



SHORELAND ZONING NEWS

Volume 20, Issue I

Summer/Fall 2007

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Please Share

For over 15 years, the Shoreland Zoning News has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the News is not getting to everyone who would like to see it.

We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other municipal officials.



DEADLINE FOR AMENDING SHORELAND ZONING ORDINANCES LESS THAN A YEAR AWAY

All municipalities should now know that the Board of Environmental Protection amended the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances* (Guidelines), effective May 1, 2006. The amended Guidelines do not immediately affect a municipality's ordinance. The Guidelines' amendments must be incorporated into a local ordinance before they become effective.

The Board of Environmental Protection has set July 1, 2008 as the deadline for municipalities to update their respective ordinances, consistent with the standards in the Guidelines. Thus, there is less than one year for the necessary amendments to be incorporated into local ordinances. If your municipality has not begun that process you will need to do so promptly. There are several issues that the Department of Environmental Protection (DEP) would like to bring to your attention as you revise your ordinances.

Timber Harvesting: First, each municipality will need to choose how it will deal with the regulation of timber harvesting in the shoreland zone, and the Legislature has given municipalities three options for addressing this. The first option is that a municipality may choose to repeal the local regulation of timber harvesting in the shoreland zone and cede that role to the Department of Conservation's Maine Forest Service. The town would no longer have any timber harvesting provisions in their ordinance, and the Maine Forest Service would administer the newly adopted state-wide timber harvesting standards for shoreland areas.

The second option that a municipality can choose is to adopt the state-wide timber harvesting standards verbatim. In that case the municipality would have primary responsibility for timber harvesting regulation in the shoreland zoned areas. However, the municipality will be able to obtain assistance from the Maine Forest Service after having entered into a "memorandum of agreement" with that agency.

The third option is that a municipality can elect to keep the same timber harvesting standards that have been in its ordinance in recent years. However, if this option is chosen, the municipality will not receive assistance with the enforcement of the standards from the Maine Forest Service. This system was established to give municipalities the incentive to have the new state-wide standards apply in most areas of the state.

The state-wide standards will take effect, including the unorganized territories covered by the Land Use Regulation Commission, on "the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards." Until such time as the 252 town threshold is met, all municipalities will continue to regulate timber harvesting activities in accordance with their own adopted standards.

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To assist municipalities in amending local ordinances, the DEP has crafted several versions of the Guidelines document. We have two versions for municipalities with only inland waters, and we have two versions for municipalities that have both inland and coastal waters. The two inland versions are further modified to provide the language for municipalities wishing to repeal their own timber harvesting regulation, and to provide the language for municipalities that choose to adopt the state-wide timber harvesting regulations. For municipalities that have both inland and coastal waters we have also provided versions for both the repeal and the acceptance of the new standards.

The DEP has a fifth version of the Guidelines that includes the specific changes to the Guidelines in the “strike-out/underline” format. All versions can be found on the DEP’s web site at: MaineDEP.com keyword “Shoreland Zoning”.

Most municipalities appear to be choosing to repeal local regulation of timber harvesting activities in the shoreland zone. Most of the other municipalities have, thus far, chosen to adopt the state-wide standards locally. A few have chosen to keep their existing standards. The choice rests with each municipality individually.

Freshwater Wetlands: A second significant issue pertaining to the amended Guidelines is the regulation of areas within 250 feet of freshwater wetlands. The previous Guidelines required areas within 250 feet, horizontal distance, of non-forested freshwater wetlands that were rated moderate/high value by the Department of Inland Fisheries and Wildlife (IF&W), as of the year 1973, to be zoned for Resource Protection. The revised Guidelines now use the IF&W wetlands ratings as of May 1, 2006. Copies of updated maps of moderate/high value freshwater wetlands were recently mailed to all municipalities.

For most municipalities the updated ratings will result in additional areas being zoned for Resource Protection.

