

Planning Day 2009

Land Use Law Review

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Presented By: John Maloney, Senior Planner

Subdivision Law Amendment

An Act To Implement the Recommendations of the Commission To Study the Protection of Farms and Farmland

Sec. C-1. 30-A MRSA §4401 (Definitions), sub-§2-B is enacted to read:

2-B. Farmland. "Farmland" means a parcel consisting of 5 or more acres of land that is:

A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or

B. Used for the production of agricultural products as defined in Title 7, section 152, subsection 2. ("Agricultural products" means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur. "Agricultural products" does not include trees grown and harvested for forest products.)

Sec. C-2. 30-A MRSA §4404, (Review Criteria) sub-§14-A is enacted to read:

14-A. Farmland. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district;

Effective September 12, 2009

Zoning Adjustment Amendment

An Act To Allow a Municipality To Grant a Variance for the Construction of a Parking Structure for a Person with a Permanent Disability

Sec. 1. 30-A MRSA §4353, sub-§4-A, as amended by PL 1995, c. 212, §1, is repealed and the following enacted in its place:

4-A. Disability variance; vehicle storage. A disability variance may be granted pursuant to this subsection.

A. The board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.

The board may impose conditions on the variance granted pursuant to this paragraph, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this paragraph, the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

B. *If authorized* by the zoning ordinance establishing the board, the board may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the board.

The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.

For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in Title 29-A, section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability.

The board may impose conditions on the variance granted pursuant to this subsection.

For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.

Effective September 12, 2009

Local Highway Law-Private Ways Amendment

An Act To Enable Municipal Assistance for Purposes of Protecting or Restoring Public Waters

Sec. 1. 23 MRSA §3106 is enacted to read:

§ 3106. Municipal assistance for purposes of protecting or restoring a great pond

1. Repairs to a private road. A municipality may repair a private road, way or bridge to prevent storm water runoff pollution *from reaching a great pond* as defined in Title 38, section 480-B, subsection 5 through the expenditure of public funds if:

A. The private road, way or bridge is within the watershed of the great pond;

B. The great pond:

(1) Is listed on the Department of Environmental Protection's list of bodies of water most at risk pursuant to Title 38, section 420-D, subsection 3;

(2) Has been listed as impaired in an integrated water quality monitoring and assessment report submitted by the Department of Environmental Protection to the United States Environmental Protection Agency pursuant to the federal Clean Water Act, 33 United States Code, Section 1315(b) at least once since 2002; *or*

(3) Is identified as having threats to water quality in a completed watershed survey that uses a protocol accepted by the Department of Environmental Protection;

C. The Department of Environmental Protection or the municipality determines that the private road, way or bridge is contributing to the degradation of the water quality of the great pond based upon an evaluation of the road, way or bridge using a protocol accepted by the department;

D. The repair complies with best management practices required by the Department of Environmental Protection; *and*

E. The private road, way or bridge is *maintained by a road association* organized under this subchapter or Title 13-B.

2. Rules. The Department of Environmental Protection may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Effective September 12, 2009

Informed Growth Act Amendment

An Act To Modify the Informed Growth Act

Sec. 1. 30-A MRSA §4371, as enacted by PL 2007, c. 347, §1, is repealed and the following enacted in its place:

§ 4371. Exemption

1. Ordinance. The provisions of this subchapter do not apply to a municipality that has adopted an ordinance that contains requirements for determining the impacts of a proposed large-scale retail development as defined in section 4366, subsection 6 and requires an independent study of the community economic impacts for each individual large-scale retail development. The ordinance must include a requirement to consider the findings of the study, among other evidence, when reviewing a land use application and must contain standards for determining when an impact of a large-scale retail development is detrimental to the municipality.

2. Community economic impact study. The study pursuant to subsection 1 may include an examination of job creation; retail wages; sales revenue retained and reinvested in the community; municipal revenues generated; municipal services and maintenance costs caused by the development's construction and operation; public subsidies including tax increment financing; impacts on utilities; and any other factors the municipality identifies.

