

MAINE STATE LEGISLATURE

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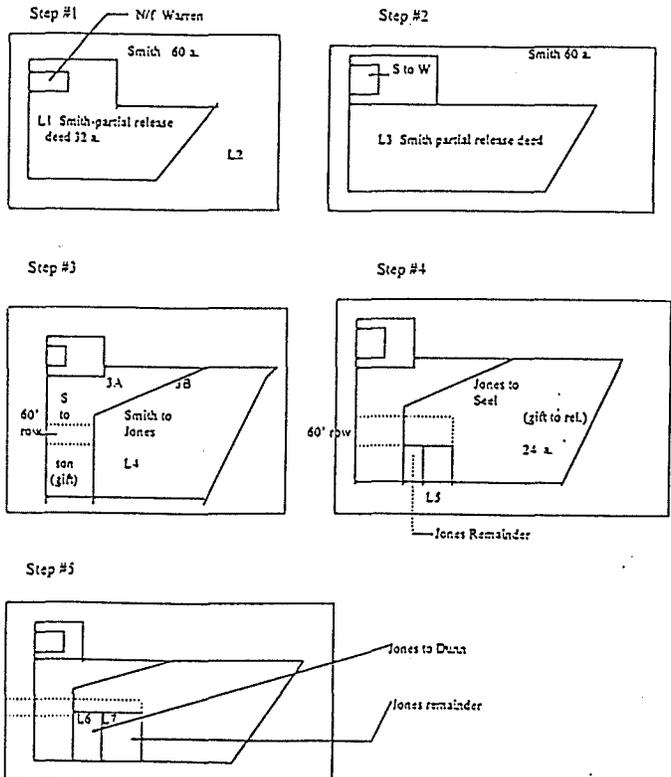
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MAINE'S MUNICIPAL SUBDIVISION LAW 30A MRSA §§4401-4407

January 7, 2000,
Conclusions Drawn from an Informal Review
Conducted by the

State Planning Office
&
Maine Municipal Association

Issue #1A - An exempt lot is conveyed by gift or abutter transfer out of the original parcel. If additional exempt lots are carved from the remainderland of the original tract, does the resulting reduced remainderland in each case constitute a new additional countable lot? Or is there only one countable remainderland lot regardless of the number of exempt lots created?



Linda Lockhart
Maine Municipal Association
John DelVecchio
State Planning Office
Matthew Nazar
State Planning Office

Summary and Recommendations

Background and Process

In response to a legislative proposal¹ to provide an additional exemption to the statutory definition of municipal subdivision, 30A MRSA §4401, the Natural Resources Committee of the 119th Legislature asked the State Planning Office (SPO) and the Maine Municipal Association (MMA)² to “look at issues related to the subdivision laws and make recommendations with regard to the following goals: to enable a landowner to sell off small parcels of land to generate income without creating a subdivision; to discourage the sale of land to developers who will create subdivisions; and to prevent sprawl.”

With the assistance of regional planning commissions and councils of governments, MMA and SPO solicited the perceptions and opinions of planners, code officers, municipal officials, and interested citizens through meetings held in Windham, Turner, Springvale, Belfast, Bangor, and Presque Isle and through mailings providing information and requesting comments on alternative recommendations.

Conclusions

- The definition of “subdivision” in Maine’s municipal subdivision law, 30A MRSA §§4401-4407, is confusing and contains so many exceptions that it encourages the creation of unreviewed subdivisions.
- Municipal officials generally believe that it is desirable to review proposed lots for compliance with basic health, safety and environmental standards; such review is frustrated when homes are built on lots exempted from review under the current law.
- Landowners, especially farmers who have held the same land in their family for generations, express a strong desire to be able to give lots to members of their family without having to go through a review process seen as long, complicated, and costly.
- The definition of subdivision, with its many exceptions, complicates municipal enforcement and compliance monitoring.
- There is confusion as to whether towns can regulate subdivisions beyond the provisions provided in the law, for example, locally eliminating some of the exemptions specified in the law.

¹ LD 1457, An Act to Decrease Restrictions on the Sale of Land, Attachment 1.

² Letter from Senator Sharon A. Treat and Representative John L. Martin to Chris Lockwood, dated May 27, 1999, Attachment 2.

- Intent to circumvent the purpose of subdivision regulations is widely regarded by municipal officials and openly admitted by some developers as the stimulus for misuse of the gift exemption. However, such intent is nearly impossible to prove to the satisfaction of a court and towns do not find it advisable to spend the time and money prosecuting even blatant abuses.

Recommendations Summary

Based on our review of what interested parties told us and the conclusions above, we offer the following recommendations to the Committee:

1. Do not create another exception to subdivision law as requested by LD 1457. Comments we received were almost exclusively negative on the prospect of adding another exemption to the law.
2. This session, enact a package of revisions to subdivision law that will clarify legislative intent and make the exceptions less attractive to those who would improperly use them to circumvent municipal review. The package of revisions should address municipal authority, the gift exemption, and an objective standard for “intent.”

Amend

- a. Clarify municipal authority;
- b. Make the gift exemption less attractive to abuse;
and
- c. Allow prosecution of actions intended to circumvent subdivision law.

3. Create a task force to review municipal subdivision law. Ask the task force to streamline current review processes for larger subdivisions and to study the establishment of a second level of subdivision review for activities currently excepted.

Study

- a. Removal of all exemptions/exceptions;
- b. Establish an appropriate level of review for subdivisions created under circumstances that currently are not reviewed (homestead, open space, 40-acre lot, devise, condemnation, order of the court, gift to relatives, sale to abutters;
- c. Establish a process for delegation of the newly-created level of review to appropriate municipal officials;
- d. Consider reinstating the criterion repealed in 1974, allowing evaluation of the impact on municipal services as a review criterion for subdivision approval.

