



City of Caribou, Maine

Municipal Building
25 High Street
Caribou, ME 04736
Telephone (207) 493-3324
Fax (207) 498-3954
www.cariboumaine.org

Caribou Planning Board Regular Meeting Wednesday, June 1, 2016 • 5:30 PM Caribou City Council Chambers

AGENDA

- I. Call Meeting to Order
- II. Approval of Minutes
 - a. May 4, 2016 Regular Meeting 2-3
- III. New Business
 - a. Daigle Oil Company Diesel Pump Operations – Concept Review 4-12
 - b. Griffin Used Automobile Site Design – Final Site Review 13-22
- IV. Old Business
 - a. Chapter 13 Revision Process 23-24
 - i. Maine Municipal Association Planning Board – Legal Issues 25-26
 - ii. MMA Ten Common Mistakes in Drafting Land Use Ordinances 26-27
 - iii. MMA-PB Manual Ch. 1–Creation, Qualifications & Liability (10 pages) 28-37
 - iv. MMA-PB Manual Ch. 6 – Ordinance Interpretation (17 pages) 38-55
- V. Other Business
- VI. Adjournment



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Caribou Planning Board Meeting Minutes Wednesday, May 4, 2016 @ 5:30 pm City Council Chambers

In Attendance: Phil Cyr, Robert White, Michele Smith, Evan Graves, Philip McDonough III and Todd Pelletier

Members Absent: Matthew Hunter

Others in Attendance: Jim Chandler –Assistant City Manager & Code Enforcement Officer, Steve Wentworth and Denise Lausier

- I. Call Meeting to Order** – The meeting was called to order at 5:30 pm.
- II. Approval of Minutes**
 - a. April 6, 2016 Regular Meeting** – Todd Pelletier moved to approve the minutes as presented; seconded by Evan Graves. Vote was unanimous.
- III. New Business** –
 - a. Griffin Used Automobile Site Design – Concept Review** – Jim Chandler stated this use is in the R-3 Zone and requires Planning Board approval. The applicant was not present. After review, the Board decided the application was insufficient for Concept Review. Philip McDonough III moved to table the application until June pending more information from the applicant and discussion with Jim Chandler; seconded by Bob White. Vote was unanimous.
 - b. Goughan’s Berry Farm – Discussion of RV Park Regulations** – Gloria and Mark Goughan submitted a letter, partial site design application and a map to explain the business plan they have been considering to develop a 10 site recreational vehicle park on their farm at 875 Fort Fairfield Road. They would like it to be seen from the road, have a view of the valley and Aroostook River as well as the farm they have developed, but current city code requires it be screened in. They are requesting to discuss if there are options to meet the city requirements, but also meet their requirements of their long range plans. The Goughans were not in attendance. After lengthy Board discussion, the Board believes this issue will be resolved in the work they are doing on the Chapter 13 re-write. They are going to adopt the state standards on campgrounds, which does not require screening in of campgrounds. Jim Chandler is to contact the applicant and let them know of the re-write and the plan to adopt the state standards.

IV. Old Business –

a. Chapter 13 Summary Discussion of Revision Process

- i. Process for Final Review and Adoption Timeline** – Jim Chandler gave the Board a timeline and proposed process for final review. He will put together a draft for the Board to review.

V. Other Business – The Board will tentatively plan to meet on July 6, 2016 for a regular meeting just for business items.

Evan Graves brought up the condition of the city sidewalks and if there is something that can be done to improve the sidewalks and the walkability of them. After Board discussion, they decided to draft a letter to the City Council as a recommendation to look at the sidewalks in the city in line with the vision in the Comprehensive Plan.

Chairman Phil Cyr thanked Steve Wentworth for attending the meetings and for offering his knowledge to the Board.

VI. Adjournment – Philip McDonough III moved to adjourn the meeting at 6:05 pm; seconded by Evan Graves. Vote was unanimous.

Respectfully Submitted,

Robert White
Planning Board Secretary

RW/dl



OFFICE OF THE CITY MANAGER

CARIBOU, MAINE

Date: June 1, 2016

To: Chairman and Planning Board Members

From: Jim Chandler, Assistant City Manager

Subject: Site Design Plan Review – Daigle Oil Company Diesel Pump Operations

Attached is a Site Design Application package that includes the following items:

- Site Design Application
 - Signed by Bert Levesque, Applicant
 - Submitted by Timothy R. Roix, PLS, PE
- Site Design & Piping/Underground Tank Consultants List
- Warranty Deed
- Three Plan Sheets for Location, Layout and Erosion Control

The Site Design Application is being submitted for the purpose of permitting the expansion of existing Fuel Storage and Dispensary Operations at the Presque Isle Road location to include the dispensing of diesel fuel. Applicant indicates the Maine Department of Environmental Protection required permit will be obtained. Applicant shall forward a copy of this permit, once issued, to be included in the City's file for this location.

The application indicates the change/expansion of existing operations will not adversely impact the Presque Isle location; however, it will positively impact the community by reducing the amount of large truck traffic at the Bennett Drive location.

Comments from Fire Chief Scott Susi – Monday, April 25, 2016:

“Bert, thanks for the great discussion this morning, I see no problems with the planed site for the dispensary. Like in my past plans we have discussed I like good lighting, if there is a spill or other emergent problem we need to see to help. I believe this is a great idea to help get rid of some of the larger traffic off Bennett drive and will be a great asset for Daigle Oil Co.”

Planning Board – by majority vote may use one of these possible Motions:

1. “Pending inclusion of a copy of the appropriate MDEP Permit, the Application is approved as submitted.”
2. “With the inclusion of a copy of the appropriate MDEP Permit, and any additional items or information discussed or requested during this public hearing, the Final Site Design is scheduled for final approval at the next scheduled Planning Board meeting at least 30 days from today.”



Site Design Application

Planning & Code Enforcement
City of Caribou
25 High St.
Caribou, Maine 04736

(207) 493-3324 option 3
pthompson@cariboumaine.org

Note to Applicant: Complete this application and return it with the required documents. In addition, the required fee must be returned along with this completed application. Make checks payable to: "City of Caribou", in the amount of \$90.00 plus \$10.00 per 2000 square feet of total gross floor area for commercial, industrial or other non residential applications.

Please print or type all information

Name of Property Owner / Developer: Daigle Oil Company

Development Name: Caribou Diesel Fuel Pumping Station

Location of Property (Street Locations): 917 Presque Isle Road

City of Caribou Tax Map: 5 Lot: 24A Zone: R-C2

Site Design Review Application – City of Caribou, Maine

Site Design approval will not be considered complete until the Planning Board has determined it has all of the necessary information to review the proposal and render a decision. You are advised to meet with the Code Enforcement Officer prior to completing the application as it may not be necessary to comply with all of the items shown on the form. The review of your application shall consist of at least (2) two presentations to the Planning Board and possibly additional presentations until all required information has been provided. A "Performance Bond" may be required prior to approval of this project.

Applicant Information

Please provide a brief description of this project.

Daigle Oil Company is going to install a diesel fuel pumping station at their site on the Presque Isle Road.

Person and address to which all correspondence regarding this application should be sent to:

Bert Levesque Phone: 207-834-5027
Daigle Oil Company
P.O. Box 328
Fort Kent, ME 04743-0328 E-mail: bertl@daigleoil.com

If applicant is a corporation, check if licensed in Maine (Yes (No)
(Attach copy of Secretary of State Registration)

Name of Land Surveyor, Engineer, Architect or other Design Professionals. (attach list if needed)

B.R. Smith Associates, Inc.
Timothy R. Roix, PLS, PE Phone: 207-764-3661
11 Hall Street
Presque Isle, ME 04769 Phone: _____

What legal interest does the applicant have in property to be developed (ownership, owners representative, option, purchase & sales contract, etc?)

Daigle Oil Company owns the property, see attached deed

(Attach supportive legal documentation)

Aroostook County Registry Deeds: Book # 5284 Page # 14 (attach copy of deed)

What interest does the applicant have in any abutting property? none

Is any portion of the property within 250 feet of the normal high water line of a lake, pond, river, or wetland or within 75 feet of any stream? (Yes (No)

Is any portion of the property within a Flood Hazard Zone? (Yes (No)

Total area or acreage of parcel: 5.3 acres Total area or acreage to be developed: 0.08 ac. +/-

Has this land been part of subdivision in the past five years? (Yes (No)

Identify existing use(s) of land (farmland, woodlot, residential, etc.) Propane bulk storage facility and
bulk fuel storage facility

Indicate any restrictive covenants to be placed in the deed -- (Please attach list) None

Does the applicant propose to dedicate any recreation area, or common lands? Yes No

Recreation area(s) Estimated Area & Description: N/A

Common land(s) Estimated Area & Description: N/A

Anticipated start date for construction: month / year ___/___ Completion: ___/___

Does any portion of the proposal cross or abut an adjoining municipal line? Yes No

Does this development require extension of public services? Yes No

Roads: ___ Storm Drainage: ___ Sidewalks: ___ Sewer Lines: ___ Other: ___

Estimated cost for infrastructure improvements: \$ 0.00

Water Supply: Private Well: Public Water Supply: N/A

Sewerage Disposal: Private SSWD: Public Sewer: N/A

Estimated sewerage disposal gallons per day: (___/ day) N/A

Does the building require plan review by the State Fire Marshal Office? Yes No
(Attach Barrier free and Construction Permits from SFMO)

Have the plans been reviewed & approved by the Caribou Fire Chief? Yes No

Does the building have an automatic sprinkler system? Yes No

Does the building have an automatic fire detection system? Yes No

Will the development require a hydrant or dry hydrant fire pond? Yes No

The Planning Board shall review applications first as a Concept Plan. Concept Plan Review is intended to insure the proposed plan is in conformance with the Caribou Comprehensive Plan and all City Ordinances. The completed application and concept plans shall be delivered to the Code Enforcement Office no less than 21 days prior to the first day of the next month. The

Chairman of the Planning Board shall determine the schedule and agenda of the next meeting when the application and plans will receive Concept Plan Review. At a minimum, Concept Plan applications shall include the following:

1. X Name and address of the owner of record and applicant (if different).
2. X Name of the proposed development and location.
3. X Names and addresses of all property owners within 500 feet of the property.
4. X A copy of the deed to the property, option to purchase the property, or other documentation to demonstrate right, title, or interest in the property on the part of the applicant.
5. X Names and addresses of all consultants working on the project.
6. X 1 complete set of plans, 24" X 36" & 10 complete sets of plans, 11" X 17"
 Plans to be included:
 Boundary Survey
 Storm Water Management
 Erosion and Sediment Control
 Finish Grading Plan
 Site Improvement Detail
 Building Elevations and Structural Plans
7. **Plans to show the following elements for review:**
 - X a. Graphic scale and north arrow.
 - N/A b. Location and dimensions of any existing or proposed easements and copies of existing covenants or deed restrictions.
 - X c. Name, registration number, and seal of the land surveyor, architect, engineer, and/or similar professional who prepared the Plan.
 - X d. All property boundaries, land area, and zoning designations of the site, regardless of whether all or part is being developed at this time.
 - X e. Size, shape, and location of existing and proposed buildings on the site including dimensions of the buildings and setbacks from property lines.
 - X f. Access for Emergency Vehicles, location and layout design of vehicular parking, circulation areas, loading areas, and walkways including curb cuts, driveways, parking space and vehicle turn around areas.
 - X g. Location and names of streets and rights-of-way within 200' and adjacent to the proposed development.
 - X h. Proposed finish grades and graphic arrows indicating the direction of storm water runoff.
 - N/A i. Conceptual treatment of on and off site storm water management facilities.
 - N/A j. Location and sizes of existing and proposed sewer and water services including connections.
 - N/A k. Conceptual treatment of landscaping buffers, screens, and plantings.

- X 1. Location of outdoor storage areas, fences, signage and accessory structures.
- X m. Context map illustrating the area surrounding the site which will be affected by the proposal including all streets, sidewalks, intersections, storm water drainage ways, sanitary sewer lines and pump stations, nearby properties and buildings, zoning Districts, and geographic features such as, but not limited to, wetlands, natural features, historic sites, flood plains, significant scenic areas, and significant wildlife habitats as provided in the Comprehensive Plan.
- X n. All proposed signage and exterior lighting including the location, size and wording of all signs, type of exterior lights, radius of light, manufacturer's specifications sheet, and the ground level intensity in foot- candles of all exterior lights.



