

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1260

S. P. 506

In Senate, March 2, 1967

Referred to Committee on Natural Resources. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Hildreth of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT to Create the Wildlands Use Regulation Commission.

Preamble. Whereas, the State of Maine has committed itself to the principle of sound planning at county and municipal levels of government; and

Whereas, general enabling legislation exists to allow municipalities and villages to zone, to adopt and amend an official map and to regulate the subdivision of land; and

Whereas, the unorganized areas and mainland plantations of the State are being made increasingly accessible by the construction and improvement of public and private roads; and

Whereas, this increasing accessibility coupled with increased public demand for and utilization of lands and waters in unorganized areas is leading to the short-sighted, unplanned and destructive use of woodland, stream and lakeshore areas located in such portions of the State; and

Whereas, in the judgment of the Legislature it is desirable to extend the principles of sound planning, zoning and subdivision control to the unorganized and mainland plantation portions of the State in order to preserve public peace, health, safety and general welfare and to prevent the further spread of unplanned residential, recreational, commercial and industrial development detrimental to the use or value of surrounding land; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development along major public and private roads of substandard structures or structures located in too close a proximity to such roads; and to prevent the despoilation, pollution and inappropriate use of lakes, rivers and streams in these mainland plantations and unorganized areas.

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

R. S., T. 12, c. 206-A, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 206-A, to read as follows:

CHAPTER 206-A
WILDLANDS USE REGULATION
SUBCHAPTER I
GENERAL PROVISIONS

§ 681. Definitions

1. Access road. "Access road" shall include any way which is used by ordinary motor vehicles at some time during the year.
2. Major road. "Major road" shall include any public or private way which is open to or generally used by the public and which is used in all seasons by ordinary motor vehicles.
3. Remote lakes and ponds. A remote lake or pond is one no part of which lies within 2,000 feet of any major road or within 100 feet of any access road.
4. Zoned area. Zoned area shall include all land within 500 feet of the traveled edge of any major road and within 500 feet of the normal shoreline of any lake or pond, except remote lakes and ponds. Zoned area shall include the surface of the waters of any lake or pond of less than 640 acres.

SUBCHAPTER II
WILDLANDS USE REGULATION COMMISSION

§ 682. Wildlands Use Regulation Commission

There is created the Wildlands Use Regulation Commission, hereinafter in this chapter called the "commission". The commission shall consist of 4 permanent members: The Director of Parks and Recreation, the Forest Commissioner, the State Planning Officer and the Chairman of the Water Improvement Commission; and 3 members serving staggered 6-year terms to be appointed by the Governor. The latter 3 members shall respectively represent conservation interests, forest products industry interest, and general landowner interests. The initial appointee to the commission representing conservation interests shall be appointed for a 2-year period. The initial appointee to the commission representing forest products industry interests shall be appointed for a 4-year period. All appointees of the Governor shall require the approval of the Executive Council.

§ 683. Officers, meetings and regulations

The commission shall elect annually, from its own membership, a chairman and secretary and such other officers it deems necessary. Meetings shall be held at the call of the chairman or at the call of more than $\frac{1}{2}$ of the membership. Such meetings shall be held no less frequently than 4 times a year. The commis-

sion may adopt whatever regulations it deems necessary for the conduct of its business. The secretary shall keep minutes of all proceedings of the commission which minutes shall be a public record available and on file in the office of the commission.

§ 684. Budget, financing and Executive Director

The commission shall prepare a biennial budget and shall submit to the Legislature requests for appropriations sufficient to carry out its assigned tasks. The commission may accept contributions of any type from any source to assist it in carrying out its assigned tasks. The commission may contract with municipal, State and Federal Governments or their agencies to assist in the carrying out of any of its assigned tasks. The commission is authorized to hire an Executive Director who shall be the principal administrative, operational and executive employee of the commission. The Executive Director must have a professional degree in planning or in a related field or must have at least 3 years practical experience in the field of planning or land use management, or both. The Executive Director shall attend all meetings of the commission and be permitted to participate fully but shall not be a voting member of the commission. The Executive Director with the approval of the commission may hire whatever competent professional personnel and other staff he deems necessary and he may obtain office space, goods and services as required.

