



Department of Environmental Protection

Bureau of Land and Water Quality, 17 State House Station, Augusta, ME 04333

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SHORELAND ZONING NEWS

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COMMUNITY AUDITS

The DEP staff recently completed a series of community audits with five towns, in what will be an on-going effort in cooperation with town officials, to evaluate the administration of their shoreland zoning ordinances.

GUIDELINE AMENDMENTS

The goals of the meetings are two-fold. One, to suggest ways that town officials can improve day-to-day administration of the ordinance. Second, to gather information on recent shoreland activity to enable the DEP staff to report to the Legislature and federal oversight agencies on the effectiveness of the shoreland zoning program.

On February 13, 2000, the Board of Environmental Protection adopted several amendments to the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*, in response to legislative changes to the Mandatory Shoreland Zoning and the Forest Practices Acts.

The changes include:

1. Optional provisions allowing limited timber harvesting within 75 feet of a great pond zoned as a Resource Protection District.
2. An increase to the tree diameter (dbh) standard used to calculate residual basal area for timber harvesting in shoreland areas.
3. An increase in the maximum penalty for violations in a Resource Protection District.
4. Replacement of the term "shoreline" with "normal high-water line or upland edge of a wetland" in the optional non-conforming structure expansion provisions.

The above changes need to be incorporated into your locally adopted shoreland zoning ordinance to be effective. A complete copy of the changes in strikethru and underline format can be found on page 4 of this newsletter.

The focus of the meetings, which include members of the Planning Board, Board of Appeals, Selectmen, and Code Officer, is to discuss the permitting process, site inspections, variance applications, and enforcement procedures. The second part of the effort involves inspecting a number of recent projects to see if they have been constructed as permitted, and meet all of the ordinance standards for shoreline setback, buffer strips, and erosion control measures.

The DEP staff will be continuing the audit program with five more communities in the coming year.

PASS IT ON

Please share your copy of the *Shoreland Zoning News* with other town officials. We keep our costs and mailing lists 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 town officials.

QUESTIONS AND ANSWERS

Question #1:

We live in a small town of about 400 people. Our Planning Board and Code Officer typically deal with less than ten shoreland zoning projects a year. We meet with the owner at a regularly scheduled planning board meeting, and come to an agreement as to what can be allowed. Our decision is then included in the meeting minutes. The system seems to work well. Do we need a permit application form? Sounds like needless bureaucracy to me.

Answer:

The system you describe sounds nice and friendly, but you are asking for trouble.

First, your town shoreland zoning ordinance requires the landowner to provide a written application and the town officials to issue a permit. To not follow that procedure is a violation of your ordinance and the shoreland zoning law.

As important as obeying the law, the written permit process is necessary to document what the owner proposes to do, and what the Planning Board approved, prior to construction. The discussion and meeting minutes can not possibly be detailed enough to accurately describe even the most simple project. Nor could the board know with any accuracy from a verbal description whether the project meets all of the ordinance standards.

Without written application and permit records, town officials and future property owners are unable to determine when various improvements were made, or if what was done complied with the town ordinance standards at the time of construction. This is particularly important when dealing with expansions to non-conforming structures.

In all cases where a permit is required, the CEO and Planning Board need a complete written application from the owner, including a detailed site plan. To require less is a disservice both to the landowner and your community.

Question #2:

The Land Uses Table in our shoreland zoning ordinance lists Campgrounds and Marinas as permitted uses with Planning Board approval in the Limited Residential District. However, commercial structures and uses are prohibited in this district. How should the Planning Board treat this apparent contradiction?

Answer:

The "Conflicts" provision in Section 7 of the DEP shoreland zoning guidelines, and most municipal ordinances, state that "Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or any other ordinance, regulation or statute, the more restrictive provision shall control".

This matter was the subject of a court case in southern Maine a few years ago, and the court clearly stated that the commercial use prohibition was more restrictive. As such, it is our understanding that while some campgrounds and marinas which are operated by a municipality or a "not for profit" organization may be permitted in a Limited Residential District, commercial "for profit" campgrounds and marinas may not be allowed.

When the DEP guidelines were initially adopted in 1973 and updated in 1990, the intent was to allow small-scale marinas and campgrounds that would be compatible with surrounding residential uses in a Limited Residential District. However, based on this court ruling, it may be necessary to revise the DEP Guidelines in the future to clearly allow these uses even if they are commercial in nature.

Got a shoreland zoning question or issue you'd like to share with others? The Question and Answer section of the *Shoreland Zoning News* is a good forum for spreading the word. Just drop a note or telephone message to the shoreland zoning staff at the DEP, and we'll try to include it in an up-coming newsletter.

Conditional Ordinance Approvals

Since 1989, the Mandatory Shoreland Zoning Act requires Towns to obtain DEP approval following adoption of local shoreland zoning ordinances and amendments. The ordinances and amendments are not legally in effect until approved by the DEP Commissioner.

