

ARTICLE 3 - DEFINITIONS

In general, words and terms used in these regulations shall have their customary dictionary meanings. More specifically, any word or term defined in the _____ Zoning Ordinance shall have the definition contained in that ordinance, unless defined differently below; other words and terms used herein are defined as follows:

Affordable Housing: Housing units which will meet the sales price and/or rental targets established by the comprehensive plan for housing affordability.

Applicant: The person applying for subdivision approval under these regulations.

Average Daily Traffic (ADT): The average number of vehicles per day that enter and exit the premises or travel over a specific section of road.

Buffer Area: A part of a property or an entire property, which is not built upon and is specifically intended to separate and thus minimize the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

Capital Improvements Program (CIP): The municipality's proposed schedule of future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project.

Capital Investment Plan: The portion of the comprehensive plan that identifies the projects for consideration for inclusion within the capital improvements program, together with an estimate of the order of magnitude for the cost of each project.

Cluster Subdivision: A subdivision in which the lot

The introductory paragraph relating the meaning of words in this document and the zoning ordinance is relatively important in order to avoid possible conflicts between the two documents. The definition sections of the two documents should be compared carefully prior to adoption of the regulations. Delete from this list any term defined in your zoning ordinance. Prior to the adoption of your regulations, you should check to see if you deleted from the text any words or terms contained in the definition section. If so, delete them from the definition section; there is no need to define words or terms not used in the text. Municipalities without zoning ordinances need not be concerned about consistency of definitions but should define all important terms used in subdivision regulations.

The comprehensive plan, in its housing section, should set target sales prices or rent levels which are %affordable.+ The State Planning Office has established rules spelling out how those targets are to be set (see SPO Rules Chapter 100, Affordable Housing Definition Rule).

Tying together the CIP and the requirements for various public improvements or facilities within subdivisions can provide an effective means of directing growth within various parts of the community. This linkage is also essential if impact fees are to be applied to new developments.

A Capital Investment Plan is a required element of a municipal comprehensive plan (see Title 30-A M.R.S.A., §4326, sub-§3.B).

In many local zoning ordinances these types of subdivisions are known as %open space subdivisions+instead. If your zoning ordinance refers to cluster subdivisions by some other

sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space.

Common Open Space: Land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by these regulations unless waived, after the applicant's written request, by a vote by the Board. The Board shall issue a written statement to the applicant upon its determination that an application is complete.

Complete Substantial Construction: The completion of a portion of the improvements which represents no less than thirty percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements.

Comprehensive Plan: A document or interrelated documents adopted by the Legislative Body, containing the elements established under Title 30-A M.R.S.A. §4326 sub-§§ 1 to 4, including

name, use that name in the definitions and elsewhere in the regulations, as appropriate.

The subdivision law requires the Planning Board to issue the applicant a written receipt upon receiving an application and to notify the applicant in writing upon determining that the application is complete. These steps are important because a hearing or decision must be made within certain time requirements from the determination that a complete application has been submitted and accepted by the Planning Board.

This term is defined because the completion of substantial construction has been used by the courts as a determination of when a developer's rights to complete a subdivision vest if the local ordinances or regulations change subsequent to the granting of approval. Later in Article __, the *Model* suggests that failure to complete substantial construction within five years of approval results in the lapse of the approval. For a Maine case that discusses the issue of vested rights after development approval see *Thomas v. Zoning Bd. of Appeals of the City of Bangor* (1978).

According to Title 30-A M.R.S.A. §4404, sub-§9, a subdivision must conform 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..

the strategies for an implementation program which are consistent with the State goals and guidelines established under Title 30-A M.R.S.A. §§4311 through 4350.

Conservation Easement: A nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

Density: The number of dwelling units per acre of land.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, and streets.

Direct Watershed of a Great Pond: That portion of the watershed which drains directly to the great pond without first passing through an upstream great pond. For the purposes of these regulations, the watershed boundaries shall be as delineated in the comprehensive plan, or as depicted in the drainage divide data layer provided by the Maine Office of GIS. Due to the scale of the map there may be small inaccuracies in the delineation of the watershed boundary. Where there is a dispute as to exact location of a watershed boundary, the Board or its designee and the applicant shall conduct an on-site investigation to determine where the drainage divide lies. If the Board and the applicant can not agree on the location of the drainage divide based on the on-site investigation, the burden of proof shall lie with the applicant to provide the Board with information from a professional land surveyor showing where the drainage divide lies.

