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Conservation

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Shoreland Zoning requirements for unorganized or deorganized areas which become municipalities

SYNOPSIS:

Unorganized and deorganized areas which seek to become organized must first obtain the Land Use Regulation Commission's approval of their comprehensive land use plan, land use districts, and land use standards. Specific compliance with the Shoreland Zoning requirements is not required. Changes in such land use districts or standards are also governed by the LURC statute and may not be less protective than those adopted by the Commission.

FACTS:

Somerville Plantation was authorized by the Legislature to become organized into a municipality by Chapter 186 of the Private and Special Laws of Maine, 1973.

Pursuant to Title 12 M.R.S.A. § 4811 (hereinafter referred to as "Shoreland Zoning"), municipalities are required to prepare a comprehensive plan and adopt shoreland protection, subdivision, and zoning ordinances for land within 250' of the normal high water mark of any pond, river, or body of salt water. These shoreland zoning requirements apply to cities and towns, 12 M.R.S.A. §4812.

Unorganized or deorganized areas which seek to become organized must comply with certain LURC statutory requirements. Specifically, such areas must comply with the following:

"The voters in any unorganized area which hereafter becomes or is authorized to become an incorporated city or town shall, prior to the effective date of its incorporation, submit to the Commission and receive the approval of the Commission of the following:

- A. A comprehensive land use plan for such proposed city or town;
- B. Standards for determining land use district boundaries and uses permitted within such districts in such proposed city or town;
- C. A land use district boundary map for such proposed city or town;
- D. Such other proposed regulations or standards as the commission deems to be necessary to achieve the purpose, intent and provisions of this chapter; and
- E. Upon request by 10 or more residents of such

proposed city or town, the commission shall prepare such plans, maps, regulations and standards as it may deem necessary to meet minimum planning and zoning standards for its approval thereof.

The effective date of incorporation of any such proposed city or town shall be automatically deferred until such time as the proposed city or town has obtained the foregoing approval and upon such approval, and upon the effective date of incorporation, the city or town shall thereafter adopt, administer and enforce such plans, maps, regulations and standards."

When an area becomes part of any organized municipality the LURC land use districts and standards continue to apply "until such time as the municipality, of which the regulated district is then a part, shall adopt land use plans and regulations not less protective of the existing natural, recreational or historic resources than those adapted by the Commission".

QUESTIONS AND ANSWERS:

1. Does a previously unorganized or deorganized area which organizes into a municipality have to comply with the requirements of Shoreland Zoning as well as the requirements of the land use regulation statute?

No, an unorganized or deorganized area must comply only with the LURC statutory requirements.

2. What statutory requirements will govern future changes in the land use districts and standards of the "new" municipality?

LURC's statutory requirements.

REASONING:

1. ~~The~~ The Shoreland Zoning statute requires that municipalities adopt the requisite zoning ordinances by July 1, 1974, 12 M.R.S.A. § 4812. The mandate has little relevance after the prescribed deadline. Indeed, there is no need for its applicability to municipalities subsequently organized since the LURC statute, both as originally enacted and as amended, would apply.

Read together, the Shoreland Zoning and LURC statutory provisions dovetail. Any municipalities existing in 1971 were to zone at least their shorelands by 1974, 12 M.R.S.A. §§ 4812, 4812-A. Any subsequently formed municipality, like Somerville Plantation, would necessarily have been within LURC's jurisdiction, 12 M.R.S.A. §§ 681, 682.1. Accordingly, it would have been governed by land use districts and standards established by LURC for shorelands as well as other land areas. Any such land use district was, by statute, to continue to be regulated by LURC land use standards until the new municipality adopted regulations "not less protective" than the LURC standards, 12 M.R.S.A. 685-A.4.

Furthermore, the zoning responsibilities of an area like Somerville Plantation were clarified by an amendment to the LURC statute enacted in the same legislative session as the shoreland zoning extension. The statute now requires that Somerville, prior to incorporation, have a comprehensive plan and various zoning provisions approved by LURC, 12 M.R.S.A. § 685-A. 4 A-E. Thus, as a practical matter, the purposes of the shoreland zoning statute, to require zoning to protect shoreland resources, are equally served in areas like Somerville by the LURC statutory requirements.

Accordingly, it is clear from both a practical and statutory standpoint, that new municipalities are not governed by the Shoreland Zoning statute, but must zone their shorelands (and other lands) pursuant to LURC's statute and approval. Note that LURC, in conjunction with the Board of Environmental Protection, must also approve shoreland zoning ordinances of municipalities, 12 M.R.S.A. §4813.

2. Subsequent changes in zoning ordinances of newly organized municipalities like Somerville are also governed by the LURC statute as noted above, particularly section 685-A.4 and 685-A.4.D. Section 685-A.4 of Title 12 provides that land use districts which subsequently become part of an organized municipality will continue to be regulated by standards adopted by LURC until the municipality adopts regulations "not less protective". This section, in conjunction with § 685-A.4.D., may also be read to prohibit any future, less protective change in the zoning ordinances.

This interpretation is supported by four factors. First, as a matter of statutory construction, statutes like this are designed to protect the public health and welfare (see 12 M.R.S.A. § 681) and are to be liberally interpreted. See for example, State v. Kunze, 262 A. 2d 126 (N. H. 1970).

Second, the legislative history of this section of the statute indicates the legislators concern that unorganized areas, by organizing into municipalities, would avoid LURC jurisdiction and the desired land use regulation (See Legislative Record, 1973, p.4117.

Third, there is clear indication within the statute itself (see 685-A.4) that should any conflict between relevant provisions arise, the standard or regulation which is more protective of natural, recreation, and historic resources would prevail.

Fourth, LURC, may, pursuant to 685-A.4.D, require that a proposed ordinance include whatever regulations or standards the commission deems necessary to achieve the purposes of land use regulation (see 12 M.R.S.A. § 681).

In view of these four facts, it seems that LURC may retain jurisdiction over subsequent changes in zoning ordinances of new municipalities, provided the changes are less protective than LURC requires.

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