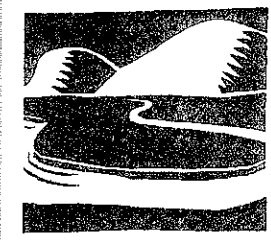


August 2001



SOUTHERN MAINE REGIONAL PLANNING COMMISSION

Regional Information Bulletin

Legislature Amends Subdivision Law, Tightens Loopholes in Exemptions

By Dan Fleishman,
Arundel Town Planner

One of the planning community's main legislative priorities for a number of years has been to have the definition of a subdivision amended in order to reduce the instances of abuse of the exemptions in the law. The first regular session of the 120th Legislature finally consented and enacted many of the changes planners have been seeking.

The bill originated as a recommendation from the Task Force on Growth Management that met last fall. A number of planners were on the Task Force, including JT Lockman, Planning Director of SMRPC. The Task Force had recommended a number of changes to the exemptions in the law and a clarification of municipal authority to further expand the definition.

Through the process, the bill was amended by the Natural Resources Committee and on the floor of both the House and the Senate. The bill was signed in early June and was even made retroactive to June 1. More on that aspect later.

The changes affect the exemptions for:

•**The Homestead Exemption.** Property owners must now own their land and live there as their primary residence for the five consecutive years immediately preceding two dividings in order to take advantage of the homestead exemption.

•**Gifts to Relatives.** The exemption for gifts to relatives has been tightened in a number of aspects. Similar to the homestead exemption, in order for a gift lot to be exempt the donor of the gift must have owned the land for five years prior to making the gift. The new law restricts who counts as a relative. In order to be exempt the gift must be to a spouse, parent, grandparent, child, grandchild, or sibling. Finally, if there is any consideration for the gift, the value of the consideration may not be more than one half of the assessed value of the lot.

•**Transfers to Abutters.** In order to be exempt a transfer to an abutter must not create a new lot.

•**Devise, Condemnation and Order of the Court.** Language has been added to remove the exemption for lots created by devise, condemnation, or a court order if the intent of the transaction was to avoid review.

In other changes, the Legislature has imposed a moratorium on the ability of municipalities to expand the definition of subdivision other than as specifically allowed in the statute. Paragraph H of the definition has allowed municipalities to expand the definition of subdivision to include the division of a structure for commercial or industrial use or otherwise regulate land use activities. There has been some debate as to how far a community

can rely on this language to either not recognize the statutory exemptions or to treat a simple lot split as a subdivision. The Task Force had recommended the Legislature clarify that municipalities may expand the definition as they wish. The Legislature, reacting in part to concern expressed by title attorneys, instead placed a temporary halt on municipal ordinances that expand the definition and directed the State Planning Office to conduct a study on the impact of the variety of definitions adopted by municipalities.

As a surprise move to those of watching the progress of this bill, the Legislature added a retroactivity clause before final passage. Even though the effective date of legislation passed this session is not until September 21, at that time this new law will apply retroactively to lots created on June 1 or later. This has significant impact for transactions that may have been exempt before but have lost their exemption. Municipal planners and Planning Boards can expect to face some applications for after-the-fact subdivisions due to the change. Code Enforcement Officers should be alert to the date on deeds that create lots that may have been exempt prior to enactment of this law.

See the complete text of the amended Subdivision Law inside.

years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

Sec. 4. 30-A MRSA §4401, sub-§4, ¶H, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is repealed and the following enacted in its place:

H. Nothing in this subchapter may be construed to prevent a municipality from enacting an ordinance under its home rule authority that:

- (1) Expands the definition of subdivision to include the division of a structure for commercial or industrial use; or
- (2) Otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of subdivision except as provided in this subchapter.

This paragraph is repealed October 1, 2002.

Sec. 5. 30-A MRSA §4401, sub-§4, ¶I, as enacted by PL 1991, c. 500, §2, is amended to read:

I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraph D paragraphs

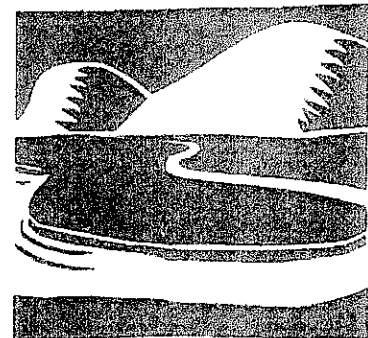
D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

Sec. 6. Application. This Act does not invalidate any municipal ordinance that expands the definition of "subdivision" if that ordinance took effect prior to the effective date of this Act.

