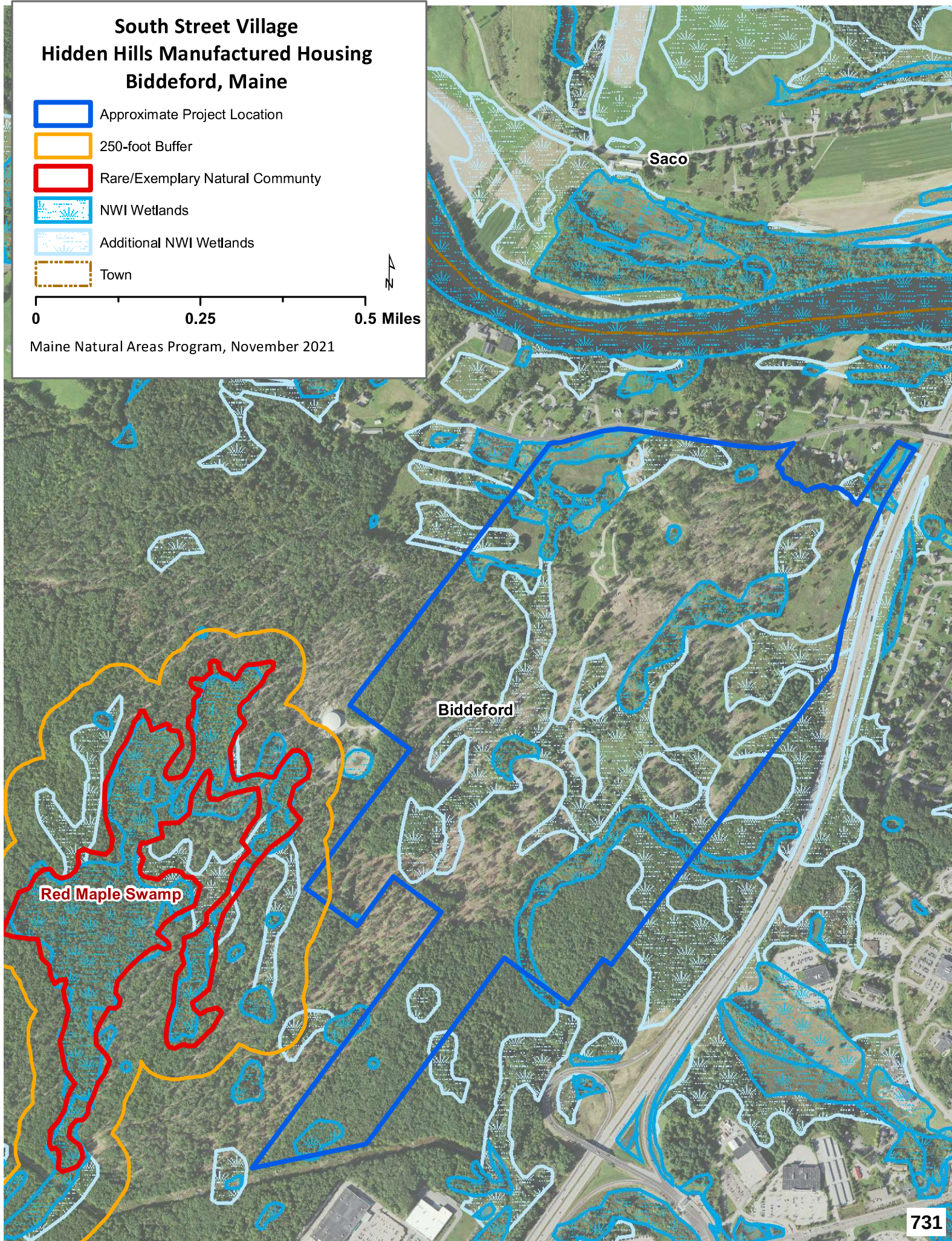
Kristen Puryear | Ecologist | Maine Natural Areas Program
207-287-8043 | kristen.puryear@maine.gov

South Street Village Hidden Hills Manufactured Housing Biddeford, Maine

- Approximate Project Location
- 250-foot Buffer
- Rare/Exemplary Natural Community
- NWI Wetlands
- Additional NWI Wetlands
- Town



Maine Natural Areas Program, November 2021





Red Maple Swamp

State Rank *S5*

Community Description

Red maple dominates the somewhat open to nearly closed canopy (20-90% closure), sometimes with a relatively large component (up to 40% cover) of balsam fir, red spruce, or northern white cedar. Green ash and yellow birch are common, but rarely abundant, associates. The maples may be widely spaced with multiple trunks and arching crowns. The shrub layer is patchy; winterberry is common and various other shrubs may be locally abundant. The herb layer is well developed and dominated by herbs, with dwarf shrubs <20% of herb cover. Bluejoint and sensitive fern are characteristic herbs. The bryoid layer is usually <35% cover; peat mosses are typical but do not form extensive, deep carpets as they do in peatlands.

Soil and Site Characteristics

Sites occupy mineral soils or well decomposed organic material over mineral soil on flats or gentle slopes in small basins, often on floodplains of streams to small rivers. Soils are typically 30-60 cm deep, loamy to silty in texture, sometimes with well decomposed muck over the mineral fraction, and pH 4.8-5.4.

Diagnostics

These are mineral soil wetlands in which



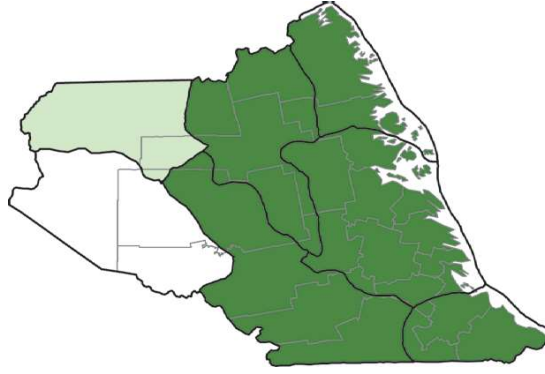
Red Maple Flowers

red maple dominates the canopy or is co-dominant with conifers other than black spruce or larch. The seasonally flooded soils usually remain saturated through the growing season.

Similar Types

Red Maple Wooded Fens are similar, but either occur in association with large peatlands or occupy small somewhat peaty basins; they do not occur on mineral soils. Some small Northern White Cedar Swamps and Spruce - Fir - Cinnamon Fern Forests, particularly along the coast, include a fair amount of red maple but have cedar or spruce/fir, respectively, as the most abundant canopy species. Silver Maple Floodplain Forests are dominated by silver maple and generally occur along larger

Location Map



Red Maple Swamp

rivers, but the two types can intergrade on some floodplains.

Conservation, Wildlife, and Management Considerations

Maintaining the hydrologic integrity of these stream drainages with upland buffers is key. These swamps typically have had few conflicting uses, although some have been recently harvested. ATV use has been observed at some sites.

Red maple swamps often provide habitat in which spotted turtles hibernate. If wet Sphagnum hummocks are present, four-toed salamanders may breed in this community. Examples that occur on floodplains of

streams and small rivers may contain wood turtles, which overwinter in the stream channel and forage in the floodplain. The silver-haired bat often roosts in riparian habitats in trees with loose bark. The northern waterthrush is a common associate of this community type. In the southern part of the state, the Louisiana waterthrush and yellow-throated vireo may be associates if the canopy is closed or nearly so.

Distribution

Statewide, but most common in the southern half of state. Extends southward and southwestward from Maine; eastward distribution unknown.

Landscape Pattern: Large Patch

Characteristic Plants

These plants are frequently found in this community type. Those with an asterisk are often diagnostic of this community.

Canopy

Balsam fir
Gray birch
Northern white cedar
Red maple*
Red spruce

Sapling/shrub

Arrowwood*
Balsam fir
Gray birch*
Red spruce
Speckled alder*
Winterberry*

Herb

Bluejoint*
Flat-topped white aster*
Interrupted fern
Tussock sedge
Royal fern*
Sensitive fern*

Bryoid

Sphagnum mosses*

Associated Rare Plants

Smooth winterberry holly
Spicebush
Swamp saxifrage
Swamp white oak
Sweet pepper-bush

Associated Rare Animals

Spotted turtle
Wood turtle

Examples on Conservation Lands You Can Visit

- Kennebunk Plains Preserve – York Co.
- Mt. Agamenticus – York Co.
- Steep Falls Wildlife Management Area – Cumberland Co.
- Waterboro Barrens Preserve – York Co.

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Atlantic White Cedar						
	SC	S2	G4	2017-07-26	3	Forested wetland
Atlantic White Cedar Bog						
	<null>	S1	G3G4	2017-07-26	3	Forested wetland
Beach Plum						
	E	S1	G4	1932-09	12	Rocky coastal (non-forested, upland)
	E	S1	G4	1933-06-21	9	Rocky coastal (non-forested, upland)
Brackish Tidal Marsh						
	<null>	S3	GNR	2009-07-29	1	Tidal wetland (non-forested, wetland)
Button Sedge						
	SC	S2	G5	1880-09-06	2	<null>
	SC	S2	G5	2017-07-26	5	<null>
	SC	S2	G5	2000-08-15	3	<null>
Clothed Sedge						
	E	S1	G5	2006-06-07	7	Dry barrens (partly forested, upland)
	E	S1	G5	2006-06-16	8	Dry barrens (partly forested, upland)
Creeping Spike-moss						
	E	S2	G5	1920-07-30	6	Open wetland, not coastal nor rivershore (non-forested, wetland), Old field/roadside (non-forested, wetland or upland)
Estuary Bur-marigold						
	SC	S3	G4	2009-07-30	35	Tidal wetland (non-forested, wetland)
Freshwater Tidal Marsh						
	<null>	S2	G4?	2009-07-30	1	Tidal wetland (non-forested, wetland)

Rare and Exemplary Botanical Features within 4 miles of
Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Georgia bulrush	SC	SU	G5	2007-08-22	4	<null>
Horned Pondweed						
	SC	S2	G5	1907-08-18	10	Tidal wetland (non-forested, wetland)
	SC	S2	G5	2000-08-28	15	Tidal wetland (non-forested, wetland)
Lilaeopsis						
	SC	S2	G5	2012-10-21	10	Tidal wetland (non-forested, wetland)
Long's Bulrush						
	T	S2	G3	2017-07-26	10	Open wetland, not coastal nor rivershore (non-forested, wetland)
Long-spined Sandbur						
	PE	SH	G5	1984	1	Rocky coastal (non-forested, upland)
Mountain-laurel						
	SC	S2	G5	1991-09-28	11	Conifer forest (forest, upland),Hardwood to mixed forest (forest, upland)
Mudwort						
	SC	S3	G5	2009-07-30	35	Tidal wetland (non-forested, wetland)
Northern Blazing Star						
	T	S1	G5?T3	1916-08-10	3	Dry barrens (partly forested, upland)
Pale Green Orchis						
	SC	S2	G4?T4Q	2008-06-27	52	Non-tidal rivershore (non-forested, seasonally wet),Open wetland, not coastal nor rivershore (non-forested, wetland)
	SC	S2	G4?T4Q	2008-06-27	53	Non-tidal rivershore (non-forested, seasonally wet),Open wetland, not coastal nor rivershore (non-forested, wetland)
	SC	S2	G4?T4Q	2008-06-27	54	Non-tidal rivershore (non-forested, seasonally wet),Open wetland, not coastal nor rivershore (non-forested, wetland)
Parker's Pipewort						

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Pendulous Bulrush	SC	S3	G3	2017-08-31	33	Tidal wetland (non-forested, wetland)
Pitch Pine Bog	SC	S2	G5	2008-06-28	8	Open wetland, not coastal nor rivershore (non-forested, wetland), Old field/roadside (non-forested, wetland or upland)
Pitch Pine Woodland	<null>	S2	G3G5	2017-07-26	4	Forested wetland, Coastal non-tidal wetland (non-forested, wetland)
	<null>	S2	G3G5	2015-09-29	20	Forested wetland, Coastal non-tidal wetland (non-forested, wetland)
Pocket Swamp	<null>	S3	G2	2016-08-09	30	Rocky summits and outcrops (non-forested, upland)
Pygmyweed	<null>	S2	G5	2004	18	Forested wetland, Hardwood to mixed forest (forest, upland)
Raised Level Bog Ecosystem	SC	S2S3	G5	2009-07-29	25	Open water (non-forested, wetland)
Red Maple Swamp	<null>	S4	GNR	2017-07-26	3	Forested wetland, Open wetland, not coastal nor rivershore (non-forested, wetland)
Saltmarsh False-foxglove	<null>	S5	G3G5	2007-06-05	17	Forested wetland
	SC	S3	G5	1982	8	Tidal wetland (non-forested, wetland)
	SC	S3	G5	1982	12	Tidal wetland (non-forested, wetland)
Scarlet Oak	SC	S3	G5	1982	9	Tidal wetland (non-forested, wetland)
	E	S1	G5	1916-08	4	Hardwood to mixed forest (forest, upland)

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Schreber's Wood-aster						
Slender Blue Flag	PE	SX	G4	1894-09	1	Rocky coastal (non-forested, upland)
Small Reed Grass						
	T	S2	G4G5	1879-08	4	Tidal wetland (non-forested, wetland)
Smooth Winterberry Holly						
	SC	S3	G5	1998-01-01	9	Old field/roadside (non-forested, wetland or upland)
	SC	S3	G5	2000-08-15	12	Old field/roadside (non-forested, wetland or upland)
Southern Slender Ladies'-tresses						
	SC	S3	G5	1916-08-10	10	Forested wetland
	SC	S3	G5	2018-09-15	24	Forested wetland
	SC	S3	G5	2009-07-05	39	Forested wetland
	SC	S3	G5	2004	36	Forested wetland
Spongy-leaved Arrowhead						
	PE	SH	G5T4T5	1918-08-27	1	Dry barrens (partly forested, upland)
Stiff Arrowhead						
	SC	S3	G5T4	2012-10-21	42	Tidal wetland (non-forested, wetland)
Sweet Pepper-bush						
	SC	S2	G5	2006-06-16	15	Tidal wetland (non-forested, wetland)
Water Pimpernel						
	SC	S2	G5	1917-09	9	Hardwood to mixed forest (forest, upland), Forested wetland
	SC	S3	G5T5	2012-10-21	26	Tidal wetland (non-forested, wetland)

Rare and Exemplary Botanical Features within 4 miles of
Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
White-topped Aster	E	S1	G5	1916-08-10	4	Dry barrens (partly forested, upland)
Yellow Wild Indigo	PE	SH	G5	1960-06-21	2	Dry barrens (partly forested, upland), Hardwood to mixed forest (forest, upland)

Conservation Status Ranks

State and Global Ranks: This ranking system facilitates a quick assessment of a species' or habitat type's rarity and is the primary tool used to develop conservation, protection, and restoration priorities for individual species and natural habitat types. Each species or habitat is assigned both a state (S) and global (G) rank on a scale of 1 to 5. Factors such as range extent, the number of occurrences, intensity of threats, etc., contribute to the assignment of state and global ranks. The definitions for state and global ranks are comparable but applied at different geographic scales; something that is state imperiled may be globally secure.

The information supporting these ranks is developed and maintained by the Maine Natural Areas Program (state ranks) and NatureServe (global ranks).

