

RECENT UPDATE OF THE MODEL SUBDIVISION REGULATIONS

As you may know, one of the longest running planning publications in Maine has been the SMRPC Model Subdivision Regulations. It has been used by hundreds of towns across the state, and it's hard to find a town whose regulations don't contain at least some of its provisions. Since the end of June, we have posted the new 12th edition on our website at: <http://www.smrpc.org/landuse/subord/subord.htm>

What's New – Thanks to our transportation planner, Josh Mack, the transportation section has been thoroughly reworked. Please take the time to look at our new “context-sensitive” subdivision road designs. We are proud that these new standards are far more extensive and flexible, allowing for unpaved, narrower roads in settings like rural Lovell or Denmark, but still requiring suburban style roads with curbs and sidewalks for growth areas in Sanford or Kennebunk. J.T. Lockman worked hard to slay a variety of process problems that he's seen Boards step into over the years – for instance, provisions for determining what submissions are required and when waivers may be granted have been largely reworked.

Take a look and let us know what you think. SPO is still reviewing our work, so the document is not final. We anticipate posting a finalized version in the coming months. For more information, contact J.T. Lockman.



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SOUTHERN MAINE REGIONAL PLANNING COMMISSION ANNOUNCES

Regional Newsletter

MOVING MAINE FORWARD THOUGHTS ON THE BROOKINGS REPORT: CHARTING MAINE'S FUTURE

By now many of you may have read at least parts of the Brookings Institution Study, “Charting Maine's Future”. If not, I would suggest everyone at least take a look (at a minimum peruse the Executive Summary and Recommendations). The study presents a fairly candid look at where we stand in Maine and where we might go in the future.

Boiling a 150 page plus study to a few paragraphs is no easy task, but I will offer my opinion on what the recommendations may mean for this region. The report provides a more optimistic view of Maine than many of us may currently have, while also pointing out many opportunities for improvement. From what I picked out, I believe a few of the crucial recommendations arise from the following issues:

- For a state where land use decision making is so heavily vested at the local level (amongst the most strong as far as local control in the country) the state, (and for that matter the towns themselves), put very little money towards planning and providing local planning boards, planners, and communities with the resources they need to more effectively do their jobs. This is despite the fact that Maine may well be on the verge of continued and sustained population growth. More specifically, here in southern Maine we are looking at growth rates which far surpass national and state averages.
- Our economic development strategies, while well intentioned, have resulted in a patchwork approach to state investment towards economic development lurching from one focus area to another and not sufficiently targeting either industries or regions in a manner which can provide long term growth.
- Taxes are an issue in Maine. However, we probably give our tourists more of a break (as far as taxes) than any other region in the country.
- Ineffective land use regulations are driving sprawl and making the costs of running local government more expensive.
- Our K-12 administrative costs are out of proportion to similarly sized states elsewhere.

Some of the proposed major policy initiatives include:

- The establishment of a \$190 million Maine Quality Places Fund to promote downtown revitalization, support land conservation and promote high quality tourism and outdoor recreation.
- Support a \$200 million Maine Innovation Jobs Fund Research and development investment in promising sectors.
- Establish a Maine Government Efficiency Commission (similar to a BRAC Commission) to identify savings and redundancies in governmental operations.
- Reduce K-12 administrative expenses

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MOVING MAINE FORWARD cont.

- Fund and enlarge the Fund for the Efficient Delivery of Local and Regional Services, the Municipal Investment Trust Fund, and establish a Community Enhancement Fund (to help cities and towns with planning)
- Provide incentives for quality regional planning, such as grant preference and the ability of towns to impose a local option tax for various services (such as food or lodging).
- Establish a new state model building code providing for more infill and redevelopment opportunities.
- Provide property tax relief with funds in excess of 27 million saved through the Government Efficiency Commission.

These new initiatives would be paid for through cost savings developed through the Government Efficiency Commission described above; through savings at the K-12 administrative level; through an increase in the state lodging tax from 7% to 10%; and through a \$20 increase in deed recording fees (this money would go towards assisting local planning).