3. Qualified preparer. The study pursuant to subsection 1 must be prepared by a preparer qualified by education, training and experience pursuant to section 4367 who is chosen by the municipality.

4. Public presentation. The study pursuant to subsection 1 must be presented to the public consistent with section 4368.

Effective September 12, 2009

Cemetery Law Amendment

An Act Regarding Construction and Excavation near Burial Sites

Sec. 1. 13 MRSA §1371-A, sub-§1, as amended by PL 2007, c. 112, §2, is repealed and the following enacted in its place:

1. Known burial sites. Construction or excavation near a known burial site or within the boundaries of an established cemetery must comply with any applicable land use ordinance concerning burial sites or established cemeteries, whether or not the burial site or established cemetery is properly recorded in the deed to the property. In the absence of local ordinances, construction or excavation may not be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established cemetery, whichever is the greater, whether or not the burial site or established cemetery is properly recorded in the deed to the property, except:

A. When the construction or excavation is performed pursuant to a lawful order or permit allowing the relocation of bodies;

B. When necessary for the construction of a public improvement, as approved by the governing body of a municipality or, in the case of a state highway, by the Commissioner of Transportation; or

C. When necessary for the construction of a private sewer line connection to a public sewer system if:

(1) No other practicable alternative exists to connecting to a public sewer system;

(2) No other practicable alternative exists to excavation or construction within 25 feet;

(3) The excavation or construction is at the maximum possible distance from the cemetery or burial site;

(4) The construction of the private sewer line connection is approved by the governing body of the municipality and the regulating division within the Department of Health and Human Services;

(5) Public notice is provided by the affected municipality that allows 2 weeks for members of the public to submit testimony prior to any approval, construction or excavation and any testimony is also submitted by the municipality to the regulating division within the Department of Health and Human Services; and

(6) No excavation or construction equipment is placed on any part of the cemetery or burial site or within 10 feet of the cemetery or burial site at any time during the construction of the sewer connection.

This paragraph is repealed June 30, 2010.

A municipality may enforce this subsection or any local ordinance concerning burial sites or established cemeteries pursuant to Title 30-A, section 4452, including the assessment of civil penalties.

In the event of any violation of this subsection, the Attorney General may seek to enjoin a further violation, in addition to any other remedy.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 9, 2009.

Internal Security and Public Safety Law Amendment

An Act To Streamline the Regulatory Process for Commercial Building Construction Projects

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

Sec. 1. 25 MRSA §2448, as repealed and replaced by PL 1983, c. 232, §1 and amended by PL 2003, c. 689, Pt. B, §6 and PL 2007, c. 324, §17, is further amended to read:

§ 2448. Construction permit; when required

~~No~~A property owner, agent or representative of the owner may not construct, alter or change the use of any structure to become a public building without first obtaining from the Commissioner of Public Safety or from a municipality designated pursuant to section 2448-A a permit ~~therefor~~for that purpose. A request for a permit ~~shall~~must be accompanied by a true copy of the plans and specifications for that construction, reconstruction or change of use. The commissioner shall issue a permit only if the plans comply with statutes and lawful ~~regulations~~promulgated rules adopted to reduce fire hazards.

The term "public building" ~~shall include~~includes any building or structure constructed, operated or maintained for use by the general public, which ~~shall include~~includes, but is not limited to, all buildings or portions of buildings used for a schoolhouse, hospital, convalescent, nursing or boarding home to be licensed by the Department of Health and Human Services, Division of Licensing and Regulatory Services; theater or other place of public assembly, mercantile occupancy over 3,000 square feet, hotel, motel or business occupancy of 2 or more stories; or any building to be ~~state-owned~~state-owned or ~~operated~~state-operated.

The term "true copy" means an accurate representation by dimensioned plans and specifications of the final construction documents.