When necessary, the law gives the DEP the authority to approve the local ordinance with conditions in order to make it consistent with the minimum requirements contained in the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*. These conditions are binding on the town and must be administered as part of the local ordinance.

It is the DEP's view that the conditional approvals are intended to be a short-term solution to making sure that the local ordinance is consistent with the requirements of the law. We recommend that each community adopt ordinance amendments to address the conditions at a future town meeting so that the DEP can fully approve the town ordinance and repeal the conditions. Unfortunately this does not always happen. Our concern is that knowledge of the conditions may be lost over time with the turn-over in town officials.

Currently, there are 72 communities with conditions of approval attached to their local shoreland zoning ordinances (listed below). If your community has adopted ordinance amendments addressing the DEP's conditional approval, please send a copy of the amendments to us for approval. If not, please consider addressing the conditions at the next available town meeting.

ABBOT	FAYETTE	NEW GLOUCESTER
ALEXANDER	FRANKLIN	NEW LIMERICK
ARUNDEL	FRYEBURG	NEW VINEYARD
BALDWIN	GILEAD	NEWRY
BAR HARBOR	GREENVILLE	OAKFIELD
BENTON	HAYNESVILLE	PATTEN
BIDDEFORD	JACKMAN	PERRY
BOOTHBAY	JACKSON	PERU
BOWDOIN	JEFFERSON	PORTER
BURLINGTON	LEE	ROCKPORT
BYRON	LIMINGTON	SABBATUS
CARRA. VALLEY	LINCOLN	ST. GEORGE
CLIFTON	LISBON	SEARSPORT
CLINTON	LOVELL	SHAPLEIGH
CORNISH	LYMAN	SMYRNA
CRAWFORD	MADRID	SOMERVILLE
CUTLER	MARSHFIELD	SORRENTO
DANFORTH	MASARDIS	SOUTH BRISTOL
DAYTON	MAXFIELD	WALLAGRASS
DEDHAM	MEDDYBEMPS	WATERBORO
DOVER-FOXCROFT	MEDWAY	WHITNEYVILLE
DYER BROOK	MILFORD	WINSLOW
ELIOT	MINOT	WINTHROP
FAIRFIELD	MONTICELLO	WOODLAND

Question #3:

The Code Officer in our coastal town is often asked by oceanfront property owners to identify the normal high-water line for setback purposes. Our ordinance, like the DEP guidelines, has two definitions that seem to apply, "normal high water line" and "coastal wetland". Which should be used?

Answer:

The Coastal Wetland definition should be used. While it may not be intuitively obvious, the Atlantic Ocean is a large coastal wetland. The definition describes all tidal and subtidal lands, and includes open water, estuaries, mud flats, salt marshes, and other areas with salt-tolerant vegetation located below the maximum spring high tide elevation. This certainly covers all areas along the coast.

The coastal wetland edge can be determined on-site by looking for a tidal debris line, the edge of salt-tolerant wetland vegetation, and other evidence of tidal action. In areas where this line may be unclear, the tide tables can be used to determine the maximum spring high tide elevation.

The normal high-water line of tidal waters and upland edge of a coastal wetland should not be confused with the "mean high-water line". That line was used in the early years of the shoreland zoning program, but was replaced in the Shoreland Zoning Law in 1988. The mean high water line is typically 2 feet or more below the maximum spring tide level, and using it would result in a significant error in the setback measurement.

**SHORELAND ZONING GUIDELINES
(TEXT AMENDMENTS)**

Amendment to Timber Harvesting Standards

Change Table 1, 4. Timber Harvesting under RP to read: CEO 1(strike footnote)

Change Section 15.O.(1)(a) to read:

(a) Within the strip of land extending 75 feet inland from the normal high-water line, there shall be no timber harvesting, except to remove safety hazards may be conducted when the following conditions are met:

(1) The ground is frozen;

(2) There is no resultant soil disturbance;

(3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;

(4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured 4 1/2 feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other vegetation remains; and

(5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.

Change Section 15.O.(1)(b) to read:

(b) Beyond the 75 foot "no harvest" strip referred to in paragraph a. above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees 1 4 1/2 inches in diameter at 4 1/2 feet above the ground be reduced to less than 30 square feet per acre.

Amendment to

"Note" in Section 16.I, Enforcement

Note: Current penalties include fines of not less than \$100 nor more than \$2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to \$5000.

Amendment to Appendix A, Change the last paragraph of Section 12.C.(1-A)(b) to read:

If a well-distributed stand of trees and other vegetation meeting the requirements of this subparagraph is not present, the 500 square foot special allowance may be permitted only in conjunction with a written plan, including a scaled site drawing by the property owner, and approved by the planning board or its designee, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet of the shoreline normal high-water line or upland edge of a wetland.

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