Rank	Definition
S1 G1	Critically Imperiled – At very high risk of extinction or elimination due to very restricted range, very few populations or occurrences, very steep declines, very severe threats, or other factors.
S2 G2	Imperiled – At high risk of extinction or elimination due to restricted range, few populations or occurrences, steep declines, severe threats, or other factors.
S3 G3	Vulnerable – At moderate risk of extinction or elimination due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors.
S4 G4	Apparently Secure – At fairly low risk of extinction or elimination due to an extensive range and/or many populations or occurrences, but with possible cause for some concern as a result of local recent declines, threats, or other factors.
S5 G5	Secure – At very low risk of extinction or elimination due to a very extensive range, abundant populations or occurrences, and little to no concern from declines or threats.
SX GX	Presumed Extinct – Not located despite intensive searches and virtually no likelihood of rediscovery.
SH GH	Possibly Extinct – Known from only historical occurrences but still some hope of rediscovery.
S#S# G#G#	Range Rank – A numeric range rank (e.g., S2S3 or S1S3) is used to indicate any range of uncertainty about the status of the species or ecosystem.
SU GU	Unrankable – Currently unrankable due to lack of information or due to substantially conflicting information about status or trends.
GNR SNR	Unranked – Global or subnational conservation status not yet assessed.
SNA GNA	Not Applicable – A conservation status rank is not applicable because the species or ecosystem is not a suitable target for conservation activities (e.g., non-native species or ecosystems).
Qualifier	Definition
S#? G#?	Inexact Numeric Rank – Denotes inexact numeric rank.
Q	Questionable taxonomy that may reduce conservation priority – Distinctiveness of this entity as a taxon or ecosystem type at the current level is questionable. The “Q” modifier is only used at a global level.
T#	Intraspecific Taxon (trinomial) – The status of intraspecific taxa (subspecies or varieties) are indicated by a "T-rank" following the species' global rank.

State Status: Endangered and Threatened are legal status designations authorized by statute. Please refer to MRSA Title 12, §544 and §544-B.

Status	Definition
E	Endangered – Any native plant species in danger of extinction throughout all or a significant portion of its range within the State or Federally listed as Endangered.
T	Threatened – Any native plant species likely to become endangered within the foreseeable future throughout all or a significant portion of its range in the State or Federally listed as Threatened.
SC	Special Concern – A native plant species that is rare in the State, but not rare enough to be considered Threatened or Endangered.
PE	Potentially Extirpated – A native plant species that has not been documented in the State in over 20 years, or loss of the last known occurrence.

Element Occurrence (EO) Ranks: Quality assessments that designate viability of a population or integrity of habitat. These ranks are based on size, condition, and landscape context. Range ranks (e.g., AB, BC) and uncertainty ranks (e.g., B?) are allowed. The Maine Natural Areas Program tracks all occurrences of rare plants and natural communities/ecosystems (S1-S3) as well as exemplary common natural community types (S4-S5 with EO ranks A/B).

Rank	Definition
A	Excellent – Excellent estimated viability/ecological integrity.
B	Good – Good estimated viability/ecological integrity.
C	Fair – Fair estimated viability/ecological integrity.
D	Poor – Poor estimated viability/ecological integrity.
E	Extant – Verified extant, but viability/ecological integrity not assessed.
H	Historical – Lack of field information within past 20 years verifying continued existence of the occurrence, but not enough to document extirpation.
X	Extirpated – Documented loss of population/destruction of habitat.
U	Unrankable – Occurrence unable to be ranked due to lack of sufficient information (e.g., possible mistaken identification).
NR	Not Ranked – An occurrence rank has not been assigned.

Visit the Maine Natural Areas Program website for more information
<http://www.maine.gov/dacf/mnap>





January 9, 2022

Mr. Jeff Amos, P.E.
Terradyn Consultants, LLC
41 Campus Drive, Suite 101
New Gloucester, ME 04260

Re: South Street Village, Biddeford: Rare Plant Habitat Assessment

Mr. Amos,

An experienced botanist with Basswood Environmental LLC (Basswood) visited the parcel identified on Biddeford Tax Maps as Lot 8 on Map 7, located on the south side of South Street, west of I-95. The purpose of the site visit was to assess the area for potential habitat for endangered plant species with an emphasis on those identified by the Maine Natural Areas program (MNAP) in their review dated November 10, 2021.

Review and Background

The approximately 160-acre site is located in Biddeford, Maine, which overlaps the northern extent of the range for many plant species considered rare by MNAP. This site is also in close proximity to a large red maple swamp that is considered by MNAP to be an exemplary natural community and contains a high potential for rare plant species. The MNAP review identified 44 occurrences of 31 total species considered rare, threatened or endangered, as well as 8 rare or exemplary natural communities that have been located by past surveys within 4 miles of the parcel. It should be noted that this proximity includes some well-known habitats for rare species that are not relevant to this survey, such as the Saco Heath (raised level bog ecosystem, Atlantic white cedar bog, pitch pine bog), the Saco River (freshwater tidal marsh), and The Kennebunk Plains (sand barren habitat, pitch pine woodland).

A 2007 survey was performed by the Biddeford Conservation Commission of the lands to the west of the site that are associated with the exemplary red maple swamp identified on the MNAP review. This survey also included a portion of the current project area (identified as the Claire Property). The reviewer indicates that much of the site is in an early-successional state and lacks the diversity of the lands to the west, but may provide good habitat for wildlife species. The extent to which the surveyor explored all areas of the site in question is unclear from this report, however it does appear that at least some evaluation was performed across much of the parcel.

Site Description

The site possesses an interspersed of upland and wetland habitats throughout the area surveyed. Broad wetland swales are present in the areas between often dramatic local relief consisting of large bedrock outcrops and hills scattered throughout the site. The majority of the site has been disturbed at some point, with the southern portions having been recently cleared for timber harvesting. Exceptions to this are areas around small streams and drainages, and stands of small diameter trees, often hemlock (*Tsuga canadensis*) that were not cut. Other small pockets of intact forest are present surrounding Thacher Brook, which passes through the eastern portion of the site.

The northern half of the site has received more disturbance and has been maintained as a patchwork of cleared fields and unmaintained roads. This portion of the site exhibits old and ongoing excavations, an old farm pond/impoundment, a development site, and a small transmission line. Having been subject to greater disturbance over a longer period of time, these areas also exhibit greater infestation from invasive plant species such as Asian bittersweet (*Celastrus orbiculatus*) and multiflora rose (*Rosa multiflora*) than recently cleared areas in the south.

The wetlands on site are typically dominated by herbaceous vegetation consisting of disturbance tolerant species such as woolly bulrush (*Scirpus cyperinus*), fringed sedge (*Carex crinita*), loosened soft rush (*Juncus effusus* ssp. *solutus*), creeping bentgrass (*Agrostis stolonifera*), and sensitive fern (*Onoclea sensibilis*). Permanently saturated areas also commonly supported broad-leaved cattail (*Typha latifolia*), blue vervain (*Verbena hastata*), and marsh fern (*Thelypteris palustris* var. *pubescens*). Some scrub-shrub wetlands are present, most notable in the floodplain area around Thacher Brook. These are dominated by a mixture of speckled alder (*Alnus incana* ssp. *rugosa*), silky dogwood (*Cornus amomum* var. *amomum*), smooth arrowwood (*Viburnum dentatum* var. *lucidum*), and meadowsweet (*Spiraea alba* var. *latifolia*). Red maple (*Acer rubrum*) saplings are common throughout both upland and wetland portions of the site in association with the recently cleared areas as well.

Uplands in the recently cleared areas are dominated by typical pioneer species such as common blackberry (*Rubus allegheniensis*), sapling red maple, quaking aspen (*Populus tremuloides*), and intermittent stands of small diameter hemlock. Intact upland forested areas, such as those surrounding some portions of Thacher Brook and other small streams on site, consist of a mixed canopy of hemlock, white pine (*Pinus strobus*), red maple, red oak (*Quercus rubra*), and balsam fir (*Abies balsamea*). Upland forests in the northern portion of the site do not appear to have been subject to a recent harvest, however the species composition is that of pioneer and secondary species such as red maple and quaking aspen, indicating that much of this area is currently in an early-successional phase. Blue Ridge sedge (*Carex lucorum*) and New England sedge (*Carex novae-angliae*) are well represented throughout the uplands on site, as well as lowbush blueberry (*Vaccinium angustifolium*) and bristly blackberry (*Rubus hispidus*).

Maintained fields are composed of typical field species including an array of goldenrods (*Solidago* spp.), asters (*Symphyotricum* and *Doellingeria* spp., in part) and grasses such as lace lovegrass (*Eragrostis capillaris*), field meadow-foxtail (*Alopecurus pratensis*), common Timothy (*Phleum pratense*), and orchard grass (*Dactylis glomerata*). Wet swales within the fields exhibit similar marsh vegetation found elsewhere on site

RTE Plant Habitat Survey Results

Of the 8 natural communities identified by MNAP as rare or exemplary, none were located during the course of the site walk. An area of mapped Adams loamy sand in the northwestern interior portion of the site was investigated for sand barren habitat but none was located. Additionally, no peatland systems were located during the course of the site walk despite the large amount of wetland areas present. Some of the wetland areas that have been subject to tree clearing may have been dominated by a red maple overstory, however these do not exhibit any discernible direct connection to the exemplary red maple swamp to the west of the site, and no other indicators of rare or exemplary habitat were found within them. Of the 31 species thus identified by MNAP as occurring in the vicinity of the project area, 19 are associated with habitat that is not present on site. The remaining 12 species documented from the area cannot be ruled out due to either the presence of their typical habitat within the project area (e.g. old fields), or because they are a generalist species at the northern edge of their natural range, such as clothed sedge (*Carex vestita*), which is found in disturbed, open areas in southern Maine. Table 1 summarizes the species that would require a formal field survey during the appropriate time to locate on site. Note that several species, including button sedge, Long's bulrush, and sweet pepper-bush are included on this list, although it is in the author's opinion that the likelihood of these species being on this site are very low due to a lack of ideal habitat.

Table 1: Species Identified by MNAP with Suitable Habitat On-site

Scientific Name	Common Name	Optimal Survey Window	Comments
<i>Carex bullata</i>	Button sedge	June-October	Open wetlands, acidic bogs, unlikely to occur but possible
<i>Carex vestita</i>	Clothed sedge	May-July	Disturbed areas, ATV trails, transmission corridors
<i>Selaginella apoda</i>	Creeping spike moss	May-October	Open wetlands, roadsides, disturbed wet areas
<i>Scirpus georgianus</i>	Georgia bulrush	June-August	Open wetlands
<i>Scirpus longii</i>	Long's bulrush	May-October	Unlikely - associated with fen habitat
<i>Kalmia latifolia</i> *	Mountain laurel	Year-round	Rocky woodland species
<i>Platanthera flava</i> <i>var. herbiola</i>	Pale green orchis	July	Wetlands throughout site may support species
<i>Scirpus pendulus</i>	Pendulous bulrush	July-August	Open wetlands, found associated with disturbance
<i>Quercus coccinea</i>	Scarlet oak	May-October	Potentially found in intact woodlands

<i>Calamagrostis cinnoides</i>	Small reed grass	August-October	Wetlands in old fields may provide habitat
<i>Ilex laevigata</i>**	Smooth winterberry holly	May-October	Suitable habitat along Thacher Brook
<i>Clethra alnifolia</i>	Sweet pepper-bush	July-September	Associated with calcareous soils - unlikely to occur on site

**Kalmia latifolia* is an evergreen shrub that is identifiable year-round, but was not observed during the initial site walk.

**It is possible to identify *Ilex laevigata* as long as fruit are present (through early January), although none were located during the site walk. Survey during the growing season is preferred for better possible detection.

If there is additional detail or clarity that Basswood can provide regarding the summary report, please do not hesitate to contact Erik Lema at erik@basswoodenv.com.

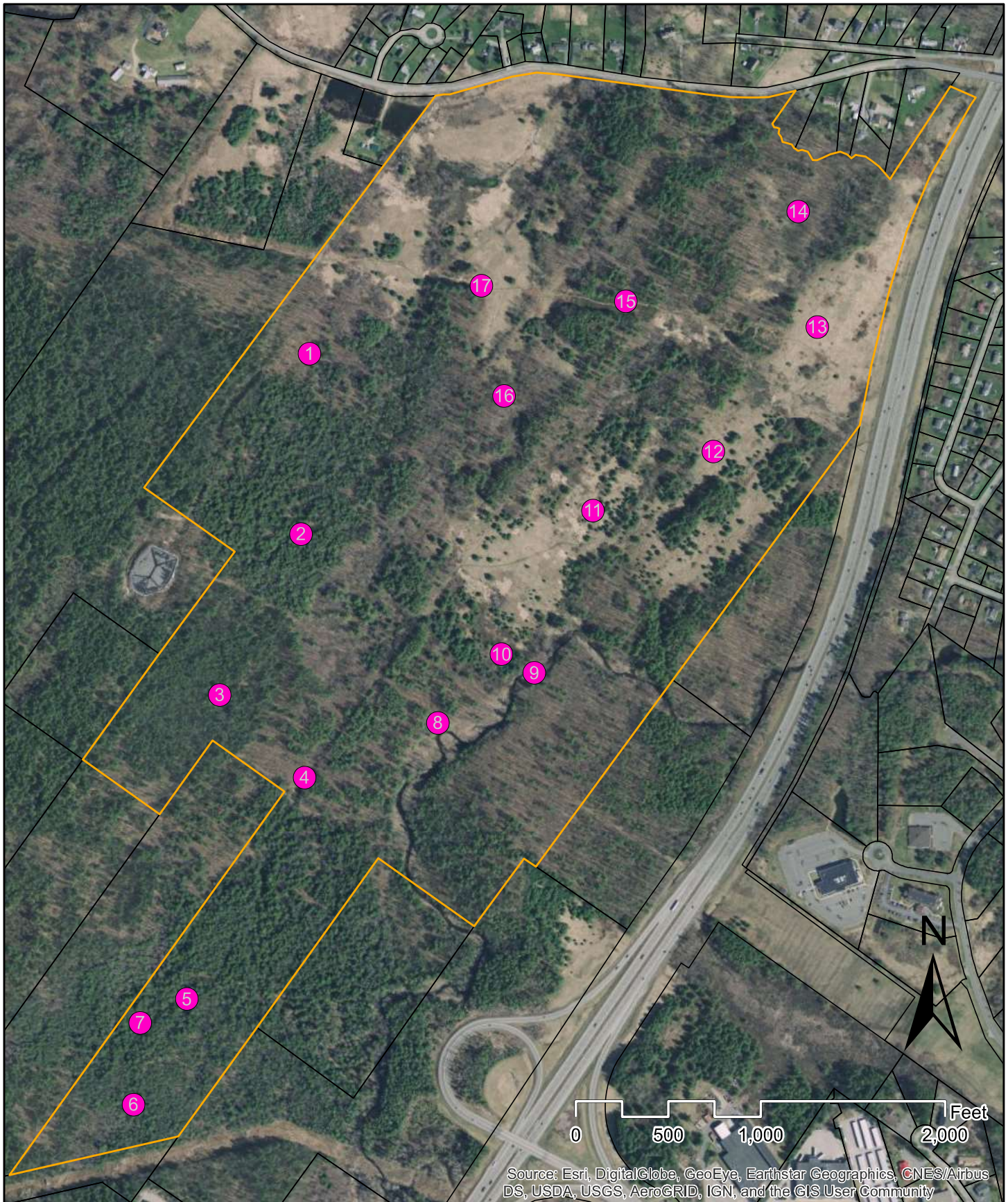
Best regards,



Erik Lema NHCWS#286, Owner/Principal
Basswood Environmental LLC

Attachments:

- 1: Index Map and Photolog
- 2: MNAP Review.



Proposed South Street Village

Rare Plant Species Habitat Survey



Parcel Boundary (MEGIS)



Photo Locations

Note: Aerial image taken circa 2019, prior to extensive tree clearing



BASSWOOD
ENVIRONMENTAL

South Street Village: Plant Habitat Survey

	Photo 1: Recently logged area, early successional shrub and forb vegetation.
	Photo 2: Typical wet swale area in the recently harvested portion of the property. Highly disturbed. Many of these areas were likely not wetlands prior to harvest and disturbance.
	Photo 3: Inundated portion of harvested area, potential vernal pool.

South Street Village: Plant Habitat Survey



Photo 4: Former seldom used ATV trail according to the 2007 Biddeford Conservation Commission report, now approximately 25-foot-wide logging road.