When using IF&W’s ratings/maps, municipalities need to be aware of the following:

- Towns are not expected to zone the entire shorefront of great ponds as Resource Protection, although the map may currently indicate that it is “moderate or high value waterfowl and

wading bird habitat. It is expected that only the area within 250 feet of the wetlands associated with the great pond will be zoned Resource Protection. DEP Shoreland Zoning staff can help you clarify coverage of areas adjacent to specific great ponds should you have any questions on map interpretation.

- Areas that the DEP has already accepted as Stream Protection Districts, with a 75 foot zone, are not required to be re-zoned as a 250 foot Resource Protection District, even when shown as a moderate or high value waterfowl and wading bird habitat. If the wetland is narrow enough along the stream that the DEP didn’t consider it a regulated freshwater wetland pursuant to the Shoreland Zoning law, the DIF&W mapping will not change this to a mandatory resource protection zone. The Natural Resources Protection Act (NRPA), however, will continue to apply within 250 feet of the mapped wetland.
- Lastly, municipalities are not expected to place developed areas in the Resource Protection district. They can be zoned in accordance with the current development pattern.

As for waterfowl/wading bird habitat in tidal areas, the DEP is not requiring districting changes in those areas. Resource Protection districting associated with waterfowl/wading bird habitat adjacent to tidal waters is still based on “moderate and high value salt marshes and salt meadows” as of 1973.

The DEP reminds municipalities that landowners whose land is being proposed for Resource Protection zoning, by law, are required to receive written notice of the proposed change. This requirement is found in the Mandatory Shoreland Zoning Act (38 M.R.S.A section 438-A(1-B)).

Please also be sure to forward all amendments that pertain to the shoreland zone to the Commissioner of DEP, 17 State House Station, Augusta, Maine 04333, for approval. A locally adopted shoreland zoning ordinance, or an amendment to that ordinance, is not effective unless approved by the DEP Commissioner.



Miscellaneous Notes From the SLZ Unit...

Mike Morse (822-6328) continues as the shoreland zoning coordinator out of the Southern Maine Regional Office in Portland. Jenn Cayer (941-4116) works out of our Eastern Maine Regional Office in Bangor. Jenn is currently splitting her work load between the shoreland zoning program and the licensing unit. Thus, she cannot devote all of her efforts to shoreland zoning matters. Therefore, there are times when Rich Baker (287-7730) from the Augusta office takes on some of Jenn’s responsibilities along with his other duties as the Shoreland Zoning Coordinator for the central Maine area. Jenn’s licensing duties, including the LNG project in Robbinston, are expected to be temporary.

In Northern Maine, Marc Russell has left the Department for a job with the Land Use Regulation Commission. Marc has been replaced by Eric Hitchcock (764-0477) who will also be performing some shoreland zoning duties.

If you have any shoreland zoning related questions please contact the person above who is assigned to your area.

Common Problems with Amended Ordinances

In reviewing incoming municipal ordinances, DEP staff has noted several common problems that have resulted in those ordinances being approved with conditions that must be administered by the municipality. Drafting conditional approvals is time-consuming to DEP staff, and the municipality must then ensure that the conditions are administered and that the townspeople are aware of them. In order to reduce the number of conditional approvals, the DEP wants to bring the following issues to your attention.

1. The updated wetlands ratings will require some districting changes in most towns. Many municipalities are making the necessary amendments to the text of the ordinance but are failing to make the necessary map amendments. Those municipalities must complete their map amendments by July 1, 2008.
2. Numerous municipalities, instead of simply amending their existing ordinance, are adopting a new ordinance with a new "effective date". For the purposes of regulating non-conformities, it is important to maintain continuity with the date that a lot, structure or use was made nonconforming. We recommend that you draft the changes as amendments to your current ordinance, keeping the old effective date. If you adopt a "new" ordinance be sure that the non-conformance section can not be interpreted as changing the date when a lot, structure, or use became "of record". Otherwise, for example, an illegally created lot could become a "lot of record as of the effective date of this ordinance".
3. If you are using the DEP's Guidelines document as the basis for your ordinance, remember that the law does not permit a municipality to adopt both the 30% expansion limitation for non-conforming structures and the alternative to the 30% expansion rule. The DEP's Guidelines document contains the alternative to the 30% rule as Appendix A to the Guidelines. Several municipalities have adopted the 30% expansion limitation, and have also retained Appendix A as part of its ordinance. The result is that the municipality must receive a conditional approval of its ordinance, effectively repealing the appendix.
4. Appendix B lists the various river segments that have been designated as Significant River Segments. There are special limitations for areas within the shoreland zone of Significant River Segments. Most municipalities have no Significant River Segments. If there are no Significant River Segments in your municipality, you should not include Appendix B. You should also delete the definition of Significant River Segment in Section 17, and remove the references to those river segments in Sections 15(B)(1)(B), 15(H)(3) and 15(M)(3).