Purposes of Maine's Subdivision Law: consumer protection and guiding growth

This report is certainly not the first attempt to study the purpose and effect of the municipal subdivision law. In 1986, a subcommittee of the Energy and Natural Resources Committee carefully considered proposed changes that sought to make Site Location of Development Law more consistent with the municipal subdivision law. According to the report³ prepared by that subcommittee, the purposes of the municipal subdivision law are:

[F]irst, to protect the health and safety of homeowners and the community by assuring that structures and their systems are situated in a healthy and safe manner.

The second purpose is to provide a means to guide the growth which is occurring in a municipality. This allows for controlled and orderly residential development and the provision of necessary municipal service.⁴

The 1986 group's assessment of the goals of municipal subdivision law echoed that of the courts (*Arundel v. Swain*, 374 A.2d 317, 321 (Me. 1977)) and preambles to the many chaptered laws that amended the basic provisions over the 56-year history of the law.

The State Planning Office views the subdivision review as a tool for managing growth only insofar as it offers a tool for site and design review. The local comprehensive plan and local zoning ordinance are appropriate tools for directing residential growth and development patterns in a community.

Confusing from the Outset

Maine's subdivision law was originally enacted as P.L. 1943 c. 199, effective July 9, 1943. The existing statute was repealed and replaced, with substantial revisions, in 1971, becoming 30 MRSA §4956, municipal subdivision law. Early in 1972, the Maine Municipal Association and the Attorney General's Department (with enforcement authority secondary to municipal authority) worked together to clarify the new version of the law and help provide uniformity of approach at the administrative level. A 1972 "Informational Bulletin" issued jointly by the two organizations and prepared by the Attorney General's Department, advised that:

It is also important to keep in mind the public policy implicit in this statute and the harm which it was designed to prevent. This statute enables municipalities to protect themselves against unplanned growth. The

³ "Report of the Joint Standing Committee on Energy and Natural Resources on its Study of Subdivision Law," March 1986.

⁴ 1986 Report, page 2.

twelve criteria in §4956(3)⁵ set forth the specific items with which the Legislature and municipalities were concerned.

In 1971, few municipalities had zoning or other codes or ordinances to accomplish the goals of consumer protection and planned growth. The current Growth Management Act would not be enacted for two decades to come. Even now, in the 12th year of the Growth Management Program, only 326 of 496 municipalities have received planning grants. Only 173 municipalities have adopted comprehensive plans that are consistent with the Growth Management Act. For 56 years, the municipal subdivision law has been a key state statute serving as preventive medicine for consumer protection and unplanned growth that municipalities have had at their disposal as they deal with land use issues.

Unfortunately, through the years, that preventive medicine has been diluted by exceptions to the definition of subdivision. In 1971, a subdivision was nothing more or less than:

A subdivision shall be the division of a tract or parcel of land into 3 or more lots for the purpose of sale, development or building.

Today's definition is considerably longer than the 1971 version, because it requires nine subsections to enumerate, describe and circumscribe all the currently available exceptions. Current exceptions include:

1. **Homestead** – allows creation of two new lots if the third lot is subdivider's residence or open space land.
2. **Open Space** - allows creation of two new lots if the third lot is subdivider's residence or open space land.
3. **Forty-Acre Lot** – not subdivided lot unless defined as such by municipality.
4. **Devise** – does not create a subdivided lot, local review not required.
5. **Condemnation** – does not create a subdivided lot, local review not required.
6. **Gift to Relatives** – does not create a subdivided lot, local review not required.
7. **Sale to abutters** – does not create a subdivided lot, local review not required.

Along with the new exception proposed by LD 1457 that would allow the creation of an additional lot when the two new lots are no greater than 140% of minimum lot size, these exceptions, and most particularly the *gift exception*, were the central focus of those contributing to SPO's and MMA's education on subdivision law, accomplished through regional subdivision forums and comments on proposals.

⁵ The twelve criteria were: 1) provision of water; 2) burden on existing water supply; 3) soil erosion; 4) road congestion or unsafe conditions; 5) waste disposal; 6) burden on municipal waste disposal services; 7) burden on other municipal or governmental services; 8) adverse affect on natural beauty; 9) historic sites or rare and irreplaceable natural areas; 10) conformance with municipal subdivision regulation, land use plan, or ordinance; 11) financial and technical capacity; and 12) proximity to shoreline of a water body.

Outreach process

SPO and MMA participated in public meetings conducted for the purpose of discussion of subdivision law and the change proposed by LD 1457. The meetings were hosted by regional councils (planning commissions and councils of governments) and were held as follows:

Location	Date	Host
Windham	10/14/99	Greater Portland Council of Governments
Turner	10/28/99	Androscoggin Valley Council of Governments
Springvale	11/1/99	Southern Maine Regional Planning Commission
Bangor	11/4/99	Eastern Maine Development Corp.
Presque Isle	11/8/99	Northern Maine Development Corp.

The meetings were attended by planning board members, municipal officials, legislators, developers and interested citizens. In addition to seeking input through the public forums, MMA maintained an interested-parties list that grew to approximately 105 parties. Throughout the fall, staff from SPO and MMA sought the views of those who have experience with subdivision law as they participated in everyday interactions. In December, MMA and SPO distributed, via electronic mail and regular mail, seven alternative recommendations addressing key issues identified in the meetings for the review and response of the interested parties who were following the subdivision study.

Summary of Key Issues and Recommendations

What we learned about subdivision law through the outreach efforts is summarized and analyzed here, accompanied by options for addressing the issue and our recommendations. A more detailed listing of oral comments received is included in the charts that follow the body of this report. Copies of written comments will be available on request.