Following approval of the Concept Plan Review, the Planning Board may by majority vote schedule the Site Design Application for Final Plan Review. Final Plan Review must be at least 30 days following Concept Plan Approval. If additional information is required by the Planning Board following the Concept Plan Review, a complete set of revised plans shall be provided for final review and approval. If additional information or a change of information is required, the revised plans shall be delivered to the Code Enforcement Office at least 21 days prior to the next scheduled meeting.

Final Site Design Plan Review shall require three (3) 24" X 36" sets of plans for Board Signatures.

If the Planning Board determines that third party review will be necessary to make a sound decision, the applicant will be responsible for any fees incurred for the third party review.

During the Final Site Design Review the Chairman or designee shall determine that all of the elements of review 7-a., through 7-n. above have been addressed. The chair may then call for a motion.

If the Final Plan is approved by the Planning Board, no work may commence for a period of 30 days following the date of approval.

Final Site Design Plans shall provide an area designated for all seven Planning Board members signatures.

Applicant Signature:

To the best of my knowledge, all of the information submitted in this application is true and correct.

Signature of Applicant: Bert Lawrence Date: 4/25/2016

Final Site Design Review Criteria by Planning Board

Date: _____	<u>Yes</u>	<u>No</u>	<u>N/A</u>
A. Conformance with Comprehensive Plan	_____	_____	_____
B. Traffic	_____	_____	_____
C. Site Access	_____	_____	_____
D. Parking & Vehicle Circulation	_____	_____	_____
	<u>Yes</u>	<u>No</u>	<u>N/A</u>
E. Pedestrian Circulation	_____	_____	_____
F. Site Conditions	_____	_____	_____
G. Open Space	_____	_____	_____
H. Sanitary Sewage	_____	_____	_____
I. Water	_____	_____	_____
J. Emergency Vehicle Access	_____	_____	_____
K. Waste Disposal	_____	_____	_____
L. Buffering	_____	_____	_____
M. Natural Areas	_____	_____	_____
N. Exterior Lighting	_____	_____	_____
O. Stormwater Management	_____	_____	_____
P. Erosion & Sediment Control	_____	_____	_____
Q. Buildings	_____	_____	_____
R. Existing Landscaping	_____	_____	_____
S. Infrastructure	_____	_____	_____
T. Advertising Features	_____	_____	_____
U. Design Relationship to Site & Surrounding Properties	_____	_____	_____

V.	Scenic Vistas & Areas	_____	_____	_____
W.	Utilities	_____	_____	_____
X.	Mineral Exploration	_____	_____	_____
Y.	General Requirements (Pg. 859)	_____	_____	_____
Z.	Phosphorus Export	_____	_____	_____

**City of Caribou, Maine
Planning Board**

Site Design Review for: _____

Address: _____

Approved by the Caribou Planning Board

Signed: _____ Chairman of the Planning Board

Date: ____ / ____ / ____

Conditions of Approval:

Consultants for Daigle Oil Co. Diesel Fuel Pumping Station

Site Design

Timothy R. Roix, PLS, PE
B.R. Smith Associates, Inc.
11 Hall Street
Presque Isle, ME 04769
207-764-3661

Piping, Underground Tank & Pump Design & Installation

GafTek Petroleum Specialists
106 Perry Road
Bangor, ME 04401
207-217-6515



OFFICE OF THE CITY MANAGER

CARIBOU, MAINE

Date: June 1, 2016

To: Chairman and Planning Board Members
From: Jim Chandler, Assistant City Manager
Subject: Site Design Plan Review – Griffin Auto Sales

Attached is a Site Design Application package that includes the following items:

- Site Design Application
- Site Sketch
- Google Map Aerial of Lot

The Site Design Application is being submitted for the purpose of permitting the use of an existing garage and parking lot at 960 Access Highway for the purpose of automobile sales.

After discussion at the May 4, 2016 Planning Board meeting, this application was tabled pending a site visit with the Applicant by Jim Chandler, CEO; and Fire Chief Scott Susi. These visits have occurred, and the Applicant was given the additional permit forms for the State of Maine Fire Marshall's Office for completion. As of the preparation of the packet materials, the City has not yet received confirmation that the Fire Marshall has approved the building for access or occupancy by the public. Applicant has been requested to attend the June meeting to discuss status of the application.

This use is permitted in the R-3 Zone, with Planning Board Approval.

Planning Board may by majority vote, may use one of these possible Motions:

1. "Pending submission of a copy of the Fire Marshall's Office approval, and City Fire Chief's approval, PB may approve the Concept Design and place the Application on a future Planning Board Agenda for Final Site Design Review and Approval."
2. "Reject the Application as submitted and request the Applicant provide additional information for re-consideration at a Final Site Design Review at the Planning Board Meeting scheduled for a later date."

CAR LOT



Site Design Application

Planning & Code Enforcement
City of Caribou
25 High St.
Caribou, Maine 04736

(207) 493-3324 option 3
citymanager@cariboumaine.org

Note to Applicant: Complete this application and return it with the required documents. In addition, the required fee must be returned along with this completed application. Make checks payable to: "City of Caribou", in the amount of \$90.00 plus \$10.00 per 2000 square feet of total gross floor area for commercial, industrial or other non residential applications.

Please print or type all information

Name of Property Owner / Developer: Kip Griffin
Development Name: Griffin used Auto
Location of Property (Street Locations): 960 Access Highway Caribou
City of Caribou Tax Map: 15 Lot: 70 Zone: R-3

Site Design Review Application - City of Caribou, Maine

Site Design approval will not be considered complete until the Planning Board has determined it has all of the necessary information to review the proposal and render a decision. You are advised to meet with the Code Enforcement Officer prior to completing the application as it may not be necessary to comply with all of the items shown on the form. The review of your application shall consist of at least (2) two presentations to the Planning Board and possibly additional presentations until all required information has been provided. A "Performance Bond" may be required prior to approval of this project.

Person and address to which all correspondence regarding this application should be sent to:

Kip Griffin
64 High Meadow Rd
Perham ME. 04766

Phone: 768-8396

E-mail: griffinfarm38@yahoo.com

If applicant is a corporation, check if licensed in Maine (Attach copy of Secretary of State Registration) Yes No

Name of Land Surveyor, Engineer, Architect or other Design Professionals. (attach list if needed)

Phone: _____

Phone: _____

What legal interest does the applicant have in property to be developed (ownership, owner's representative, option, purchase & sales contract, etc?)

owner - 11/20/2015 Book 5493 Page 36
(Attach supportive legal documentation)

Aroostook County Registry Deeds: Book # 5493 Page # 36 (attach copy of deed)

What interest does the applicant have in any abutting property? No

Is any portion of the property within 250 feet of the normal high water line of a lake, pond, river, or wetland or within 75 feet of any stream? () Yes (X) No

Is any portion of the property within a Flood Hazard Zone? () Yes (X) No

Total area or acreage of parcel: 2.5 Total area or acreage to be developed: _____

Has this land been part of subdivision in the past five years? () Yes (X) No

Identify existing use(s) of land (farmland, woodlot, residential, etc.) currently vacant
previously used as a car wash

Indicate any restrictive covenants to be placed in the deed: None

(Attach list if needed)

Does the applicant propose to dedicate any recreation area, or common lands? Yes No

Recreation area(s) Estimated Area & Description: N/A

Common land(s) Estimated Area & Description: N/A

Anticipated start date for construction: month / year ASAP Completion: 06/01/2016

Does any portion of the proposal cross or abut an adjoining municipal line? Yes No

Does this development require extension of public services? Yes No

Roads: _____ Storm Drainage: _____ Sidewalks: _____ Sewer Lines: _____ Other: _____

Estimated cost for infrastructure improvements: \$ _____

Water Supply: Private Well: Public Water Supply:

Sewerage Disposal: Private SSWD: Public Sewer:

Estimated sewerage disposal gallons per day: (_____ / day) unknown

Does the building require plan review by the State Fire Marshal Office? Yes No
(Attach Barrier free and Construction Permits from SFMO)

Have the plans been reviewed & approved by the Caribou Fire Chief? Yes No

Does the building have an automatic sprinkler system? Yes No

Does the building have an automatic fire detection system? Yes No

Will the development require a hydrant or dry hydrant fire pond? Yes No

1. The Planning Board shall review applications first as a Concept Plan. Concept Plan Review is intended to insure the proposed plan is in conformance with the Caribou Comprehensive Plan and all City Ordinances. The completed application and concept plans shall be delivered to the Code Enforcement Office no less than 21 days prior to the first day of the next month. The Chairman of the Planning Board shall determine the schedule and agenda of the next meeting when the application and plans will receive Concept Plan Review. At a minimum, Concept Plan applications shall include the following:

1. _____ Name and address of the owner of record and applicant (if different).

2. _____ Name of the proposed development and location.
3. _____ Names and addresses of all property owners within 500 feet of the property.
4. _____ A copy of the deed to the property, option to purchase the property, or other documentation to demonstrate right, title, or interest in the property on the part of the applicant.
5. _____ Names and addresses of all consultants working on the project.
6. _____ 1 complete set of plans, 24" X 36" & 10 complete sets of plans, 11" X 17"
Plans to be included:
Boundary Survey
Storm Water Management
Erosion and Sediment Control
Finish Grading Plan
Site Improvement Detail
Building Elevations and Structural Plans

7. **Plans to show the following elements for review:**

- _____ a. Graphic scale and north arrow.
- _____ b. Location and dimensions of any existing or proposed easements and copies of existing covenants or deed restrictions.
- _____ c. Name, registration number, and seal of the land surveyor, architect, engineer, and/or similar professional who prepared the Plan.
- _____ d. All property boundaries, land area, and zoning designations of the site, regardless of whether all or part is being developed at this time.
- _____ e. Size, shape, and location of existing and proposed buildings on the site including dimensions of the buildings and setbacks from property lines.
- _____ f. Access for Emergency Vehicles, location and layout design of vehicular parking, circulation areas, loading areas, and walkways including curb cuts, driveways, parking space and vehicle turn around areas.
- _____ g. Location and names of streets and rights-of-way within 200' and adjacent to the proposed development.
- _____ h. Proposed finish grades and graphic arrows indicating the direction of storm water runoff.
- _____ i. Conceptual treatment of on and off site storm water management facilities.
- _____ j. Location and sizes of existing and proposed sewer and water services including connections.
- _____ k. Conceptual treatment of landscaping buffers, screens, and plantings.
- _____ l. Location of outdoor storage areas, fences, signage and accessory structures.
- _____ m. Context map illustrating the area surrounding the site which will be affected by the proposal including all streets, sidewalks, intersections, storm water

drainage ways, sanitary sewer lines and pump stations, nearby properties and buildings, zoning Districts, and geographic features such as, but not limited to, wetlands, natural features, historic sites, flood plains, significant scenic areas, and significant wildlife habitats as provided in the Comprehensive Plan.

- n. All proposed signage and exterior lighting including the location, size and wording of all signs, type of exterior lights, radius of light, manufacturer's specifications sheet, and the ground level intensity in foot- candles of all exterior lights.

Following approval of the Concept Plan Review, the Planning Board may by majority vote schedule the Site Design Application for Final Plan Review. Final Plan Review must be at least 30 days following Concept Plan Approval. If additional information is required by the Planning Board following the Concept Plan Review, a complete set of revised plans shall be provided for final review and approval. If additional information or a change of information is required, the revised plans shall be delivered to the Code Enforcement Office at least 21 days prior to the next scheduled meeting.

Final Site Design Plan Review shall require three (3) 24" X 36" sets of plans for Board Signatures.

If the Planning Board determines that third party review will be necessary to make a sound decision, the applicant will be responsible for any fees incurred for the third party review.

During the Final Site Design Review the Chairman or designee shall determine that all of the elements of review 7-a., through 7-n. above have been addressed. The chair may then call for a motion.

If the Final Plan is approved by the Planning Board, no work may commence for a period of 30 days following the date of approval.

Final Site Design Plans shall provide an area designated for all seven Planning Board members' signatures.

Applicant Signature:

To the best of my knowledge, all of the information submitted in this application is true and correct.