Sec. 2. 25 MRSA §2448-A is enacted to read:

§ 2448-A. Municipal review of development

The Commissioner of Public Safety, referred to in this section as "the commissioner," may register municipalities for authority to issue permits required by section 2448 under the following conditions. For purposes of this section, "municipal reviewing authority" has the same meaning as defined in Title 30-A, section 4366, subsection 7.

1. Projects. A municipality registered pursuant to this section may review projects of public buildings that constitute a mercantile occupancy over 3,000 square feet, a hotel, a motel or a business occupancy of 2 or more stories.

2. Registration. The commissioner shall register municipalities to grant permits for projects under subsection 1 if the commissioner finds that the municipality meets all of the following criteria.

A. A municipal inspector of buildings has been appointed pursuant to section 2351.

B. The municipality has an employee that is certified as a plan reviewer by the National Fire Protection Association.

C. The municipality has adopted by reference the fire codes adopted by the Office of the State Fire Marshal pursuant to sections 2452 and 2465.

D. The municipality has adequate resources to administer and enforce the provisions of the fire codes under paragraph C.

E. The procedures for public hearing and notification have been established including:

(1) Notice to the commissioner upon receipt of an application, including a description of the project;

(2) Notice of issuance and denial to the applicant and commissioner, including the reason for denial;

(3) Public notification of the application and any hearings; and

(4) Procedures for public hearing.

F. The procedures for appeal of local decisions by aggrieved parties are defined.

G. A registration form, provided by the commissioner, has been completed and submitted by the municipality, demonstrating compliance with the criteria under this subsection.

H. The municipality is currently enforcing the Maine Uniform Building and Energy Code.

The Department of Public Safety shall publish on its publicly accessible website a list of those municipalities that are registered pursuant to this subsection.

3. Current requirements. A municipality registered under this section shall ensure that its municipal regulations continue to meet the criteria listed in subsection 2.

A. The commissioner shall immediately notify a registered municipality of new or amended rules.

B. A municipality shall adopt amendments to its municipal regulations within one calendar year of the effective date of new or amended rules adopted by the Department of Public Safety. Within 45 days of the adoption of the amended municipal regulations, the municipality shall submit the amendments for approval by the commissioner.

4. Suspension of registration. If the commissioner finds that a municipality no longer meets the criteria under subsection 2, or is not adequately implementing those requirements, the commissioner may suspend the registration under subsection 2 and shall immediately notify the municipality. The notice must contain findings of fact and conclusions of law. If the registration is suspended, the commissioner shall provide the municipality with the necessary procedures to come into compliance with this section.

5. Central list of pending projects. The commissioner shall maintain and make available a list of projects that are pending municipal review under this section.

6. Technical assistance. The commissioner may provide technical assistance to municipalities upon request for projects reviewed under this section.

7. Application review process. Upon determination by the municipal reviewing authority that an application for a permit or permit amendment under this section is complete for processing:

A. The municipal reviewing authority shall submit to the commissioner within 14 days of that determination one copy of the project application; and

B. The commissioner shall review the application and, within 30 days of its receipt or within 30 days of receipt of any subsequent amendment to the application, notify the municipality if the Department of Public Safety intends to exercise jurisdiction as provided in subsection 9.

A failure of the commissioner to act within the 30-day period following receipt of the application for a permit or within 30 days of receipt of any amendment to the application constitutes a decision not to exercise jurisdiction as provided in subsection 9.

8. Record of review and basis for decision. The municipality shall submit to the commissioner one copy of the record of the review of the application for a permit or permit amendment and basis of the decision for each permit or permit amendment granted pursuant to this section within 40 working days of final action by the municipal reviewing authority.

9. State jurisdiction. The Department of Public Safety shall review projects and exercise jurisdiction for a registered municipality if:

A. The municipal reviewing authority in which the project is located petitions the commissioner in writing; or

B. The proposed project is located in more than one municipality.

10. Joint enforcement. A permit or permit amendment issued by a municipal reviewing authority may be enforced by either the commissioner or the municipality that issued the permit or permit amendment.