Photo 5: Potential vernal pool, low quality, likely too shallow.



Photo 6: Naturally occurring wetland at far southern end of property, some sphagnum/peat development.

South Street Village: Plant Habitat Survey



Photo 7: Wetland impounded by adjacent logging road, some amphibian habitat.

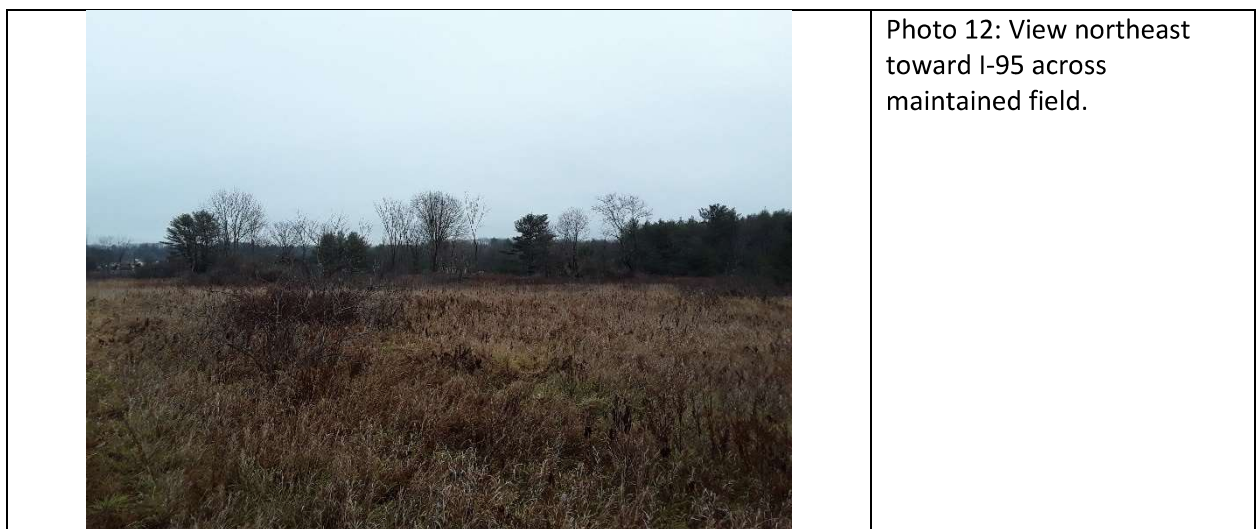


Photo 8: Thacher Brook from intact buffer area. Note scrub-shrub floodplain around brook.

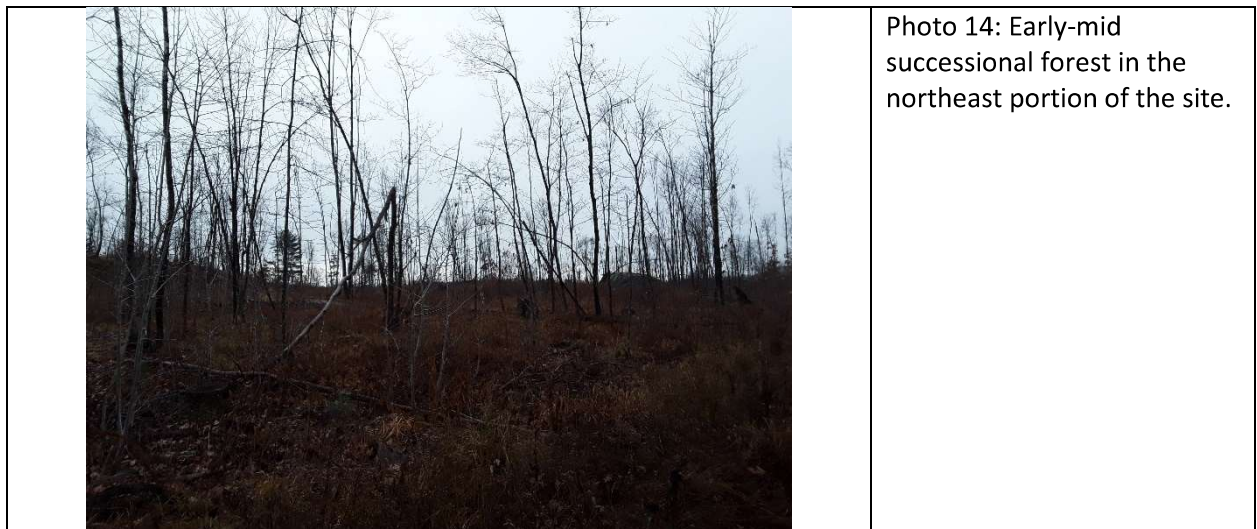


Photo 9: View of harvested area across Thacher Brook at crossing point. Inaccessible by foot at time of survey.

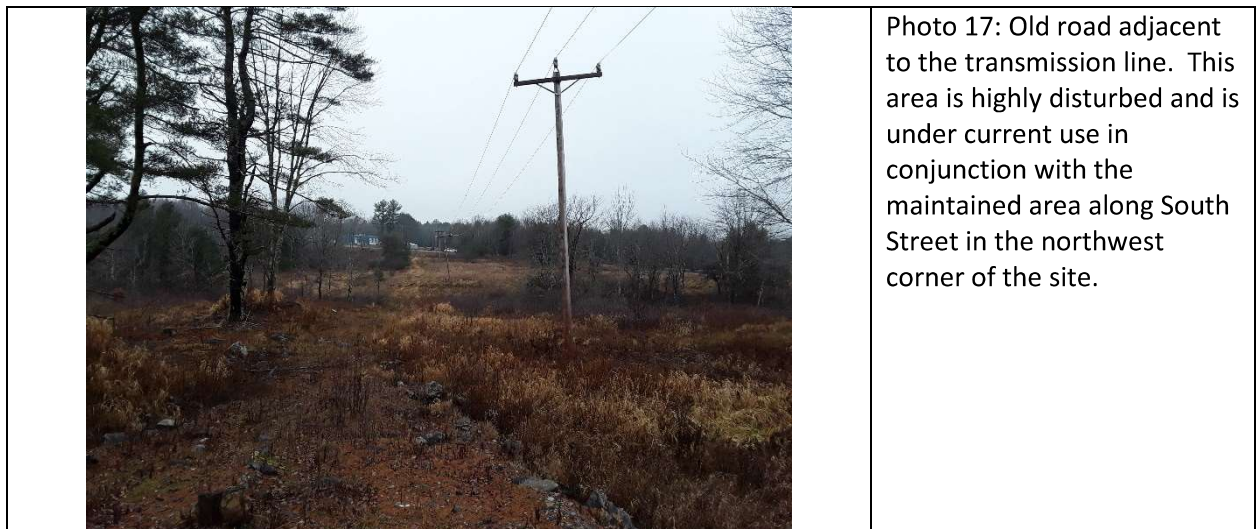
South Street Village: Plant Habitat Survey



South Street Village: Plant Habitat Survey



South Street Village: Plant Habitat Survey





STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
177 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

November 10, 2021

Jeff Amos
Terradyn Consultants
565 Congress Street, Suite 201
Portland, ME04101

Via email: jeff@terradyconsultants.com

Re: Rare and exemplary botanical features in proximity to: Hidden Hills Manufactured Housing Park, 413 South Street, Biddeford, Maine

Dear Mr. Amos:

I have searched the Maine Natural Areas Program's Biological and Conservation Data System files in response to your request received October 20, 2021 for information on the presence of rare or unique botanical features documented from the vicinity of the property in Biddeford, Maine. Rare and unique botanical features include the habitat of rare, threatened, or endangered plant species and unique or exemplary natural communities. Our review involves examining maps, manual and computerized records, other sources of information such as scientific articles or published references, and the personal knowledge of staff or cooperating experts.

Our official response covers only botanical features. For authoritative information and official response for zoological features you must make a similar request to the Maine Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, Maine 04333.

According to the information currently in our Biological and Conservation Data System files, the property is in close proximity to a mapped Red Maple Swamp. Activities within 250-feet of wetlands associated with this Red Maple Swamp can adversely impact this exemplary wetland. MNAP recommends avoiding development activity within 250-feet of the Red Maple Swamp and its associated mapped wetlands. Please see the table below, attached map, and attached factsheet for more information.

Feature	State Status	State Rank	Global Rank	Occurrence Rank	Site
Red Maple Swamp (Red Maple – Sensitive Fern Swamp)	N/A	S5	G3G5	A Excellent	West Biddeford Black Gum Swamp

If a field survey of the project area is conducted, please refer to the enclosed supplemental information regarding rare and exemplary botanical features documented to occur in the vicinity of the project site. The list may include information on features that have been known to occur historically in the area as well as recently field-verified information. While historic records have not been documented in several years, they may persist in the area if suitable habitat exists. The enclosed list identifies features with potential to occur in the area, and it should be considered if you choose to conduct field surveys.

MOLLY DOCHERTY, DIRECTOR
MAINE NATURAL AREAS PROGRAM
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-8044
WWW.MAINE.GOV/DACF/MNAP

This finding is available and appropriate for preparation and review of environmental assessments, but it is not a substitute for on-site surveys. Comprehensive field surveys do not exist for all natural areas in Maine, and in the absence of a specific field investigation, the Maine Natural Areas Program cannot provide a definitive statement on the presence or absence of unusual natural features at this site.

The Maine Natural Areas Program (MNAP) is continuously working to achieve a more comprehensive database of exemplary natural features in Maine. We would appreciate the contribution of any information obtained should you decide to do field work. MNAP welcomes coordination with individuals or organizations proposing environmental alteration or conducting environmental assessments. If, however, data provided by MNAP are to be published in any form, the Program should be informed at the outset and credited as the source.

The Maine Natural Areas Program has instituted a fee structure of \$75.00 an hour to recover the actual cost of processing your request for information. You will receive an invoice for \$225.00 for three hours of our services.

Thank you for using MNAP in the environmental review process. Please do not hesitate to contact me if you have further questions about the Natural Areas Program or about rare or unique botanical features on this site.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Puryear".

Kristen Puryear | Ecologist | Maine Natural Areas Program
207-287-8043 | kristen.puryear@maine.gov

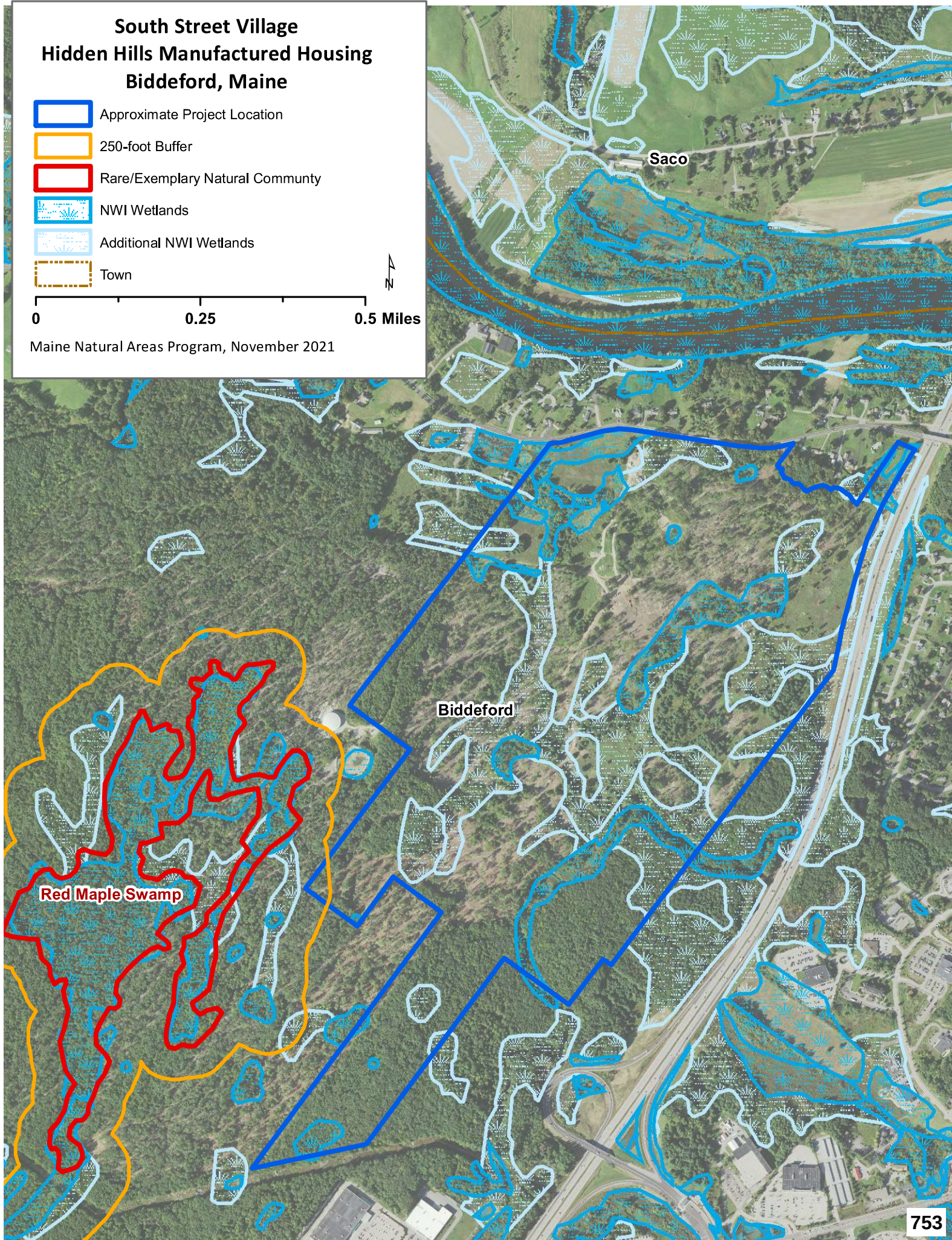
**South Street Village
Hidden Hills Manufactured Housing
Biddeford, Maine**

-  Approximate Project Location
-  250-foot Buffer
-  Rare/Exemplary Natural Community
-  NWI Wetlands
-  Additional NWI Wetlands
-  Town

0 0.25 0.5 Miles



Maine Natural Areas Program, November 2021





Red Maple Swamp

State Rank *S5*

Community Description

Red maple dominates the somewhat open to nearly closed canopy (20-90% closure), sometimes with a relatively large component (up to 40% cover) of balsam fir, red spruce, or northern white cedar. Green ash and yellow birch are common, but rarely abundant, associates. The maples may be widely spaced with multiple trunks and arching crowns. The shrub layer is patchy; winterberry is common and various other shrubs may be locally abundant. The herb layer is well developed and dominated by herbs, with dwarf shrubs <20% of herb cover. Bluejoint and sensitive fern are characteristic herbs. The bryoid layer is usually <35% cover; peat mosses are typical but do not form extensive, deep carpets as they do in peatlands.

Soil and Site Characteristics

Sites occupy mineral soils or well decomposed organic material over mineral soil on flats or gentle slopes in small basins, often on floodplains of streams to small rivers. Soils are typically 30-60 cm deep, loamy to silty in texture, sometimes with well decomposed muck over the mineral fraction, and pH 4.8-5.4.

Diagnostics

These are mineral soil wetlands in which



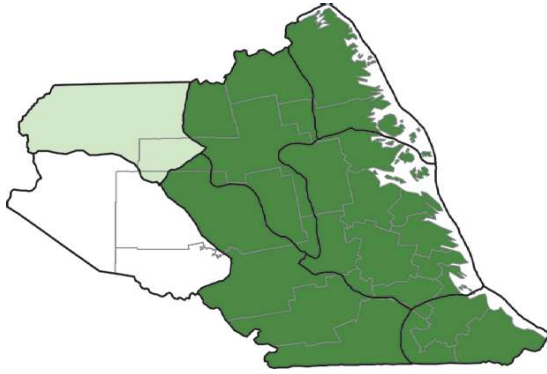
Red Maple Flowers

red maple dominates the canopy or is co-dominant with conifers other than black spruce or larch. The seasonally flooded soils usually remain saturated through the growing season.