Signature of Applicant:



Date:

3/09/2016

Final Site Design Review Criteria by Planning Board

Date: _____	<u>Yes</u>	<u>No</u>	<u>N/A</u>
A. Conformance with Comprehensive Plan	_____	_____	_____
B. Traffic	_____	_____	_____
C. Site Access	_____	_____	_____
D. Parking & Vehicle Circulation	_____	_____	_____
	<u>Yes</u>	<u>No</u>	<u>N/A</u>
E. Pedestrian Circulation	_____	_____	_____
F. Site Conditions	_____	_____	_____
G. Open Space	_____	_____	_____
H. Sanitary Sewage	_____	_____	_____
I. Water	_____	_____	_____
J. Emergency Vehicle Access	_____	_____	_____
K. Waste Disposal	_____	_____	_____
L. Buffering	_____	_____	_____
M. Natural Areas	_____	_____	_____
N. Exterior Lighting	_____	_____	_____
O. Stormwater Management	_____	_____	_____
P. Erosion & Sediment Control	_____	_____	_____
Q. Buildings	_____	_____	_____
R. Existing Landscaping	_____	_____	_____
S. Infrastructure	_____	_____	_____
T. Advertising Features	_____	_____	_____
U. Design Relationship to Site & Surrounding Properties	_____	_____	_____

- V. Scenic Vistas & Areas _____
- W. Utilities _____
- X. Mineral Exploration _____
- Y. General Requirements (Pg. 859) _____
- Z. Phosphorus Export _____

**City of Caribou, Maine
Planning Board**

Site Design Review for: _____

Address: _____

On _____ (date) the members of the Caribou Planning Board met to consider the application for Site Design Review on the property referenced above.

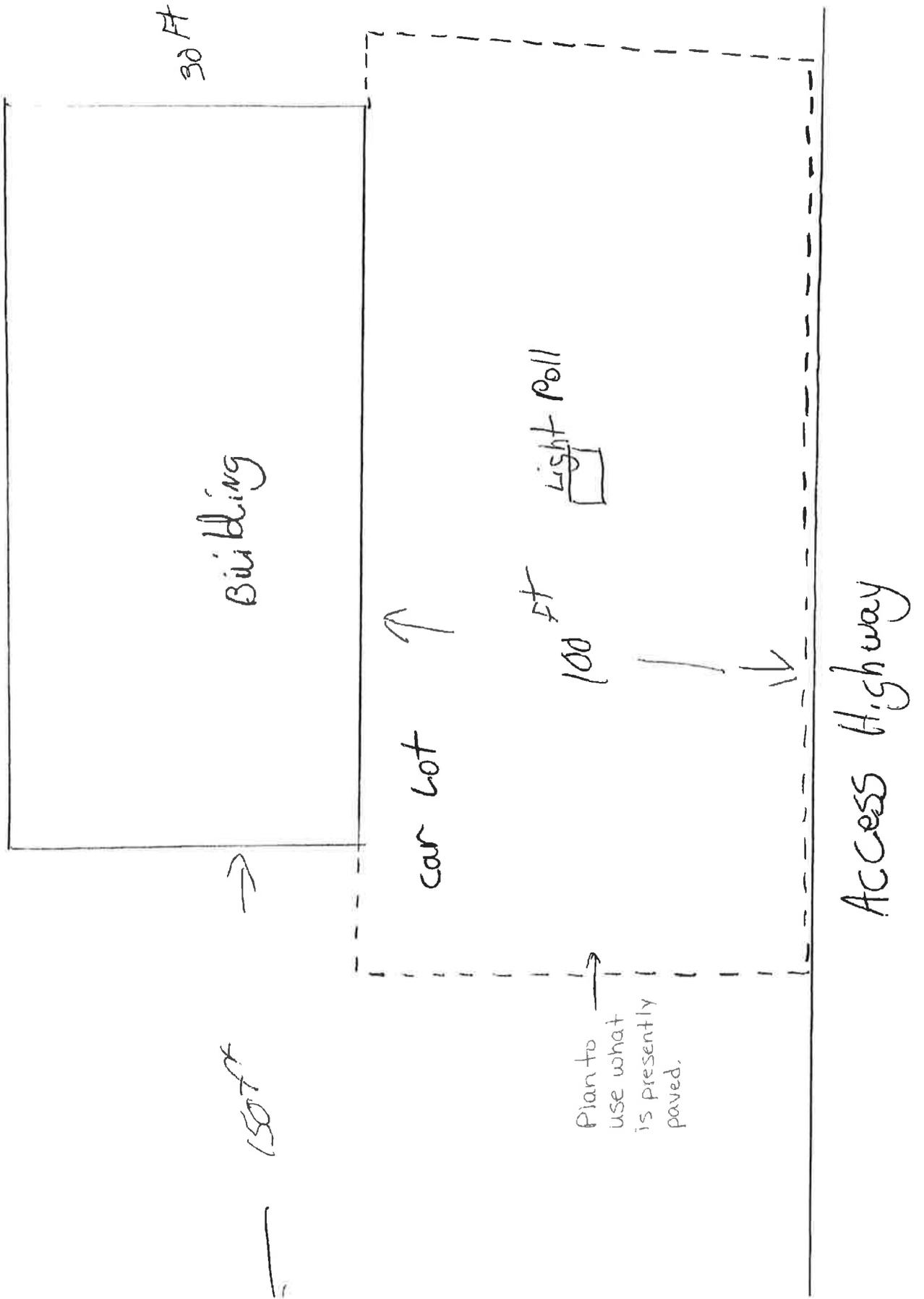
The application was: **Denied / Approved / Approved with conditions**

Approved by the Caribou Planning Board

Signed: _____ Chairman of the Planning Board

Date: ____ / ____ / ____

Conditions of Approval:







OFFICE OF THE CITY MANAGER

CARIBOU, MAINE

Date: June 1, 2016

To: Chairman and Planning Board Members
From: Jim Chandler, Assistant City Manager
Subject: City Code Chapter 13 – Zoning Ordinance Revisions

Following our discussion at the May meeting regarding the path forward for developing a final draft of revisions to the City of Caribou Zoning Ordinances, we reviewed several planning and zoning resources published by the American Planning Association. These offered general guidance for how the Planning Board may wish to incorporate nationally recognized best practices as you move forward with revising the Zoning Ordinances. Using these resources, and those offered by the State of Maine and the Maine Municipal Association, provide sound guidance for revising our zoning ordinances in a way that empowers citizens and businesses to develop and redevelop the land resources efficiently and in keeping with the City of Caribou's Comprehensive Plan.

The formal review/revision process discussed at the June 1, 2016 Planning Board Meeting included the following general timeline and benchmarks:

- June 1st
 - Review of MMA Planning Board Legal Perspectives (Attached Below)
- July 6th
 - Initial Review of Topics and Chapters
- August 3rd
 - Begin Initial Review of New Code Language
- September 7th
 - Review of New Code Language
 - Public Hearing for Comments on New Code Sections

- October 5th
 - Public Hearing for Comments of New Code Sections

- November 2nd
 - Public Hearing for Approval of New Code Section

Please find attached below the following items from the Maine Municipal Association's Planning Board Manual (2011, most current version) and Planning Board Resources section for member municipalities. These items offer a good foundation for moving our revision process forward on sound legal standing.

These support the general review and revision approval process we discussed at our May 4th meeting, as noted below:

For the First Draft Review

1. Format change approval
 - a. Is the format user friendly?
 - b. Is the format in keeping with the Planning Board grouping suggestions (example: Transient Accommodations)?

2. Content Change Approval
 - a. Have agreed upon content changes been made?
 - b. Are the suggested references cited?
 - c. Anything else?

How to determine approval

1. Do you approve of the changes?
 - a. Yes
 - b. No, with reason(s)
 - c. If all Yes -> approved
 - d. If all No -> not approved
 - e. If a No with reason, quorum determines if the change should be made or if approval goes forth

Introduction

Serving on a municipal planning board is one of the most important contributions that a citizen can make toward shaping the community's future. It can be a very rewarding experience for a person who is interested in trying to help the municipality balance new development against the traditional character and quality of life of the community. But it also can be a frustrating experience—doing battle with the voters at town meetings who oppose a comprehensive plan or ordinance which the board has worked for months to develop, going head to head with an uncooperative subdivision developer or his attorney over information requested by the board, or wondering whether the board has legal authority to approve a particular project.

This manual has been prepared in an effort to lay out the basic legal information which every planning board member should know in order to feel confident in performing the board's responsibilities. It is a general discussion of the planning board's legal authority and duties. While it will apply to most municipalities, an individual municipality may have an ordinance or charter provision which imposes additional requirements for its planning board to follow.

Any person using this manual should always check the exact section numbers and provisions of any statutes, ordinances, or codes mentioned in the manual's text, sample forms or other material. The references included in the manual are intended to provide general guidance to the reader rather than to serve as a substitute for reading the actual law. In this way, a person using these materials can be sure that an applicable law or regulation has not been amended. After reading the whole law or regulation, rather than merely selected excerpts, the reader will have a better idea of whether the law or regulation covers a particular project or whether there are provisions which exempt the project.

This manual is not intended to be a substitute for seeking legal advice from the municipality's private attorney or from the attorneys in MMA's Legal Services Department about how a specific State law, court decision, or local ordinance applies to the facts of a particular case which the board must decide.

The primary author of the various editions of this manual is Rebecca Warren Seel, Esq. Many thanks to Patti Soule and Sally Joy for their patience, hard work and dedication in typing, proofing and formatting this edition of the manual.

This December 2011 edition replaces the October 1999 Revised Edition (second printing) and 2004 supplement and the 1982, 1983, 1986, 1988, and 1991 editions. Work on the original project was conducted as part of the Coastal Program of the Maine State

Planning Office. Financial assistance for preparation of that document was provided by a grant from Maine's Coastal Program, through funding provided by U. S. Department of Commerce, Office of Coastal Zone Management, under Coastal Zone Management Act of 1972, as amended.

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December 2011

Ten Common Mistakes in Drafting Land Use Ordinances

1. Inconsistent Terminology

An ordinance is not an essay, and using different terms to refer to the *same* thing (e.g., "home," "residence," "abode") is confusing and implies distinctions where none may be intended. Choose a single, generic term (e.g., "dwelling"), define it if necessary, and use it consistently throughout the ordinance.

2. Omitted Definitions

Some terms are commonly understood and may not require a specific definition (e.g., "use," "structure"), but many have no generally accepted meaning and are subject to broad interpretation (e.g., "frontage," "setback"). Failure to define uncertain terms in an ordinance is a clear invitation to misunderstanding and dispute.

3. Superfluous Definitions

Every definition should have a purpose in the ordinance. Defining terms whose meaning is obvious (e.g., "Town," "Planning Board") or that appear nowhere else in the ordinance is a waste of space and diverts attention from what really matters.

4. Faulty Incorporation of Materials

Maps, specifications and other standards or requirements are not made enforceable just by attachment to or passing mention in an ordinance. They should be fully identified (i.e., by title, date and source) and expressly incorporated by reference (e.g., ". . . which is incorporated herein by reference and made a part hereof"). There are also special notice, adoption and filing requirements for national building, electrical and similar codes (see 30-A M.R.S.A. §3003).

5. Mis-cited Statutes

It is nonsense for an ordinance to refer to a law that no longer exists or that now exists in a different place or form. If in doubt about the correct citation to a statute, always check with appropriate sources.

6. Inconsistencies with Other Laws

A "conflicts" clause deferring to the more restrictive of inconsistent regulations is no substitute for an ordinance that is in harmony with specific statutory requirements. For instance, State law restricts municipal authority to regulate manufactured housing and mobile home parks (see 30-A M.R.S.A. §4358). An ordinance that ignores limitations such as these is unenforceable and an embarrassment.

7. Absent or Imprecise Standards

Most ordinances vest at least some discretion in boards to grant (or deny) permits under certain qualified circumstances (e.g., conditional uses or special exceptions). Without specific standards or with only vague criteria to guide officials in reviewing plans and administering approvals, however, a board's decisions are subject to reversal and the entire exercise will have been in vain.

8. Cannibalism of Other Ordinances

An ordinance that consists of nothing more than an amalgamation of borrowed parts from other models is no more pleasing or predictable than Frankenstein's monster. Use other ordinances as prototypes only and make sure that custom components (e.g., cluster housing provisions, mobile home park regulations) mesh with standard features in form, sequence and process.