LD 1457, An Act to Decrease Restrictions on the Sale of Land

Planning board members and other municipal officials almost universally cried, "Please, no more exceptions!" These impassioned pleas of those charged with enforcing the law constituted the vast majority of input on LD 1457. While there was acknowledgement that the exception proposed by LD 1457 had some potential to slow sprawl, it was not enough to overcome the opposition to addition of yet another exception. Many citizens, likewise, were concerned about adding loopholes.

MMA and SPO provided our written review group with the following alternative recommendations and asked for their comments:

New Exemption

Explanation and forum comments: LD 1457 would provide an additional exemption. A third lot could be created within a five-year period as long as each new lot is no larger than 140% of the municipality's minimum lot size. The purpose of the 140% maximum lot size is to prevent the possibility of any future subdivision of the lot. The purpose of the bill is to try to avoid or delay the sale (by farmers, for example) of large parcels to developers for subdivision by offering an alternative to the current owner to sell a few lots without needing local subdivision review.

Although we heard⁶ general support for exemptions to the law from a small number of landowners and developers who attended the meetings, we heard from a far larger number of local officials, such as planning board members and code officers, as well as town planners, that existing exemptions cause problems and that adding an additional exemption is not warranted or desired.

- Options:**
- a). Enact LD 1457.
 - b). Do not enact 1457.

Conclusion

While sympathetic to this proposal's goal of slowing sprawl, MMA and SPO do not believe that the addition of another exception to municipal subdivision law would be an appropriate response to current problems.

Exceptions/Exemptions (gift, homestead, abutters)

At every opportunity, municipal officials, planning board members, code enforcement officers and planners shared stories about unreviewed development in their municipalities facilitated by the exceptions to subdivision law. While northern Maine does not currently face strong development pressures ("No one's pounding on our doors looking for land to develop!"), municipal experience in northern and eastern Maine illustrates the same problems with unreviewed subdivisions.

When the consumer protections and planning aspects of the law are not available, the results include:

- Subdivisions with inadequate services;
- Subdivisions with private ways with substandard construction that cannot be accessed by emergency vehicles;
- Remaining parcels that do not conform to local regulations;
- Haphazard patterns of development.

⁶ Please see "The public's perceptions", Attachment 5.

Why are the exceptions and exemptions used to circumvent municipal subdivision review?

Confusion in interpretation and administration. Frequently, the reason for circumvention is the confusion inherent in interpreting the law. Agreement on interpretations of the exceptions and time tracking provisions is impossible to find. In disputes over correct interpretations of the law taking place before the planning board, we heard that “whoever has the loudest voice wins out!”

Municipal review. We heard all too often that municipal review takes too long and is too expensive. Developers say that they cannot afford to have funds held captive for the amount of time required. They claim that road and utility standards are too stringent, requiring highways and underground utilities in small residential subdivisions. Large landowners sometimes perceive the requirement of municipal review to be an absolute barrier to sale of lots from their land. They believe that the exceptions are their only opportunity to turn portions of the land into retirement income, education funds, or to pay taxes. They said that, absent the exceptions, they would be required to sell their land in total to developers who could afford to undergo subdivision review.

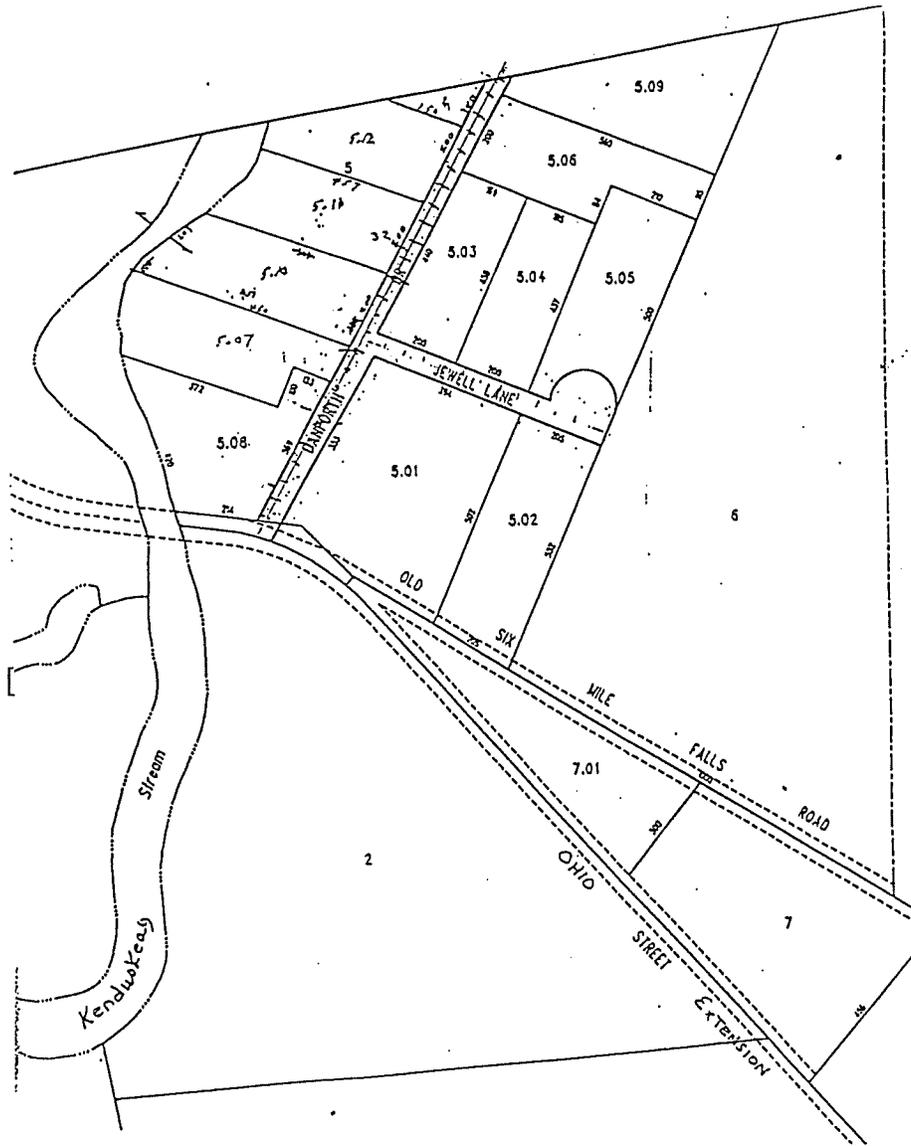
Property rights. Some landowners believe that land is an asset like any other and it is their right to do with that asset as they please.