A major theme of the entire study, and one which should be of major concern to us in southern Maine, is that Maine is in danger of losing its "brand" as a place of beauty, character and desirability – mainly due to the impacts of sprawl and unplanned development.

Although the Executive Committee of SMRPC has not taken a position on the Brookings study or it's recommendations, the feeling of the staff here is that many of the ideas deserve further consideration and should be part of the debate about how best to prepare Maine for the future. While we may be a little biased in this regard, there is no question (at least in this office) that local planning efforts need additional support; that regional planning as method to manage growth needs both support and legitimacy; that state investments (whether for economic development or growth related) could be better targeted to areas of need and opportunity; and that savings and additional revenue for these efforts could be found through a fresh look at the way we do business at the state, local and regional level. Our hope is that this study does not sit on a shelf, but that it becomes part of an active discussion in the legislature on moving Maine forward. We plan to be part of that discussion. The Brookings Report can be found at www.growsmartmaine.org

Paul Schumacher

MAINE DOT STRATEGIC INVESTMENT PLANS cont.

SIPCRES are required to contain Policy, Planning and Capital Investment strategies to meet the transportation, economic and land use objectives identified in the RTA. The strategies are required to have regional benefits, consider the full-range of multimodal opportunities, and should be beyond the scope of capital projects found in Maine DOT's Biennial Capital Work Plan.

SMRPC began drafting the SIPCRES by collecting an inventory of potential policies, planning initiatives and capital projects by consulting with the RTA, regional plans, documented planning processes and studies, and is currently soliciting its Executive Committee, Corridor Committees, Metropolitan Planning Organizations, and other transportation stakeholders to review and provide input on the draft plan.

The document continues to evolve as more feedback is collected. You are encouraged to take a look at the SIPCRES and offer any comments. For more information about this project contact Josh Mack.

SHORELINE EXPLORER'S FIRST YEAR SHOWS GREAT PROMISE

Getting around along the shore of Southern Maine was made easier for people wishing to leave the car at home this past summer. For the first time, a rider could get from York to Kennebunkport without using a car or dealing with parking and traffic hassles. The *Shoreline Explorer* officially rolled out on June 24th and although the first year of any new project points to issues and challenges, the first season shows great promise for York County tourists and residents. Tourists now had the option of leaving their cars at their hotel, and visiting shops, restaurants and other attractions while they were here – they could also ride from the Amtrak *Downeaster* at Wells Transportation Center to their hotel using the Shoreline Explorer Hotel Shuttle. In addition, local residents from Kennebunk to York Beach and Sanford to Wells could get to school or work or simply take a ride to the beach!

Until this new system was created, the Wells Trolley (owned by the Wells Chamber of Commerce) and three private companies provided seasonal trolley service within specific towns – Ogunquit, York, and Kennebunkport (with a guided tour). The Shoreline Explorer system, consisting of the Shoreline Trolley, Kennebunk Shuttle, Shore Road Shuttle, and Sanford Ocean Shuttle provides the connection to private trolley operators in Kennebunkport, Ogunquit, and York Beach as a network.

While ridership for the first week of operation seemed light, it was consistent with prior years of experience for the Wells Trolley. The next 10 weeks, beginning with July 4th, saw an increase in ridership through the middle of August, going from 4,384 in week 2 to 5,572 in week 6 and declining ridership from the middle of August through Labor Day. Monthly total ridership for the system went from 3,644 for the last week in June to 18,637 in July to 20,413 in August. The four-day Labor Day weekend ended the season with September ridership at 1,560. The ridership numbers presented in this summary are for the Shoreline Explorer only and do not include data for the private operators.

NEW TRANSPORTATION-LAND USE WORKSHOP SERIES

Over the years, SMRPC has found that as Southern Maine continues to grow there is a more urgent need to go beyond the basic training or refresher course on planning board basics, and provide planning boards and other municipal leaders involved in planning issues with more in-depth training.

That's why this year we've secured Maine DOT funding to develop a workshop series that aims to provide towns with background information and tools to identify ways to enhance the integration of land use with transportation planning.

On September 20th, the first workshop in the series was held, with good attendance on "Right of Way Acquisition and Municipal Planning" with Mike Danforth, with Right of Way Acquisition at Maine DOT.