9. Missing Directions and Disorganization

Every ordinance should answer these questions (among others) and in roughly this order: What is regulated, prohibited, or requires a permit? Who must obtain it, from whom, when, and how? Under what circumstances may it be issued, and in what form? If granted, with what conditions, who monitors compliance, and how? If denied, who may appeal, to whom, when, and how? What relief is available, and under what circumstances? If there is a violation, who enforces it, when and how? What are the penalties?

10. Failure to Anticipate Probabilities

No draftsman is clairvoyant, and few ordinances contemplate all possibilities, but every ordinance benefits from "reality testing." Short of hindsight, the best way of identifying an ordinance's deficiencies is to test it with hypotheticals and "what if" scenarios and correct oversights before enactment.

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June 1992

CHAPTER 1 – Creation, Qualifications, and Liability

The powers and duties of local planning boards are governed by the provisions of State statutes, local ordinances and, in some cases, town or city charters. A planning board cannot take any legally enforceable actions unless it has been formally created and unless the action which the board wants to take is specifically or implicitly authorized by a statute, ordinance, or charter provision. *Cf., Clark v. State Employees Appeals Board*, 363 A.2d 735 (Me. 1976). *Compare, Fisher v. Dame*, 433 A.2d 366 (Me. 1981). Board members should be sure that the board was created properly and should be familiar with the ordinances and statutes they will be using before trying to take any official action.

Creation of a Planning Board

The laws pertaining to the establishment of a planning board have been modified several times over the years. In order to determine whether a board was created legally, it is important to know when it was created and how the law read at that time.

Boards Created Between 1957 and 1971

Between 1957 and September 23, 1971, 30 M.R.S.A. § § 4952 to 4957 of the Maine statutes (Chapter 405 of the 1957 Public Laws) governed how a city or town created its planning board, who could serve on the board, and the board's various powers and duties. (See Appendix 1). According to section 4952(1), the legislative body of the municipality (i.e., the town meeting or town or city council) had the authority to establish a planning board and the municipal officers (i.e., selectpersons or council) made appointments to the board. The board consisted of five members and two associate members serving five year staggered terms who elected a chairperson and secretary from the membership. Associate members could vote only if designated to do so by the chairperson because a voting member was absent or had a conflict of interest. The municipal officers could appoint someone to fill a permanent vacancy for the remainder of the term. A municipal officer could not serve on the board either as a member or an associate.

If a municipality voted at a town meeting to create a planning board under one of the old planning board statutes, the clerk's records should include a vote approving a warrant article similar to the following: "To see if the Town will vote to establish a Planning Board pursuant to 30 M.R.S.A. § 4952."

In 1971, the Legislature repealed or revised the planning and zoning sections of Title 30 (which took effect on September 23, 1971). According to 30-A M.R.S.A. § 4324(2)(A), if a planning board was created pursuant to the repealed provisions of 30 M.R.S.A. § 4952(1), it can continue to function as a legally constituted planning board under that section until the

municipality decides to adopt a new ordinance or charter provision changing the composition of the board or its method of selection.

Boards Created After September 23, 1971

At the same time that the Legislature repealed section 4952 in 1971, it enacted 30 M.R.S.A. § 1917 (now 30-A M.R.S.A. § 3001), known as the “home rule” statute. Section 3001 provides authority for a municipality’s legislative body to adopt a “home rule” ordinance establishing a planning board. A sample ordinance and the procedure for adopting it are included in Appendix 1. This ordinance may be used to establish a new board or to reestablish one which was created under the old statutes, but it should be revised where necessary to meet the particular needs of the town or city adopting it. The Legislature repealed the old planning board statutes to allow municipalities to have more flexibility in creating a planning board which would meet local needs. Such things as the number of members and term of office can now be determined through an ordinance rather than by statute.

A new planning board also may be created in municipalities which have a charter by amending the charter using the home rule charter procedures found in 30-A M.R.S.A. § 2104 and 2105 and Article VIII, part 2, § 1 of the Maine Constitution. Generally, the charter provision would be supplemented by a more detailed ordinance.

Boards Created Before 1957

Boards created before 1957 will need to refer to one of the following public laws, depending on when the board was formed: (1) Chapter 5, § 137 et seq. of the 1930 Revised Statutes; (2) Chapter 80, § 84 et seq. of the 1944 Revised Statutes; or (3) Chapter 91, section 93 et seq. of the 1954 Revised Statutes.

Ordinance or Article Wording

It is important to remember that a planning board has no authority to act as an official arm of municipal government unless it has been legally established by one of the methods described above. After September 23, 1971, a simple article in the warrant, such as “To see if the town will vote to establish a planning board,” is not a sufficient procedure by itself to create a board because it leaves unanswered questions such as the number of board members and their terms of office. Nor is a provision in the town’s shoreland zoning ordinance or other ordinance which simply states that a board is established “as provided in State law” sufficient to create a legal board. Sample ordinances to establish a board and to reestablish one which was improperly created and sample warrant article wording to adopt the ordinance appear in Appendix 1.

Elected Board Members

A number of Maine towns have established elected planning boards. If a municipality has an appointed planning board and wants to change to an elected board, it must enact an ordinance or charter provision which provides that the appointed board will be phased out by replacing the appointed members with elected members as the terms of the appointed members expire. See generally, McQuillin, *Municipal Corporations* (3rd ed. rev.), § § 12.117-12.119, 12.121. If the positions are to be filled by written ballot election from the floor at an open town meeting, the ordinance or charter provision must be adopted at least 90 days prior to the annual meeting at which the first election will occur. 30-A M.R.S.A. § 2525. If election will be by secret (pre-printed) ballot, then the ordinance or charter provision must be adopted at least 90 days prior to the annual election at which it will take effect. 30-A M.R.S.A. § 2528. The enactment of a charter provision also must conform to 30-A M.R.S.A. § § 2101-2109. The “90-day” rules described above also apply where an elected board is being changed to an appointed one.

Qualifications for Office

Age, Residency, Citizenship

Title 30-A M.R.S.A. § 2526(3) states generally that a person must be 18 years old, a resident of the State, and a U.S. citizen to hold a municipal office. Most municipal officials, including planning board members, do not have to be registered voters or legal residents of the town or city in order to serve in an elected or appointed position, unless required by local charter; the selectpeople or Council and school board members are the exceptions to this rule under State law.

Oath

Whether a board member is elected or appointed, he or she must be sworn into office by someone with authority to administer oaths, such as the clerk, the moderator (if during open town meeting), a notary public, dedimus justice, or an attorney, before performing any official duties as a board member. 30-A M.R.S.A. § 2526(9). The oath must be taken at the beginning of each new term. It does not need to be administered each year if a member is serving a multi-year term.

Incompatible Positions

A person serving on the planning board may not hold another office which is “incompatible” with the planning board position. Two offices are “incompatible” if the duties of each are so inconsistent or conflicting that one person holding both would not be able to perform the duties of each with undivided loyalty. *Howard v. Harrington*, 114 Me. 443, 446 (1916); McQuillin, *Municipal Corporations* (3rd ed. rev.), § 12.67. An example of incompatible

positions would be if one person served on both the planning board and zoning board of appeals, since the same person would be involved in making the initial decision and then deciding whether that decision was correct on appeal. [One Superior Court justice has held that it also is not legal for a husband to serve on the planning board and his wife to serve on the appeals board. *Inhabitants of Town of West Bath v. Zoning Board of Town of West Bath*, CV-91-19 (Me. Super. Ct., Sag. Cty, May 7, 1991).] The positions of an appointed planning board member and selectperson probably are incompatible, since the board of selectpersons has the power to remove an appointed planning board member for just cause under 30-A M.R.S.A. § 2601. For a planning board established under the old planning board statute, 30 M.R.S.A. § 4952 prohibited a municipal officer (a selectperson or councilor) from being a member or associate member of the planning board. The positions of local plumbing inspector and local code enforcement officer also may be incompatible with the position of planning board member if the planning board generally must pass judgment on a decision of the LPI or CEO in the process of making its own decision regarding an application or a violation of the ordinance. Not all attorneys agree that the positions of CEO or LPI are probably incompatible with the office of planning board member. Likewise, not all agree that the offices of selectperson or councilor are incompatible with the office of appointed planning board member where the planning board was created under a home rule ordinance rather than the old planning board statute. There appear to be no Maine court cases directly addressing this incompatibility issue.

The courts have ruled that, in accepting and taking an oath for an office which is incompatible with one already held the person automatically vacates the first office as though he or she had actually resigned it. *Stubbs v. Lee*, 64 Me. 195 (1914); *Howard v. Harrington*, *supra*.

Vacancy

As a general rule, when a permanent vacancy occurs in an appointed planning board position, the municipal officers have the authority to fill the vacancy for the remainder of the term. 30-A M.R.S.A. § 2602. The ordinance or charter provision creating the board should define what constitutes a “permanent vacancy” using § 2602 as a guide and adding other items, such as repeated absences. If a vacancy occurs on an elected planning board, the municipal officers may either appoint someone to fill the vacancy for the remainder of the term or leave the position unfilled, if there is no ordinance or charter provision to the contrary, but they do not have the authority to fill the position by calling an election. 30-A M.R.S.A. § 2602; *Googins v. Gilpatrick*, 131 Me. 23 (1932).

If the term of office of a board member expires and neither the person holding the office nor another person has been appointed or elected to fill the position, it is arguable that the person who was serving in that position (i.e., the incumbent) may continue to hold office under the previous term until he or she has been reelected or reappointed or until another person has been chosen and sworn in. An incumbent board member who continues to serve under those circumstances would be what is called a “de facto” member of the board. McQuillin, *Municipal Corporations* (3rd ed. rev.), § 12.102, 12.105, 12.106. However, the legal basis for this “holdover” theory is stronger where an elected board is involved. To be safe, it is advisable to have an ordinance or charter provision clearly authorizing a board member to continue to serve.

If board members are elected and the municipal officers fail to make a provision in the annual town meeting warrant and on the ballot for the election of a board member whose term was due to be filled at that election, the result would be a “failure to elect” a person for that position, creating a vacancy in that position under 30-A M.R.S.A. § 2602. The municipal officers have the authority to appoint someone to the position in that situation for the balance of the term. *Googins v. Gilpatrick, supra*.

Removal

If a planning board position is one which is filled by an appointment made by the municipal officers, then the municipal officers may remove that person for just cause, after notice and hearing. 30-A M.R.S.A. § 2601. “Just cause” means a legally justifiable reason, such as a blatant disregard for the law. It probably does not include a philosophical disagreement with decisions made by the board or personality conflicts. An elected board member cannot be removed from office either by the municipal officers or the voters prior to the expiration of his or her term unless the municipality has adopted a recall provision by charter or by ordinance. 30-A M.R.S.A. § 2602.

Alternate Members of the Board

It is advisable to create one or more alternate or associate member positions by ordinance. Use of alternates can minimize attendance problems which many boards experience. It can also serve as a training ground for future full voting members. Before a person may legally be designated as an alternate or associate member, the position must be established by vote of the legislative body.

Liability of Board Members

Nonperformance of Duty

Title 30-A M.R.S.A. § 2607 states that a municipal official can be personally liable for a \$100 fine for neglecting or refusing to perform a duty of office. An example of neglect or refusal is where a person files an application with the board and the board refuses to call a meeting or continually tables action without a valid reason in the hope of discouraging the applicant.