Follow the money. Even without trying to estimate the cost of municipal review of a subdivision, it is undisputed that review costs *something*. Those seeking to maximize the return on their investment in developable land will frequently seek to minimize their costs. If the subdivision process could be streamlined and applied to all divisions of land, cost would not be a factor driving unplanned development.

MMA and SPO provided our written review group with the following alternative recommendations and asked for their comments:

Gifting Exemption

Explanation and forum comments: Current law exempts from planning board review gift lots to family members. We heard strong support for keeping this exemption from several landowners and land developers. We also heard, at every meeting, tales of how this gifting provision is being used to circumvent the law. The most common tale was of someone purchasing property and on the same day of purchase, deeding lots to a number of family members for planned resale. A drawing of one of the resulting unreviewed subdivisions, contributed by CEO/LPI Earle M. Rafuse, R.S., Glenburn, follows. This subdivision contains “12 lots on private roads that could be considered hazardous to emergency personnel during periods of inclement weather,” according to Mr. Rafuse.



Several ideas were offered at the meetings for addressing this persistent problem, including:

- Options:**
- a). Remove the gifting provision altogether – the rationale being that every lot should receive local review to be sure that health, safety and welfare is assured in the development of land in a town, and to protect consumers.
 - b). Add a five-year holding requirement prior to gifting the lot in addition to the currently existing five-year holding period prior to subsequent sale by the receiver of the gift.
 - c). Leave as is.

Reduced exemptions and reduced review for small subdivisions

Explanation and forum comments: Abuse of the exemptions was described as a major problem for all our contributors. The exceptions require too

much tracking to be effectively monitored. We heard that some developers consistently use the exemptions to create unreviewed, multiple-lot subdivisions. We were told that, in some municipalities, as much as 80% of the new residential housing was being built in unreviewed subdivisions.

- Options:**
- a). Remove all exempting language for gifts, abutters, and homestead 30A MRSA §4401, sub-§4, ¶A (1) and ¶D) from the definition of subdivision and substitute a reduced review procedure for these cases. The reduced review procedure could be, at the option of the municipality, delegated to appropriate municipal staff.
 - b). Leave as is.

Conclusion

Based on the comments received, SPO and MMA believe that the gift exception to the definition of subdivision currently operates as a primary tool for circumvention of municipal review requirements. The circumvention frustrates the purposes of the law: consumer protection for those who purchase unreviewed lots and management of growth. Adding a five-year ownership requirement prior to title transfer by gift, in addition to the five-year ownership requirement following the transfer, was a notion receiving wide support at the meetings. This change would make the abuse of this exception less attractive to those seeking a means to circumvent the requirement for municipal review.⁷ This change would not adversely affect gifts to family members of land owned by the donor for five years or more.

Intent to Circumvent the Law

Municipal officials told us that even when intent to circumvent the law is obvious, the time and expense involved in providing legal evidence to that effect prevents enforcement of the law. Instead, planning boards are required to do “after the fact” review of subdivisions and make the best of a bad situation in terms of consumer protection and planning. As early as 1974, the Attorney General’s office acknowledged⁸ the difficulty: “...the assumption that we should look to ‘intent’ in administering a statute is a dubious one because matters of intent or motive are difficult to prove as such. It would be preferable if the statute were rephrased in terms of the effect of certain conveyances resulting in evasion of the objectives or purposes of the law.”⁹ The need for an objective standard of evidence survives to this day, more than 25 years later.

MMA and SPO provided our written review group with the following alternative recommendations and asked for their comments:

⁷ Please see legislative proposal, “An Act to Amend Municipal Subdivision Law,” Attachment 3.

⁸ Correspondence dated June 11, 1974: informal opinion of Edward Lee Rogers, Assistant Attorney General prepared for Rich Rothe and Fortin Powell of the State Planning Office.

⁹ Ibid.

Difficulty in proving intent

Explanation and forum comments: Although current law has a provision whereby exemptions do not apply if the intent of gifting lots is to circumvent local subdivision review, we heard repeatedly from local officials that, even when faced with clear evidence of circumvention, cases are not taken to court because of difficulties in proving the intent of the parties to the transactions.

- Options:**
- a). Place in statute a “per se” (taken alone, or self-evident) rebuttable presumption that certain subdivision activities are intended to circumvent the law. For example, if gift lots are sold within six years of the gift transfer, or if lots sold to abutters are resold to a third party, then these actions would be deemed to be intended to circumvent subdivision review. The burden of proving that the intent is not to circumvent the law would fall to the individual creating the lot and the individual attempting to sell the lot. The shift would ask the individual whose intent must be determined and who would be in a superior position to explain that intent to do so.
 - b). Leave as is.

Conclusion

SPO and MMA support the addition of a “deemed intent to circumvent” to the statute to simplify local administration.

