

**ARTICLE 1 - PURPOSES AND STATUTORY REVIEW CRITERIA**

1.1 **Purposes.** The purposes of these regulations are:

- A. To provide for an expeditious and efficient process for the review of proposed subdivisions;
- B. To assure new development in the Town of \_\_\_\_\_ meets the goals and conforms to the policies of the \_\_\_\_\_ Comprehensive Plan;
- C. To assure the comfort, convenience, safety, health and welfare of the people of the Town of \_\_\_\_\_;
- D. To protect the environment and conserve the natural and cultural resources identified in the \_\_\_\_\_ Comprehensive Plan as important to the community;
- E. To assure that a minimal level of services and facilities are available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures;
- F. To minimize the potential impacts from new subdivisions on neighboring properties and on the municipality; and
- G. To promote the development of an economically sound and stable community.

This article introduces the purposes of the regulations. The subdivision law has four broad purposes: setting standards for the platting of land; consumer protection by setting out standards for adequate facilities; environmental protection; and municipal growth management. This paragraph articulates these purposes.

If these standards are adopted as an ordinance, the first line needs to be changed from %the purposes of these regulations...+to %the purposes of this ordinance...+

**A municipality’s subdivision regulations are an important part of the implementation strategy for achieving the goals of the community’s comprehensive plan, as far as preserving natural resources, providing public services and in general, guiding the location of growth within the community. Although the subdivision review process cannot necessarily control *where* development will take place, it can go a long way in determining the quality of that development and the impacts of the development on the community. The regulations should reflect the policies of the comprehensive plan, by guiding development activity away from resources for which the plan calls for protection and into areas the plan indicates should see growth, and by implementing policies and plan strategies regarding public facilities.**

## *Commentary*

1.2. **Statutory Review Criteria:** When reviewing any application for a subdivision, as defined by Article 3, the Review Authority shall find that the following criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as all applicable provisions of the Zoning Ordinance and other sections of this Regulation have been met, before granting approval. The proposed project :

- A. Will not result in undue water or air pollution. In making this determination, it shall at least consider:
  - 1. The elevation of the land above sea level and its relation to the flood plains;
  - 2. The nature of soils and subsoils and their ability to adequately support waste disposal;
  - 3. The slope of the land and its effect on effluents;
  - 4. The availability of streams for disposal of effluents; and
  - 5. The applicable State and local health and water resources rules and regulations;
- B. Has sufficient water available for the reasonably foreseeable needs of the subdivision;
- C. Will not cause an unreasonable burden on an existing water supply, if one is to be used;
- D. Will not cause unreasonable soil erosion or reduction in the land's capacity to hold

The subdivision law contains twenty criteria for approval of a proposed subdivision. However, the standards in the statute are somewhat general and vague. Therefore, one of the main purposes of local, municipal subdivision regulations is to clarify and expand upon the criteria of the statute. The regulations also provide the procedural framework under which a proposed subdivision is reviewed.

Towns that do not have their own adopted Subdivision Regulation or Ordinance would only use these twenty criteria found in the statute in order to base a decision. The Performance and Design Standards of Article 10 of this Model have been designed to assure compliance with these twenty statutory criteria.

water so that a dangerous or unhealthy condition results;

- E. Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway, located outside the urban compact area of an urban compact municipality, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;
- F. Will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;
- G. Will not cause an unreasonable burden on the municipality's ability to dispose of solid waste if municipal services are to be utilized;
- H. Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

This section makes clear that a DOT driveway or entrance approval is required, prior to final subdivision approval from the local review authority.

- I. Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;
- J. The developer has adequate financial and technical capacity to meet the standards of this section.
- K. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, sections 435 through 490, or within 250 feet of tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.
  - 1. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.
    - (a) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended

Most Boards never discuss the financial and technical capacity of the applicant, considering it unseemly to pry into such a private matter. However, there are occasions when the Board may doubt whether an applicant has the knowledge or funds to actually develop a subdivision properly and may ask for proof that he or she has the experience and financial backing to construct the project

Most Towns do not have outstanding river segments so that the provisions of K.1 will not apply.

to the shore.

(b) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983;

- L. Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water
  
- M. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision or project plan must include a condition of plan approval requiring that principal structures in the subdivision

will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

- N. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;
- O. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;
- P. The proposed subdivision will provide for adequate storm water management;
- Q. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;
- R. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the

This statutory provision requires all wetlands, whether forested or open, be delineated and mapped on a subdivision plan, REGARDLESS OF SIZE.

This is an often overlooked review criteria that must be followed, even if it is not mentioned in the community's shoreland zoning regulations, or elsewhere in the subdivision ordinance or regulation.

construction phase and life of the proposed subdivision;

- S. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.
  
- T. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, M.R.S.A section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The Planning Board may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or the Board may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If the Bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. If the Bureau notifies the Planning Board that it will not provide assistance, the Board may

In the case of a proposed subdivision that crosses a municipal boundary, the statute requires joint review meetings by both Towns reviewing authorities, unless one town cedes control of the review over to the other. See Title 30-A M.R.S.A. section 4403, subpart 1-A. Unfortunately, the exact method of how to conduct the joint meetings is not spelled out in the statute. The Towns may wish to consulting with their Regional Planning Commission or Town Attorney in these situations.

This relatively new provision mandates a five year waiting period, if a landowner violates liquidation harvesting rules, and technical assistance is available from the Department of Conservation, Bureau of Forestry.

require a subdivision applicant to provide a determination certified by a licensed forester. For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, M.R.S.A section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.