An alternative to referencing a map in the comprehensive plan is to include a watershed boundary map as an appendix of the regulations.

Commentary

Driveway: A vehicular accessway serving two lots or less.

Dwelling Unit: A room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, and sleeping facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums.

Engineered Subsurface Waste Water Disposal System: A subsurface waste water disposal system designed, installed, and operated as a single unit to treat and dispose of 2,000 gallons of waste water per day or more; or any system designed to be capable of treating waste water with higher BOD5 and total suspended solids concentrations than domestic waste water.

Final Plan: The final drawings on which the applicant's plan of subdivision is presented to the Board for approval and which, if approved, may be recorded at the Registry of Deeds.

Freshwater Wetland: Areas which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and are not part of a great pond, coastal wetland, river, stream or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

Great Pond: Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has surface area in excess of thirty acres, except for the purposes of these regulations, where the artificially formed or

This term has been defined to avoid disputes over what is a street, which needs to meet certain design standards, and what is a driveway.

This definition is taken from the Maine Subsurface Wastewater Disposal Rules, administered by the Department of Human Services. Any %engineered system+ must be reviewed and approved by the Department's Plumbing and Waste Water Disposal Program prior to the issuance of a permit by the local plumbing inspector.

This is the definition contained in the statute (Title 30-A M.R.S.A., §4401, sub-§2-A).

This is the definition contained in the Mandatory Shoreland Zoning Act (Title 38 M.R.S.A., §436-A).

increased inland body of water is completely surrounded by land held by a single owner.

High Intensity Soil Survey: A map prepared by a Certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to a limiting factor such as seasonal high water table or bedrock at that location. Single soil test pits and their evaluation for suitability for subsurface waste water disposal systems shall not be considered to constitute high intensity soil surveys.

100-Year Flood: The highest level of flood that, on the average, has a one percent chance of occurring in any given year.

High Water Mark, Coastal Waters: See DEP Chapter 1000 Minimum Guidelines for Municipal Shoreland Zoning Ordinances.

High Water Mark, Inland Waters: See DEP Chapter 1000 Minimum Guidelines for Municipal Shoreland Zoning Ordinances.

Level of Service: A description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the *Highway Capacity Manual*, most recent edition, published by the National Academy of Sciences, Transportation Research Board. There are six levels of service ranging from Level of Service A, with free traffic flow and no delays to Level of Service F, with forced flow and congestion resulting in complete failure of the roadway.

Multifamily Development: A subdivision which

Level of service is the basic measurement which is used to indicate how well a highway or intersection is functioning. Article 10 refers to level of service to establish a standard for the acceptable impacts a proposed subdivision may have on the road system.

contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums or mobile home parks.

Municipal Engineer: Any registered professional engineer hired or retained by the municipality, either as staff or on a consulting basis.

Net Residential Acreage: The total acreage available for the subdivision, as shown on the proposed subdivision plan, minus the area for streets or access and the areas that are unsuitable for development as outlined in Article 10.

Net Residential Density: The average number of dwelling units per net residential acre.

New Structure or Structures: 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.

Person: Includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

Planning Board: The Planning Board of the Town of _____.

Preliminary Plan: The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

Professional Engineer: A professional engineer, registered in the State of Maine.

Public Water System: A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

Recording Plan: An original of the Final Plan, suitable for recording at the Registry of Deeds and which need show only information relevant to the transfer of an interest in the property, and

Some communities also require in the Zoning Ordinance that each individual lot must have a certain minimum amount of suitable area. Be careful the methods for determining minimum lot area and net residential density work together logically.

The date in this definition is from the statute (Title 30-A M.R.S.A., §4401, sub-§5).

This definition is taken from the Rules Relating to Drinking Water administered by the Department of Human Services. Any %public water system+is required to have a license from the Department's Drinking Water Program.

The idea behind a %eording plan+is to avoid having the plan that is recorded at the Registry of Deeds contain information which is not relevant to transfers of property interests (but which must be reviewed by the municipal review authority). If a recording plan is used, it

which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts, and building lines.

Reserved Affordable Housing: Affordable housing which is restricted by means of deed covenants, financing restrictions, or other binding long term methods to occupancy by households making 80% or less of the area median household income.

