

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

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H. P. 1234

House of Representatives, June 3, 1969

Reported by Mr. Snow from Committee on Natural Resources. Printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT to Create the Maine Land Use Regulation Commission and to Regulate Realty Subdivisions.

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

USE REGULATION

SUBCHAPTER I

GENERAL PROVISIONS

§ 681. Purpose

The Legislature finds that it is desirable to extend the principles of sound planning, zoning and subdivision control to the unorganized and deorganized townships and mainland plantations 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 areas; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to prevent the development along lakes, ponds and public 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 and ponds in these mainland plantation and unorganized areas; and, to preserve ecological balance in the mainland plantation and unorganized areas.

This chapter shall apply only to unorganized and deorganized townships and mainland plantations and shall not apply to Indian reservations.

§ 682. Definitions

1. Remote lakes and ponds. A remote lake or pond is one no part of which lies within one mile of a public road and which does not have more than 5 single family residential dwellings within 500 feet of its normal shoreline.

2. 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.

3. Zoned area. Zoned area shall include all land within 500 feet of the traveled edge of any public road and within 500 feet of the normal shoreline of any lake or pond, except remote lakes and ponds. Zoned areas shall include the surface of the waters of any lake or pond of less than 640 acres unless it is remote.

SUBCHAPTER II

MAINE LAND USE REGULATION COMMISSION

§ 683. Creation of Maine Land Use Regulation Commission

To carry out the purposes stated in section 681 there is created the Maine Land 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 and deorganized 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. Thereafter said appointees shall be appointed to serve 4-year terms.

§ 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 5 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 commission, 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. A quorum of the commission for the transaction of business shall be 4 members. No action shall be taken by the commission except upon vote of 4 members.

§ 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, and make such requirements in respect to the administration of such funds, not inconsistent with this subchapter, as are required as conditions precedent to receiving such funds, federal or otherwise. 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

1. Zoning regulation. The commission, based on principles of sound and comprehensive planning, may adopt a zoning regulation which shall be applicable in any subarea or group of subareas within the zoned area. The commission may decline or postpone adoption of regulations in those portions of the zoned area where it deems regulation unnecessary due to lack of imminent land development. 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, unbuilt-upon area, to be retained on all real estate parcels;
- D. Setback of structures along public roads and along shores of lakes and ponds, except remote lakes and ponds;

E. Use of boats and size of outboard motors on lakes or ponds of less than 640 acres except on remote lakes and ponds.

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 polluting 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; to encourage tree farms and to encourage the policy of multiple use of forest and timber resources.

2. **Notice of intent to zone.** At least 3 months before public hearings on any proposed zone or zoning regulation the commission shall give notice of its intent to zone or issue a zoning regulation in any 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. Public notice of such intent to zone shall also be given by 3 weeks' successive publication thereof in some newspaper of general circulation in the county wherein the land sought to be affected lies, the first such publication to be at least 90, and the last such publication to be at least 60, days before the date of the zoning hearing specified in subsection 3.

3. **Notice of hearing.** After 3 months' notice of intent to zone or issue zoning regulations, 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 area to be affected. Such notice shall state the purpose, date, time and place of the hearing, which shall be in the county where the area affected lies. The notice shall reasonably define the area involved, and shall be mailed at least 14 days before the hearing is scheduled. Public notice of such hearing shall also be given by 3 weeks' successive publication thereof in some newspaper of general circulation in the county where the land sought to be affected lies. The notice shall conform in content to that notice given the landowners. The first such publication shall be at least 45, and the last such publication shall be at least 7, days before the date of the hearing.

4. **Considerations.** In adopting a zoning ordinance 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 plan of its owners and its future use.

A. In any event, land in the zoned area used or held for either forest product or agriculture uses, if so stated by the owner thereof, shall at the request of the owner be zoned for such use and shall not be zoned otherwise without the owner's consent. Nothing in this chapter or in any regulation adopted shall in any way limit the right, method or manner of cut-

ting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings or other structures used primarily for agricultural or forest products industry purposes in the zoned area.

B. In addition, the Legislature declares it to be in the public interest, for the public benefit and for the good order of the people of this State to encourage the well managed multiple use of the privately owned forest and timber resources and to the making of these lands available to the people of this State and visitors to it, in their common pursuit of various out-of-doors recreational activities, including hunting, fishing, boating, hiking and camping.