Similar Types

Red Maple Wooded Fens are similar, but either occur in association with large peatlands or occupy small somewhat peaty basins; they do not occur on mineral soils. Some small Northern White Cedar Swamps and Spruce - Fir - Cinnamon Fern Forests, particularly along the coast, include a fair amount of red maple but have cedar or spruce/fir, respectively, as the most abundant canopy species. Silver Maple Floodplain Forests are dominated by silver maple and generally occur along larger

Location Map



Community is known from this Ecoregion
Community may occur in this Ecoregion
Bailey's Ecoregion
County



Landscape Pattern: Large Patch



Red Maple Swamp

rivers, but the two types can intergrade on some floodplains.

Conservation, Wildlife, and Management Considerations

Maintaining the hydrologic integrity of these stream drainages with upland buffers is key. These swamps typically have had few conflicting uses, although some have been recently harvested. ATV use has been observed at some sites.

Red maple swamps often provide habitat in which spotted turtles hibernate. If wet Sphagnum hummocks are present, four-toed salamanders may breed in this community. Examples that occur on floodplains of

streams and small rivers may contain wood turtles, which overwinter in the stream channel and forage in the floodplain. The silver-haired bat often roosts in riparian habitats in trees with loose bark. The northern waterthrush is a common associate of this community type. In the southern part of the state, the Louisiana waterthrush and yellow-throated vireo may be associates if the canopy is closed or nearly so.

Distribution

Statewide, but most common in the southern half of state. Extends southward and southwestward from Maine; eastward distribution unknown.

Characteristic Plants

These plants are frequently found in this community type. Those with an asterisk are often diagnostic of this community.

Canopy

Balsam fir
Gray birch
Northern white cedar
Red maple*
Red spruce

Sapling/shrub

Arrowwood*
Balsam fir
Gray birch*
Red spruce
Speckled alder*
Winterberry*

Herb

Bluejoint*
Flat-topped white aster*
Interrupted fern
Tussock sedge
Royal fern*
Sensitive fern*

Bryoid

Sphagnum mosses*

Associated Rare Plants

Smooth winterberry holly
Spicebush
Swamp saxifrage
Swamp white oak
Sweet pepper-bush

Associated Rare Animals

Spotted turtle
Wood turtle

Examples on Conservation Lands You Can Visit

- Kennebunk Plains Preserve – York Co.
- Mt. Agamenticus – York Co.
- Steep Falls Wildlife Management Area – Cumberland Co.
- Waterboro Barrens Preserve – York Co.

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Atlantic White Cedar	SC	S2	G4	2017-07-26	3	Forested wetland
Atlantic White Cedar Bog	<null>	S1	G3G4	2017-07-26	3	Forested wetland
Beach Plum						
	E	S1	G4	1932-09	12	Rocky coastal (non-forested, upland)
	E	S1	G4	1933-06-21	9	Rocky coastal (non-forested, upland)
Brackish Tidal Marsh						
	<null>	S3	GNR	2009-07-29	1	Tidal wetland (non-forested, wetland)
Button Sedge						
	SC	S2	G5	1880-09-06	2	<null>
	SC	S2	G5	2017-07-26	5	<null>
	SC	S2	G5	2000-08-15	3	<null>
Clothed Sedge						
	E	S1	G5	2006-06-07	7	Dry barrens (partly forested, upland)
	E	S1	G5	2006-06-16	8	Dry barrens (partly forested, upland)
Creeping Spike-moss						
	E	S2	G5	1920-07-30	6	Open wetland, not coastal nor rivershore (non-forested, wetland), Old field/roadside (non-forested, wetland or upland)
Estuary Bur-marigold						
	SC	S3	G4	2009-07-30	35	Tidal wetland (non-forested, wetland)
Freshwater Tidal Marsh						
	<null>	S2	G4?	2009-07-30	1	Tidal wetland (non-forested, wetland)

Rare and Exemplary Botanical Features within 4 miles of
Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Georgia bulrush	SC	SU	G5	2007-08-22	4	<null>
Horned Pondweed						
	SC	S2	G5	1907-08-18	10	Tidal wetland (non-forested, wetland)
	SC	S2	G5	2000-08-28	15	Tidal wetland (non-forested, wetland)
Lilaeopsis						
	SC	S2	G5	2012-10-21	10	Tidal wetland (non-forested, wetland)
Long's Bulrush						
	T	S2	G3	2017-07-26	10	Open wetland, not coastal nor rivershore (non-forested, wetland)
Long-spined Sandbur						
	PE	SH	G5	1984	1	Rocky coastal (non-forested, upland)
Mountain-laurel						
	SC	S2	G5	1991-09-28	11	Conifer forest (forest, upland),Hardwood to mixed forest (forest, upland)
Mudwort						
	SC	S3	G5	2009-07-30	35	Tidal wetland (non-forested, wetland)
Northern Blazing Star						
	T	S1	G5?T3	1916-08-10	3	Dry barrens (partly forested, upland)
Pale Green Orchis						
	SC	S2	G4?T4Q	2008-06-27	52	Non-tidal rivershore (non-forested, seasonally wet),Open wetland, not coastal nor rivershore (non-forested, wetland)
	SC	S2	G4?T4Q	2008-06-27	53	Non-tidal rivershore (non-forested, seasonally wet),Open wetland, not coastal nor rivershore (non-forested, wetland)
	SC	S2	G4?T4Q	2008-06-27	54	Non-tidal rivershore (non-forested, seasonally wet),Open wetland, not coastal nor rivershore (non-forested, wetland)
Parker's Pipewort						

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Pendulous Bulrush	SC	S3	G3	2017-08-31	33	Tidal wetland (non-forested, wetland)
Pitch Pine Bog	SC	S2	G5	2008-06-28	8	Open wetland, not coastal nor rivershore (non-forested, wetland), Old field/roadside (non-forested, wetland or upland)
Pitch Pine Woodland	<null>	S2	G3G5	2017-07-26	4	Forested wetland, Coastal non-tidal wetland (non-forested, wetland)
	<null>	S2	G3G5	2015-09-29	20	Forested wetland, Coastal non-tidal wetland (non-forested, wetland)
Pocket Swamp	<null>	S3	G2	2016-08-09	30	Rocky summits and outcrops (non-forested, upland)
Pygmyweed	<null>	S2	G5	2004	18	Forested wetland, Hardwood to mixed forest (forest, upland)
Raised Level Bog Ecosystem	SC	S2S3	G5	2009-07-29	25	Open water (non-forested, wetland)
Red Maple Swamp	<null>	S4	GNR	2017-07-26	3	Forested wetland, Open wetland, not coastal nor rivershore (non-forested, wetland)
Saltmarsh False-foxglove	<null>	S5	G3G5	2007-06-05	17	Forested wetland
	SC	S3	G5	1982	8	Tidal wetland (non-forested, wetland)
	SC	S3	G5	1982	12	Tidal wetland (non-forested, wetland)
Scarlet Oak	SC	S3	G5	1982	9	Tidal wetland (non-forested, wetland)
	E	S1	G5	1916-08	4	Hardwood to mixed forest (forest, upland)

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
Schreber's Wood-aster						
Slender Blue Flag	PE	SX	G4	1894-09	1	Rocky coastal (non-forested, upland)
Small Reed Grass						
	T	S2	G4G5	1879-08	4	Tidal wetland (non-forested, wetland)
Smooth Winterberry Holly						
	SC	S3	G5	1998-01-01	9	Old field/roadside (non-forested, wetland or upland)
	SC	S3	G5	2000-08-15	12	Old field/roadside (non-forested, wetland or upland)
Southern Slender Ladies'-tresses						
	SC	S3	G5	1916-08-10	10	Forested wetland
	SC	S3	G5	2018-09-15	24	Forested wetland
	SC	S3	G5	2009-07-05	39	Forested wetland
	SC	S3	G5	2004	36	Forested wetland
Spongy-leaved Arrowhead						
	PE	SH	G5T4T5	1918-08-27	1	Dry barrens (partly forested, upland)
Stiff Arrowhead						
	SC	S3	G5T4	2012-10-21	42	Tidal wetland (non-forested, wetland)
Sweet Pepper-bush						
	SC	S2	G5	2006-06-16	15	Tidal wetland (non-forested, wetland)
Water Pimpernel						
	SC	S2	G5	1917-09	9	Hardwood to mixed forest (forest, upland), Forested wetland
	SC	S3	G5T5	2012-10-21	26	Tidal wetland (non-forested, wetland)

Rare and Exemplary Botanical Features within 4 miles of
 Project: South Street Village LLC, Hidden Hills Manufactured Housing Park, 413 South Street,
 Biddeford, Maine

Common Name	State Status	State Rank	Global Rank	Date Last Observed	Occurrence Number	Habitat
White-topped Aster	E	S1	G5	1916-08-10	4	Dry barrens (partly forested, upland)
Yellow Wild Indigo	PE	SH	G5	1960-06-21	2	Dry barrens (partly forested, upland),Hardwood to mixed forest (forest, upland)

Conservation Status Ranks

State and Global Ranks: This ranking system facilitates a quick assessment of a species' or habitat type's rarity and is the primary tool used to develop conservation, protection, and restoration priorities for individual species and natural habitat types. Each species or habitat is assigned both a state (S) and global (G) rank on a scale of 1 to 5. Factors such as range extent, the number of occurrences, intensity of threats, etc., contribute to the assignment of state and global ranks. The definitions for state and global ranks are comparable but applied at different geographic scales; something that is state imperiled may be globally secure.

The information supporting these ranks is developed and maintained by the Maine Natural Areas Program (state ranks) and NatureServe (global ranks).

Rank	Definition
S1 G1	Critically Imperiled – At very high risk of extinction or elimination due to very restricted range, very few populations or occurrences, very steep declines, very severe threats, or other factors.
S2 G2	Imperiled – At high risk of extinction or elimination due to restricted range, few populations or occurrences, steep declines, severe threats, or other factors.
S3 G3	Vulnerable – At moderate risk of extinction or elimination due to a fairly restricted range, relatively few populations or occurrences, recent and widespread declines, threats, or other factors.
S4 G4	Apparently Secure – At fairly low risk of extinction or elimination due to an extensive range and/or many populations or occurrences, but with possible cause for some concern as a result of local recent declines, threats, or other factors.
S5 G5	Secure – At very low risk of extinction or elimination due to a very extensive range, abundant populations or occurrences, and little to no concern from declines or threats.
SX GX	Presumed Extinct – Not located despite intensive searches and virtually no likelihood of rediscovery.
SH GH	Possibly Extinct – Known from only historical occurrences but still some hope of rediscovery.
S#S# G#G#	Range Rank – A numeric range rank (e.g., S2S3 or S1S3) is used to indicate any range of uncertainty about the status of the species or ecosystem.
SU GU	Unrankable – Currently unrankable due to lack of information or due to substantially conflicting information about status or trends.
GNR SNR	Unranked – Global or subnational conservation status not yet assessed.
SNA GNA	Not Applicable – A conservation status rank is not applicable because the species or ecosystem is not a suitable target for conservation activities (e.g., non-native species or ecosystems).
Qualifier	Definition
S#? G#?	Inexact Numeric Rank – Denotes inexact numeric rank.
Q	Questionable taxonomy that may reduce conservation priority – Distinctiveness of this entity as a taxon or ecosystem type at the current level is questionable. The "Q" modifier is only used at a global level.
T#	Intraspecific Taxon (trinomial) – The status of intraspecific taxa (subspecies or varieties) are indicated by a "T-rank" following the species' global rank.

State Status: Endangered and Threatened are legal status designations authorized by statute. Please refer to MRSA Title 12, §544 and §544-B.

Status	Definition
E	Endangered – Any native plant species in danger of extinction throughout all or a significant portion of its range within the State or Federally listed as Endangered.
T	Threatened – Any native plant species likely to become endangered within the foreseeable future throughout all or a significant portion of its range in the State or Federally listed as Threatened.
SC	Special Concern – A native plant species that is rare in the State, but not rare enough to be considered Threatened or Endangered.
PE	Potentially Extirpated – A native plant species that has not been documented in the State in over 20 years, or loss of the last known occurrence.

Element Occurrence (EO) Ranks: Quality assessments that designate viability of a population or integrity of habitat. These ranks are based on size, condition, and landscape context. Range ranks (e.g., AB, BC) and uncertainty ranks (e.g., B?) are allowed. The Maine Natural Areas Program tracks all occurrences of rare plants and natural communities/ecosystems (S1-S3) as well as exemplary common natural community types (S4-S5 with EO ranks A/B).

Rank	Definition
A	Excellent – Excellent estimated viability/ecological integrity.
B	Good – Good estimated viability/ecological integrity.
C	Fair – Fair estimated viability/ecological integrity.
D	Poor – Poor estimated viability/ecological integrity.
E	Extant – Verified extant, but viability/ecological integrity not assessed.
H	Historical – Lack of field information within past 20 years verifying continued existence of the occurrence, but not enough to document extirpation.
X	Extirpated – Documented loss of population/destruction of habitat.
U	Unrankable – Occurrence unable to be ranked due to lack of sufficient information (e.g., possible mistaken identification).
NR	Not Ranked – An occurrence rank has not been assigned.

Visit the Maine Natural Areas Program website for more information
<http://www.maine.gov/dacf/mnap>



Attachment 15

Vernal Pool Report & Wetland Delineation



MARK HAMPTON ASSOCIATES, INC.

SOIL EVALUATION • WETLAND DELINEATIONS • SOIL SURVEYS • WETLAND PERMITTING

5365

May 18, 2020

Mr. Matthew Chamberlain
South Street Village LLC
762 Main Street
South Portland, ME 04106

Re: Vernal Pool Assessment, 175 acre portion of parcel on South Street Biddeford, ME

Dear Matthew,

I have completed a vernal pool assessment on a 175+/- acre portion of a parcel located off South Street Biddeford, ME. The vernal pool assessment was conducted in accordance with Chapter 335 Significant Wildlife Habitat, Section 9 Significant Vernal Pools for the Maine Department of Environmental Protection. This section outlines the definition of a vernal pool as well as the requirements of a vernal pool to meet the definition of significance as related to the number of amphibian egg masses counted during the breeding season.

Two site visits were made to the property over the course of six weeks beginning the first week in April. There were no vernal pools found on the property.

If you have any questions or require additional information, please contact me.

Sincerely,

Mark J. Hampton C.S.S., L.S.E.
Certified Soil Scientist #216
Licensed Site Evaluator #263



5365

MARK HAMPTON ASSOCIATES, INC.