Shoreland Zoning Unit Staff and Technical Assistance to Towns

The staff of the DEP's shoreland zoning unit strives to provide quality service to the town officials who we work with. We are very busy, however, providing that service, whether it is technical assistance or the review of an ordinance. Many times the assistance to municipal officials involves site visits which are costly in terms of both time and money. Therefore, we are once again suggesting that sending a photograph of the site or issue of concern to the DEP may enable your question to be answered in a more timely and efficient manner. The picture can be a hardcopy by regular mail or an electronic photo by e-mail. We will do our best to address your issue. If the photo does not provide all the needed information, we will then schedule a site visit with you.

Vegetation Removal Standards— Easements

Fairly frequently we receive calls from municipal officials, property owners, or others seeking information regarding the shoreland zoning vegetation clearing standards and how they relate to easements or right of ways.

The typical series of questions relate to a property owner seeking to give an easement or right of way across their property to a child, or perhaps selling such to a willing buyer, in order for that person/ those persons to gain legal access to the water. While under the shoreland zoning regulations there is no limit to the number of easements that can be created on paper, the clearing standards still apply in the area of the easement just as they do to the rest of the lot.

You may recall that the clearing standards allow an owner to clear vegetation to have a **single** 6-foot wide meandering path to the water. Does this mean that the regulations prohibit the clearing for additional footpaths to the water within the various easements? If there is already a path to the water elsewhere on the lot then the answer is "yes", the regulations do prohibit multiple paths to the shoreline on a single lot.

Therefore, if a property owner wishes to create easements or right of ways on his property, perhaps the best way to accomplish this is to establish them where the existing path to the water exists and all parties with rights to the property would share the same path.



Note Notes:

Please remember that when you send in your ordinance and map amendments for our review that they are certified as official copies, and that you must also include a copy showing exactly what the amendments are. For ordinance text amendments, a strike-out/ underlined formatted document is very helpful. When sending us your amended town map, many towns submit a copy of the original map with arrows hand-drawn pointing to the amended areas, or the amended areas circled or highlighted in addition to the certified official "clean" copy.

Contact Us:

Rich Baker, Coordinator, Augusta 287-7730
1-800-452-1942

Jennifer Cayer, Bangor 941-4116
1-888-769-1137

Eric Hitchcock, Presque Isle 764-0477
1-888-769-1053

Mike Morse, Portland 822-6328
1-888-769-1036

Questions & Answers:

Q. My town has a state-imposed shoreland zoning ordinance that was adopted for the town by the Board of Environmental Protection because the town failed to adopt a suitable shoreland zoning ordinance consistent with the Department's Guidelines. What will happen if our town does not adopt a suitable ordinance before the July 1, 2008 deadline? Will we be required to regulate timber harvesting in the shoreland zone?

A. If your town does not adopt a suitable ordinance by the deadline adopted by the Board of Environmental Protection the Department will initiate a rulemaking effort to adopt the Guidelines as amended May 1, 2006 for the town. The ordinance would include an updated shoreland zoning map.

The Board would adopt the version of the Guidelines that would repeal the municipal requirement to regulate timber harvesting in the shoreland zone, since this would be the least restrictive of the three options.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
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