We are making arrangements with guest speakers (if available) for a whole host of other interesting and relevant topics. Below is a list of the workshop themes planned for the rest of the year:

- Transportation Impact Fees
- Access Management: Beyond Curb Cut Regulations
- Introduction to the New 2006 Maine Model Subdivision Access and Road Performance and Design Standards
- Creative Parking Policy and Design

We hope to see planners, planning board members, public works officials, town managers, selectmen, council members and others at these workshops. Contact Josh Mack for more information.

MAINE DOT STRATEGIC INVESTMENT PLANS

In 2004 and 2005, SMRPC and its partner, the Greater Portland Council of Governments (GPCOG), facilitated an outreach effort to towns, agencies and other transportation stakeholders to identify transportation needs for Southern Maine for the Maine Department of Transportation (MDOT).

During that process, six corridors of regional and economic significance were identified for the York, Cumberland and Southern Oxford County Region in a Regional Transportation Assessment (RTA). This document summarized key regional transportation objectives as they relate to existing and future land use and economic development conditions in our state.

In July 2006, SMRPC and GPCOG were tasked by MDOT to develop Strategic Investment Plans for Corridors of Regional and Economic Significance (SIPCREs) for each of the transportation corridors identified in the RTA. Maine DOT intends to use the SIPCREs to inform its long range planning activities.

(Continued on page 11)

New Shoreland Zoning Mapping and Funding Considerations

SMRPC staff has started talking with several towns, including Kennebunkport, Eliot, Ogunquit, and Lovell, about updating their Official Shoreland Zoning maps and text, to comply with the new DEP rules that came out last May. You'd think that we would be able to make maps quicker and cheaper than we used to in the mid-90's, with all of our GIS (Geographic Information Systems) computing power. The last time many of our towns made shoreland zoning maps, it was with old-fashioned ink on mylar, with attractive "Zip-a-tone" shading patterns adhered over the top.

However, it turns out that using today's GIS computers to make maps is not necessarily a time saver, compared to the old ways. It still takes two or three weeks of person-hours to complete a SLZ map job. One reason is that, thanks to a 2001 court decision brought on by a dispute in Kennebunkport, towns will need to show clearly on the map where all of the Resource Protection zones are located. It will not be acceptable anymore to have detailed text about which lands qualify as Resource Protection...Judges will expect the Town to show every one of these areas to the public on maps, as well. As Spiderman might say, "With great GIS power, comes increased mapping responsibility!"

For instance, the DEP rules have required for many years now that areas of steep slope (20% or higher for areas of 2 acres or more) within the shoreland zone be designated as Resource Protection (RP). Many towns had this in their zoning ordinance text definition of RP. However, no towns (to our knowledge) with SLZ maps made before 2000 showed such steep areas as RP on their maps. That's because without GIS technology, it was almost impossible to show such detail. But the dispute between Nardi and Kennebunkport, as well as advancing technology have changed the rules of the mapping game. For the complete text of the Nardi decision, go to <http://mainelaw.maine.edu/library/SuperiorCourt/decisions/YORap-00-001.pdf>.

The dispute behind the case was complicated, but basically revolved around the fact that the Nardi's property was shown as located in RP on the map, but did not meet the criteria for RP zoning in the ordinance text. This is a common enough problem, but the reverse situation is even more common – Frequently, properties meet the criteria in the ordinance text to be included in RP, but the map may not show it.

Judge Brennan goes on for 31 pages about this problem, but the lesson is simple enough. Make sure your map clearly and visibly shows all the areas that will be zoned RP according to your ordinance text, so that any reasonable person can figure out roughly where that zone will be, before hiring an engineer and a surveyor. So getting back to the example of steep slopes... we will now have to use special extensions in our software to analyze contours, and show all areas on the map that have sustained slopes of over 20%. Just this one analysis will take several hours of setup and running time. It is just one of the many criteria that had not previously been included on the old-fashioned, manually drawn maps.