SOIL EVALUATION • WETLAND DELINEATIONS • SOIL SURVEYS • WETLAND PERMITTING

November 11, 2022

Mr. Matthew Chamberlain
South Street Village LLC
762 Main Street
South Portland, ME 04106

Re: Review of "Rapid Reconnaissance Survey, September 2022"

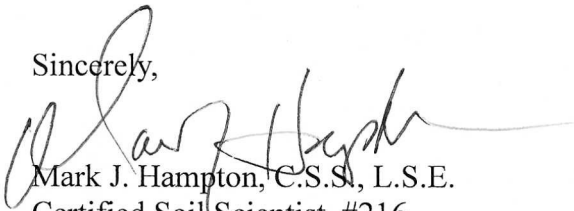
Dear Matthew,

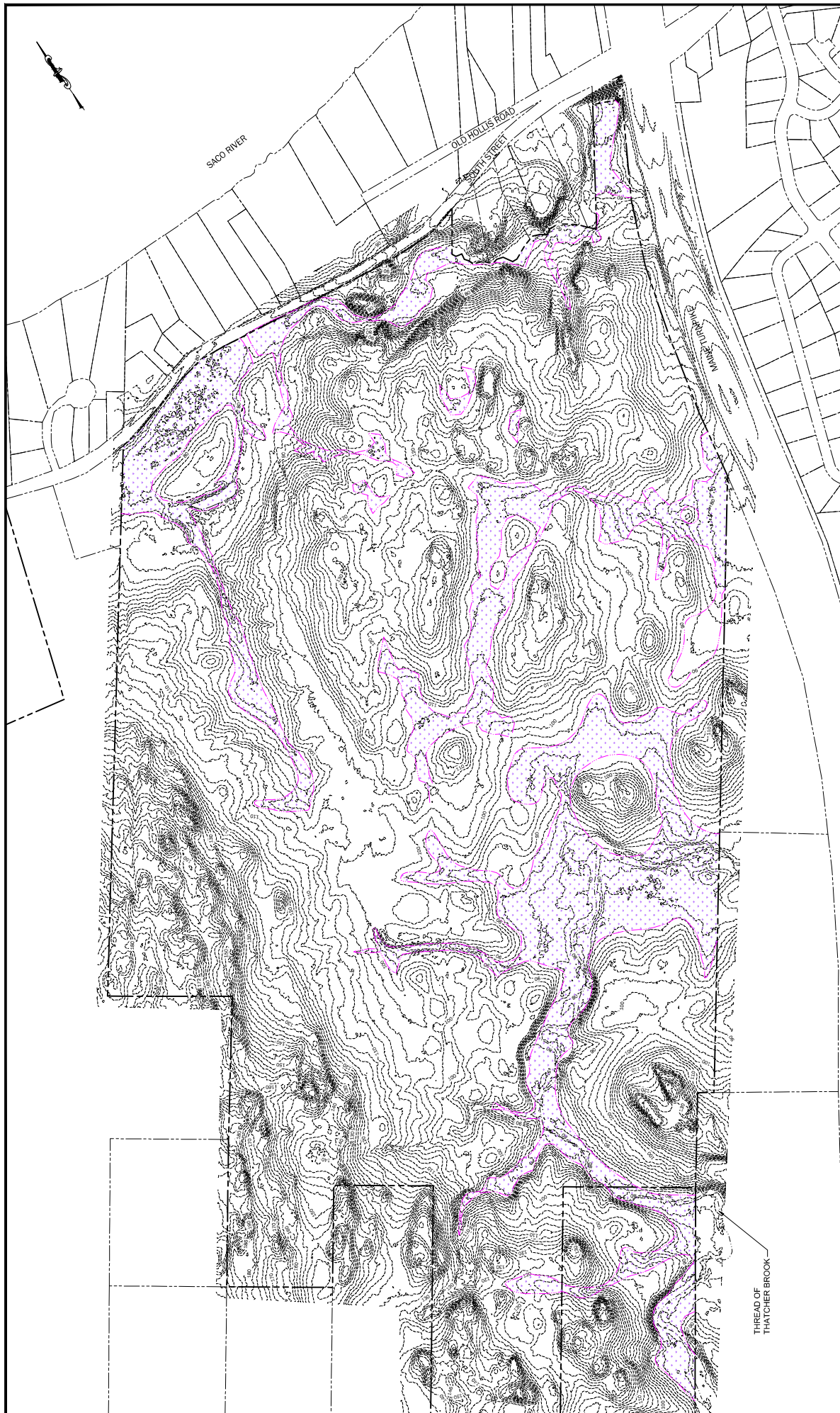
At your request, I have reviewed the document you forwarded to me entitled, "Rapid Reconnaissance Survey of Two Parcels in Western Biddeford, 2022", prepared by Mr. Mark Ward and prepared for the Biddeford Conservation Commission. Based upon the comments made in the report, the consultant, at the request of the Biddeford Conservation Commission, made two cursory, 1-day walkovers of two parcels totaling more than 300 acres once in 2007 and then 15 years later, in August of this year. It is clear that the consultant did not have any documents related to the project under consideration for development of the property, which were of public record at the time of the field review and which should have been the focus of his reconnaissance.

Consequently, all the comments made in this document have to be taken as a broad brush assessment, and not detailed in anyway to make any judgment of the work I completed for you. I spent more than 21 days on the northern half of the property, the location of the proposed housing development, completing a full range of natural resource assessments. All of the issues raised by the consultant noted in photos and waypoint locations shown in figures in his report are located in the southern half of the total parcel.

In my professional opinion, this document should not be any negative impact on the local and state review of your project. It is very clear that the consultant had few if any issues with the northern half of the overall parcel, which is exactly where your proposed project is located.

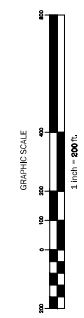
Sincerely,


Mark J. Hampton, C.S.S., L.S.E.
Certified Soil Scientist, #216
Licensed Site Evaluator #263



SOUTH STREET VILLAGE, LLC
762 MAIN STREET
SOUTH PORTLAND, MAINE

WETLAND DELINEATION
SOUTH STREET, BIDDEFORD, MAINE



DATE: MAY 6, 2021

DRAWING LEGEND

---	PARCEL PROPERTY LINE
---	ADJUTER PROPERTY LINE
---	WETLANDS
---	INDEX CONTOUR
---	INTERMEDIATE CONTOUR


MARK HAMPTON ASSOCIATES, INC.
P.O. BOX 1931
PORTLAND, MAINE 04104

Rapid Reconnaissance Survey of Two Parcels in Western Biddeford, 2022

submitted to the Biddeford Conservation Commission

October 2022

by

Mark Ward

Ecological Consultant

28 Poor Farm Road

Bristol, ME 04539

207-350-6537

akamward@gmail.com

Background

On August 22, 2022, I met Erik Lema of Basswood Environmental and together we walked the grounds of two parcels, Tax Map 7, Lot 8 and Tax Map 2, Lot 38 in western Biddeford (Figure 1). I had visited both of these parcels in 2007 on behalf of the Conservation Commission as part of a broad ecological assessment of lands located west of I-95 in western Biddeford. The Commission asked me to revisit these lands in 2020 and to report on interim changes. Access to these two parcels was not granted at that time, although I was able to cursorily assess the impact of timber harvesting on the parcels from the boundaries of adjacent parcels. The objective of my 2022 visit was to conduct a rapid reconnaissance, photo document any observed changes, and report on current condition.

Prior to the site visit, I reviewed two documents that had been provided to me by Terradyn Consultants, LLC that relate to recent survey work conducted on the Map 7, Lot 8 parcel. The first was a Rare Plant Habitat Assessment conducted by Mr. Lema of Basswood Environmental dated January 9, 2022. The report included a review of potential rare plant and rare or exemplary natural community occurrences on the parcel (based on data provided by the Maine Natural Areas Program) as well as the results of a site visit conducted by Mr. Lema in either December 2021 or January 2022. The second document was a one-page Vernal Pool Assessment dated May 18, 2020 by Mark Hampton of Mark Hampton Associates Inc. that was based on two site visits “over the course of six weeks beginning the first week of April” presumably in 2020; this report stated that “no vernal pools were found on the property.” These documents were labelled as Appendices 9 and 10 respectively and were apparently part of a larger project application put together by Terradyn Consultants.

The acreages referenced in the two documents differed somewhat. The Rare Plant Habitat Assessment refers to an approximately 160-acre site while the Vernal Pool Assessment references a “175-acre portion of parcel on South Street.” I found these acreage references confusing since the actual acreage of the Map 7, Lot 8 parcel is about 314 acres. The photo point locations included in the Rare Plant Habitat Assessment Report indicate that the majority of the Map 7, Lot 8 parcel was visited during the survey. No map or descriptive content was provided in the Vernal Pool Assessment making it difficult to evaluate what area was actually included in that survey.



Figure 1a. Aerial imagery of the subject parcels as they were in 2007.



Figure 1b. Aerial imagery of the subject parcels in 2022.

Mr. Lema and I were met at the site by Matthew Chamberlain and Chico Potvin, who made sure that I understood that the offer to walk the grounds was extended only to Mr. Lema and myself and not to members of the Conservation Commission. The encounter provided the opportunity to ask about the timing of the logging operations at the site. Mr. Chamberlain informed me that the logging had taken place over the course of several years, beginning in either 2017 or 2018 and continuing through 2020. Mr. Chamberlain also mentioned that a Mr. Milligan (affiliation unclear) was soon intending to drop some additional trees into Thatcher Brook to enhance water quality.

Methods

Mr. Lema and I walked a good portion of the two parcels (Figure 2), which collectively comprise about 333 acres (314 acres for Map 7, Lot 8 and 19 acres for Map 2, Lot 38). While a one-day site visit did not allow a comprehensive inventory of the site, I got a good sense of the condition of these parcels fifteen years later. The overall amount of field time spent on these parcels in 2022 was comparable to the amount of time I spent on them in 2007.

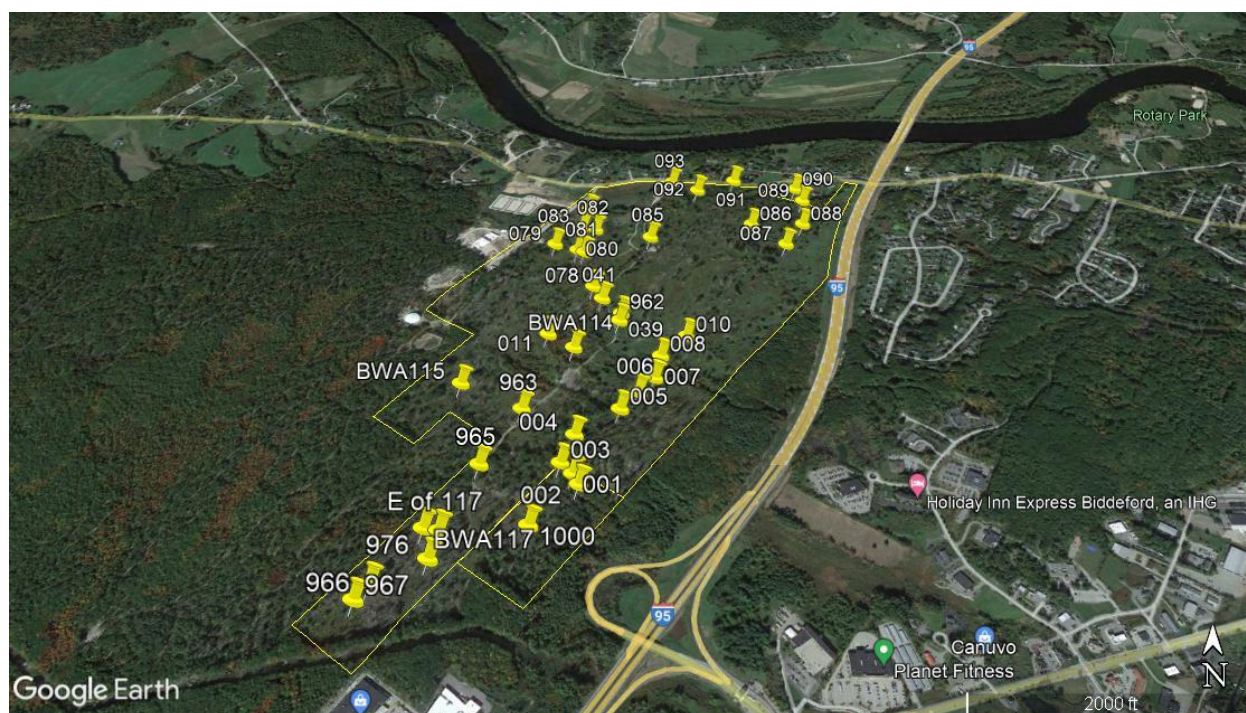


Figure 2. Map of waypoints taken at locations on the subject parcels indicating the approximate terrain covered during the Aug 22, 2022 rapid reconnaissance.

Results

Site Description

The subject parcels include a variety of upland and wetland habitats characterized by rocky upland rises punctuated by lowland swales and wetland basins. There are both perennial and intermittent streams at the site. A powerline corridor runs more or less parallel to South Street about one quarter of the way south at the site (Figure 1a). The southern two thirds of the site drain primarily to the east into Thacher Brook, while the northern third of the site drains north into tributary streams of the Saco River.

Conditions at the site were unusually dry at the time of the visit owing to the drought of 2022.

Timber Harvesting

The most obvious change in the condition of these parcels since my visit in 2007 was the timber harvesting that has taken place. As noted in Mr. Lema's report, the infrequently used ATV trail that I had observed in 2007 running from north to south through the parcel has now become an approximately 25-ft wide logging road. While a significant portion of the northern third of the site was open field or early successional in 2007, the southern two thirds was primarily forested (Figure 1a). Recent aerial imagery (Figure 1b) illustrates the extent to which the formerly wooded land on these parcels has been largely cleared of trees. It appears to have been the same logging operation that occurred on both parcels as there was no indication of any difference between treatments on the two parcels (the parcels are indistinguishable from one another on the ground). These parcels now have a relatively low number of scattered standing trees, except in a few areas that: border perennial or intermittent streams, were difficult to access because of rocky slopes, or were presumably deemed to be low value. The heavy cutting on these parcels is in sharp contrast with uncut, or selectively, cut forested parcels that they abut (Figure 1b). The cutting operation on these parcels has left sections of exposed bedrock on shallow-to-bedrock Lyman soils (Figure 3). The sparse array of remaining trees has made them more susceptible to blowdown (Figure 4). Early successional pioneer species such as blackberry (*Rubus allegheniensis*) and sweet fern (*Comptonia peregrina*) were common in upland areas.

The Maine Forest Service, in a press release dated October 19, 2021, reported that this logging operation had been conducted in violation of Maine's Forest Practices Act, by having created a clearcut of greater than 75 acres without first having submitted the required written harvest plan for approval to the Service. The landowner, South Street Village, LLC agreed to a civic settlement penalty of \$30,000 to address this violation. While cutting operations seem largely to have concluded at this site, earth-moving machinery was still present at site at the time of my visit (Figure 5).

Thacher Brook

Land located to the east of Thacher Brook on the Map 7, Lot 8 parcel was also cut during the logging operation in what appeared to be a series of strip cuts. This section of the site was apparently accessed by a temporarily constructed bridge that allowed machinery to cross the brook during the operation (Figure 6). Thacher Brook has a history as an impaired stream with

water quality issues to which the City of Biddeford has devoted significant monetary and human resources to restore. With the help of Mr. Lema and a 100ft measuring tape, I measured the forested buffer along Thacher Brook at several locations (Figure 7). City ordinance requires a 75-ft forested buffer be maintained on streams to maintain water quality. I found measurements of the forested buffer along Thacher Brook on these parcels to routinely fall short of this threshold. Measured buffer widths at five different locations ranged from 0-75 ft, with only one measurement approaching 75 feet and most falling in the 35-50 ft range. For an impaired waterway, such as Thacher Brook, extra caution should have been taken to assure that, at a minimum the required 75-ft forested buffer condition was met. This does not appear to have been the case. The failure to provide an adequate buffer on Thacher Brook was not mentioned in the press release issued by the Maine Forest Service as a component of the violation. It should be considered an additional consequence of a poorly executed cutting operation.

An inadequate forested buffer can subject Thacher Brook to additional sediment input during heavy rainfall events. Increased solar inputs caused by an inadequate forest buffer can raise water temperatures, which can in turn reduce dissolved oxygen levels and further the cycle of impairment.

Discussions of dropping additional trees in this already under-allocated forested buffer to “improve stream habitat” seems ill-advised. If the desired goal is put trees in the stream channel for structural purposes to enhance pool formation, then I would recommend using some of the already downed wind-thrown trees on the property rather than felling additional trees in an inadequate forest buffer.

There was plenty of water in Thacher Brook at the time of the site visit. The clay banks of Thacher Brook often make it cloudy as sediments remain in suspension in the water column (Figures 6 & 7). The floodplain along the margins of the brook is typically occupied by shrubby or tall herbaceous plants (Figure 8), but at one location we came across a floodplain pool (Figure 8) covered with duckweed (*Lemna* sp.) that is probably a remnant livestock pond. Two unidentified waterfowl flew up from a nearby section of Thacher Brook as we approached the floodplain pool.