SUBCHAPTER III
POWERS AND DUTIES

§ 685. Zoning

1. Zoning ordinance. The commission based on principles of sound and comprehensive planning shall upon a majority vote of its members adopt and from time to time may amend a zoning ordinance which shall be applicable in any subarea or group of subareas within the zoned area. The zoning ordinance may regulate the following within the zoned area:

- A. Location and use of real estate for agricultural, industrial, commercial, forestry, recreational, residential and other purposes;
- B. Type of construction, height, width, minimum floor area and bulk of all structures;
- C. Lot size and size of open space, unbuilt upon area, to be retained on all real estate parcels;
- D. Setback of structures along major roads and along the shores of water bodies;
- E. Use of boats and size of outboard motors on lakes or ponds of less than 640 acres.

Among other things the ordinance shall be designed to encourage the most appropriate use of land; to prevent overcrowding or substandard development of real estate; to prevent development from polluting lakes, ponds and streams; to preserve natural conditions where appropriate or beneficial; to protect forest resources and timber reserves for industrial use.

2. **Notice of intent to zone.** At least 6 months before public hearing on any proposed zoning ordinance or amendment the commission shall give notice of its intent to zone any portion of zoned area by first class mail directed to the owners of land according to their names and addresses as shown on the records of the Bureau of Taxation. Such notice shall reasonably define the portion of the zoned area to be involved and shall invite the owner thereof to submit to the commission a description of the use or uses to which his land within the zoned area is being put, and a plan of the use or uses to which he intends to put it in the future.

3. **Notice of hearing.** After 6 months' notice of intent to zone or amend the zoning ordinance has been given, notice of zoning hearing, which shall be open to the public, shall be given in a similar manner as described in subsection 2 to landowners in the zoned area to be affected. Such notice shall state the date, time and place of the hearing, which shall be in the county where the area affected lies, shall reasonably define the portion of the zoned area to be involved, and shall be mailed at least 14 days before the hearing is scheduled.

4. **Considerations.** In adopting a zoning ordinance or amendment with respect to any portion of the zoned area, the commission shall give consideration to public and private planning reports and other data available to it, and where not inconsistent with the spirit and intent of this chapter shall give weight to existing uses of the land and to any reasonable plans of its owners for its future use.

5. **Map.** Before adoption of a zoning ordinance or amendment, the commission shall prepare a zoning map outlining each zone to be established or modified. These maps shall be on file and available for inspection by any interested party in the offices of the commission and in the appropriate registry of deeds of the county in which the land lies.

6. **Application.** No ordinance shall apply to structures and uses existing at the time the ordinance is adopted, but shall apply to new structures and uses and to substantial changes in structures and uses made after passage, provided that year around occupied single family residences and operating farms presently in existence and use shall be exempt from the ordinance while so used to the extent that new accessory buildings or renovations of existing buildings are necessary to the satisfactory and comfortable continuation of these exempt residential and farm categories. The changes in structure and use to which a zoning ordinance applies may be defined in the ordinance.

7. **Exemptions.** Real estate used or to be used by a public service corporation may be wholly or partially exempted from an ordinance when, upon timely petition to the commission and after a hearing, the commission determines that such exemption is necessary or desirable for the public's welfare or convenience.

8. **Governments.** Any zoned area which subsequently becomes a part of an organized municipal entity and which formerly was zoned pursuant to this enabling legislation shall continue to be regulated by the zoning ordinance until such time as the new municipal entity of which the territory is a part shall amend the existing zoning ordinance. The zoning ordinance shall be only advisory with respect to actions of the State Government.

9. **Building permit.** Any individual or corporation who would build upon zoned land must apply to the commission for a permit for such building or structure. A permit application shall be in writing and shall be signed by the applicant and directed to the Executive Director of the commission. The Executive Director, with the approval of the commission, shall approve or disapprove each application. Failure of the Executive Director to issue a written notice of his decision, directed to the applicant, within 21 days from the date of filing the application constitutes a disapproval or refusal of the permit.

10. **Nuisance.** Any real estate or personal property existing in violation of an ordinance enacted pursuant to this enabling legislation is a nuisance and may be sought to be abated by either public or private action.

11. **Inspection.** For purposes of inspection and to insure compliance with a zoning ordinance, any member of the commission, the Executive Director, appointed staff or consultant personnel of the commission shall have free access at reasonable hours to any zoned lands and structures thereon.