Maine Tort Claims Act

- ***Individual Board Members Generally Immune.*** The exceptions to liability found in 14 M.R.S.A. § 8111 generally protect a planning board member from personal liability and having to pay monetary damages to an injured party. The statute provides immunity from liability for an action or failure to act which falls into one of the following categories: “quasi-legislative” (for example, adoption of bylaws or procedures); “quasi-judicial” (for example, granting or denying a permit); “discretionary” (for example, an ordinance provision which gives the board discretion whether to conduct a site visit or whether to conduct a public hearing); or intentional, as long as the board members acted in good faith and within the scope of their authority (for example, where a board member comments at a board meeting about the quality of work submitted by one of the applicant’s experts). The statute also provides immunity from claims based on the performance or failure to perform an administrative enforcement function.
- ***Individual Liability for Negligence.*** Under 14 M.R.S.A. § 8104-D, an individual board member may be personally liable for his/her negligent or intentional act or failure to act if the act is ministerial (not involving any discretion), is an intentional act not undertaken in good faith, or is outside the scope of his/her authority. A possible example of a negligent act is where the board approves a permit for a use which is expressly prohibited by the ordinance governing the board’s review. An example of an action outside the scope of authority of a board member is where a board member is consulted by a member of the public about whether a certain permit is needed for a project, the board member provides advice which is wrong, and the person relies to his detriment on that advice. In order to recover damages as compensation for negligence, the person would have to show that he or she was injured and that the board member’s negligence was the cause of the injury and not something else, such as the person’s own negligence.
- ***Municipal Liability and Immunity; Defense/Indemnification of Board Members.*** Generally, the municipality will be immune from liability under the Tort Claims Act when a suit is brought against the board based on a decision by the board, since the municipality’s liability must be tied to one of the categories in § 8104-A of the statute, all of which relate to negligence in connection with municipal equipment, buildings, pollution, or public works projects. However, § 8112 of the Act generally requires the

municipality to provide insurance or to pay attorneys fees and damages on behalf of each of the board members in an amount up to \$10,000 (the statutory limit on personal liability) in cases where a board member is found liable for negligence. Where the members of the board are criminally liable, where they act in bad faith, or where they act outside the scope of their authority, they may be required to pay their own attorney fees and damages; these damages may exceed the \$10,000 cap under the Tort Claims Act and may be beyond the coverage of the town's public officials liability insurance. Generally, a municipality will stand behind its board members and pay such costs either by providing insurance or by appropriating money for that purpose, except where a board member is guilty of conduct in bad faith which is outside his or her authority and which the municipality does not want to condone. Examples of such conduct are physical assault of an audience member or repeated unilateral acts by a board member without majority approval.

- **Notice of Suit.** Board members who are sued under the Tort Claims Act should notify the town or city manager (if any) or the municipal officers immediately, since an insurer may deny defense and coverage for lack of timely notice. Members should refrain from commenting publicly about the suit.

Maine Civil Rights Act

The Maine Civil Rights Act (5 M.R.S.A. § § 4681-4683) prohibits a person from “intentionally interfer(ring) by threat, intimidation or coercion” with another person’s exercise or enjoyment of rights secured by the U.S. Constitution or the laws of the United States or rights secured by the Maine Constitution or laws of the State. Unlike federal law (see discussion below), the State Civil Rights Act does not apply only to actions done “under color of law.” This means that a board member could be sued under this law whether or not he or she was acting in an official capacity if a violation of this law results from the board member’s action. The Maine Attorney General is authorized to seek an injunction or other corrective action on behalf of the injured person in order to protect that person in exercising his or her rights. The injured person also may pursue a civil action on his or her own behalf seeking appropriate monetary or corrective relief. The law also authorizes the successful party (other than the State) to recover its reasonable attorney fees and costs. For a case interpreting this law, see *Duchaine v. Town of Gorham*, CV-99-573 (Me. Super. Ct., Cum. Cty., June 15, 2001).

Federal Civil Rights Act of 1871

The Federal Civil Rights Act of 1871 (42 U.S.C.A. § 1983) prohibits any violation of any individual right which is guaranteed by either the United States Constitution or a federal statute.

- **Individual Liability.** Individual board members are immune from personal liability under federal law for damages resulting from a board decision if the board acted in “good faith.” “Good faith” means that the board did not know and should not have known that its decision would deprive the injured person of a federal or constitutional right. *Owen v. City of Independence*, 445 U.S. 622 (1980). For example, if the planning board denies an application, the applicant might try to sue the board and ask a court to order the board to approve the application and to pay damages to him as compensation for the loss of use of his property. As long as the board acted in good faith in interpreting the ordinance and denying the application, the court would not award damages against the members even if the court found that the application should have been approved. However, if, for example, the court found that the only reason that the board had for denying the application was that it wanted to prevent a family with a particular ethnic background from moving into the neighborhood, it probably would award damages against the board members personally.
- **Municipal Liability.** Even if the board members are not personally liable for damages, the municipality will be liable if the court finds that the person bringing the suit actually was deprived of a federal or constitutional right by the board’s decision and that decision was made pursuant to a municipal “policy, custom, or practice.” The municipality cannot rely on the board’s good faith in defending a suit against the municipality.
- **Damages; Attorneys Fees; Defense and Indemnification.** A person who wins a case under the Civil Rights Act of 1871, whether against the municipality or the members of the board, can recover attorney fees as well as damages. 42 U.S.C.A. § 1988. If the court finds that the suit was frivolous, however, it will be quick to require the person filing the suit to pay the municipality’s attorney fees. *Burr v. Town of Rangeley*, 549 A.2d 733 (Me. 1988). There is no statutory limit on damages under the federal law as there is under the Maine Tort Claims Act. Title 14 M.R.S.A. § 8112(2-A) states essentially that if board members are sued for violating someone’s rights under a federal law, the municipality must pay their defense costs and may pay any damages awarded against them for a violation of federal law, if they consent. This is not true if they are found criminally liable or if it is proven that they acted in bad faith.
- **Notice of Suit.** If sued under federal law, the board should notify the town or city manager (if any) or the municipal officers immediately, since an insurer may deny coverage and defense if notice is not provided in time.

Maine Freedom of Access Act (Right to Know Law)

The Maine Freedom of Access Act (FOAA) (1 M.R.S.A. § 401 et seq.) (also known as the “Right to Know Law”) requires the planning board to allow the general public to attend board meetings and workshops, to open its records for public inspection, and to give prior public notice of its meetings. If the board willfully violates the FOAA, the municipality or the board members could be liable to pay a \$500 fine. 1 M.R.S.A. § § 409 and 410. Also, the

statute states that certain decisions made in violation of the Right to Know Law are void. 1 M.R.S.A. § 409.

Records Retention and Preservation and Public Access

Title 5 M.R.S.A. § 95-B requires municipal boards and officials to comply with regulations adopted by the State Archives Advisory Board when destroying or disposing of public records. Those regulations set out specific retention periods for many public records and establish a general rule of indefinite retention for records not expressly covered. They are available on the State of Maine's website at www.maine.gov/sos/cec/rules/index.html. Any person who violates those rules is guilty of a Class D crime. Section 95-B also requires boards and officials to protect the public records in their custody from damage or destruction. An official who leaves public office has an obligation under this statute to turn over any public records in his or her possession to his or her successor.

Records in the custody and control of the planning board are public records under Maine's Freedom of Access Act, with rare exceptions. Any member of the general public has a right to inspect public records at a time that is mutually convenient for the custodian and the person wanting to inspect them. Inspection should be done with supervision of the custodian or someone designated by the custodian; a member of the public should never be allowed to remove public records and take them somewhere else to review and copy. If a person wants a copy of a public record, the municipality may charge a reasonable fee for the copy and may charge for research and retrieval time to the extent authorized by 1 M.R.S.A. § 408-A. When a person wants to inspect or obtain a copy of a record which might be confidential, the custodian has five (5) working days to determine whether the record is public and to issue a written denial if it is not. 1 M.R.S.A. § § 402, 409. Virtually all materials received or made by the board in connection with the transaction of public business are "public records," regardless of the form in which they are prepared and maintained. Application materials, board minutes, email communications, computerized records, audio tapes and personal notes taken by board members at board meetings are all examples of "public records" for the purposes of the FOAA.

The custodian of the records must acknowledge a request to inspect and/or copy public records within a reasonable time of receiving the request. Although a request need not be made in writing, the custodian should acknowledge the request in writing if possible.

If an elected planning board member receives an email from a constituent that contains the following personal information, that information is confidential under 1 M.R.S.A. § 402(3)(C-1): personal medical information; credit or financial information; information pertaining to the personal history, general character or conduct of the constituent or member of his/her immediate family; material related to charges or complaints of misconduct or

disciplinary action; the person's Social Security number. Information which would be confidential in the possession of another public agency or official is also confidential if contained in a communication between an elected planning board member and a constituent.

CHAPTER 6 – Ordinance Interpretation

General Ordinance Interpretation Rules

General

If the board is confronted with an ambiguous provision in an ordinance as part of an application review and is unsure about how to apply the provision to a particular project, it should keep the following court-made rules of ordinance interpretation in mind. The board may find it necessary to seek advice from an attorney in many instances in order to determine how these general rules apply to the ordinance involved. When an ordinance authorizes a board or official to decide an application, neither that board or official nor the applicant may bring a request for an ordinance interpretation directly to the board of appeals, unless authorized by ordinance; the board of appeals' authority to interpret an ordinance normally will arise only through the filing of an appeal from some application decision by the code enforcement officer or planning board.

Consistency

To determine the purpose of the ordinance provision, interpret each section to be in harmony with the overall scheme envisioned by the municipality when it enacted the ordinance. The assumption is that the drafter would not have included a provision that clearly was inconsistent with the rest of the ordinance. *Natale v. Kennebunkport Board of Zoning Appeals*, 363 A.2d 1372 (Me. 1976); *Cumberland Farms, Inc. v. Town of Scarborough*, 1997 ME 11, 688 A.2d 914.

Object; Context; Common Meaning

A zoning ordinance must be construed reasonably with regard to the objects sought to be attained and to the general structure of the ordinance as a whole. All parts of the ordinance must be taken into consideration to determine legislative intent. *Moyer v. Board of Zoning Appeals*, 233 A.2d 311 (Me. 1967); *George D. Ballard, Builder v. City of Westbrook*, 502 A.2d 476 (Me. 1985); *Nyczepir v. Town of Naples*, 586 A.2d 1254 (Me. 1991); *Dyer v. Town of Cumberland*, 632 A.2d 145 (Me. 1993); *C.N. Brown, Inc. v. Town of Kennebunk*, 644 A.2d 1050 (Me. 1994); *Buker v. Town of Sweden*, 644 A.2d 1042 (Me. 1994); *Christy's Realty Ltd. v. Town of Kittery*, 663 A.2d 59 (Me. 1995); *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930; *Oliver v. City of Rockland*, 1998 ME 88, 710 A.2d 905; *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996); *Springborn v. Town of Falmouth*, 2001 ME 57, 769 A.2d 852; *Jordan v. City of Ellsworth*, 2003 ME 82, 828 A.2d 768; *Priestly v. Town of Hermon*, 2003 ME 9, 814 A.2d 995; *Isis Development, LLC v. Town of Wells*, 2003 ME 149, 836 A.2d 1285; *Peregrine Developers, LLC v. Town of Orono*, 2004 ME 95, 854 A.2d 216; *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86; *Aydelott v. City of Portland*, 2010 ME 25, 990 A.2d 1024; *Bizier v. Town of Turner*, 2011 ME 116, 32 A.3d 1048.

Ambiguity Construed in Favor of Landowner

The restrictions of a zoning ordinance run counter to the common law, which allowed a person to do virtually whatever he or she wanted with his or her land. The ordinance must be strictly interpreted. Where exemptions appear to be in favor of a property owner, the board should interpret them in the owner's favor. *Forest City, Inc. v. Payson*, 239 A.2d 167 (Me. 1968). (But see the discussion of legally nonconforming uses, structures and lots appearing later in this chapter, where the courts have held that ambiguities should be construed against the landowner in that context.)

Natural Meaning of Undefined Terms

Zoning ordinances must be given a strict interpretation and may not be extended by implication. However, undefined terms must be given their common and generally accepted meaning unless the context indicates otherwise or there is express legislative intent to the contrary. *Jade Realty Corp. v. Town of Eliot*, 2008 ME 80, 946 A.2d 408; *DeSomma v. Town of Casco*, 2000 ME 113, 755 A.2d 485; *Silsby v. Belch*, 2008 ME 104, 952 A.2d 218; *Hrouda v. Town of Hollis*, 568 A.2d 824, 825 (Me. 1990); *Moyer v. Board of Zoning Appeals, supra.*; *George D. Ballard, Builder, Inc. v. City of Westbrook*, 502 A.2d 476 (Me. 1985); *Putnam v. Town of Hampden*, 495 A.2d 785 (Me. 1985); *Camplin v. Town of York*, 471 A.2d 1035 (Me. 1984); *Lewis v. Town of Rockport*, 712 A.2d 1047 (Me. 1998); *Underwood v. City of Presque Isle*, 1998 ME 166, 715 A.2d 148; *Britton v. Town of York*, 673 A.2d 1322 (Me. 1996); *Town of Freeport v. Brickyard Cove Associates*, 594 A.2d 556 (Me. 1991); *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996). Compare with *C.N. Brown and Buker, supra.* Ordinances must be interpreted reasonably to avoid an absurd result. *Lippman v. Town of Lincolnville*, 1999 ME 149, 739 A.2d 842; *Jordan v. City of Ellsworth*, 2003 ME 82, 828 A.2d 768.