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 the boundaries of 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 in 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 substantial 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 regulation 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. No regulation shall apply to or prohibit use of land as a tree farm or for forestry purposes or for lumbering or woodcutting operations of any kind. No ordinance shall be enacted contrary to subsection 4, paragraphs A and B, and if enacted contrary to said paragraphs, it shall not apply to nor prohibit the uses outlined in said paragraphs.

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 Public Utilities Commission and after a hearing, the said 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 municipality and which was zoned pursuant to this chapter shall continue to be controlled by the zoning regulation until

such time as the new municipality, which the zoned land is now a part of, shall alter or amend the zoning regulation.

10. **Building permit.** Any individual or corporation who would build upon land subject to a zoning regulation, with the exception noted in subsection 4 covering buildings used primarily 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 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 commission deems necessary. Failure of the executive director to issue a written notice of approval or disapproval by the commission, directed to the applicant, within 30 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.

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.** For purposes of property tax assessment, it shall be presumed that any zoning classification hereunder is permanent in the absence of clear proof to the contrary. The State Tax Assessor shall consider the effect upon value of any restrictions to which the use of the land is subjected. Restrictions shall include, but are not necessarily limited to, zoning restrictions and any recorded contractual provisions limiting the use of land entered into with the Federal or State Government or any subdivision or agency thereof.

§ 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, may adopt and from time to time may amend, subdivision control regulations which shall be applicable in the subdivided 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, road location, boat and automobile parking arrangements and other improvements.

2. **Publication.** Subdivision control regulations or any amendments thereto shall become effective in the areas 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 enact a zoning ordinance in conformity with Title 30, chapter 239, subchapter V.

4. **Subdivision approval.** Any individual or corporation who would subdivide lands, any part of which is subject to subdivision control regulations adopted pursuant to this chapter, 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 regulation in effect. 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 commission deems necessary. Failure of the executive director to issue a written notice of commission action, directed to the applicant, within 30 days from the date of filing the application constitutes a disapproval or refusal of the permit.

5. **Subdivision notice.** Any individual or corporation who would subdivide lands, any part of which is within the zoned area but not subject to subdivision control regulations adopted pursuant to this chapter, must give written notice of same to the commission, 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.

6. **Recording.** A register of deeds shall not record any plat or any writing purporting to convey or subdivide land, except by a mortgage thereof, located in the unorganized 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 within the zoned area, or if within the zoned area but not subject to subdivision control regulations, that the notice provided in subsection 5, has been mailed to the commission, or unless the commission's approval is evidenced thereon. The recording of a plat or plan in violation of this subsection is void.

7. **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.

§ 688. Minimum Lot Size

In all areas of the unorganized and deorganized townships and mainland plantations of the State, except for areas within the zoned area when and

after subdivision control regulations adopted pursuant to this chapter are applicable thereto, a lot or parcel of land which is not served by public or community sewer whether created by plat or laid out in metes and bounds shall not be used for single family residential purposes unless such lot or parcel of land is at least 20,000 square feet in size. Lots of less than 20,000 square feet in size may be used for single family residential purposes if approved by the State Department of Health and Welfare on the bases of percolation tests, soil type, soil observation holes made in a representative manner, and recommendations by a registered engineer. The results of such tests and the engineering recommendations shall be submitted in a written report by the landowner to the State Department of Health and Welfare for approval. The department shall issue a written notice of its decision within 30 days after a proposed use of such lot has been submitted, and if its disapproval is indicated, reasons for the same shall be listed. Single family dwellings in existence prior to the effective date of this Act and lots of less than 20,000 square feet for which a plan has been recorded prior to January 1, 1970 shall be exempt from the provisions hereof. The State Department of Health and Welfare shall charge \$10 per lot to service applications for approval, but not more than \$50 for any one subdivision. Any structures erected in violation of this section shall constitute a nuisance which may be abated by either public or private action.

SUBCHAPTER IV

APPEALS

§ 689. Appeal to Superior Court

An appeal may be taken by any aggrieved party from any decision of the commission including without limitation 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, or from any decision of the State Department of Health and Welfare pursuant to section 688, 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 action of the commission or department 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 or department being appealed from. Costs may be awarded to the prevailing party by the court as justice requires. An appeal from the decision of the Superior Court to the law court may be taken as provided by law.