

MAINE STATE LEGISLATURE

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SHORELAND ZONING REPORT TO THE LEGISLATURE
APRIL 1997

Introduction

Maine's shoreland zoning program is administered pursuant to the Mandatory Shoreland Zoning Act (Title 38 sections 435 through 449). That law requires municipalities to adopt shoreland zoning ordinances regulating land use activities within 250 feet of rivers, great ponds, and tidal waters; within 250 of the upland edge of freshwater and coastal wetlands; and 75 feet of streams as defined in the Act. The Department of Environmental Protection establishes minimum guidelines for those shoreland ordinances. It also provides technical assistance to municipalities and acts to enforce against those municipalities which fail to administer and enforce the required ordinances.

Over the past two-year period, the shoreland zoning program has remained quite stable. There have been few statutory changes which affect the program, and no amendments have been made to the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, the document established by the Board of Environmental Protection (BEP) to guide municipalities as they enact shoreland ordinances. The only significant statutory change in the past two years which relates to shoreland zoning is the new requirement that landowners whose land is proposed to be placed in a Resource Protection District must be notified of the proposal in writing.

Staff Activities/Assistance to Municipalities

In order to carry out the Department's responsibilities pursuant to the Mandatory Shoreland Zoning Act, the Department employs two staff members. The Shoreland Zoning Coordinator is paid from the State's general fund, while the assistant coordinator is paid from federal Coastal Zone Management funds. The majority of the staff's activities over the past two year period have been directed toward assisting municipalities with the administration of shoreland zoning ordinances. Assistance is provided in many forms, including but not limited to participation in the code enforcement officer certification training program, conducting training programs for planning boards and code officers in conjunction with regional planning councils (sessions were held in all regions), publishing the *Shoreland Zoning News* at least three time a year, and meeting with individual towns to assist with the administration and enforcement of local ordinances. The

Department also published a new *Issue Profile* pertaining to non-conforming structures. This profile details the limitations for such structures, including the 30% expansion cap.

Staff also devotes a significant amount of effort toward educating the public and related organizations. For example, staff developed a training session on shoreland zoning issues for realtors. That course was presented as an outreach effort in conjunction with the University of Southern Maine on six different occasions to more than 200 realtors throughout the State. Other training programs were conducted for loggers and lake associations.

The shoreland zoning unit is also responsible for reviewing all new shoreland zoning ordinances and amendments, and making recommendations to the Commissioner regarding whether the ordinances can be approved. During this past two-year period staff reviewed 33 newly adopted ordinances, 9 draft ordinances, and 150 amendments to local ordinances, and drafted responses to the respective municipalities for the Commissioner.

We have worked closely with those towns whose ordinances have provisions inconsistent with the Department's Guidelines. At the start of this reporting period, forty-two towns had inconsistent provisions in their locally adopted ordinances. By the end of 1996 that number had been reduced to twenty. Working with the municipalities, staff also saw a reduction in the number of towns with conditionally approved ordinances. At the beginning of 1995 there were 116 conditionally approved ordinances. However, by the end of 1996, that number had been reduced to 81. We believe it is important to reduce the number of conditionally approved ordinances because many towns fail to append the conditions to the text of the locally adopted ordinance, increasing the possibility of those conditions not being administered as part of the local ordinance.

Figure 1, illustrates the geographic distribution of municipalities with fully approved ordinances, conditionally approved ordinances, and state-imposed ordinances.

In 1995, the Department completed the process of adopting state-imposed shoreland zoning ordinances for those municipalities which failed to update their respective ordinances following the BEP's updating of the minimum guidelines in 1990. That process was long and tedious, involving many meetings with town officials, as well as the drafting and reviewing of nearly two hundred zoning maps. Today, there are three hundred-eighty five (385) locally adopted ordinances, and sixty-five (65) fully state-imposed shoreland zoning ordinances. Eight (8) of the locally

adopted ordinances, due to various deficiencies, are supplemented by partial state-imposed ordinances. A complete list of the municipalities which are subject to a state-imposed ordinance is found in Table 1.

As noted above, the Department, making use of EPA grant monies, has provided zoning maps to approximately 200 municipalities. Whereas, accurate zoning maps are essential for effective administration of zoning ordinances, the Department has been working cooperatively with many municipalities in order to upgrade their locally adopted shoreland zoning maps. The primary benefit of the new maps is that they incorporate the more accurate wetlands information which is now available from the National Wetlands Inventory.

We are pleased to note that of the two-hundred (200) zoning maps which have been drafted by the Department or its contracted cartographers, 153 are in effect and 47 are in draft form. Of the 153 in effect, 71 have been locally adopted, 69 have been incorporated into a state-imposed ordinance, and 13 have been adopted by the Department as a condition of approval of a locally adopted ordinance.

Summary of Reports from Code Officers, Including Enforcement Actions

Section 441.3.C of the shoreland zoning law requires local code enforcement officers to biennially submit a report of all essential activities of that office to the Bureau of Land and Water Quality. Records include applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected.

Compliance with the requirements of Section 441.3.C remains less than desirable. For the previous reporting period only 58% of the towns submitted code officer reports. For the time covered by this reporting period (1994-1995) only 49% of the municipalities submitted code officer reports for the shoreland zone. The low degree of compliance with the reporting requirement has persisted since the requirement was established in the late 1980's.