Similar Uses

The board of appeals has the ultimate authority at the local level to interpret the provisions of a zoning ordinance under 30-A M.R.S.A. § 4353. Even in the absence of a provision in a zoning ordinance authorizing “uses similar to permitted uses” or words to that effect, the court has held that a zoning appeals board has the inherent authority under 30-A M.R.S.A. § 4353 to interpret whether a proposed use which is not expressly authorized is “similar to” a use which is expressly addressed in the ordinance. In doing so, the board must act reasonably and base its decision on the facts in the record and the provisions of the ordinance. *Your Home, Inc. v. City of Portland*, 432 A.2d 1250 (Me. 1981). It is likely that a court would find that the planning board has similar authority.

Legal Nonconforming (“Grandfathered”) Uses, Structures, and Lots

Provisions dealing with nonconforming lots, structures, and uses legally must be included in a zoning ordinance to avoid constitutional problems with the ordinance. *Inhabitants of the Town of Windham v. Sprague*, 219 A.2d 548 (Me. 1966). Such provisions commonly are called “grandfather clauses.” They typically define a “nonconforming use or structure” as a use or structure which was legally in existence when the ordinance took effect but which does not conform to one or more requirements of the new ordinance. The mere issuance of a permit under a prior ordinance does not confer “grandfathered” status by itself. *Cf., Thomas v. Board of Zoning Appeals of City of Bangor*, 381 A.2d 643, 647 (Me. 1978). The use or structure must be in actual existence (or at least substantially completed) when the new ordinance takes effect in order to be “grandfathered.” *Town of Levant v. Seymour*, 2004 ME 115, 855 A.2d 1159; *Town of Orono v. LaPointe*, 698 A.2d 1059 (Me. 1997). *Cf., Nyczepir v. Town of Naples*, 586 A.2d 1254, 1256 (Me. 1991); *Turbat Creek Preservation, LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489. Where a permit is issued before a new ordinance takes effect and a deadline stated in the existing ordinance for beginning construction or substantially completing construction has not expired, the approved use or structure can legally be completed under the existing ordinance if done within the stated deadline. To be “grandfathered,” a use must “reflect the nature and purpose of the use prevailing when (the ordinance) took effect and not be different in quality or character, as well as in degree, from the original use, or different in kind in its effect on the neighborhood.” *Turbat, supra*. Nonconforming uses and structures generally are allowed to continue and be maintained, repaired and improved. However, the ordinance usually contains language limiting expansion, reconstruction, or replacement. “Nonconforming lots” generally are defined in an ordinance to mean lots which do not conform to the ordinance but which were legal when the ordinance took effect and for which a deed or plan was on record in the Registry of Deeds. Such lots generally don’t meet the lot size or frontage requirements or both of the new ordinance but the new ordinance generally allows them to be used for certain purposes as long as other requirements can be met.

See Appendix 4 for a collection of DEP “Shoreland Zoning News” articles related to a number of nonconforming use and structure issues.

The court in Maine has established the following rules relating to nonconforming uses, structures, and lots. These court-made rules must be read in light of the specific language of the nonconforming use, structure, and lot provision of a given ordinance in order to determine whether the court decisions cited below have any bearing on a nonconforming use, structure, or lot in the municipality.

Gradual Elimination

“The spirit of zoning ordinances is to restrict rather than to increase any nonconforming uses and to secure their gradual elimination. Accordingly, provisions of a zoning regulation for the continuation of such uses should be strictly construed and provisions limiting nonconforming uses should be liberally construed. The right to continue a nonconforming use is not a perpetual easement to make a use of one’s property detrimental to his neighbors and forbidden to them, and nonconforming uses will not be permitted to multiply when they are harmful or improper.” *Lovely v. Zoning Board of Appeals of City of Presque Isle*, 259 A.2d 666 (Me. 1969); *Shackford and Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102 (Me. 1984); *Total Quality, Inc. v. Town of Scarborough*, 588 A.2d 283 (Me. 1991); *Chase v. Town of Wells*, 574 A.2d 893 (Me. 1990); *Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, 712 A.2d 1061.

Phased Out Within Legislative Standards

“Nonconforming uses are a thorn in the side of proper zoning and should not be perpetuated any longer than necessary. Nevertheless, the rights of the parties necessitate that this policy be carried out within legislative standards and municipal regulations.” *Lovely, supra*; *Frost v. Lucey*, 231 A.2d 441 (Me. 1967); *Oliver v. City of Rockland*, 1998 ME 88, 710 A.2d 905.

Expansion of Nonconforming Use

“Where the original nature and purpose of an existing nonconforming use remain the same, and the nonconforming use is not changed in character, mere increase in the amount or intensity of the nonconforming use within the same area does not constitute an improper expansion or enlargement of a nonconforming use,” where the language of the ordinance prohibits the extension or enlargement of a nonconforming use or the change of that use to a dissimilar use. *Frost, supra*; *Boivin v. Town of Sanford*, 588 A.2d 1197 (Me. 1991); *W.L.H. Management Corp. v. Town of Kittery*, 639 A.2d 108 (Me. 1994); *Turbat Creek Preservation, LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489. An increase in the amount of time that a nonconforming use is conducted does not constitute the expansion or extension of the nonconforming use, in the absence of language in the ordinance to the contrary. *Frost, supra*; *Trudo v. Town of Kennebunkport*, 2008 ME 30, 942 A.2d 689.

Expansion of Nonconforming Structure

“Any significant alteration of a nonconforming structure is an extension or expansion. When an ordinance prohibits enlargement of a nonconforming building, a landowner cannot as a matter of right alter the structure, even if the alteration does not increase the nonconformity.” *Shackford and Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102 (Me. 1984). Where a portion of a structure is nonconforming as to setback or height, expanding another portion of the structure to “line it up” or “square it off” constitutes an expansion which increases the nonconformity, absent language in the ordinance to the contrary. *Lewis*

v. Town of Rockport, 1998 ME 144, 712 A.2d 1047; *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644. . (See Appendix 4 for other materials relating to expansion issues.)

In 2013 the Maine Legislature repealed the longstanding “30% expansion rule” governing the expansion of nonconforming structures in the shoreland zone and replaced it with the provisions of 38 M.R.S.A. § 439-A(4). The new statutory rule applies to shoreland zoning ordinances regardless of whether the new rule has been incorporated into a municipality’s local shoreland zoning ordinance. The text of section 439-A(4) can be accessed using the following website address: <http://legislature.maine.gov/statutes/38/title38sec439-A.html>. For a Maine Supreme Court case reciting the evidence on which a planning board relied to establish the size of an existing nonconforming deck for the purposes of making calculations under the 30% expansion rule, see *Sproul v. Town of Boothbay Harbor*, 2000 ME 30, 746 A.2d 368. For a Maine Supreme Court case involving the enclosure of a screened-in porch and whether the work performed constituted either the expansion of a nonconforming use or the expansion of a nonconforming structure under the town’s ordinance, see *Trudo v. Town of Kennebunkport*, 2008 ME 30, 942 A.2d 689.

Ordinances generally prohibit the expansion toward the water of a legal nonconforming structure which is nonconforming as to the required water setback. The court has held that this doesn’t prevent a board of appeals from granting a water setback variance if the applicant proves “undue hardship.” *Peterson v. Town of Rangeley*, 1998 ME 192, 715 A.2d 930. The current language of 38 M.R.S.A. § 439-A(4) is consistent with that holding.

Replacement

There is no inherent right on the part of a landowner to replace an existing nonconforming structure with a newer one of the same or larger dimensions. That right hinges on whether the ordinance expressly allows it. This is true even where the original building was destroyed by fire or natural disaster. *Inhabitants of Town of Windham v. Sprague*, 219 A.2d 548 (Me. 1966). The court also has held that when a unit is moved from an existing mobile home park, the park owner doesn’t automatically have a right to bring in a replacement unit without a permit, absent clear language in the ordinance to the contrary. *LaBay v. Town of Paris*, 659 A.2d 263 (Me. 1995).

Discontinuance/Abandonment

Zoning ordinances generally attempt to prohibit a person from reactivating a nonconforming use if it has been “abandoned” or “discontinued” for a certain period of time. Absent language in an ordinance to the contrary, the word “abandonment” generally is interpreted by the courts on the basis of whether the *intent* of the landowner was to give up his or her legal right to continue the existing nonconforming use. The owner’s intent is generally judged on the basis of “some overt act, or some failure to act, which carries the implication

that (the) owner neither claims nor retains any interest in the subject matter of the abandonment.” Young, *Anderson’s American Law of Zoning* (4th ed.), § 6.65. Although “discontinuance” or cessation of the use for the period stated in the ordinance does not automatically constitute abandonment, it may be evidence of an intent to abandon if accompanied by other evidence relating to the use or non-use of the property, such as the removal of advertising signs or allowing the building formerly occupied by the use to become dilapidated.

If the ordinance regulates the reactivation of a “discontinued” nonconforming use rather than an “abandonment” of such a use, an analysis of the owner’s intent is not necessary. Cessation of the use for the period of time stated in the ordinance is enough. *Mayberry v. Town of Old Orchard Beach*, 599 A.2d 1153 (Me. 1991). Cf., *Turbat Creek Preservation, LLC v. Town of Kennebunkport*, 2000 ME 109, 753 A.2d 489.

Where the voluntary removal of a nonconforming structure has the effect of returning the use of the property to a permitted use, some ordinances will not allow a replacement structure because the nonconforming use has been superseded by a permitted use. See *Chase v. Town of Wells*, 574 A.2d 893 (Me. 1990).

Approval of a second permit for essentially the same project doesn’t automatically constitute an abandonment of the first permit obtained for the project, absent language in the ordinance or permit conditions to the contrary. *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644.

Where a house burned and no livable structure thereafter existed on the property and the property had not been used since the fire (for six years), the existence of a foundation and septic system were not enough to defeat a legal conclusion that the nonconforming use of the property for a residence had been discontinued. *Lessard v. City of Gardiner Board of Appeals*, AP-02-27 (Me. Super. Ct., Kenn. Cty., January 14, 2003).

Merger of Lots

Where two or more unimproved, recorded legally nonconforming lots are adjacent and owned by the same person, the State Minimum Lot Size Law (12 M.R.S.A. § 4807-D) and many zoning and other local ordinances require that those lots be merged and considered as one for the purposes of development to the extent necessary to eliminate the nonconformity. In order to require the merger of a developed and undeveloped nonconforming lot of record or two developed nonconforming lots of record which are contiguous and in the same ownership, the Maine courts have said that the ordinance must expressly require such a merger. *Moody v. Town of Wells*, 490 A.2d 1196 (Me. 1985); *Powers v. Town of Shapleigh*, 606 A.2d 1048 (Me. 1992) (where the court interpreted the phrase “not contiguous to any

other lot in the same ownership” to mean either built or vacant in the context of the rest of the nonconforming lot section, since that section used the words “vacant” and “built” where it wanted to make that distinction). For other nonconforming lot cases, see *Farley v. Town of Lyman*, 557 A.2d 197 (Me. 1989) and *Robertson v. Town of York*, 553 A.2d 1259 (Me. 1989). If a zoning ordinance establishes a local minimum lot size which is different from and more restrictive than the State’s, the question of merger will be controlled by the ordinance. Where an ordinance requires the merger of lots in the same ownership which have “contiguous frontage” with each other, the court in Maine has held that such a provision does not apply to corner lots. *Lapointe v. City of Saco*, 419 A.2d 1013 (Me. 1980). The court also has held that it does not require the merger of a back lot which is landlocked with an adjoining lot or the merger of adjoining lots which “front” on different streets. *Bailey v. City of South Portland*, 1998 ME 54, 707 A.2d 391. See also, *John B. DiSanto and Sons, Inc. v. City of Portland*, 2004 ME 60, 848 A.2d 618, where the court upheld the board of appeals’ interpretation of the phrase “separate and distinct ownership” as meaning continuously held under separate and distinct ownership from the adjacent lots. For a case interpreting conflicting lot merger clauses in townwide and shoreland zoning ordinances, see *Logan v. City of Biddeford*, 2006 ME 102, 905 A.2d 293.