Wetland Delineation

This site appears to have more wetlands than were indicated on the National Wetland Inventory paper maps based on 1998 data that I consulted prior to visiting. At numerous locations on the parcels, the presence of obligate wetland plant indicator species such as cattail (*Typha* sp.) suggest that wetlands are widespread in swales and lowland basins at this site (Figure 9). At the southern end of the site, formerly forested wetlands had been heavily cut and were characterized by large numbers of sprouting red maple stumps (Figure 10). There was a surprising amount of cattail (and other floral indicators of wetland habitat) present on the west side of the Map 7, Lot 8 parcel in swales that occupy low areas at the base of upland rises with shallow to bedrock soils.

There was little indication at the site (such as extant flagging) that a thorough wetland delineation has been completed on the subject parcels. The only location where we observed

flagging to suggest that some wetland delineation may have occurred was along a wooded stream channel at the northern edge of the site (Figure 11).

I was not provided with a report of wetland delineation for this site by Terradyn Consultants. Wetland delineation is presumably a requirement for any project application on the scale being contemplated at this site. Conducting a wetland delineation prior to the cutting operation would have been a much easier undertaking for a wetland scientist. As Mr. Lema's report suggests the disturbances associated with the harvesting operation has likely expanded habitat that would now be delineated as wetland at this site.

Based on my observations of obligate wetland species throughout the site, I would suggest that the wetland map produced by the Maine Natural Areas Program (MNAP) and included as page 15 of Mr. Lema's report, is a much better proxy for wetland delineation at this site than the NWI maps that I consulted before visiting. The MNAP map (Figure 12) includes a category for "additional NWI wetlands" that more than doubles the amount of wetland habitat at this site. An inquiry to MNAP staff clarified that the "additional NWI wetlands" data are the result of a US Fish and Wildlife Service digital update to NWI maps conducted in 2007. These data are unfortunately not currently available through the Maine Office of GIS (MEGIS) for download, but do constitute the most up-to-date version of NWI mapping for this site. These data should be considered to be the best available wetland data for this site in the absence of an on-the-ground wetland delineation. If a wetland delineation of the site has already been completed, I would be interested to know when it was done and what it includes.

Potential Vernal Pools

I revisited two potential vernal pools on Map 7 Lot 8 (Waypoints BWA115 & BWA117), where I had conducted egg mass counts in early May 2007. I was able to confirm that both of these potential vernal pools were natural basins in surrounding bedrock (a fact that I had neglected to record in my original notes from this site). Both pools had seen heavy cutting in them and in their immediately adjacent uplands. Both potential vernal pools had significant amounts of logging slash deposited in their deeper portions (Figure 13). Although these wetlands lacked standing water at the time of my visit, both included obligate wetland indicator plant species, such as cattail, bur-reed (*Sparganium* sp.), and wild calla (*Calla palustris*) that suggest them as semi-permanent wetlands (Figure 14)—in other words wetlands that retain standing water throughout the summer in some, if not most, years. In combination with the natural basin setting, these indicators should suggest to a trained eye the need for their assessment as potentially "significant vernal pools." During my single day visit to these wetlands in May 2007, one of these wetlands (Waypoint#BWA117) easily exceeded the thresholds for both wood frog and spotted salamander egg mass counts to suggest it as a likely candidate for significant vernal pool designation. Other wetland basins at the site also suggest that they should have been deemed worthy of egg mass counts.

The one-page Vernal Pool Assessment by Mark Hampton in 2020 did not contain a map of the area assessed although it referenced a "175+/- acre portion" of what was presumably Map 7, Lot

8 (a 314-acre parcel). The one-page report did not include any data on potential vernal pools that were visited and/or egg mass counts at assessed pools. If data showing the area assessed, the locations of potential vernal pools investigated, and egg mass counts tallied or species observed exist, I would be very interested to see these. The report implies that there no wetlands at the site were worthy of egg mass counts in the assessed area, which seems questionable. However, without knowing the area that the Vernal Pool Assessment covered it is impossible to evaluate the reasonableness of this claim. If either of the two potential vernal pools that I revisited in 2022 were located within the 175 +/- acre area covered by the 2020 vernal pool assessment, then they should have at least had egg mass counts conducted at them.

The 2020 vernal pool survey was apparently conducted after logging operations were well under way (if not mostly completed). Vernal pool assessments on both parcels should ideally have been conducted prior to the logging operations that took place. The heavy-handed logging has undoubtedly altered both upland and wetland habitats for pool-breeding amphibians on these parcels by dramatically decreasing the amount of forest cover in and around potential vernal pools. The resulting loss of forest cover not only increases exposure of pool-breeding amphibians on their springtime journeys to and from surrounding uplands to breeding pools, it also may decrease the hydroperiod of breeding pools and render them less able to support metamorphosis of amphibian larvae to adults. Cutting within and adjacent to potentially significant vernal pools was not explicitly mentioned in the press release issued by the Maine Forest Service as a component of the violation, but should be considered an additional consequence of a poorly executed cutting operation.

Invasive Species

This site hosts a laundry list of invasive plant species; among the invasive species observed here include bull thistle (*Cirsium vulgare*), Japanese barberry (*Berberis thunbergia*), Morrow's honeysuckle (*Lonicera morrowii*), Japanese knotweed (*Fallopia japonica*), multiflora rose (*Rosa multiflora*), spotted knapweed (*Centaurea* sp.), Asiatic bittersweet (*Celastrus orbiculatus*), glossy buckthorn (*Frangula alnus*), and purple loosestrife (*Lythrum salicaria*). In addition to a range of invasive plant species at this site, they are also widely distributed. The greatest abundance of invasive plants is currently found in the areas closest to South Street, that have had the longest history of human disturbance. There were, however, large dense stands of 8-10 ft high glossy buckthorn found along the floodplain of Thatcher Brook. Some of these invasive plant species were certainly here when I visited the site in 2007, but I did not note any in my report. The severity of the recent cutting operation and the accompanying soil disturbance that it entailed will undoubtedly facilitate the spread of invasive plants at this site by opening up formerly wooded areas and subjecting them to occupancy by these tenacious invaders, yet another consequence of a poorly executed cutting operation that went unmentioned by the Maine Forest Service.

Rare Plant Surveys

This site visit was a rapid reconnaissance, but would benefit from dedicated rare plant survey effort. I collected a small number of plants at the site. None were determined to be rare species. Erik Lema of Basswood Environmental is an experienced and knowledgeable botanist. His rare plant assessment report of January 2022 was thorough for a wintertime assessment. He did a commendable job of winnowing existing information provided by the Maine Natural Areas Program down to a dozen rare plant species that have the highest potential to be found at this location and identifying the best window to survey for each of those species. I found his report beneficial for my own visit to the site and it was nice to have his trained eye at the site in August when it was actually feasible to find rare plants there. It's unfortunate that the only apparent reason for his presence at the site on the date of my visit was to serve as my minder. If this project were truly interested in conducting a thorough rare plant assessment at this site, it would have had him out at the site conducting botanical surveys on its behalf earlier in 2022 during the most appropriate survey windows as recommended in his report.

Conclusions and Recommendations

The overall condition of these parcels in 2022 has been diminished significantly primarily because of a poorly executed logging operation that was conducted from 2017-2020. The most egregious issues associated with the cutting include leaving an inadequate forested buffer on an impaired waterway (Thacher Brook), indiscriminate cutting in and adjacent to a variety of wetlands including likely significant vernal pools, extensive cutting on shallow to bedrock uplands that increased the vulnerability of remaining trees to windthrow, and opening up formerly wooded sections of the site to invasive plant species. Ideally, vernal pool survey work, wetland delineation, and rare plant assessments should have been conducted at this site prior to carrying out this cutting operation. The findings of such survey work could have informed a more ecologically sensitive cutting operation than the one that was undertaken here.

I recommend against dropping additional trees in the already inadequate forested buffer left along Thacher Brook. If putting downed trees in the stream channel is intended to enhance pool formation, then I would recommend using already-downed, wind-thrown trees on the property rather than felling additional trees in the insufficient forest buffer.

I recommend that the Conservation Commission seek details of any wetland delineation work that may have been conducted at this site to find out when the work was done and the extent of the site that it covers. The Maine Natural Areas Program map (Figure 12), which includes the most up-to-date NWI wetland data, should be considered the best available wetland information for this site, in the absence of on-the-ground wetland delineation, and could be useful as a course tool to assess the thoroughness and quality of a wetland delineation.

I recommend that the Conservation Commission seek additional details of the Vernal Pool Assessment conducted in 2020 to determine the area assessed and to seek any data on potential vernal pools that were visited and/or egg mass counts at assessed pools.

Any future field work conducted at the site should clearly identify the area assessed (e.g. does it encompass the entirety of Map 7, Lot 8 or only a portion of it?). This will allow for a better evaluation of the comprehensiveness of the work.

I recommend that the project provide Mr. Lema of Basswood Environmental the opportunity to conduct botanical surveys on its behalf during the most appropriate seasonal survey windows as recommended in his Rare Plant Assessment Report.



Figure 3. Sections of exposed bedrock from the logging operation. (Waypoint#966)



Figure 4. Windthrown trees uprooted after logging operations. (Waypoint#976)



Figure 5. Earth moving machinery observed at site on Aug. 22, 2022 (Waypoint#085).



Figure 6. The location at which a temporary bridge was constructed across Thacher Brook for logging access. The horizontal remains of bridge materials are visible in the distance. (Waypoint#007)



Figure 7. A narrow, forested buffer along Thacher Brook showing cut stumps on a steep bank (left) and a location where felled trees left no forested buffer at all along Thacher Brook (right). (Waypoints#1000 & #006)



Figure 8. A typical section of tall herbaceous vegetation in the floodplain along Thacher Brook (left) and a duckweed covered pool in the floodplain of Thacher Brook (right). Waypoints #004 & #008.



Figure 9. An example of cattails (*Typha* sp.), an obligate wetland plant species, suggesting an area that would be delineated as a wetland. (Waypoint#041).



Figure 10. Purple loosestrife, an invasive wetland plant species, in front of stump sprouting red maples in a formerly forested wetland. (Waypoint#967)



Figure 11. Yellow flagging on a tree along a streambed at the northern edge of the property was the only on the ground indication of potential wetland delineation observed at the site. (Waypoint #091)

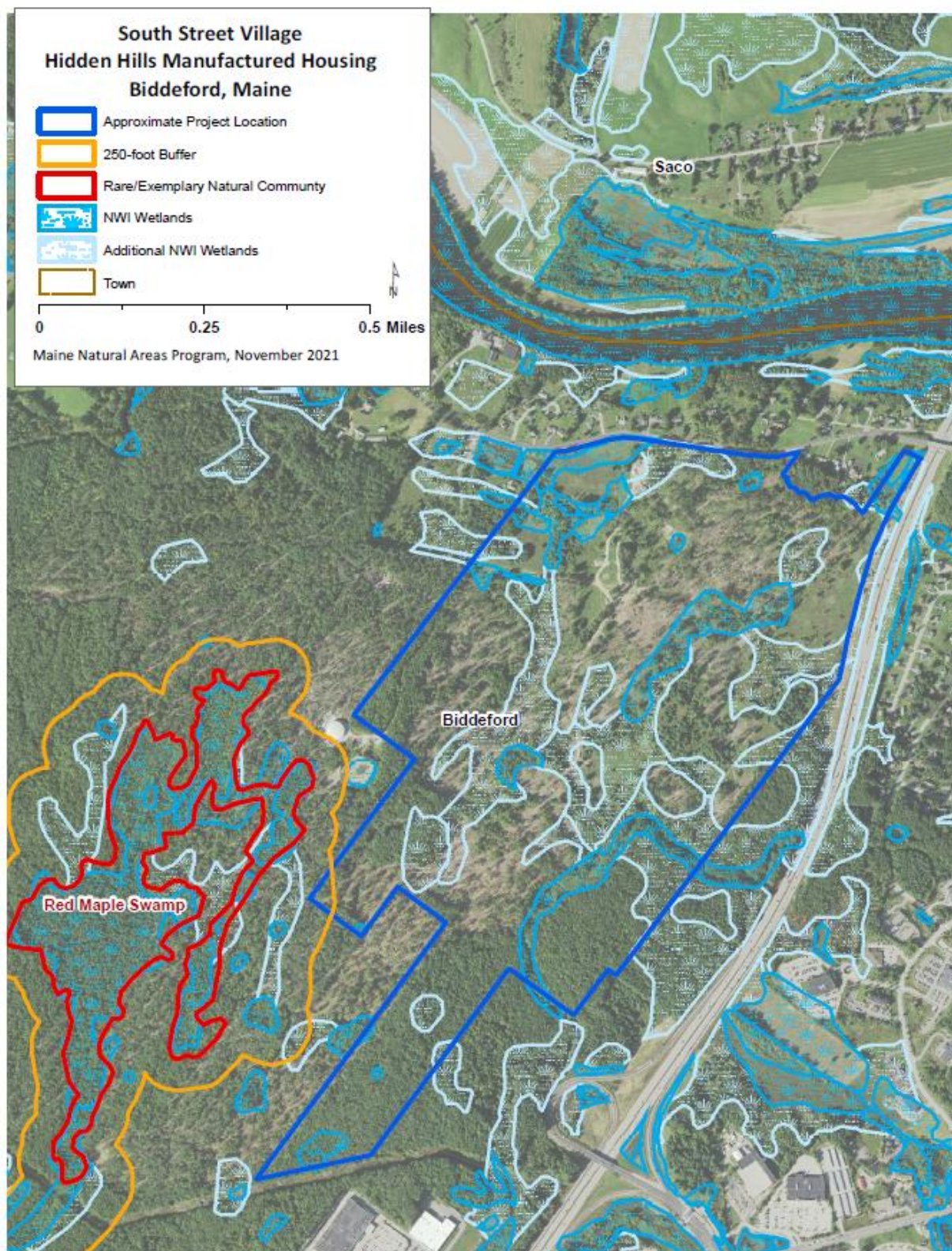


Figure 12. Map of NWI wetlands at the site provided by the Maine Natural Areas Program to Basswood Environmental in November 2021.