Sec. 3. 25 MRSA §2450, as amended by PL 2007, c. 699, §12, is further amended to read:

§ 2450. Examinations by Department of Public Safety

The Commissioner of Public Safety shall adopt, in accordance with requirements of the Maine Administrative Procedure Act, a schedule of fees for the examination of all plans for construction, reconstruction or repairs submitted to the Department of Public Safety. The fee schedule for new construction or new use is 5¢ per square foot for occupied spaces and 2¢ per square foot for bulk storage occupancies, except that a fee for review of a plan for new construction by a public school may not exceed \$450. The fee schedule for reconstruction, repairs or renovations is based on the cost of the project and may not exceed \$450, except as provided in section 2450-A. ~~The~~ Except for projects reviewed by a municipality pursuant to section 2448-A, the fees must be credited to a special revenue

account to defray expenses in carrying out this section. Any balance of the fees may not lapse, but must be carried forward as a continuing account to be expended for the same purpose in the following fiscal years. For projects reviewed by a municipality that include occupied spaces, a 1¢ fee per square foot must be remitted to the Department of Public Safety and a 4¢ fee per square foot must be paid to the municipality.

A municipality is prohibited from charging a developer a fee that is in excess of the 4¢ fee per square foot for fire code permits. This limitation does not prohibit a municipality from charging fees for other construction-related permits.

Effective June 11, 2009.

An Act To Clarify the Maine Uniform Building and Energy Code

PART A

Sec. A-1. 10 MRSA §1415-C, sub-§7, as enacted by PL 2007, c. 699, §2, is amended to read:

7. Repeal. This section is repealed ~~July~~December 1, 2010.

Sec. A-2. 10 MRSA §1415-D, sub-§2, as enacted by PL 2007, c. 699, §3, is amended to read:

2. Repeal. This section is repealed ~~July~~December 1, 2010.

Sec. A-3. 10 MRSA §1420, sub-§4, as enacted by PL 2007, c. 699, §4, is amended to read:

4. Repeal. This section is repealed ~~July~~December 1, 2010.

Sec. A-4. 10 MRSA §9707, as enacted by PL 2007, c. 699, §5, is amended to read:

§ 9707.Repeal

This chapter is repealed ~~July~~December 1, 2010.

Sec. A-5. 10 MRSA §9721, sub-§1-A is enacted to read:

1-A. Building code. "Building code" means any part or portion of any edition of a code that regulates the construction of a building, including codes published by the International Code Council or Building Officials and Code Administrators International, Inc., or the Maine Model Building Code or the International Existing Building Code adopted pursuant to Title 10, section 9702, but does not include the fire and life safety codes in Title 25, section 2452.

Sec. A-6. 10 MRSA §9722, sub-§6, ¶E, as enacted by PL 2007, c. 699, §6, is amended to read:

E. On ~~December~~January 31st of each calendar year beginning in ~~2010~~2011, report to the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters any proposals for proposed conflict resolutions for codes and standards referenced in section 9725, subsections 2 to 7; proposals to improve the efficiency and effectiveness of those codes and standards; and alternative methods of funding for the board to create an equitable source of revenue;

Sec. A-7. 10 MRSA §9724, sub-§1, as enacted by PL 2007, c. 699, §6, is amended to read:

1. Limitations on home rule authority. This chapter provides express limitations on municipal home rule authority. Beginning ~~July~~December 1, 2010, the Maine Uniform Building and Energy Code must be enforced in a municipality that has more than 2,000 residents and that has adopted any building code by August 1, 2008. Beginning July 1, 2012, the Maine Uniform Building and Energy Code must be enforced in a municipality that has more than 2,000 residents and that has not adopted any building code by August 1, 2008. The Maine Uniform Building and Energy Code must be enforced through inspections that comply with Title 25, section 2373.