The fact that a single deed describes multiple contiguous lots by their external perimeter does not automatically destroy their independent status. *Bailey v. City of South Portland*, 1998 ME 54, 707 A.2d 391; *Logan v. City of Biddeford*, 2001 ME 84, 772 A.2d 1183.

Adding Acreage to a Legally Nonconforming Lot; Dividing a Legally Nonconforming Lot

An issue which doesn’t appear to have been expressly addressed by the Maine courts is whether a legally existing nonconforming lot loses its grandfathered status if land is added to it, with a resulting change in the lot boundaries. It would seem as a policy matter that, if acreage is added to a nonconforming lot, but not enough to make it a conforming lot, such an increase shouldn’t cause the lot to lose its grandfathered status. However, a particular definition of “lot” or “nonconforming lot” in an ordinance might dictate a different result. The legal status of an adjoining lot from which the acreage was transferred may be affected by the transfer. Ideally, this issue should be addressed by including appropriate language in the ordinance. For a discussion of the meaning of “lot of record,” see *Camplin v. Town of York*, 471 A.2d 1035 (Me. 1984).

The authority to divide an existing legally nonconforming lot is more likely to be addressed in the applicable ordinance. As a general rule, ordinances prohibit an action that makes an existing legally nonconforming situation more nonconforming. A person who has an existing “grandfathered” lot might cause that lot to lose its grandfathered status and become an illegal lot if he/she attempts to convey any portion of it, particularly if it is a developed

lot. *Viles v. Town of Embden*, 2006 ME 107, 905 A.2d 298. Often a minimum lot size requirement is triggered by a proposal to build on a lot rather than by the creation of a lot. A lot which is vacant might be legal at any size under the terms of the applicable town ordinance. If the owner divides and conveys part of the lot and then seeks a permit to build on the portion of the lot that he/she retained, that portion would not qualify as a grandfathered, legally nonconforming lot because it was not a lot of record when the town's ordinance took effect. Therefore, if the retained lot doesn't meet the minimum lot size requirement for the building that the owner plans to construct, he/she probably will be unable to get approval. Since the lot is undersized because of the owner's action, the owner probably will not qualify for a variance either. A person proposing such a division should consider not only whether the division itself is legal but whether the division will limit the legal right to develop the lots at a later date.

Functional Division

Where a single parcel of land had been developed with a number of buildings prior to the effective date of the ordinance and the buildings had all been used for distinct and separate uses prior to that date, the Maine Supreme Court has held that the buildings could be sold separately on nonconforming lots, finding that the land had already been functionally divided. *Keith v. Saco River Corridor Commission*, 464 A.2d 150 (Me. 1983). The court's holding was based on the specific facts related to the land and buildings in question and the language of the Saco River Corridor Commission Act. While the court found a functional division in *Keith*, it acknowledged that the landowner also needed to comply with other applicable State, federal, and local laws, including the subdivision law. If the Saco River Corridor Commission Act had the kind of detailed nonconforming lot provisions that many zoning ordinances have today, the court might have reached a different conclusion in *Keith*. The *Keith* decision was based on a nonconforming use provision in the Act and whether the creation and conveyance of lots with existing buildings constituted an expansion or enlargement of a nonconforming use. The court concluded that it did not. It may be advisable for the board to seek legal advice regarding the interpretation of the specific language in its municipality's ordinance before deciding to apply *Keith* to the division of a developed nonconforming lot.

Change of Use

The test to be applied in determining whether a proposed use fits within the scope of an existing nonconforming use or whether it constitutes a change of use is: "(1) whether the use reflects the 'nature and purpose' of the use prevailing when the zoning ordinance took effect; (2) whether there is created a use different in quality or character, as well as in degree, from the original use; or (3) whether the current use is different in kind in its effect on the neighborhood." *Total Quality Inc. v. Town of Scarborough*, 588 A.2d 283 (Me.

1991); *Boivin v. Town of Sanford*, 588 A.2d 1197 (Me. 1991); *Keith v. Saco River Corridor Commission, supra*; *Turbat Creek, supra*.

Illegality of Use; Effect on “Grandfathered” Status

“As a general rule... the illegality of a prior use will result in a denial of protected status for that use under a nonconforming use exception to a zoning plan. But violations of ordinances unrelated to land use planning do not render the type of use unlawful.” *Town of Gorham v. Bauer*, CV-89-278 (Me. Super. Ct., Cum. Cty, November 21, 1989). In *Bauer* the court held that a failure of the landowner to obtain a State day care license did not deprive an existing day care of nonconforming use status, but the fact that the owner had not obtained the necessary local site plan approval and certificate of occupancy did prevent his use from becoming a legal nonconforming use.

Meaning of “Permitted Use” or “Allowed Use” in the Context of Nonconforming Uses

In *Gensheimer v. Town of Phippsburg*, 2007 ME 85, 926 A.2d 1168, the court held that a “legally existing nonconforming use” was not the same thing as a “permitted use.” Each was subject to separate standards, with those applicable to nonconforming uses being more stringent. The court found that the construction of a road to an existing home was not part of the normal upkeep and maintenance of a nonconforming use and therefore needed its own review and approval as a separate type of permitted use.

Lots and Structures Divided by a Zone Boundary

In some cases, one lot is divided between two or more zones. Absent a provision in a zoning ordinance to the contrary, the requirements of the ordinance for a particular zone apply only to that part of the lot which is located in that zone. *Town of Kittery v. White*, 435 A.2d 405 (Me. 1981). For a Maine Supreme Court decision interpreting an ordinance which extended the provisions relating to one zoning district into an adjoining district in the case of a split lot, see *Marton v. Town of Ogunquit*, 2000 ME 166, 759 A.2d 704. See *Gagne v. Inhabitants of City of Lewiston*, 281 A.2d 579 (Me. 1971) for a case involving a structure divided by a zone boundary.

Section 11 of the DEP model shoreland zoning guidelines states: “Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.” In 2013 MMA Legal Services discussed this language with the DEP shoreland zoning unit staff to learn how DEP interprets this provision. DEP staff indicated that where part of a lot is

located within the shoreland zone, the lot must meet the dimensional requirements of the shoreland zoning ordinance even if the activity involved will be conducted on a part of the lot that is outside the shoreland zone.

Definition of Dwelling Unit

The conversion of seasonal cabins rented on a nightly basis, each with separate heating and electrical systems, bathroom, and kitchen, to condominium ownership has been held by the court as constituting the creation of individual dwelling units which must satisfy the applicable minimum lot size. *Oman v. Town of Lincolnville*, 567 A.2d 1347 (Me. 1990). The court also has upheld a determination by a local code enforcement officer and board of appeals that a detached garage with its own water, heat, septic system, full bathroom, kitchen sink, and refrigerator constituted a “dwelling unit” for the purposes of the town’s lot size requirement. *Goldman v. Town of Lovell*, 592 A.2d 165 (Me. 1991). See also *Wickenden v. Luboshutz*, 401 A.2d 995 (Me. 1979), *Moyer v. Board of Zoning Appeals*, 233 A.2d 311 (Me. 1967), *Hopkinson v. Town of China*, 615 A.2d 1166 (Me. 1992), and *Your Home, Inc. v. City of Portland*, 432 A.2d 1250 (Me. 1981). For a case analyzing whether a guest house addition to a garage constituted a dwelling unit or an accessory structure, see *Adler v. Town of Cumberland*, 623 A.2d 178 (Me. 1993). Whether a living arrangement legally constitutes a “dwelling unit” ultimately depends on the specific definition of that term in the applicable ordinance. Other cases interpreting the meaning of “dwelling” include: *Jordan v. City of Ellsworth*, 2003 ME 82, 828 A.2d 768 (interpreting whether a proposed structure was a “hotel,” “apartment,” or “multiple dwelling”); *Fitanides v. City of Saco*, 2004 ME 32, 843 A.2d 8 (construing the meaning of “multi-family complex”); *Peregrine Developers, LLC v. Town of Orono*, 2004 ME 95, 854 A.2d 216 (determining whether a proposed project was a “dormitory” or a “multi-family dwelling”); *Malonson v. Town of Berwick*, 2004 ME 96, 853 A.2d 224 (interpreting the definition of “boarding home”); and *Adams v. Town of Brunswick*, 2010 ME 7, 987 A.2d 502 (analysis of terms “household,” “dwelling unit,” and “boarding house”).

Definition of Structure in the Shoreland Zone

Title 38, section 436-A(12) of the Maine statutes was amended in 2014 to revise the definition of “structure” for shoreland zoning purposes. That definition now excludes subsurface wastewater disposal systems, geothermal heat exchange wells, and water wells. This definition is expressly applicable to the calculation of the permissible expansion of a nonconforming structure.

Definition of Lot

In the absence of an ordinance definition of “lot” to the contrary, a parcel which is divided by a public road or a private road serving multiple properties is effectively two lots even though described as a single parcel in the deed. *Fogg v. Town of Eddington*, AP-02-9 (Me. Super. Ct., Pen. Cty., January 3, 2003); *Bankers Trust Co. v. Zoning Board of Appeals*, 345 A.2d 544, 548-549 (CT, 1974). Absent language to the contrary in an ordinance, the land area underlying a road or easement is not included in calculating whether a lot meets the minimum lot area requirements. *E.g.*, *Sommers v. Mayor and City Council of Baltimore*, 135 A.2d 625 (Md. 1957); *Loveladies Property Owners Assoc. v. Barnegat City Service Co.*, 159 A.2d 417 (NJ Super. 1960). For a case analyzing whether a lease may be used to create a new lot in the context of a wind energy project, see *Horton v. Town of Casco*, 2013 ME 111, 82 A. 3d 1217.

Conflict Between Zoning Map and Ordinance; Clarifying Zone Boundaries

The courts in Maine have held on several occasions that, absent a rule of construction in the ordinance to the contrary, where a depiction of a zoning district boundary on a map conflicts with the ordinance text description of the type of land which should be included in a particular district, the map depiction is controlling until amended by the legislative body. *Summerwind Cottage, LLC v. Town of Scarborough*, 2013 ME 26, 61 A. 3d 698; *Veerman v. Town of China*, CV-93-353 (Me. Super. Ct., Kenn. Cty., April 13, 1994); *Coastal Property Associates, Inc. v. Town of St. George*, 601 A.2d 89 (Me. 1992). See generally, *Lippman v. Town of Lincolnville*, 1999 ME 149, 739 A.2d 842. See also *Nardi v. Town of Kennebunkport*, AP-00-001 (Me. Super. Ct., Yor. Cty., Feb. 12, 2001).

Where confronted with the kind of conflict described above or where a boundary as depicted on a map is ambiguous due to the manner in which the map was prepared, communities look for a solution which allows a board or official to rule on the boundary location and have that ruling be binding on all parties, without revising the map and submitting it to the legislative body for adoption. Unfortunately, under general law, such a resolution would constitute an improper delegation of legislative authority and would not result in a legally enforceable map. It probably would be possible to delegate such authority through a municipal charter provision, but not by ordinance or administrative policy.

Conflict Between Ordinances

Where a town-wide zoning ordinance prohibited a particular expansion of a nonconforming use but a separate shoreland zoning ordinance permitted it, the court applied the section of the ordinance which governed conflicts between ordinances and ruled that the expansion was prohibited. The court found that a conflict exists when there will be a different result from the application of two separate ordinances. *Two Lights Lobster Shack v. Town of Cape Elizabeth*, 1998 ME 153, 712 A.2d 1061. See *Logan v. City of Biddeford*, 2006 ME 102, 905 A.2d 293, for a case involving four contiguous nonconforming lots, one with a principal structure, one with an accessory structure, and two vacant; the town-wide and shoreland zoning ordinances had different merger language and the court held that the more restrictive one controlled and required merger. Where a town-approved shoreland zoning ordinance contained a side line setback requirement and a shoreland zoning ordinance imposed on the town by the Maine Board of Environmental Protection (BEP) did not, the Maine Supreme Court held that the State-imposed ordinance served as a supplement to the town ordinance and did not effectively repeal it. *Bartlett v. Town of Stonington*, 1998 ME 50, 707 A.2d 389.