Depending on the condition of your SLZ ordinance provisions and mapping, it will take up to five or six thousand dollars to make your Town a new map, and a few thousand more dollars to fix your text, if you use outside consultants. As budget season approaches, start working on your funding, as the deadline for compliance is Summer 2008. For detailed information on complying with the new Shoreland Zoning Rules, come to our workshop scheduled for November 14th in North Berwick (see announcement in this Issue), or contact J.T. Lockman or Jamie Oman-Saltmarsh.

SMRPC'S NEWLY FORMED GIS USER'S GROUP

In September SMRPC kicked off a GIS User's Group. About 15 people enthusiastic about GIS mapping attended from a variety of towns throughout the region. Attendees were from public works, planning, information technology, code enforcement, assessing and the local citizenry. GIS (geographic information systems) is the use of geographic mapping software for the displaying and analysis of geographic based information. SMRPC held the workshop to provide a forum for people within the region who are using, or interested in using, GIS software in their town. Since it was the first workshop, most of the time was spent sharing how GIS is being used, or wanting to be used. Attendees in towns that didn't have GIS expressed a desire to get started and explored how they might use it. Some of the ways that GIS is being used include:

- Water, sewer management map and database development (Sanford and Biddeford)
- Parcel map, zoning, shoreland zoning and comprehensive plan mapping (numerous towns)
- Developable lands analysis (North Berwick, Acton, Mt Agamenticus region)
- Wetlands and stream mapping (Biddeford)
- Beach site location testing of non-point source pollution (Kennebunkport)
- Web access to numerous map layers (Sanford, Biddeford)

Undoubtedly there are many other ways that towns are using GIS throughout our region, but the list only includes what was discussed at the workshop. The New England regional representative from the mapping software ESRI also attended the workshop to enhance our discussion on ways that we can further GIS efforts in the region. Some of those efforts include training, assistance and guidance with projects, getting started with a GIS system, developing parcel maps, and accessing color aerial photos. Although SMRPC had only planned one more workshop for the fiscal year, the workshop attendees expressed a strong interest in having another workshop sooner. Look for another GIS workshop during the beginning of 2007.

SPO REVAMPING COMPREHENSIVE PLANNING RULES

Over the years it has become apparent that the State's Growth Management Act – whose centerpiece was a mandate for every municipality to prepare a Comprehensive Plan – needs to be revisited. Most participants in the program have been quite critical of the process and its results, particularly those who worked on comp plans over the last five or six years.

Since the summer of 2005, the State Planning Office (SPO) who administers the Growth Management Act (GMA), has embarked on an ambitious project to evaluate itself by reaching out to stakeholders with forums and focus groups, and reporting to the Legislature on the results. This fall SPO has begun to revise the Comprehensive Planning Rule (Chapter 202) to streamline their process for determining whether or not a Plan is consistent with the GMA. Stacy Benjamin, the new head of the SPO Land Use Team, needs your input now, and is offering many chances for you to participate.

For details on this effort, check out their extensive web page at:
<http://www.spo-comp-plan-rules.com/spo/>

Drafts of the proposed rule changes are available here, as well as copies of reports on how the program has been working. Schedules of outreach meetings are available as well. Don't miss the boat – Let them know how you feel!

CASE NOTES BY MADGE BAKER, ESQ. cont.

Issues: Were Hinman's appeals filed in a timely manner? And was lot 7 a nonconforming lot of record and therefore buildable?

Ruling: The Court spent considerable effort analyzing whether this case met the "good cause" exception from filing a timely appeal. (Thus this case provides a very useful review of that law if you are interested.) The Justices ended up finding fault with the state shoreland zoning statute which does not require notification of permit applications or permit issuance to landowners in the immediate neighborhood. As a result, the abutter in this case had no way of knowing of its issuance until months after the permit was issued. What the Court found was the abutter, as soon as he saw the stakes in the ground, contacted the Town. The town officials thought his challenge had enough merit for the CEO to issue a stop work order and look into the matter. The fact that the abutter acted immediately led the Court to agree with Superior Court that there was "good cause" for applying an exception to the 60-day appeal period. The analysis of the question whether the lot is a nonconforming lot of record is also thorough. In this case Lot 7 was part of a tract in excess of 80 acres until **after** the Shoreland Zoning ordinance had been adopted. Therefore, the Justices ruled that Lot 7 was not a nonconforming lot **of record**, and it could not be built upon.