§ 686. Subdivision control

1. **Subdivision control ordinance.** The commission based on standards of health, safety and general welfare as these standards apply to the process of subdividing land, and after adoption of a zoning ordinance for the zoned area or any portion thereof, may upon a majority vote of its members adopt, and from time to time amend, a subdivision control ordinance which shall be applicable in that portion of the zoned area. The subdivision control ordinance shall be consistent with the zoning ordinance and may regulate to achieve minimum standards in the development of subdivided land with particular attention to such factors as utilities, drainage, pollution control, water supply, lot sizes, access roads and other improvements.

2. **Publication.** A subdivision control ordinance or any amendment thereto shall become effective 30 days after the filing of a certified copy thereof in the registry of deeds of the applicable county.

3. **Governments.** Any zoned area which subsequently becomes a part of an organized municipal entity and which formerly was subject to a subdivision control ordinance validly adopted pursuant to this enabling legislation shall continue to be regulated by such ordinance until such time as the new municipal entity of which the territory is a part shall amend the existing ordinance.

4. **Subdivision.** A subdivision shall be defined as a division of an existing parcel of land into 3 or more parcels within any 5-year period whether this division is accomplished by platting the land or by a sale of the land by metes and bounds except where no one of such parcels is less than 10 acres in size. Any individual or corporation who would subdivide lands, any part of which are subject to a subdivision control ordinance adopted pursuant to this enabling legislation, must apply to the commission for a permit allowing such subdivision. An application for a subdivision permit shall be in writing signed by the applicant and directed to the Executive Director of the commission. It shall show with reasonable clarity the full scope of the proposed subdivision and shall note in all respects the compliance of the proposed subdivision with the subdivision

control ordinance in effect. The Executive Director, with the approval of the commission, shall approve or disapprove each application. Failure of the Executive Director to issue a written notice of his decision, directed to the applicant, within 21 days from the date of filing the application constitutes a disapproval or refusal of the permit.

5. Recording. A register of deeds shall not record any plat or any writing purporting to convey land, except by a mortgage thereof, located in the unorganized lands or mainland plantations of the State unless the same bears an attested statement by the draftsman or the owner of such land that no portion of the same is located in a zoned area subject to a subdivision ordinance, or that the same is not a subdivision, or unless the commission's approval is evidenced thereon.

The recording of a plat or plan in violation of this subsection is void.

6. Violation. Any conveyance of land in violation of this chapter shall be void, and any structures erected thereon after conveyance shall constitute a nuisance which may be sought to be abated by either public or private action.

SUBCHAPTER IV

ZONING AND SUBDIVISION CONTROL BOARDS OF APPEALS

§ 687. Zoning and subdivision control boards of appeals

1. Separate boards of appeals. There shall be established a separate zoning and subdivision control board of appeals for each county in which land subject to this chapter is located.

2. Membership. The boards of appeals shall consist of 5 members, one of whom shall be a member of the commission or its staff, and one of whom shall be a resident of the county appointed by the commission. The remaining 3 shall be the county commissioners of the county. The board of appeals shall choose an alternate member to act in the absence of a regular member. The member appointed by the commission and the alternate member shall serve for a term of 3 years. The board shall elect a chairman and secretary each year from its own membership.

3. Appeal. An appeal must be filed in any case within 60 days after the refusal of an application for a building permit or a subdivision permit, by any person aggrieved thereby. The appeal must be in writing, directed to the county commissioners of the appropriate county and must state the grounds upon which the appeal is being made. The failure of the board to issue a written notice of its decision, directed to the appellant, within 21 days from the date of the filing of the appeal constitutes a denial of the appeal, an affirmance of the commission's decision.

4. Basis. An appeal may be taken from the refusal to grant a permit on the grounds that it:

- A. Is unreasonable;
- B. Creates an undue hardship; or

C. Is inconsistent with the intent of this chapter.

An appeal may be taken from the failure to grant a subdivision permit on the grounds that:

A. The commission's action was unreasonable;

B. The conditions upon which the permit was granted was unreasonable; or

C. It creates an undue hardship, and reversal of the action will not cause a substantial departure from the intent of the ordinance.

5. To Superior Court. A decision of the zoning and subdivision control board of appeals may be appealed to the Superior Court within 45 days of the decision by either the appellant before the board or by the commission. Notice of the appeal shall be ordered by the court and the appeal shall be tried and determined by the court without a jury in the manner and with the rights provided by law in other civil actions so heard. Costs may be awarded to the prevailing party by the court as justice requires.