

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 210

H. P. 171

House of Representatives, January 16, 1969

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Richardson of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT To Create the Wildlands Use Regulation Commission.

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. Scope and purpose

The Legislature finds that it is desirable to extend the principals of sound planning, zoning and subdivision control to the unorganized and mainland plantation areas 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 these wildlands; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development along lakes, ponds, rivers and streams, and public and private roads of substandard structures or structures located in too close a proximity to such waters or roads; and, to prevent the despoliation, pollution and inappropriate use of lakes, ponds, rivers and streams in these mainland plantation and unorganized areas; and, to preserve ecological balance in these mainland plantation and unorganized areas.

§ 682. Definitions

1. Access road. An access road shall include any public or private way which is open to or generally used by the public and which is capable of being traveled by ordinary motor vehicles at sometime during the year.

2. Remote lakes, ponds, rivers and streams. A remote lake, pond, stream or river is one no part of which lies within 500 feet of any access road.

3. Subdivision. A subdivision is 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 or by leasing except where no one of such parcels is less than 10 acres in size.

4. Wildlands. The wildlands are the mainland plantation and unorganized portions of the State of Maine.

5. Zoned area. The zoned area shall include all land within 500 feet of the traveled edge of any access road and within 500 feet of the normal shoreline of any lake, pond, river and stream, except remote lakes, ponds, rivers and streams. 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

§ 683. Creation of Wildland Use Regulation Commission

To carry out the purposes stated in section 681 there is created the Wildlands Use Regulation Commission, hereafter in this chapter called the "commission." The commission is charged with implementing this chapter in all of the mainland plantation and unorganized portions of the State. The commission shall consist of 3 permanent members: the Director of Parks and Recreation, the Forest Commissioner and the State Planning Officer; and 4 members serving staggered 4-year terms to be appointed by the Governor with the advice and consent of the Council. The latter 4 members shall respectively represent the public, conservation interests, forest products industry interests and general landowner interests. The initial appointee to the commission representing the public shall be appointed for a one-year period; the initial appointee representing conservation interests shall be appointed for a 2-year period; the initial appointee representing the forest products industry interests shall be appointed for a 3-year period; and the initial appointee representing general landowner interests shall be appointed for a 4-year period.

§ 684. Commission officers, meetings and rules

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 commission may adopt whatever rules it deems necessary for the conduct of its business. The secretary shall keep minutes of all proceedings of the com-

mission, which minutes shall be a public record available and on file in the office of the commission. Members of the commission shall not be paid a salary but shall be reimbursed for all expenses incurred in carrying out their respective responsibilities.

§ 685. Commission 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

COMMISSION POWERS AND DUTIES

§ 686. Zoning powers and duties

I. Zoning regulation. The commission, based on principles of sound and comprehensive planning, shall, upon a majority vote of its members, adopt a zoning regulation which shall be applicable in any subarea or group of subareas within the zoned area. The zoning regulation 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, depth and width of lots, and minimum size of open space, un-built-upon area, to be retained on all real estate parcels;
- D. Setback of structures along access 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 regulations shall be designed to encourage the most appropriate use of land and water resources; to prevent overcrowding or substandard development of real estate; to prevent development from pol-

luting lakes, ponds, rivers and streams; to preserve natural conditions where appropriate or beneficial; to preserve ecological balance; to protect forest resources and timber reserves for industrial use.

2. Notice of intent to zone. At least 3 months before public hearings on any proposed zoning regulation the commission shall give notice of its intent to zone any portion of zoned area by first-class mail directed to the owners of the land affected 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 any plans which the landowner may have with respect to the future use of these lands.

3. Notice of hearing. After 3 months' notice of intent to zone, notice of a 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. The notice shall reasonably define the portion of the zoned area involved, and shall be mailed at least 14 days before the hearing is scheduled.

4. Considerations. In adopting a zoning regulation covering any portion of the zoned area, the commission shall give consideration to public and private planning reports and other data available to it, and shall consider existing uses of the land and any reasonable plans of landowners with respect to future uses of the land. In any event, land in the zoned area used or held exclusively for forest products industry use, if so stated by the owner thereof, shall be zoned for such use. Nothing in this or in any regulation adopted shall in any way limit the right, method or manner of cutting or removing timber, or the erection of buildings or other structures used entirely for forest products industry purposes in the zoned area.

5. Amendments. The commission may from time to time upon its own motion, or upon the application of the owner of land in a zoned area, amend any zoning regulation as it applies to any subarea. A public hearing on any amendment with notice given as outlined in subsection 3 shall be held after giving 3 weeks' notice of intent to amend in a similar manner as described in subsection 2, to all landowners within one mile of the area to be affected by the proposed amendment.