Sight Distance: The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Used in these regulations as a reference for unobstructed road visibility.

Sketch Plan: Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

Street: Public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways.

Street Classification:

Arterial Street: A major thoroughfare which serves as a major traffic way for travel between and through the municipality. The following roadways shall be considered arterial streets:

List streets designated as arterials in the comprehensive plan or other planning document.

Collector Street: A street with average daily traffic of 200 vehicles per day or greater, or streets which serve as feeders to arterial

should make clear reference to the review authority's files in the municipal office for the information which is not shown.

There are a variety of methods to assure that housing units that are built as %affordable housing+ remain affordable housing, and are not later sold or offered for sale at market prices. See Title 33 M.R.S.A., §§121-126, for instance, regarding affordable housing covenants.

It is important to list the arterial streets here, if there are any in the municipality. Later in the standards there are particular standards that apply to subdivisions which front on arterial streets, not listing them may lead to controversy as to when those standards apply. **The comprehensive plan should contain a functional classification of all the streets in the municipality in which the arterial streets are identified.**

streets, and collectors of traffic from minor streets.

Cul-de-sac: A street with only one outlet and having the other end for the reversal of traffic movement.

Industrial or Commercial Street: Streets servicing industrial or commercial uses.

Minor Residential Street: A street servicing only residential properties and which has an average daily traffic of less than 200 vehicles per day.

Private Right-of-Way: A minor residential street servicing no more than eight dwelling units, which is not intended to be dedicated as a public way.

Subdivision: The term shall be defined as in Title 30-A M.R.S.A. §4401, sub-§4, as amended. *Optional addition to this definition:* A lot of 40 or more acres shall not be counted as a lot for the purposes of this definition when the parcel of land being divided is located entirely outside any shoreland areas as defined in the Town of _____ Shoreland Zoning Ordinance.

The definition of "Private Right-of-Way" is included because the street design guidelines in Article 10 allow roads which are to remain private and serve a limited number of lots or dwelling units to be built to lesser standards than roads which are to be dedicated as public ways. The number of dwelling units that are allowed to be served by a private right of way is flexible, and the number chosen here is arbitrary. Your municipality may wish to choose a higher or lower number, or not limit the number of lots or dwelling units at all.

This model recommends that the statutory definition of a "subdivision" should not be duplicated in the text of the subdivision regulation, as it takes up too much space and is frequently amended by the Legislature. Instead the suggested definition cites the statute. It may be advisable to print the most current definition from the Statute in an appendix, so that it may be easily switched after any legislative action.

When the review authority is operating under a subdivision regulation or ordinance, there is an option to exempt lots of 40 acres or more as lots for the purposes of the definition of a subdivision, but only if there is no designated shoreland area on such a lot, and the regulation or ordinance expressly authorizes this option. See Title 30-A M.R.S.A. §4401, sub-§4 C. In our region, given the relatively small size of most land holdings, we do not recommend adding the optional sentence to the definition.

The statute also allows a municipality to expand the definition of a subdivision to include the division of a structure for commercial or industrial use. If a municipality wishes to expand its definition of a subdivision in such a way, it must do so by enacting an ordinance, not by having the review authority establish regulations. This is the only other modification of the statutory definition of subdivision allowable. See Title 30-A M.R.S.A. §4401, sub-§4 H-1.

Leased dwelling units (apartments) are automatically treated as being covered by the definition of subdivision, unless the review authority has another procedure, such as conditional use or site plan review, and the review authority has determined that such

Commentary

review criteria process is as stringent as the subdivision review. See Title 30-A M.R.S.A. §4401, sub-§4 G.

The statute exempts other types of divisions from the definition of subdivision, and these exemptions must be acknowledged by the review authority. You may wish to contact your regional planning commission or the Maine Municipal Association Legal Services Department for specific advice on these exemptions, as they arise. See Title 30-A M.R.S.A. §4401, sub-§4 A through H.

Subdivision plans should show the entire ~~tract~~ tract or parcel which includes every contiguous piece of land that has been in one ownership within the last five years, unless it is separated by an existing road.

Tract or Parcel of Land: All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

Usable Open Space: That portion of the common open space which due to its slope, drainage characteristics and soil conditions can be used for active recreation, horticulture or agriculture. In order to be considered usable open space, the land must not be poorly drained or very poorly drained, have ledge outcroppings, or areas with slopes exceeding 10%.