Stricter subdivision regulation by municipalities

MMA’s Legal Services staff has long believed, and long advised municipal clients and attorneys, that the State’s municipal subdivision law does not preclude municipalities from enacting their own, stricter subdivision regulations. For example, by ordinance enactment, a municipality may choose to review even single divisions of property. MMA’s position, expressed clearly in “Definition of Subdivision Under the Municipal Subdivision Law and Local Ordinances,” prepared by Rebecca Warren Seel, Esquire, November 1990 for a Bar Association attorney training, is well supported by home rule authority provided by Maine’s Constitution and Statutes, case law, a July 21, 1976 Assistant Attorney General’s opinion, and existing broader municipal definitions of subdivision. According to MMA’s Legal Services, Ms. Seel’s 1990 interpretation has not been altered by statutory changes or case law. Still, there is at least one, and perhaps more, members of the municipal bar who advise municipal clients that they may not enact stricter subdivision regulations than those of the State.

We provided our written review group with the following alternative recommendations and asked for their comments:

Scope of municipal authority

Explanation and forum comments: Municipal attorneys are divided in their opinions as to whether state law currently acts as a “ceiling,” or as a “floor” that allows municipalities to define subdivision more narrowly under home rule

authority. We heard from many local officials who assumed or were told by their municipal attorney that the law restricted their subdivision review authority and options. We also heard from some municipalities that successfully administer subdivision regulations far stricter than the standards in state law. Some municipalities review each and every newly created lot in town to assure that soils, septic, and water supply provisions, among others, are assured.

- Options:**
- a). Clarify in statute that municipalities are authorized to adopt ordinances that define subdivision more narrowly than state law. For example, by ordinance, a municipality could define subdivision as *any division* and eliminate one or more of the current exceptions to the state definition.
 - b). Leave as is.

Conclusion

SPO and MMA recommend clarification of municipal authority by amending the current statute in reconciliation with home rule.¹⁰

Recommendations Summary

With each new amendment, municipal subdivision law has become more difficult to interpret and more difficult to enforce. While we are recommending yet more amendment, our recommendation to amend cannot be separated from our recommendation to investigate and develop better ways to accomplish the purposes of the law. If the purposes continue to be consumer protection and managed growth, neither is being served. The minor changes that we recommend for the short term do not address all the issues raised in our review, and which we believe will benefit from a more thorough review.

Based on our review of what interested parties told us our conclusions, we offer the following recommendations to the Committee:

1. Do not create another exception to subdivision law as requested by LD 1457. Comments we received were almost exclusively negative on the prospect of adding another exemption to the law.
2. This session, enact a package of revisions to subdivision law that will clarify legislative intent and make the exceptions less attractive to those who would improperly use them to circumvent municipal review. The package of revisions should address municipal authority, the gift exemption, and an objective standard for “intent.”

Amend a. Clarify municipal authority;

¹⁰ Ibid.



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

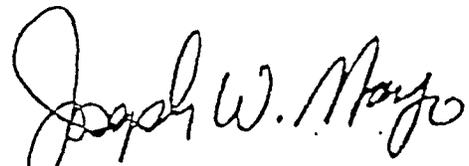
No. 1457

H.P. 1035

House of Representatives, February 23, 1999

An Act to Decrease Restrictions on the Sale of Land.

Reference to the Committee on Natural Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative CLOUGH of Scarborough.
Cosponsored by Senator KONTOS of Cumberland and
Representatives: BUCK of Yarmouth, LABRECQUE of Gorham, MAYO of Bath,
McKENNEY of Cumberland, MURPHY of Kennebunk, SNOWE-MELLO of Poland, TOBIN
of Windham, WHEELER of Eliot.

Be it enacted by the People of the State of Maine as follows: .

2
3 Sec. 1. 30-A MRSA §4401, sub-§4, ¶A, as enacted by PL 1989, c.
4 104, Pt. A, §45 and Pt. C, §10, is amended to read:

6 A. In determining whether a tract or parcel of land is
7 divided into 3 or more lots, the first dividing of the tract
8 or parcel is considered to create the first 2 lots and the
9 next dividing of either of these first 2 lots, by whomever
10 accomplished, is considered to create a 3rd lot, unless:

12 (1) Both dividings are accomplished by a subdivider
13 who has retained one of the lots for the subdivider's
14 own use as a single-family residence or for open space
15 land as defined in Title 36, section 1102, for a period
16 of at least 5 years before the 2nd dividing occurs; or

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

20 (3) Both dividings are accomplished by a subdivider
21 who has owned the lot to be divided for a period of at
22 least 5 years before the first dividing occurs and both
23 dividings create, at the time of each dividing, a lot
24 no larger than 140% of the minimum size lot on which a
25 structure may be built pursuant to the applicable
26 municipal ordinance.

28 Sec. 2. Retroactivity. This Act applies retroactively to a
29 date 5 years prior to the effective date of this Act.

32 34 SUMMARY

36 This bill permits a landowner to divide a tract or parcel of
37 land into 3 lots within any 5-year period without creating a
38 subdivision as that term is defined in the planning and land use
39 regulation laws if the landowner has owned the parcel to be
40 divided for a period of at least 5 years before the first
41 dividing occurs and both dividings create, at the time of each
42 dividing, a lot no larger than 140% of the minimum size lot on
43 which a structure may be built pursuant to the applicable
44 municipal ordinance. The bill adds language making the Act
45 retroactive to a date 5 years prior to the effective date of the
46 Act.

Attachment Z.

SENATE

SHARON ANGLIN TREAT, DISTRICT 18, CHAIR
JOHN M. NUTTING, DISTRICT 20
JAMES D. LIBBY, DISTRICT 34

AMY B. HOLLAND, LEGISLATIVE ANALYST
DAVID C. WEBB, LEGISLATIVE ANALYST
MELISSA HINKLEY, COMMITTEE CLERK



STATE OF MAINE

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ONE HUNDRED AND NINETEENTH LEGISLATURE

COMMITTEE ON NATURAL RESOURCES

May 27, 1999

Chris Lockwood, Executive Director
Maine Municipal Association
60 Community Drive
Augusta, Maine 04330-9486

Dear Mr. Lockwood,

As you may know, earlier this session the Joint Standing Committee on Natural Resources considered LD 1457, *An Act to Decrease Restrictions on the Sale of Land*. Committee members had some concerns about the bill as written, but agreed that there were important issues raised by the bill and voted to carry it over to the Second Regular Session.