Road Frontage; Back Lots

Where a town ordinance defined “frontage” as the horizontal distance between the side lot lines as measured along the front lot line, the court held that an interior road which passes through the center of the lot cannot be used to satisfy “road frontage” requirements. *Morton v. Schneider*, 612 A.2d 1285 (Me. 1992). See also *Morse v. City of Biddeford*, AP-01-061 (Me. Super. Ct., York Cty., May 10, 2002) (case involving disputed right to use the road in question); *Fitanides v. City of Saco*, 2004 ME 32, 843 A.2d 8; *Bagge v. Town of Newfield*, AP-05-40 (Me. Super. Ct., Yor. Cty., June 12, 2006) (analysis of whether deeded rights constituted a road or a driveway). For cases interpreting ordinance provisions related to the creation of a back lot, see *Merrill v. Town of Durham*, 2007 ME 50, 918 A.2d 1203, *Bizier v. Town of Turner*, 2011 ME 116, 32 A.3d 1048, and *Town of Minot v. Starbird*, 2012 ME 25, 39 A.3d 897.

Setbacks Within the Shoreland Zone; New Structures and Expansions; Functionally Water-Dependent Uses

Title 38, section 439-A(4) requires new structures and expansions of existing structures in the shoreland zone to meet the setbacks established in the minimum shoreland zoning guidelines or as provided in section 439-A(4), other than functionally water-dependent uses.

The definition of “functionally water-dependent use” in 38 M.R.S.A. § 436-A(6) no longer includes recreational boat storage buildings.

Water Setback Measurement; Measurements Related to Slope of Land, Calculation of Building Expansion, Percentage of Lot Coverage, and Building Height

“The general objectives of the shoreland zoning ordinance, the specific objectives of shoreland setbacks, and the customary methods of surveying boundaries all counsel in favor of the use of the horizontal methodology” to measure setback, rather than an “over-the-ground” method of measurement. *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996). For cases interpreting the location of the normal high watermark, see *Armstrong v. Town of Cape Elizabeth*, AP-00-023 (Me. Super. Ct., Cum. Cty., Dec. 21, 2000) and *Nardi v. Town of Kennebunkport*, AP-00-001 (Me. Super. Ct., York Cty., Feb. 12, 2001). See also, *Griffin v. Town of Dedham*, 2002 ME 105, 799 A.2d 1239, and *Mack v. Town of Cape Elizabeth*, 463 A.2d 717 (Me. 1983).

For a case involving measurement of the slope of the land within the shoreland zone, see *Griffin v. Town of Dedham*, 2002 ME 105, 799 A.2d 1239. *Rockland Plaza Realty v. City of Rockland*, 2001 ME 81, 772 A.2d 256, is a case in which the Maine Supreme Court analyzed ordinance provisions related to building height and percentage of lot covered by structures. *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644, provides some guidance regarding taking measurements in connection with the expansion of a nonconforming structure. Regarding expansions toward the water and the point at which the measurement of “toward the water” begins, see *Fielder v. Town of Raymond*, AP-01-16 (Me. Super. Ct., Cum. Cty., October 4, 2001), where the court found that it starts from “the linear setback boundary, not from the structure itself.”

Decks

A deck which is attached to a home becomes “an extension and integral part of the principal structure” and therefore must comply with any setback requirements applicable to principal structures. *Town of Union v. Strong*, 681 A.2d 14 (Me. 1996). The court also has held that a detached deck constitutes a structure which is subject to applicable setback requirements. *Inhabitants of Town of Boothbay Harbor v. Russell*, 410 A.2d 554 (Me. 1980). In the case of *Town of Poland v. Brown*, CV-97-227 (Me. Super. Ct., Andro. Cty., Feb. 11, 1999), a landowner attempted to claim that an illegal deck was not a structure by putting wheels under it and registering it as a trailer while it was still in place on the ground with lattice skirting and outdoor furniture. The court found that “a deck by any other name is still a deck.” Municipalities have the authority to adopt an amendment to a shoreland zoning

ordinance that exempts decks from otherwise applicable water and wetland setbacks if the ordinance complies with the specific requirements of 38 M.R.S.A. § 439-A(4-B).

Essential Services; Communications Towers; Satellite Dishes; Public Utilities; Wind Energy Projects

Neither a communications tower nor a radio station qualifies as an “essential service” as typically defined in a local zoning ordinance. *Priestly v. Town of Hermon*, 2003 ME 9, 814 A.2d 995. In *Brophy v. Town of Castine*, 534 A.2d 663 (Me. 1987), the Maine Supreme Court held that a satellite dish was a “structure” for the purposes of the shoreland zoning setback requirements. A Maine Superior Court judge found that a telecommunications tower constituted a “public utility” for the purposes of a particular town’s zoning ordinance. *Means v. Town of Standish*, CV-92-1365 (Me. Super. Ct., Cum. Cty., Oct. 8, 1993). See 30-A M.R.S.A. § 4352(4) and a related Public Utilities Commission (PUC) rule found in 65-407 CMR ch. 885 regarding the applicability of a municipal zoning ordinance to public utilities and ocean wind energy projects. In order for a public utility to be exempt from compliance with a municipal ordinance, the utility must first apply for local approval and go through the local review process before seeking an exemption certificate from the PUC. For a case analyzing the evidence provided by a tower applicant related to the issues of height and visibility, see *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86.

Accessory Use or Structure

“The essence of an accessory use or structure by definition admits to a use or structure which is dependent on or pertains to a principal use or main structure, having a reasonable relationship with the primary use or structure and by custom being commonly, habitually and by long practice established as reasonably associated with the primary use or structure.... (F)actors which will determine whether a use or structure is accessory within the terms of a zoning ordinance will include the size of the land area involved, the nature of the primary use, the use made of the adjacent lots by neighbors, the economic structure of the area and whether similar uses or structures exist in the neighborhood on an accessory basis.” *Town of Shapleigh v. Shikles*, 427 A.2d 460, 465 (Me. 1981). As is always true with ordinance interpretation, the court’s test must be read in light of the exact language of the applicable ordinance and the facts in a particular case. See *Flint v. Town of York*, CV-95-675 (Me. Super. Ct., York Cty., Sept. 4, 1996) for a case where the court found that the addition of a redemption center to an existing fruit and vegetable stand did not qualify as an accessory use. See *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202, for an analysis of what uses are accessory to a mineral extraction operation.

Home Occupations

A number of Maine court decisions have interpreted local ordinance definitions of “home occupation.” In *Town of Kittery v. Hoyt*, 291 A.2d 512, 514 (Me. 1972), the Maine Supreme Court concluded that a commercial lobster storage and sales business was not a home occupation under a local ordinance which defined the term as a “business customarily conducted from the home.” Similarly, the court held that an auto body shop and used car rental and sales business weren’t a home occupation under an ordinance requiring such businesses to be “operated from the home.” *Baker v. Town of Woolwich*, 517 A.2d 64, 68 (Me. 1987). In *Toussaint v. Town of Harpswell*, 1997 ME 189, 698 A.2d 1063, the court found that a commercial dog kennel with 11 indoor-outdoor runs and boarding capacity for 15 dogs qualified as a home occupation under an ordinance permitting home occupations if “customarily conducted on or in residential property.” The court found this definition broader and more lenient than the ones in *Hoyt* and *Baker*. A Maine Superior Court judge found that a mail order pharmacy business did not qualify as a home occupation, based on language in the town’s ordinance which referred to “stock-in-trade.” *Simonds v. Town of Sanford*, CV-91-710 (Me. Super. Ct., York Cty., July 14, 1992).

Commercial and Industrial Uses

For several Maine Supreme Court cases analyzing whether a use or structure was “commercial,” see *Beckley v. Town of Windham*, 683 A.2d 774 (Me. 1996) (holding that an office/maintenance building which was proposed as part of a boat rental facility was a commercial structure), *Bushey v. Town of China*, 645 A.2d 615 (Me. 1994) (dog kennel as commercial use), and *Silsby v. Belch*, 2008 ME 104, 452 A.2d 218 (holding that an apartment building was a residential use rather than a commercial use). See also, *Your Home, Inc. v. City of Portland*, 432 A.2d 1250 (Me. 1981). See, *C.N. Brown Co., Inc. v. Town of Kennebunk*, 644 A.2d 1050 (Me. 1994), for a case interpreting whether a gasoline filling station constituted a “retail store” as defined in the ordinance. See *Isis Development, LLC v. Town of Wells*, 2003 ME 149, 836 A.2d 1285, for an analysis of whether a self storage business constituted “warehousing” or a “service” business. See *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202, for a discussion of what constitutes “light industrial” and “manufacturing.” See *Rudolph v. Golick*, 2010 ME 106, 8 A.3d 684, for an analysis of whether a horse barn/riding arena qualified as “animal husbandry” or a “commercial” use. See *Lakeside at Pleasant Mountain Condominium Association v. Town of Bridgton*, 2009 ME 64, 974 A.2d 893 for a case analyzing whether an easement to a pond retained by a ski resort company and associated use of a dock and float for recreation constituted a “commercial use” or an “accessory use.”

Docks; Related Easements

When a project involves a dock or easement where a number of people hold shared rights to use the area and are not in agreement, the board may find some of the following court decisions helpful. The cases involve the right to apply for construction of a dock, the right to use a dock, the standards of review applicable to dock applications, and the excessive use (“overburdening”) of easement rights: *Stewart v. Town of Sedgwick*, 2002 ME 81, 797 A.2d 27; *Britton v. Department of Conservation*, 2009 ME 60, 974 A.2d 303; *Lentine v. Town of St. George*, 599 A.2d 76 (Me. 1991); *Uliano v. Board of Environmental Protection*, 2009 ME 89, 977 A.2d 400; *Toomey v. Town of Frye Island*, 2008 ME 44, 943 A.2d 563; *Great Cove Boat Club v. Bureau of Public Lands*, 672 A.2d 91 (Me. 1995); *Lamson v. Cote*, 2001 ME 109, 775 A.2d 1134; *Uliano v. Board of Environmental Protection*, 2005 ME 88, 876 A.2d 16; *Lakeside at Pleasant Mountain Condominium Association v. Town of Bridgton*, 2009 ME 64, 974 A.2d 893; *Murch v. Nash*, 2004 ME 139, 861 A.2d 645; *Chase v. Eastman*, 563 A.2d 1099 (Me. 1989); *Britton v. Town of York*, 673 A.2d 1322 (Me. 1996); *Kroeger v. Department of Environmental Protection*, 2005 ME 50, 870 A.2d 566; *Farrington’s Owners’ Association v. Conway Lake Resorts, Inc.*, 2005 ME 93, 878 A.2d 504; *Hannum v. Board of Environmental Protection*, 2006 ME 51, 898 A.2d 392; *Badger v. Hill*, 404 A.2d 222 (Me. 1979); *Rancourt v. Town of Glenburn*, 635 A.2d 964 (Me. 1993). For a case involving the rights of lot owners in a subdivision regarding the use of common roads, see *D’Alessandro v. Town of Harpswell*, 2012 ME 89, 48 A.3d 786.

Pond

For a case interpreting whether a quarry constitutes a “pond” for the purposes of applicable water setbacks, see *Hollenberg v. Town of Union*, 2007 ME 47, 918 A.2d 1214.

Quarrying; Rock Crushing; Mineral Extraction; Gravel Pits

See *Lane Construction Corp. v. Town of Washington*, 2008 ME 45, 942 A.2d 1202, for a case upholding a board’s finding that rock crushing was an integral part of the process of mineral extraction and not an accessory use or a distinct process. The case also addresses the status of a bituminous hot mix plant and a concrete batch plant in relation to mineral extraction. For a case discussing whether a gravel pit existed on both sides of a road and that the land on both sides constituted a grandfathered pit under the doctrine of diminishing assets, see *Town of Levant v. Seymour*, 2004 ME 115, 855 A.2d 1159.

Clearing Vegetation in the Shoreland Zone

Title 38, sections 439-A(6) and 439-A(6-A) impose requirements applicable to vegetative clearing in the shoreland zone that apply notwithstanding language to the contrary in an existing shoreland zoning ordinance. These new requirements took effect in 2013.