

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

December 11, 1973

Rich Rothe

State Planning Office

Jon Lund, Attorney General

Attorney General

Requirements for Shoreland Zoning Ordinances

Your memorandum dated August 23, 1973, essentially asks whether towns must first adopt town-wide comprehensive plans before they may be permitted to adopt shoreland zoning ordinances. You also ask further questions relating to that general question, depending on the answer given to it.

Title 12 M.R.S.A. § 4812, as repealed and replaced by P. L. 1973, c. 564, mandates that cities and towns adopt zoning and subdivision control ordinances, inter alia, for shoreland protection and prepare "a comprehensive plan adequate to comply with the requirements of Title 30, § 4961 and this chapter" by July 1, 1974. Such ordinances "shall be pursuant to and consistent with a comprehensive plan." Section 4812-A.

By way of contrast, Title 30 M.R.S.A. § 4962, as amended by P. L. 1973, c. 536, § 19, relating to zoning ordinances generally, requires that they "shall be pursuant to and consistent with a comprehensive plan adopted by its legislative body."

The requirements of Section 4962 do not apply to the shoreland zoning provisions, and a comprehensive plan need not first be adopted by a municipality's legislative body before the required shoreland zoning ordinance is adopted.

That the Legislature did not provide, and did not intend, that a comprehensive plan be first adopted before shoreland zoning could become effective is reasonably clear from the entire context of Title 12 M.R.S.A. §§ 4611, et seq., in that throughout those provisions the priority and urgency given to shoreland zoning is made clear. Explicitly, none of those provisions require that a comprehensive plan be first "adopted." Most important, § 4812-A states that:

"Zoning ordinances adopted pursuant to this chapter need not depend upon the existence of a zoning ordinance for all of the land and water area within a municipality, despite the provisions of Title 30, section 4962 to the contrary, it being the intention of the Legislature to recognize that it is reasonable for municipalities to treat specially with shoreland areas and to choose to immediately zone around water bodies rather than to wait until such time as it enacts zoning ordinances for all of the land within its boundaries. However,

NOT A FORMAL OPINION

the provisions of ordinances, which zone shoreland areas only must relate solely to measures necessary to protect and enhance water quality, preserve shoreland areas from erosion, protect and preserve that vegetation and wildlife which is more indigenous to shoreland areas than areas not associated with water bodies, avoid the problems associated with floodplain development and use and to encourage and insure the integrity of points of access to water bodies."

Section 4962 of Title 30 provides not only that zoning ordinances enacted pursuant to that provision "shall be pursuant to and consistent with the comprehensive plan adopted by its legislative body" but also that zoning as defined in that provision is "the division of a municipality into districts and the prescription and reasonable application of different regulations in each district." In short, construing those two provisions of § 4962 together, it is clear that the Legislature was referring to them in § 4812-A and assuming that ordinary zoning requires comprehensive zoning for the entire municipality. It is precisely these provisions, then, of § 4962 that the Legislature wished to make inapplicable to shoreland zoning.

A related question you have is what the nature of a comprehensive plan (adopted or unadopted) must be to meet the requirements of § 4812-A that a shoreland zoning ordinance be adopted pursuant to and consistent with a comprehensive plan. I do not think it possible to give a definitive answer to this question. As is clear from § 4961 of Title 30, a comprehensive plan can be a variety of things under different circumstances. In short, the Legislature has given great flexibility to the planners in this area as to what might constitute a comprehensive plan and whether or not in a given situation a particular stage of development of a comprehensive plan is sufficient and would have to be decided on those particular facts.

A related question asked by Mr. Fournier Powell is whether the requirement of a comprehensive plan in § 4812-A of Title 12 applies not only to shoreland zoning ordinances adopted by municipalities but also to those imposed by the State after the municipality fails to act to adopt such ordinances. It is my view that the requirement applies only to municipalities and not to the State. To be sure, if read literally, the requirement would apply to any zoning ordinance adopted pursuant to "this chapter." The very purpose, however,

NOT A FORMAL OPINION

of § 4813 is to give the State authority to impose ordinances on municipalities that have failed to adopt shoreland zoning ordinances. If the State could not impose shoreland zoning ordinances on such municipalities where they have also refused to prepare some type of comprehensive plan, those municipalities could thus easily thwart the law by simply refusing to prepare such comprehensive plans. Thus, if the comprehensive plan requirement were held to be applicable to the State's action in this area, then the Legislature would have done a futile thing in authorizing the State to act for it would be those very municipalities which were recalcitrant about preparing comprehensive plans and adopting shoreland zoning ordinances that the State would be helpless to act against. It is a maxim of statutory construction that legislatures are assumed not to do futile acts. Accordingly, the comprehensive plan requirement cannot be deemed to be applicable to the action of the State in imposing shoreland zoning ordinances on delinquent municipalities.

---

JON A. LUND  
Attorney General

cc: Fourtin Powell  
JL/bls

NOT A FORMAL OPINION