The committee requests that the Maine Municipal Association work with the State Planning Office and other interested parties to look at issues related to the subdivision laws and make recommendations with regard to the following goals: to enable a landowner to sell off small parcels of land to generate income without creating a subdivision; to discourage the sale of land to developers who will create subdivisions; and to prevent sprawl.

We look forward to hearing from you next January with your recommendations, in time for us to consider the bill during the Second Regular Session. Thank you very much.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon Anglin Treat".

Senator Sharon Anglin Treat
Senate Chair

A handwritten signature in cursive script, appearing to read "John L. Martin".

Representative John L. Martin
House Chair

cc: Rep. Harold Clough, Sponsor of LD 1457
Linda Lockhart, Maine Municipal Association

An Act to Revise Municipal Subdivision Law

Sec. 1. 30A MRSA §4401, sub-§4, ¶D is amended to read:

- D. A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift or a gift to a municipality or by the transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of this definition, unless the intent of the transferor in any transfer or gift within this paragraph is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this subsection. If the real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 6 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then there will be a rebuttable presumption that the intent of the donor was to avoid the objectives of this subchapter.

Sec. 2. 30A MRSA §4401, sub-§4, ¶H is amended to read:

- H. Nothing in this subchapter may be construed to prevent a municipality from enacting an ordinance under its home rule authority which expands the definition of subdivision ~~to include the division of a structure for commercial or industrial use~~ or which otherwise regulates land use.

**Proposal for a Task Force to Review
Municipal Subdivision Law**

Issue: A number of problems and issues related to compliance with the law as well as municipal administration and enforcement warrant a more thorough review than was possible during this year's review.

Recommendation: An advisory group, comprised of appropriate (Legislators?), state agency, municipal, and landowner/developer representatives will analyze and report back to the Natural Resources Committee by January 15, 2001, with recommendations, including draft legislation if necessary, on issues including, but not limited to, the following:

- A. Explore the feasibility and desirability of encouraging a streamlined local review process for subdivisions of 3 lots, perhaps in combination with removing current exemptions in the law.
- B. Explore the feasibility and desirability of eliminating current exemptions in the law or otherwise simplifying interpretation and enforcement.
- C. Explore the feasibility and desirability of modifying the law to address the issue of circumventing the law through "bond for deed" property transfers.
- D. Other issues deemed important by the group.

The State Planning Office shall coordinate the review and the efforts of the advisory group. There shall be 3 municipal representatives on the group, including one representative from the MMA; one code officer, one planning board member. There shall be three landowner/developer representatives on the group, including one MEREDA representative. There shall be one regional council representative and one representative from the Department of Environmental Protection. The State Planning Office will provide for coordination with other appropriate state agencies through the Land and Water Resources Council.

Expense Estimates:

- a. 7 meetings (\$100 space rental X 7= \$700)
- b. printing, draft and final report \$2,000 (1000 copies @ \$2 per copy)
- c. postage \$500 (one letter mailed to 500 towns, plus mailing reports)

Staffing: approximately 12 person weeks total.

The public's perceptions

Each location has a code, its first initial. The initials in the left tell the reader where we heard the statement and provide some indication of how many times we heard it.

W=Windham S=Springvale T=Turner B=Bangor P=Presque Isle

LD 1457

PS	<i>How is retroactivity provision clarifying anything?</i>
B	<i>Does not accomplish the goals stated in the Committee's letter to MMA and SPO because it will allow the developer to create the 2 lots in a 5-year period as well as the landowner.</i>
B	<i>Because 2 of the 3 lots being created are undividable, this proposal may have some merit. It will allow a total of 5 lots to be created over a 10-year period, which is equal to what might be created through other exemptions.</i>
B	<i>This might allow a lot of frontage to be cut up along existing roads. There are a significant number of lots in this region with large frontage.</i>
BBS	<i>This will be another exemption that communities will have to track and enforce and this will be costly to accomplish.</i>
B	<i>The 140% provision would be eliminated in the next legislative session by special interest pressure and this is just a first step to reducing the requirement for local review.</i>
B	<i>Whatever local problem this bill or any other changes might be trying to address should be solved through local action, not a change in law.</i>
B	<i>This bill provides a financial incentive to develop or divide large tracts of land, which are generally in a community's rural area. Encouraging development in the rural areas of a community is contrary to the prevention of sprawl.</i>
B	<i>This bill erodes the community control in the current law.</i>
B	<i>The 140% provision of this bill will keep growth equal to what could be done anyway, but it creates more parcels in the short term.</i>
BS	<i>Changes in the law requiring more tracking and enforcement would be detrimental.</i>
B	<i>Added exemptions make the statute even harder for planning boards to interpret.</i>
B	<i>In order to get the exemption allowed in LD 1457 the land should have to be the primary residence of the landowner for the past 5 years, rather than simply owned by the individual. This would prevent developers from using this exemption.</i>

S	<i>The proposal might serve the group it was intended to benefit, large landowners that have owned the property for a long time, if the exemption does not apply until the land has been owned for 15 years or more.</i>
S	<i>The exemption should only apply to very large lots.</i>
SS	<i>The bill seems to serve a very narrow special interest group and that is not the way to set statewide policy, especially since many others besides the interest group would be able to use and likely abuse the law.</i>

Exceptions/Exemptions (Gift, homestead, abutters)