SHOP UNTIL YOU DROP IN BIDDEFORD

What's the biggest project in the SMRPC region since the new Poland Spring Bottling plant? – The new shopping Mecca called "Biddeford Crossing." You can't miss it at exit 32, across from Home Depot. It weighs in at over 500,000 square feet of floor space, with 800 jobs and \$110 million in annual sales tax revenue projected. The site plan shows 2,340 parking spaces. Tenants will include Target, Old Navy, Lowes, Best Buy, Olive Garden, and TGI Friday's. At the time of this writing most of the stores are open, but the restaurants are still under construction. So the reality is that big-box retailing is coming on strong in the center of York County (It's not just in Kittery anymore). Locally-owned small scale retailers will have to adjust.

SMRPC AWARDED BROWNFIELD ASSESSMENTS GRANTS

EPA has awarded the Southern Maine Regional Planning Commission two Brownfields Assessment grants. The hazardous substances grant program is a continuation of our existing Brownfields Assessment program.

These funds will be targeted towards properties in the mill complex in Biddeford and will be used to conduct Phase I and II site assessments and to conduct a community involvement program. The petroleum grant program will fund a new Brownfields Assessment program at SMRPC. These funds will be used to perform Phase I and II site assessments and to conduct a community involvement program at potential petroleum contamination site within the region's 39 communities.

SMRPC is currently developing a database of potential petroleum sites for this program. If there is a site in your community that you would like to be evaluated and possibly added to the list please contact either Chuck Morgan or Paul Schumacher.

CASE NOTES BY MADGE BAKER, ESQ.

***Logan v. City of Biddeford*, Maine Supreme Judicial Court, decided August 17, 2006**

Contiguous lot case

Facts: Robert Logan owns four contiguous lots, two of which are vacant, lots 29 and 30. He applied for a building permit to build one residence on the vacant two lots, which lots when combined still did not constitute a conforming lot. The intervenors appealed the issuance of a building permit to the Zoning Board of Appeals. The ZBA found that while the Shoreland Zoning Ordinance allows for an exemption from the merger provisions, the General Zoning Ordinance does not. The ZBA decided that the more restrictive ordinance controls and ruled that the CEO should not have issued a building permit. The ZBA's decision was overturned at Superior Court. Justice Fritzsche ruled that the more specific provision in the Shoreland Zoning Ordinance controlled.

Issue: Do the two ordinance provisions in fact conflict, because if they do the stricter controls?

Ruling: The Shoreland Zoning provisions exempt lots from the merger provision if the lot or lots can accommodate a subsurface waste disposal system that complies with State regulations and are at least 20,000 square feet. Logan's lot would meet these requirements. The General Ordinance requires a conforming lot in order for a second residence to be built on the four lot.s (There is one residence there already.) The Court ruled that the since the application of the General Ordinance and the Shoreland Zoning Ordinance achieve different results they do in fact conflict. When they conflict the stricter controls. Therefore, the ZBA was correct: the building permit should be denied.

***Viles v. Town of Embden*, Maine Supreme Judicial Court, decided August 31, 2006**

Zoning case

Facts: Mr. and Mrs. Viles own lots 7 and 21. These lots were originally part of a larger tract of land on the shores of Embden Pond. Lot 7 has 50 feet of frontage on the pond. In 2003 the Viles obtained a permit to build a house and garage on Lot 7. The abutter, Mr. Hinman, in September wrote a letter complaining about the permit. It was discussed at the next Planning Board meeting. The CEO and the Viles made some amendments to the dimensions in the building permit, which reduced the size of both the house and the garage. Then the abutter filed two appeals to the ZBA seeking revocation of the original permit and the amended permit. The ZBA dismissed the appeals as untimely. Hinman appealed to Superior Court. Superior Court concluded that the appeal of the first building permit was timely pursuant to "the good cause" exception to the 60 appeal period requirement. (In this case there was no time limit in the ordinance, in which case 60 days is normally the standard.) The second appeal was also timely. The Superior Court remanded to the ZBA. The ZBA ruled that the building permit should be rescinded on the basis that Lot 7 was not a nonconforming lot of record. The Viles appealed.