In addition to the low reporting rates, the Department believes that the data received may not be extremely reliable. Of the 220 reports submitted, 56 (25%) indicated that no shoreland activities occurred over the past two year period. However, it is unlikely that no shoreland zoning activities occurred in as many towns as is indicated by these reports.

Another concern is that some town reports appear to list town-wide data, rather than shoreland data. The Department, however, does not have the staffing to follow-up on the submitted data. For the above reasons, the Department is skeptical about the quality of the overall information submitted for shoreland areas.

The above concerns aside, the information received indicates that the percentage of variances granted over the two-year reporting period have remained constant. 54% of the variance requests were granted over each of the last two reporting periods. This is down from 70% in 1990.

Approximately 35% of the variances granted were for setbacks from water bodies and wetlands.

New accessory structures and renovations/additions to existing structures outnumbered new principal structures by a four to one margin. For the 220 towns reporting, there were 632 new principal structures erected in the shoreland zone.

The data also confirms that municipalities resolve most enforcement matters without formal enforcement action. The reports indicated that 237 violations were confirmed. Forty-seven of those violations were resolved through administrative consent agreements. Only ten violations were elevated to the courts for resolution.

Future Activities

The most important task for the staff of the shoreland zoning unit is that of technical assistance to the municipalities. Present educational efforts will be maintained, including the publication of at least three editions of the Shoreland Zoning News each year, and continued training of town officials in each regional council area.

The shoreland zoning unit will also serve as the primary instructors of the shoreland zoning training for code enforcement officers, which is sponsored by the State Planning Office's code officer certification program. As noted earlier in this report, that program has proven to be a valuable link toward achieving effective enforcement of shoreland zoning rules.

The Department will continue to encourage municipalities to adopt updated zoning maps which incorporate the more accurate National Wetland Inventory maps. The incorporation of those maps will greatly improve the administration of shoreland zoning in those towns which are affected.

Towns with conditionally approved ordinances will also be prime targets of our assistance efforts. By directing our efforts at those towns, we can ensure that conditions attached to local ordinances are incorporated into those local ordinances, thereby, reducing the total number of conditionally approved ordinances.

Another project that the shoreland zoning unit will initiate this biennium is a *Citizen's Guide to Shoreland Zoning*. Although the Department has spent considerable time and effort to train local officials on the administration of shoreland zoning, it has not produced a great deal of educational materials for the general citizenry. The Guide will be a mix of illustrations and easily understood text, similar to earlier manuals published by the Land Use Regulation Commission to educate the public about its program and rules.

Problem Areas and Recommendations for Legislation

The Department does not recommend that significant changes be made to the shoreland zoning program. Over the past seven years since the Department's Guidelines were updated, municipal officials, including code enforcement officers, have consistently told the Department that they do not want to see major changes in the shoreland zoning law or rules. Those officials desire a period of stability, and the Department understands the municipalities' position.

Notwithstanding the above statement, the Department does recommend that the definition of "functionally water-dependent use" in the Mandatory Shoreland Zoning Act be amended to make it clear that recreational boathouses are not water-dependent. As the definition is now worded, some municipalities are treating boathouses for recreational boat storage as being water-dependent, therefore allowing such structures to be built within the structure setback area. As long as the definition is not clarified, the number of municipalities allowing such structures at the water's edge will continue to increase.

In the last report to the legislature the Department noted that the 30% expansion limitation for nonconforming structures in the shoreland zone is a valid provision and should be maintained. We continue to believe that the limitation, which is directed at preserving water quality and the natural beauty of our lakes, is appropriate. However, the Department is willing to review the expansion limitation with a stakeholders group to evaluate whether the current limitation is the best way to protect the aesthetics of our shoreland areas while maintaining water quality. We

are also receptive to reviewing the current expansion provisions in an effort to ensure an equitable system for all landowners. Currently, the amount of expansion allowed does not consider the size of the lot, the current size of the structure, nor the setback of the existing structure. Although we have not concluded that change is necessary, we are interested studying the issue.

Regarding the Department's Guidelines for municipal shoreland zoning ordinances, there are several minor amendments that should be made to those Guidelines. For example, the Guidelines do not require the landowner to post a copy of any permit issued in the watershed of great pond during the construction activity for which the permit was issued, although the shoreland zoning law requires it. There are other minor changes which should be made to the Guidelines but the Department proposes not to make changes until more compelling reasons to amend the document become evident, so that we can make these changes at once rather than having a document that is constantly being altered.

The Department makes special note of the value of the present code enforcement officer training program run by the State Planning Office. We strongly recommend that the program be maintained in the years to come. As a result of the program, code enforcement has improved dramatically over the past several years. In this period where state and local cooperation are imperative, we must continue to provide quality training for local code officers.

Lastly, it is the Department's understanding that the Land Use Regulation Commission is reviewing its standards pertaining to nonconforming uses. It is an opportunity for both the DEP and the Commission to establish greater consistency state-wide in dealing with nonconforming uses, structures and lots. It is not uncommon to receive complaints from a landowner or town official regarding inconsistent rules on a lake that is located in both an organized town and in a territory under LURC jurisdiction. Although the rules have been made more consistent in recent years, some further improvement can be made.