P P B	<i>Exceptions to the law require too much tracking/tracking is too complicated.</i>
P	<i>Five year exemptions allow subversion around law's intent, but do not prevent abuse of the law</i>
P	<i>Implication of 5 year provision is that every 5 years pieces of land can be subdivided, which creates a multitude of future problems for the town.</i>
P	<i>There are too many restrictions already.</i>
P	<i>Perhaps the gift could be limited to 2 in every 5 year period, and still follow the 140% restriction., maybe this would slow the subdivisions down.</i>
P	<i>The problem isn't with the gift, but with how and when the land will then be developed – stress on public infrastructure and services.</i>
P	<i>Maybe limit one gift per relative.</i>
P	<i>Quid pro Quo – in order to gain participation of landowners in review process both the landowner and the community to gain something; tighter provisions still allow owner to make exemption/provisions within the law, it may cut down on problems with exemptions.</i>
B	<i>The gift provision seems to be used properly in this region.</i>
B B BTTTWW WWSSSP	<i>The gift provision and sales to abutter provision are being abused.</i>
B	<i>85% of the communities in the region don't have the money to track and enforce the existing law.</i>
T	<i>Why have the subdivision law when dividing is only limited by the number of family members?</i>
T	<i>Exemptions help keep land out of the hands of large developers – this must be considered. Selling a lot or two slows growth.</i>

WWSS	<i>Unplanned/unreviewed development with inadequate services or maintenance arrangements lead the new landowners to pressure the town to accept roads and provide services. If these services are provided and the development is improved to meet town standards, it ends up being the taxpayer that pays the bill instead of the developer and owners of the lots in the unreviewed development.</i>
WS	<i>If the gift provision is removed, people that need the money won't be able to get it.</i>
S	<i>Planning boards end up having to clean up/review after-the-fact subdivisions that have problems. This is inefficient and costly.</i>
S	<i>The buyer is often harmed when buying a lot because the lot may not have been created in accordance with local zoning and is not buildable. Too much of a burden is placed on the buyer to understand the nuances of subdivision law and local zoning and there isn't enough consumer protection.</i>
S	<i>Subdivision review makes a lot more saleable and should not be something that another exception should encourage avoiding.</i>
S	<i>Without review, people sometimes create a lot that conforms to the local regulations, but forget that the remaining parcel must also conform to local regulations, creating a mess that must be cleaned up in the future.</i>
S	<i>The law was created with three intents: 1) it is primarily a consumer protection law; 2) it is an environmental protection law; and 3) it has recently been a growth management law. The exemptions currently in the law are intended to be for transactions that are not arms length transactions (i.e. gifts to family) so the lawmakers felt they did not need protection as consumers.</i>
S S S	<i>There are enough exemptions now.</i>

Interpretation Issues

PS	<i>With current subdivision law, towns/developers/lawyers all seem to have different interpretations of the law. Whoever has the loudest voice wins out. Before changes are made to the law, there needs to be a lot more education.</i>
P	<i>Law interpreted and administered differently in each town. CEO serving several towns has to reinvent the wheel at every town meeting.</i>
P	<i>Can't recall having problems with the subdivision law in the 70's and 80's. but there seem to be a lot of problems with the law now - why is this?</i>
PS	<i>Lawyers, with more knowledge of the law, can be intimidating for local officials/CEOs.</i>
P	<i>Original intent of the law was to keep sprawl in check. Problem now is that towns interpret it to strictly. Need a good solid basis of interpretation, rather than more exemptions or gifts. It's the towns' responsibility to intelligently apply their own restrictions.</i>
P	<i>Promissory transaction, what problems result from it? Loss of tax income. No way to research subdivision history till deed is recorded. Perpetrators go unpunished when found out.</i>
P	<i>Farmers, in particular, don't understand the subdivision law. Often sell their land in chunks without going through the process. This often results in selling land that has problems.</i>

P	<i>Some towns have gotten so restrictive in their interpretation of the law that an individual sitting on a big piece of subdivide-able and developable land often can't afford the process of developing the land themselves. Need to sell the land to a developer with the resources to go through the process.</i>
P	<i>Need to avoid approving subdivision that will cause problems for the town later on because the subdivision wasn't properly reviewed. Our subdivision problems involve those subdivisions that were approved without proper review.</i>
P	<i>Planning board problems: often don't want to enforce development requirements; always seems that applicant is related to some member of the planning board; MMA's interpretation of blood relatives would eliminate everyone in these small towns from participating.</i>
P	<i>Law is not clear on campgrounds. Case of corp. forming to develop an 80-site subdivision that was only licensed for 42 sites. Individual site owners own shares of a corp. Is this a subdivision?</i>
P	<i>Does subdivision law apply to subdivision in the shoreland zone?</i>
P	<i>Nice to know that nobody knows any more about this law than we do!</i>
P	<i>People who want to sell off a piece of their land are afraid to go through the review process.</i>
B	<i>Planning boards currently don't have the technical expertise to interpret the existing statute and training should be a priority regardless of whether or not changes to the law are made.</i>
T	<i>Original purpose of law is lost – overly complicated.</i>
T	<i>Turner's ordinance is stricter than state law.</i>
W	<i>Pownal, Biddeford, and Standish each have aspects of their subdivision regulations/ordinances that are more restrictive than state law.</i>

Intent to Circumvent the Law

PBTTWS	<i>Too difficult to prove and too expensive to litigate.</i>
T	<i>There are a few people who make their living by circumventing subdivision law, but they are the exception.</i>
WWW	<i>Landowners and developers attempt to circumvent the statute because it is too costly and time consuming to go through subdivision review in a community.</i>
W	<i>Most developers create planned developments as opposed to the ad hoc developments created by unregulated parcel divisions.</i>