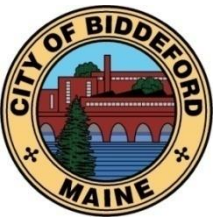
Figure 13. Logging slash deposited in a deep section of a potential vernal pool at which a critical threshold of egg masses had been counted in 2007 to suggest its designation as significant wildlife habitat. (Waypoint# BWA117)



Figure 14. A relatively unvegetated section of a potential vernal pool with wild calla (*Calla palustris*) suggesting the longer hydroperiod of a semi-permanent pool. (Waypoint #BWA117)

Appendix I. Coordinate data for Waypoints taken on Aug 22, 2022

Waypoint #	Latitude	Longitude
962	43.48942	-70.50076
963	43.48588	-70.50398
965	43.48413	-70.50513
BWA117	43.48231	-70.50652
East of BWA117	43.48225	-70.50605
966	43.48089	-70.50777
967	43.48053	-70.50813
976	43.48153	-70.50624
1000	43.48245	-70.50344
001	43.48394	-70.50221
002	43.48362	-70.50201
003	43.48424	-70.50261
004	43.48516	-70.50222
005	43.48593	-70.50076
006	43.48661	-70.50016
007	43.48703	-70.49960
008	43.48789	-70.49937
010	43.48851	-70.49845
011	43.48852	-70.50332
BWA115	43.48661	-70.50607
039	43.48915	-70.50082
041	43.48988	-70.50146
078	43.49030	-70.50179
079	43.49210	-70.50332
080	43.49192	-70.50246
081	43.49182	-70.50220
082	43.49298	-70.50180
083	43.49313	-70.50231
084	43.49397	-70.50209
085	43.49252	-70.49966
086	43.49295	-70.49570
087	43.49228	-70.49442
088	43.49320	-70.49364
089	43.49420	-70.49351
090	43.49485	-70.49371
091	43.49519	-70.49619
092	43.49456	-70.49772
093	43.49516	-70.49872



CITY OF BIDDEFORD

PLANNING DEPARTMENT

David C.M. Galbraith
Deputy Director/City Planner
205 Main Street
Biddeford, ME 04005
(207) 284-9115

David.Galbraith@Biddefordmaine.org

Planning Board Memorandum

TO: Chair Patoine and Members of the Biddeford Planning Board

FROM: David C.M. Galbraith, Deputy Director / City Planner

DATE: June 15, 2023

RE: **Case # 2023.24 Back Lot Ordinance / Planning Board Discussion Item**

MEETING DATE: June 21, 2023

1. INTRODUCTION:

Discussion regarding creating a Back Lot Ordinance was last discussed with the Board at the June 7, 2023 meeting. Materials provided to the Planning Board at that time included two (2) attachments, namely 1) Attachment # 1: City of Saco - Back Lot Ordinance and 2) Attachment # 2: City of Biddeford – Working Document #1 - Back Lot Ordinance. These two documents are a copy of the Planning Board memorandum can be found on-line in the Planning Board meeting archives on the city's web site. In general terms, the Board was supportive of the draft Ordinance but the two items that received the most discussion were:

A. Back Lots in the Rural Farm (RF) Zone: The originally proposed language included the below wording:

ORIGINAL PROPOSED LANGUAGE:

Back lots. One new back lot may be created from any lot of record that existed on [\(Ordinance adoption date\)](#) and conforms to the lot requirements of Table [B Dimensional Requirements](#) except for the lot frontage requirement, provided that:

1. *A new back lot may only be created on residentially zoned properties identified as "growth areas" in the City's Comprehensive Plan and within the City's Rural Farm (RF) zoning district.*
2. *Backlots are prohibited in residential lots in the Coastal Residential (CR) Zoning District.*

The Board discussed whether or not Back Lots should be a matter of right in the Rural Farm (RF) zoning district OR should these regulations not apply to properties in the rural farm (RF) zone. Ultimately the Board determined that the proposed back lot provisions should not apply to properties within the Rural Farm (RF) zone. Therefore, below is the modified Ordinance language:

MEETING: Planning Board Workshop
TOPIC: Back Lot Ordinance
MEETING DATE: June 7, 2023

Back lots. One new back lot may be created from any lot of record that existed on [\(Ordinance adoption date\)](#) and conforms to the lot requirements of Table [B Dimensional Requirements](#) except for the lot frontage requirement, provided that:

3. [A new back lot may only be created on residentially zoned properties identified as “growth areas” in the City’s Comprehensive Plan.](#)
4. [Backlots are prohibited on residential lots in the City’s Rural Farm \(RF\) and Coastal Residential \(CR\) Zoning Districts.](#)

This decision was based primarily upon the recently adopted (local level) Comprehensive Plan which identified the Rural Farm (RF) zone as Limited Residential Growth Area and the consensus of the Board also determined that as this Ordinance is completely new for the City it should be fairly limited to begin with and that following adoption Staff should monitor the number of property owners utilized the Back Lot Ordinance, what modifications may be need and that if this “pilot program” was functioning as desired the City may be interested in relaxing the regulations rather than allowing in the Rural Farm (RF) Zone and then trying to contract the Ordinance.

- B. Stormwater Management: Similar to the above, one of the other items that generated some discussion was related to additional stormwater run-off and how it relates to the City’s MS4 program. Incorporating MS4 regulations into this Ordinance will make it much more complex and costly for the property owner. Therefore, as the Ordinance is a “pilot program” the Staff consensus was to allow back lots to be created and developed without stormwater studies similar to how the City is currently treating single and two-family dwellings. Therefore, at this time the Ordinance did not include regulations of this nature. However, if the adoption of the Back Lot Ordinance causes environmental concerns this requirement can be revisited.

2. Preliminary Review:

When preparing for the Council Workshop, Staff began by reviewing and evaluating the City of Saco’s Back Lot Ordinance, and similar ordinances, to determine what, if any, modifications would be desirable to include in our local ordinance. From this initial review we identified a number of areas in Saco’s ordinance that we believe should be edited, expanded upon to meet the needs of Biddeford. Included as Attachment # 2 of this memorandum, is a document titled “Back Lot Ordinance Draft # 3. The attached Draft #3 modified the draft to include the comments / concerns raised by the Board and also formerly incorporated the proposed draft language reviewed by the Board. This document does NOT include any deleted text in ~~red strikethrough~~ or new text as [blue underlined](#) as it contains only language reviewed by the Board so it looks like a “clean” document as no edits are proposed.

Also attached to this memorandum is “Back Lot Ordinance Draft # 4” (Attachment #1) which includes new proposed changes to Attachment # 2, the “clean document”. Staff is seeking feedback on these new proposed changes which illustrates deleted text in ~~red strikethrough~~, new text as [blue underlined](#).

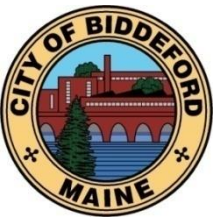
MEETING: Planning Board Workshop
TOPIC: Back Lot Ordinance
MEETING DATE: June 7, 2023

3. Next Steps:

At this time Staff is seeking input and direction from the Planning Board related to the modified draft ordinance. Ideally, the Board will provide staff direction / ordinance modification at the June 21, 2023 meeting so that the Board can determine if the revised ordinance, addressing the Board's concerns can have the final ordinance review on the Planning Board Agenda.

ATTACHMENTS

1. Attachment # 1: City of Biddeford – Back Lot Ordinance Draft # 4 (proposed changes)
2. Attachment # 2: City of Biddeford – Back Lot Ordinance Draft # 3
3. Planning Board Memorandum dated June 7, 2023



CITY OF BIDDEFORD

PLANNING DEPARTMENT

David C.M. Galbraith
Deputy Director/City Planner
205 Main Street
Biddeford, ME 04005
(207) 284-9115

David.Galbraith@Biddefordmaine.org

Planning Board Memorandum

TO: Chair Patoine and Members of the Biddeford Planning Board

FROM: David C.M. Galbraith, Deputy Director / City Planner

DATE: May 30, 2023

RE: **Planning Board Workshop - Back Lot Ordinance**

MEETING DATE: June 7, 2023

1. INTRODUCTION:

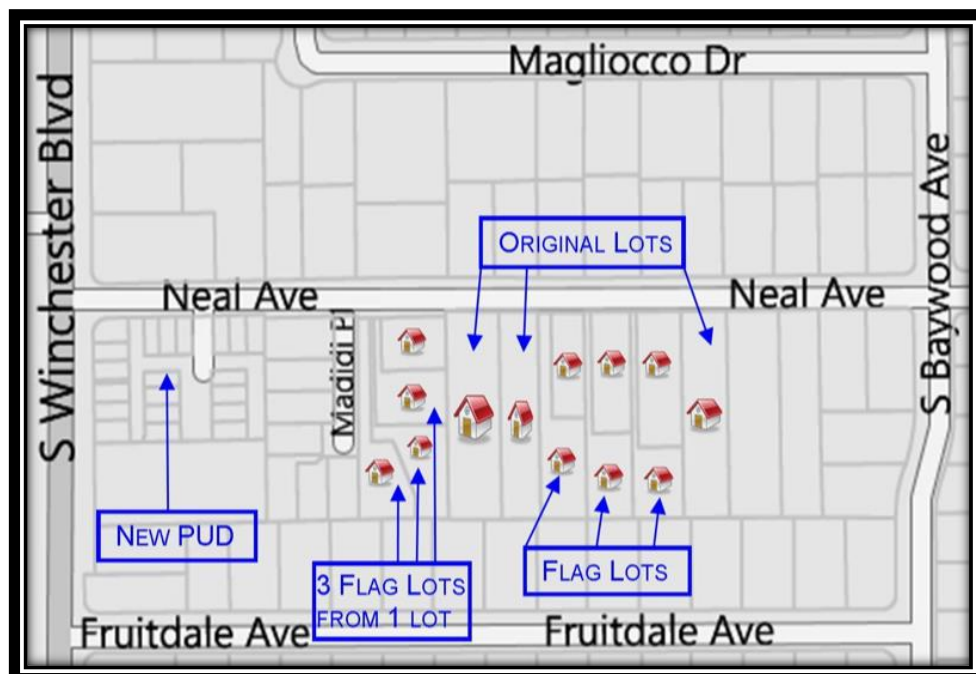
At previous City Council meetings / workshops the Council has expressed their desire to discuss the possibility of the City adopting a residential "Back Lot" Ordinance similar to the existing City of Saco Ordinance and other Maine municipalities such as Brunswick, Gorham, Lisbon, and Readfield. The purpose of "back lots" is to allow residential property owners the ability to create additional density on their parcel, behind or in front of, their existing dwelling by relaxing the Zoning Ordinance frontage requirements while maintaining the minimum lot dimensional requirements of the zoning district. On April 11, 2023 the Planning Department discussed this matter with the City Council who directed Staff to continue drafting a Back Lot Ordinance, based upon the City of Saco's Back Lot Ordinance, with input from other City Departments and workshop the Ordinance with the Planning Board. The Council was supportive of the back lot concept and their desire was for the Planning Board to forward a recommendation of Ordinance adoption to the Council as expediently as possible.

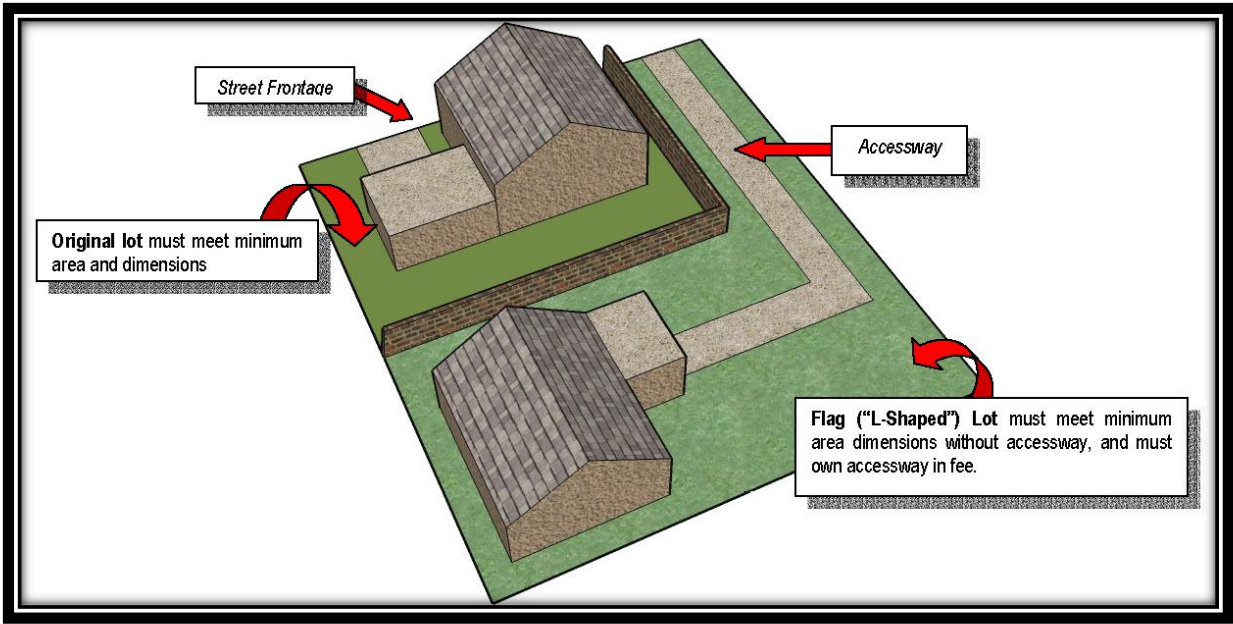
2. Defining a Back Lot: Back lots are often also referred to as "flag lots", so the first question to answer is, what exactly are back lots / flag lots? Definitions for these types of lots vary greatly and provided below are a few examples of back / flag Lot definitions from a variety of municipalities around the United States:

- A. Means a lot that is mostly separated from the street, located behind another lot, and connected to the street by an extension of land that reaches to the street.
- B. Means a lot located behind a frontage another lot, plus a strip out to the street for an access drive. A flag lot results from the subdivision or partitioning of a lot or parcel which is more than twice as large as the minimum allowed in the underlying zone, but has insufficient frontage to allow two dwellings to front along a public street.
- C. A lot not fronting or abutting a public roadway and where access to the public roadway is limited to a narrow private right-of-way. (Schaumburg, Ill.)

- D. A large lot not meeting minimum lot frontage requirements and where access to a public or private street is provided by means of a long, narrow driveway between abutting lots. (Clarkdale, Ariz.).
 - E. A lot so shaped and designed that the main building site area is set back from the street on which it fronts and includes an access strip connecting the main building site with the frontage street. (North Liberty, Iowa)
 - F. A lot that has access to a public right-of-way by means of a narrow strip of land. (Sandy, Ore.)
 - G. A lot having only its access strip fronting on a private or public street. (Santa Rosa, Calif.)
 - H. A lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way. (Bondurant, Iowa).
 - I. A lot or parcel which includes a private driveway as part thereof. (Multnomah County, Ore.)
 - J. A parcel that lies at the end of a long driveway. (Saco, Me)
 - K. A lot that lacks adequate lot frontage on a street or private way to meet the minimum lot dimensional requirements of the Zoning district. (Town of Arundel, Me)
3. What do “Back Lots” / “Flag Lots” look like?

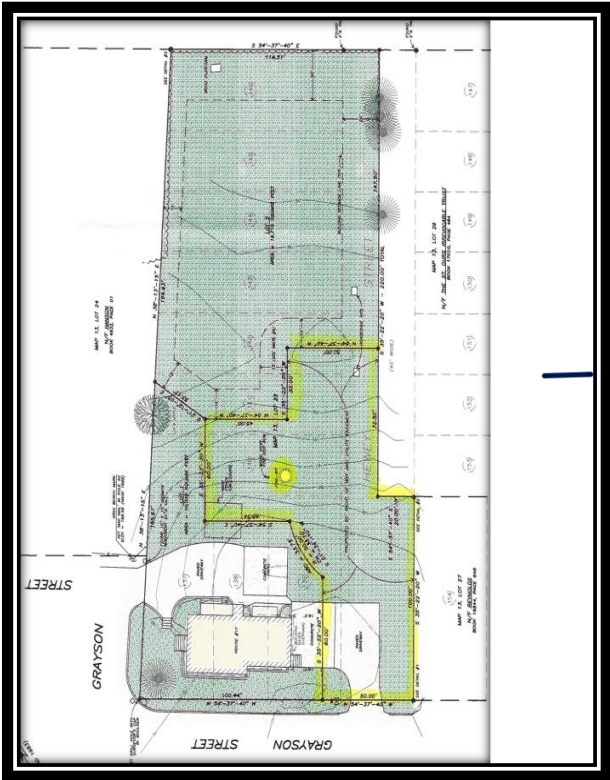
As one might expect from the definitions discussed above, back lots generally have a configuration that resembles a fully outstretched flag at the top of a flag pole and where the "pole" portion of the lot contains the required lot frontage and lot access. Below are a couple of examples of these types of lot configurations.





4. Side by Side Comparison:

The City of Biddeford does not currently allow the creation / development of back lots however, the City does allow for the development of rear portions of residential lots by the creation of a “private way”.