6. Map. Before adoption of a zoning regulation or amendment thereto, 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.

7. Application. No regulation shall apply to structures and uses existing at the time the regulation is adopted, but shall apply to new structures and uses and to changes in structures and uses made after passage, except that occupied year-round single family residences and operating farms presently in existence and use shall be exempt from regulations 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 regulation applies may be further defined in the regulation.

8. Public service corporation exemptions. Real estate used or to be used by a public service corporation may be wholly or partially exempted from regulation when, upon timely petition to the commission and after a hearing, the commission determines that such exemption is necessary or desirable for the public welfare or convenience.

9. Governments. Any portion of the zoned area which subsequently becomes a part of an organized municipal entity and which was zoned pursuant to this enabling legislation shall continue to be controlled by the zoning regulation until such time as the new municipal entity, which the zoned land is now a part of, shall alter or amend the zoning regulation. Any zoning regulation shall be only advisory with respect to actions of the State Government.

10. Building permit. Any individual or corporation who would build upon zoned land with the exception noted in subsection 4 covering buildings used exclusively for forest products industry purposes, 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. It shall show with reasonable clarity the type and location on the lot of the proposed building or structure and shall note in all respects the compliance of the proposed building or structure with the zoning regulation in effect. The executive director, with the concurrence of the commission, shall approve or disapprove of each application. If the character of the land or building is unique or unusual, approval may be conditioned on compliance with such additional requirements, other than those spelled out in the zoning regulations, as the executive director and commission deem necessary. The commission may overrule a decision of the executive director by a $\frac{2}{3}$ vote of its membership. Failure of the executive director to issue a written notice of approval or disapproval by the commission, directed to the applicant, within 90 days from the date of filing the application constitutes a disapproval or refusal of the permit.

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

12. Inspection. For purposes of inspection and to insure compliance with a zoning regulation, any member of the commission, the executive director, appointed staff or consultant personnel of the commission may obtain access at reasonable hours to any zoned lands and structures.

13. Taxation. In the assessment of land, the State Tax Assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. Restrictions shall include but are not necessarily limited to zoning restrictions limiting the use of land and any recorded contractual provisions limiting the use of lands entered into with a govern-

mental agency pursuant to state law. There shall be a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that the value of the land is attributable to the legally permissible use or uses.

§ 687. Subdivision control, powers and duties

1. Subdivision control regulation. 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 regulation for the zoned area or any portion thereof, shall, upon a majority vote of its members, adopt and from time to time may amend, subdivision control regulations which shall be applicable in that portion of the zoned area. The subdivision control regulations shall be consistent with the zoning regulations and may regulate to achieve minimum standards in the development of subdivided land with particular attention to such factors as structural design, building location, building materials, utilities, drainage, pollution control, water supply, lot sizes, extension of access roads, boat and automobile parking arrangements and other improvements.

2. Publication. Subdivision control regulations or any amendments thereto shall become effective in the areas designed to be affected 30 days after a certified copy of the regulations and a map denoting the lands affected are filed in the registry of deeds of the appropriate county.

3. Governments. Any portion of the zoned area which subsequently becomes a part of an organized municipality entity and which was subject to subdivision control regulation pursuant to this enabling legislation shall continue to be controlled by such regulations until such time as the new municipal entity shall alter or amend the existing regulation.

4. Subdivision approval. Any individual or corporation who would subdivide lands, any part of which are subject to subdivision control regulations 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 regulations in effect. The executive director with the concurrence of the commission shall approve or disapprove each application. If the character of the land or design and layout of the subdivision is unique or unusual, approval may be conditioned on compliance with such additional requirements, other than those spelled out in the subdivision regulations, as the executive director and commission deem necessary. The commission may overrule a decision of the executive director by a 2/3 vote of its membership. Failure of the executive director to issue a written notice of commission action, directed to the applicant, within 90 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 un-

organized territory or mainland plantation areas 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 as defined in this chapter, 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 unrecorded subdivided land or subdivided land recorded in violation of this chapter shall be void and any structures erected on such land after conveyance shall constitute a nuisance which may be abated by either public or private action.

SUBCHAPTER IV

WILDLAND ZONING AND SUBDIVISION CONTROL REGULATION

APPEALS

§ 688. Appeal to Superior Court

An appeal may be taken by any injured party from the refusal of the commission to grant a building or subdivision permit or from the granting of such permit upon conditions thought to be unreasonable to the Superior Court of the county in which the affected lands are located. Such appeal must be taken within 45 days of receipt of notice of the commission's action and shall be tried and determined by the court without a jury in the manner and with the rights provided by law in other actions so heard. The court may affirm, set aside or modify the acts of the commission being appealed from. Costs may be awarded to the prevailing party by the court as justice requires.