(Continued on page 9)

2007 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

The Maine Department of Economic and Community Development, Office of Community Development's 2007 Community Development Block Grant Program will begin accepting applications for various programs in December, 2006. Assistance in the explanation of the programs is available from SMRPC at no cost to municipalities. These services are financed through a contract with the Department of Economic and Community Development made possible as a result of your annual dues payment. We are able to meet with you to explain the types of activities eligible under the various grant programs, and match the grant programs to the community and economic development needs of your community.

Information on the various CDBG programs, including application deadlines, funding amounts, program descriptions and the Final Statement, is available at the Office of Community Development's website: www.meocd.org.

Public Facilities and Public Infrastructure

- Letter of Intent and Verification of CDBG National Objective on or before December 1, 2006
- Application January 12, 2007

Downtown Revitalization

February 9, 2007

Community Enterprise

February 9, 2007

Economic Development Program

- Pre-Application February 2, 2007 and May 4, 2007
- Application (Final Phase) April 6, 2007 and July 6, 2007
(May 4 pre-application deadline is based upon availability of funds)

Housing Assistance

- Letter of Intent on or before January 12, 2007
- Application March 2, 2007

Public Service

- Letter of Intent on or before January 26, 2007
- Application March 9, 2007

Community Planning

April 6, 2007 and August 3, 2007

Urgent Need

1st come basis beginning March 2, 2007

Interim Financing Program

Open

Special Projects Matching Fund

Open

Southern Maine Regional Planning Commission Announces

SHORELAND ZONING WORKSHOP

(Previously advertised workshop for October 25, 2006 was cancelled and rescheduled)

TOWNS HAVE TWO YEARS TO MAKE THEIR LOCAL ORDINANCES CONSISTENT WITH NEW MAINE DEP SHORELAND ZONING RULES THAT TOOK EFFECT MAY 1, 2006

TOWNS WILL BE REQUIRED TO MAKE TEXT AND MAP CHANGES AND NEED TO START BUDGETING FOR THESE CHANGES NOW

Guest Speaker – Mike Morse, Maine DEP, will review the changes to Maine Dep Chapter 1000 Shoreland Zoning Rules, and a representative from the Maine Forest Service will briefly discuss timber harvesting in the shoreland.

Discussion Topics:

- Considerations for making text changes to shoreland zoning
- Shoreland zoning mapping case study – Town of Lovell
- Budgeting for shoreland zoning changes

Who Should Attend:

Selectmen and Council members, Planning Board members, Planners, Conservation Commission members, and Code Enforcement Officers

**NEW DATE: Tuesday, November 14, 2006
6:30 p.m. -- 9:00 p.m.**

**NEW LOCATION: Noble High School Lecture Hall
388 Somersworth Rd. (Rt 9), North Berwick, ME**

Please RSVP by November 3, 2006
Please call Peg Sawyer at 324-2952 or e-mail to psawyer@smrpc.org

Southern Maine Regional Planning Commission Announces

BOARDSMANSHIP WORKSHOP

Wednesday, November 15, 2006

7:00 to 9:00 PM

**South Hiram Elementary School Gymnasium
213 S. Hiram Rd., Hiram, ME**

The Workshop will address the following topics:

- Understanding Your Responsibilities as a Public Official
- Basic Tools of Planning and Appeals Boards
- Right to Know Law
- Setting Meeting Agendas
- Running a Meeting (Parliamentary Procedure, Taking Minutes, Making Decisions)
- Conflicts of Interest

We will be joined by Durward Parkinson, Esq., a land use attorney from Bergen & Parkinson, who will address specific issues of interest, including:

- Variances and Appeal Procedures;
- Vested Rights;
- Revocation of Approval;
- Applicability of New Ordinances; and
- What the Courts Look at in Reviewing your Decisions

The presentation will be followed by an open-ended question and answer session, so come prepared with your own specific questions and concerns.

**We request that you RSVP by November 7, 2006
Please call Peg Sawyer at 324-2952
or email to psawyer@smrpc.org**