Example: Private Way Approval – Allowed

Private ways require the creation of a fifty (50) foot private right-of-way (ROW) through the front lot, and designed to City private way standards, with the existing and proposed lots complying with all dimensional standards in the underlying zoning district, including frontage and setback requirements. Due to these requirements, many existing developed lots are unable to “create” legal street frontage or accommodate the required fifty (50) foot right-of-way which includes a required vehicle maneuvering area to accommodate emergency vehicle access and maneuverability. Shown left is an existing property in the city where the property owners are trying to develop a private way. In this typical example, the proposed ROW (in yellow) area is subtracted from the overall lot area thus significantly increasing the land area required for the creation of private ways.

MEETING: Planning Board Workshop
TOPIC: Back Lot Ordinance
MEETING DATE: June 7, 2023



Seeking approval of a private way requires the submittal of a formal application, including fully engineered plans, and Planning Board review and approval. In many cases the expense of the review process, and the hiring of design professionals (surveyors, engineers, etc.) is cost prohibitive for the property owner. Using the same property shown above, if a Back Lot Ordinance was adopted by the City, the access to the rear property could be accommodated utilizing a significantly smaller area for the access way via an easement (or ownership) rather than requiring a fifty (50) foot wide ROW. The allowance of a back lot provision would be a significantly less expensive project in regards to design, construction and approval required.

Flag / Back Lot – Currently Not Allowed

5. Preliminary Review:

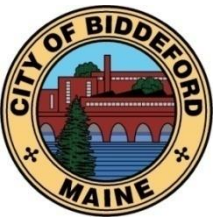
When preparing for the Council Workshop, Staff began by reviewing and evaluating the City of Saco's Back Lot Ordinance, and similar ordinances, to determine what, if any, modifications would be desirable to include in our local ordinance. From this initial review we identified a number of areas in Saco's ordinance that we believe should be edited, expanded upon to meet the needs of Biddeford. Included as Attachment # 2 of this memorandum, is a document titled "City of Biddeford Back Lot Ordinance - Working Document Draft #2". The base framework of this document is the City of Saco's Ordinance which illustrates deleted text in ~~red-strikethrough~~, new text as blue.

6. Next Steps:

At this time Staff is seeking input and direction from the Planning Board related to the draft ordinance. Ideally, the Board will provide staff direction / ordinance modification at the June 7, 2023 meeting so that a revised ordinance, addressing the Board's concerns can have the final ordinance review on the June 21, 2023 Planning Board Agenda.

ATTACHMENTS

1. Attachment # 1: City of Saco - Back Lot Ordinance
2. Attachment # 2: City of Biddeford – Working Document #1 - Back Lot Ordinance



CITY OF BIDDEFORD

PLANNING DEPARTMENT

David C.M. Galbraith
Deputy Director/City Planner
205 Main Street
Biddeford, ME 04005
(207) 284-9115

David.Galbraith@Biddefordmaine.org

Planning Board Memorandum

TO: Chair Patoine and Members of the Biddeford Planning Board

FROM: David C.M. Galbraith, Deputy Director / City Planner

DATE: May 30, 2023

RE: **Planning Board Workshop - Back Lot Ordinance**

MEETING DATE: June 7, 2023

1. INTRODUCTION:

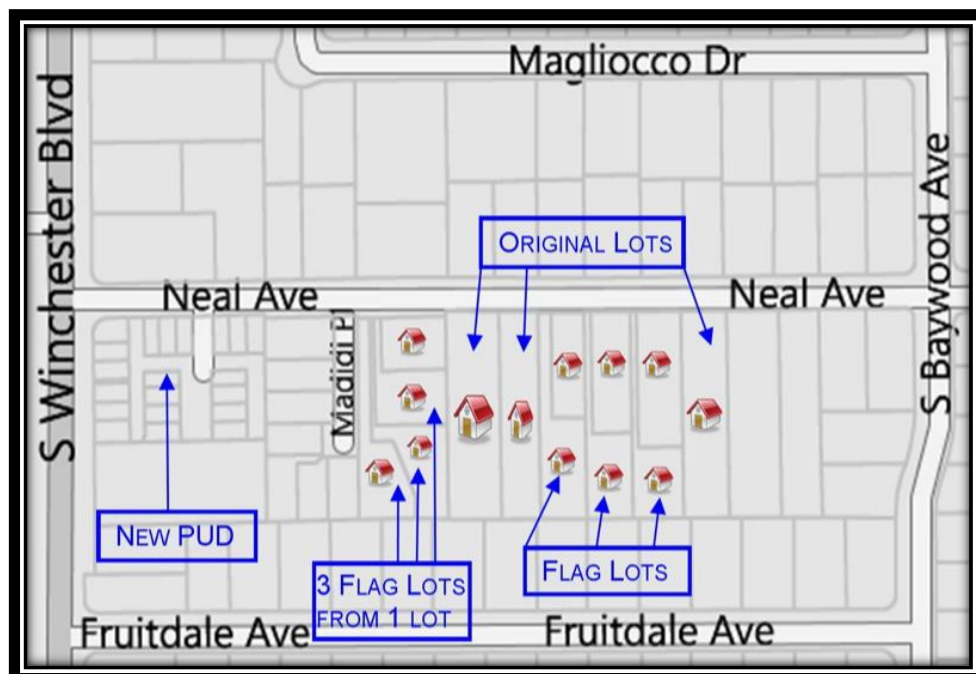
At previous City Council meetings / workshops the Council has expressed their desire to discuss the possibility of the City adopting a residential "Back Lot" Ordinance similar to the existing City of Saco Ordinance and other Maine municipalities such as Brunswick, Gorham, Lisbon, and Readfield. The purpose of "back lots" is to allow residential property owners the ability to create additional density on their parcel, behind or in front of, their existing dwelling by relaxing the Zoning Ordinance frontage requirements while maintaining the minimum lot dimensional requirements of the zoning district. On April 11, 2023 the Planning Department discussed this matter with the City Council who directed Staff to continue drafting a Back Lot Ordinance, based upon the City of Saco's Back Lot Ordinance, with input from other City Departments and workshop the Ordinance with the Planning Board. The Council was supportive of the back lot concept and their desire was for the Planning Board to forward a recommendation of Ordinance adoption to the Council as expediently as possible.

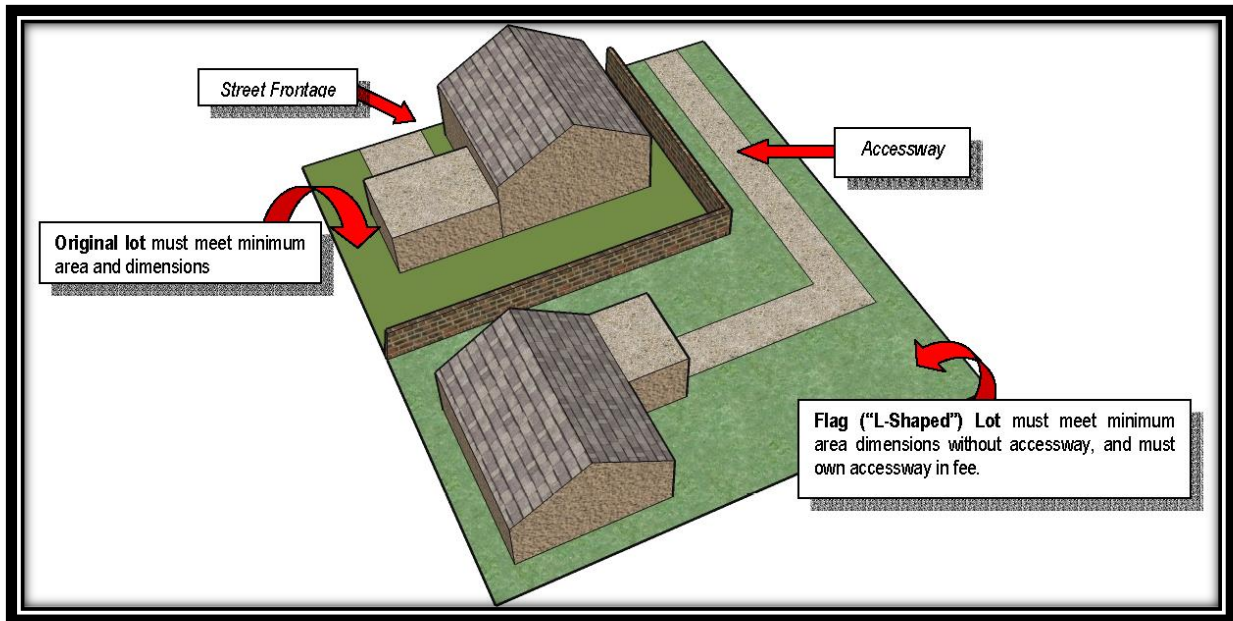
2. Defining a Back Lot: Back lots are often also referred to as "flag lots", so the first question to answer is, what exactly are back lots / flag lots? Definitions for these types of lots vary greatly and provided below are a few examples of back / flag Lot definitions from a variety of municipalities around the United States:

- A. Means a lot that is mostly separated from the street, located behind another lot, and connected to the street by an extension of land that reaches to the street.
- B. Means a lot located behind a frontage another lot, plus a strip out to the street for an access drive. A flag lot results from the subdivision or partitioning of a lot or parcel which is more than twice as large as the minimum allowed in the underlying zone, but has insufficient frontage to allow two dwellings to front along a public street.
- C. A lot not fronting or abutting a public roadway and where access to the public roadway is limited to a narrow private right-of-way. (Schaumburg, Ill.)

- D. A large lot not meeting minimum lot frontage requirements and where access to a public or private street is provided by means of a long, narrow driveway between abutting lots. (Clarkdale, Ariz.).
 - E. A lot so shaped and designed that the main building site area is set back from the street on which it fronts and includes an access strip connecting the main building site with the frontage street. (North Liberty, Iowa)
 - F. A lot that has access to a public right-of-way by means of a narrow strip of land. (Sandy, Ore.)
 - G. A lot having only its access strip fronting on a private or public street. (Santa Rosa, Calif.)
 - H. A lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way. (Bondurant, Iowa).
 - I. A lot or parcel which includes a private driveway as part thereof. (Multnomah County, Ore.)
 - J. A parcel that lies at the end of a long driveway. (Saco, Me)
 - K. A lot that lacks adequate lot frontage on a street or private way to meet the minimum lot dimensional requirements of the Zoning district. (Town of Arundel, Me)
3. What do “Back Lots” / “Flag Lots” look like?

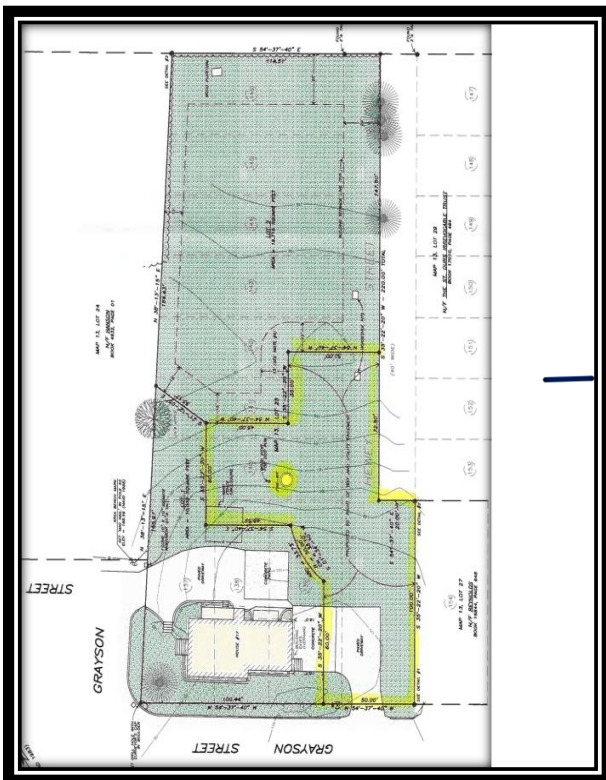
As one might expect from the definitions discussed above, back lots generally have a configuration that resembles a fully outstretched flag at the top of a flag pole and where the "pole" portion of the lot contains the required lot frontage and lot access. Below are a couple of examples of these types of lot configurations.





4. Side by Side Comparison:

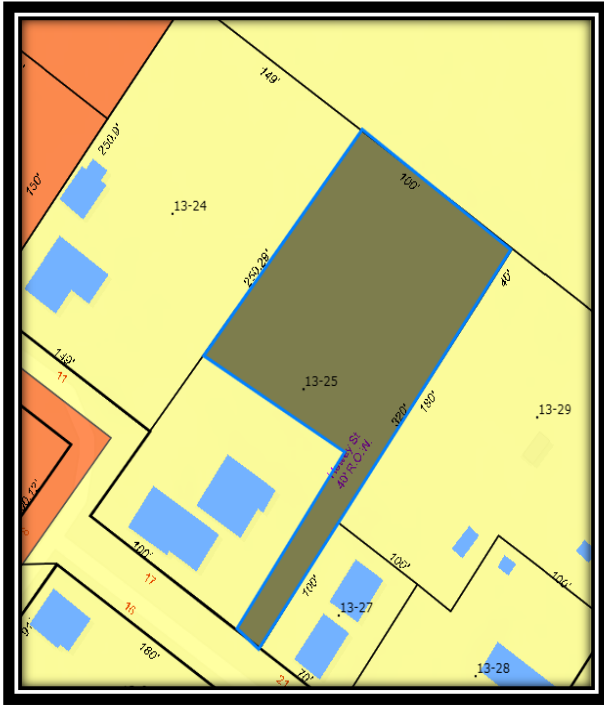
The City of Biddeford does not currently allow the creation / development of back lots however, the City does allow for the development of rear portions of residential lots by the creation of a “private way”.



Private ways require the creation of a fifty (50) foot private right-of-way (ROW) through the front lot, and designed to City private way standards, with the existing and proposed lots complying with all dimensional standards in the underlying zoning district, including frontage and setback requirements. Due to these requirements, many existing developed lots are unable to “create” legal street frontage or accommodate the required fifty (50) foot right-of-way which includes a required vehicle maneuvering area to accommodate emergency vehicle access and maneuverability. Shown left is an existing property in the city where the property owners are trying to develop a private way. In this typical example, the proposed ROW (in yellow) area is subtracted from the overall lot area thus significantly increasing the land area required for the creation of private ways.

Example: Private Way Approval – Allowed

MEETING: Planning Board Workshop
TOPIC: Back Lot Ordinance
MEETING DATE: June 7, 2023



Seeking approval of a private way requires the submittal of a formal application, including fully engineered plans, and Planning Board review and approval. In many cases the expense of the review process, and the hiring of design professionals (surveyors, engineers, etc.) is cost prohibitive for the property owner. Using the same property shown above, if a Back Lot Ordinance was adopted by the City, the access to the rear property could be accommodated utilizing a significantly smaller area for the access way via an easement (or ownership) rather than requiring a fifty (50) foot wide ROW. The allowance of a back lot provision would be a significantly less expensive project in regards to design, construction and approval required.

Flag / Back Lot – Currently Not Allowed

5. Preliminary Review:

When preparing for the Council Workshop, Staff began by reviewing and evaluating the City of Saco's Back Lot Ordinance, and similar ordinances, to determine what, if any, modifications would be desirable to include in our local ordinance. From this initial review we identified a number of areas in Saco's ordinance that we believe should be edited, expanded upon to meet the needs of Biddeford. Included as Attachment # 2 of this memorandum, is a document titled "City of Biddeford Back Lot Ordinance - Working Document Draft #2". The base framework of this document is the City of Saco's Ordinance which illustrates deleted text in ~~red strikethrough~~, new text as blue underlined.

6. Next Steps:

At this time Staff is seeking input and direction from the Planning Board related to the draft ordinance. Ideally, the Board will provide staff direction / ordinance modification at the June 7, 2023 meeting so that a revised ordinance, addressing the Board's concerns can have the final ordinance review on the June 21, 2023 Planning Board Agenda.

ATTACHMENTS

1. Attachment # 1: City of Saco - Back Lot Ordinance
2. Attachment # 2: City of Biddeford – Working Document #1 - Back Lot Ordinance