Sec. 7. Study by State Planning Office. The Executive Department, State Planning Office shall conduct a study of the status of municipal subdivision ordinances with respect to the local review of subdivisions as defined by municipal ordinance and the process of conducting a title search in the furtherance of a real estate transaction and providing an opinion on the quality of title. At a minimum the study must include: the cataloging of municipal subdivision ordinances according to the definitions of "subdivision" used, an analysis of the legislative history of Maine's subdivision law with a focus on its relationship to home rule authority and a list of possible strategies to coordinate the subdivision review and title search procedures. The office shall consult with interested parties as necessary. The office shall submit its re-

port to the Joint Standing Committee on Natural Resources before December 15, 2001, and the committee is authorized to report out legislation during the Second Regular Session of the 120th Legislature that will properly coordinate the subdivision review and real estate title search procedures.

Sec. 8. Retroactivity. This Act applies retroactively to June 1, 2001.



What Should Your Community Do Now?

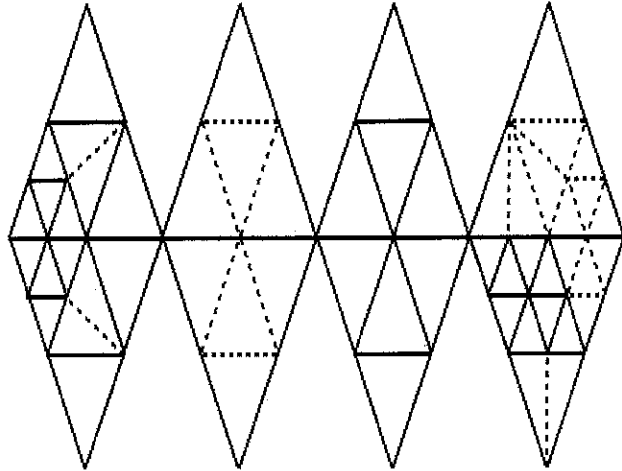
Open your ordinances or regulations and read what it says in your Town, regarding what is a subdivision and what are the allowable exemptions.

- If you have a definition of subdivision stricter than the state's definition, you can keep it. However, you must conform to the new standards for exemptions.
- You can not adopt a new, stricter definition of subdivision, compared to the state statute for the next two years.
- Help the MMA by providing them with a copy of your definition of subdivision when they request it from you. They are making a report to the legislature, required by the new law, about what kinds of definitions the Towns are using.
- The new exemptions go into effect on September 21, 2001 and are retroactive to June 1st. Have your Assessor and Code Officer check for divisions that were filed over the summer, which may need to go

to the Planning Board for after-the-fact approval. We can only assume that citizens have worked with attorneys and realtors to create divisions, thinking they were exempt from Planning Board review, but maybe they weren't!

For more information or any questions, contact J.T. Lockman or Kate Albert at SMRPC at 207-324-2952.

Or you can use email:
jlockman@server.eddmaine.org
kalbert@server.eddmaine.org



SOUTHERN MAINE
REGIONAL PLANNING
COMMISSION

21 Bradeen Street, Suite 304
Springvale, ME 04083

Phone 207-324-2952

NON-PROFIT
U.S. Postage
PAID
Sanford, ME 04073
Permit #55

Approved June 6, 2001
By Governor
Chapter 359 Public Law

STATE OF MAINE
—
IN THE YEAR
OF OUR LORD
TWO THOUSAND AND
ONE
—

S.P. 380 – L.D. 1278

An Act to Implement the
Recommendations of the
Task Force to
Study Growth Management

Be it enacted by the People
of the State of Maine as fol-
lows:

Sec. 1. 30-A MRSA §4401, sub-§4, ¶A, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is amended to read:

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 or for open space land as defined in Title 36, section 1102,

that has been the subdivider's principal residence for a period of at least 5 years before immediately preceding the 2nd dividing occurs division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter.

Sec. 2. 30-A MRSA §4401, sub-§4, ¶D, as amended by PL 1991, c. 500, §1, is repealed.

Sec. 3. 30-A MRSA §4401, sub-§4, ¶¶D-1 to D-6 are enacted to read:

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.

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.

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.

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 spouse, parent, grandparent, brother, sister, child, or grandchild related by blood, marriage, or adoption. A gift under this paragraph cannot be given for consideration that is more than ½ the assessed value of the real estate.

D-5. A division accomplished by gift to 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.

D-6. 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 transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5