Proposals/Suggestions/Ideas

PB	<i>Need a simpler and better law.</i>
P	<i>Standards could be minimized to allow families with large piece of land to subdivide on their own, avoiding developers and al of their added costs, and thereby increase the supply of affordable homes up here.</i>
P	<i>Perhaps, instead of subdivision review for every subdivision, at least notification of every development.</i>
PS	<i>Enforcement should be stricter, like having the house removed.</i>
B	<i>The gift provision could be modified so that a gifted parcel had to be held for 10 years before it can be resold.</i>
S	<i>More communities should have impact fees to cut the cost of development to the taxpayer and place it on the developer and the individual that chooses to live in rural areas.</i>
B	<i>Economic development and land use regulations must be better linked than they currently are in the statutes.</i>
TWS	<i>Gift provision should be tightened, but not eliminated.</i>
TT	<i>Should be no exemptions, no 5-year rule. All divisions should be reviewed.</i>
T	<i>Some municipalities have added a provision to allow consideration of municipal impact.</i>
T	<i>Single division review should be a simple process.</i>
T	<i>Local ordinances should be more reasonable, less cumbersome.</i>
W	<i>Farm and open space tax programs should be better publicized to get more people to use the program.</i>
W	<i>Landowners should be approached about conservation easements and other methods of protecting land permanently, while reducing taxes and possibly allowing the people to keep the land, even through multiple generations.</i>
WSSS	<i>Local review process should be streamlined whenever possible.</i>
S	<i>The loopholes in the subdivision law should be closed at the local level—having the state close the loopholes is dangerous.</i>
S	<i>Clarify that municipalities have the authorization to be stricter than state law. Lawyers disagree, making it legally risky for towns to take this step even if they want to.</i>
S	<i>Allow planning boards to decide which of the criteria in the law to apply to a simple subdivision instead of saying all subdivisions must address every criterion in the law.</i>

P	<i>People are being forced into unorganized territories where taxes are lower.</i>
P	<i>Farmers often regret selling off a small piece of land because the new owner turns around and creates a stir about the effect of the farmer's Ag practices (spraying) on their residence/quality of life.</i>
P	<i>A majority of new lots do not fall under subdivision review.</i>
P	<i>Cost of developing the land should go directly to the landowner and not be borne by the rest of the town.</i>
B	<i>The development of a community's rural are is a long-term disadvantage to the community. Remote development is expensive to serve and will have a negative impact on tax rates.</i>
T	<i>We should be looking at how the landscape is being chopped up.</i>
T	<i>Rural access standards are needed.</i>
TWS	<i>The answers are in taxation policies.</i>
T	<i>Current-use tax should be more readily available, better used.</i>
T	<i>Create economic incentives to keep land intact.</i>
T	<i>Development impact fees are needed.</i>
T	<i>Blaming tax policy is just an excuse. Financial gains for landowners have not been as good as for some others. Selling the land is the escape valve.</i>
T	<i>Our society doesn't value the agricultural way of life.</i>
T	<i>The key is valuation of property.</i>
T	<i>Farmers don't participate in current-use tax programs because of the penalties/riders.</i>
T	<i>Penalties should be removed but there must be some other way to keep the farms intact.</i>
T	<i>Sprawl must be dealt with regionally, not locally.</i>
T	<i>Sprawl is driven by economics of urban life.</i>
W	<i>People look for new homes because of jobs and as leisure/second hones. Job creation becomes a regional issue because the lack of uniformity in regulations, services, and taxes from town to town become driving factors in where people choose to live.</i>
W	<i>Because the regulations, services and taxes differ from town to town, some towns end up bearing the brunt of the development.</i>
W	<i>We must recognize that money is the driving force in land division.</i>
W	<i>Promote-transfer of development rights to encourage subdivision and development in areas where we desire it and provide permanent protection areas where we don't want additional dense development.</i>
W	<i>How much does open space cost the town? When the value of the land is reduced by conservation easements, revenue from the</i>

	<i>land is reduced.</i>
W	<i>Small, rural towns with limited regulations and limited services are attractive to people that can't afford to live in the larger towns. As the smaller towns grow, they tend to increase services and regulation. Property values rise and people are forced to move out further to find the affordable communities. The only way to address this cycle is to address affordable housing and growth problems.</i>
WS	<i>Agricultural land should be taxed at a lower value to help farmers keep the land and not have to sell portions due to high taxes.</i>
S	<i>Unreviewed divisions are occurring in the rural areas of a community making the control of sprawl and growth in these areas very difficult. Reviewed subdivisions are generally happening in the growth areas.</i>

Other

B	<i>There is no "lot of record" provision in the statute. When adjacent parcels are purchased separately by the same person they automatically become a single lot under common law and cannot be sold separately without being redivided.</i>
B	<i>Additional funding for the regional councils is necessary to help them provide more technical assistance and help towns cope with the subdivision law.</i>
B	<i>Towns are forced to spend too much time and money to enforce state laws.</i>
T	<i>Municipalities are afraid to take the heat for going stricter – they want the state to be the regulator.</i>
T	<i>Landowners don't want to spend the money on review. They want it in their pocket.</i>
T	<i>Subdivision review takes 2-6 months, depending on the level of review required by the project (town has provisions for two levels).</i>
T	<i>Farmers who need the cash can't afford the up-front costs of the review process.</i>
W	<i>Property is often seen as a retirement investment for the self-employed. As the population ages, large landholders, such as farmers, look to sell off pieces of their land, or the entire parcel, to make ends meet and as retirement income.</i>
W	<i>Zoning and subdivision regulations change too frequently for investors to put money into purchasing large tracts of land.</i>
W	<i>The construction of expensive houses is difficult because the protection that a zoning ordinance may provide could be changed in any given year.</i>
W	<i>Impact fees, new roads, and public utility standards are too difficult and expensive for landowners and developers to work with and still make a reasonable profit. This causes people to leapfrog to the outer rural towns with fewer requirements and do small divisions to avoid having to do a subdivision that will require review.</i>
S	<i>For a simple subdivision, with no road, the only professionals needed are a surveyor, soils/wetland scientist, and a site evaluator. These costs are relatively minor compared to the sale of property and they could simply be added to the price of the lot.</i>