Sec. A-8. 10 MRSA §9724, sub-§2, as enacted by PL 2007, c. 699, §6, is amended to read:

2. Prior statewide codes and standards. Effective ~~July~~December 1, 2010, the Maine Uniform Building and Energy Code adopted pursuant to this chapter replaces, and is intended to be the successor to, the Model Energy Code established in Title 35-A, section 121 and the Maine model radon standard for new residential construction set forth in Title 25, section 2466.

Sec. A-9. 10 MRSA §9724, sub-§3, as enacted by PL 2007, c. 699, §6, is amended to read:

3. Ordinances. Effective ~~July~~December 1, 2010, except as provided in subsection 4 and section 9725, any ordinance regarding a building code of any political subdivision of the State that is inconsistent with the Maine Uniform Building and Energy Code is void.

Sec. A-10. 25 MRSA §2353, as amended by PL 2007, c. 699, §8 and affected by §26, is repealed and the following enacted in its place:

§ 2353. Duty to inspect buildings under construction

Unless the municipality is enforcing the Maine Uniform Building and Energy Code by means of 3rd-party inspectors pursuant to section 2373, subsection 4, the building official shall inspect each new building during the process of construction, so far as may be necessary, to see that all proper safeguards against the catching or spreading of fire are used, that the chimneys and flues are made safe and that proper cutoffs are placed between the timbers in the walls and floorings where fire would be likely to spread, and may give such directions in writing to the owner or contractor as the building official considers necessary concerning the construction of such building so as to render the same safe from the catching and spreading of fire.

This section is repealed December 1, 2010.

Sec. A-11. 25 MRSA §2357, as amended by PL 1999, c. 725, §5 and PL 2007, c. 699, §9 and affected by §26, is repealed and the following enacted in its place:

§ 2357. No occupancy without certificate; appeal

Subject to the provisions of Title 10, chapter 951, a new building may not be occupied until the building official has given a certificate that the same has been built in accordance with section 2353, and so as to be safe from fire. The inspector of buildings may issue the certificate of occupancy upon receipt of an inspection report by a certified 3rd-party inspector pursuant to section 2373, subsection 4. The municipality has no obligation to review a report from a 3rd-party inspector for accuracy prior to issuing the certificate of occupancy. If the owner permits it to be so occupied without such certificate, the owner must be penalized in accordance with Title 30-A, section 4452. In case the building official for any cause declines to give that certificate and the builder has in the builder's own judgment complied with section 2353, an appeal may be taken to the municipal officers and, if on such appeal it is decided by them that the section has been complied with, the owner of the building is not liable to a fine for want of the certificate of the building official.

This section is repealed December 1, 2010.

Sec. A-12. 25 MRSA §2373, first ¶, as enacted by PL 2007, c. 699, §11, is amended to read:

Beginning ~~July~~December 1, 2010, the code must be enforced in a municipality that has more than 2,000 residents and that has adopted any building code by August 1, 2008. Beginning July 1, 2012, the code must be enforced in a municipality that has more than 2,000 residents and that has not adopted any building code by August 1, 2008. The code must be enforced through inspections that comply with the code through any of the following means:

Sec. A-13. 25 MRSA §2466, sub-§5, as enacted by PL 2007, c. 699, §14, is amended to read:

5. Repeal. This section is repealed ~~July~~December 1, 2010.

Sec. A-14. 30-A MRSA §4451, sub-§2-A, ¶E, as amended by PL 2007, c. 699, §15, is further amended to read:

E. Building standards under chapter 141; chapter 185, subchapter 1; beginning ~~January~~June 1, 2010, Title 10, chapter 1103; and Title 25, chapters 313 and 331.

Sec. A-15. 35-A MRSA §121, sub-§3, as enacted by PL 2007, c. 699, §19, is amended to read:

3. Repeal. This section is repealed ~~January~~December 1, 2010.

Sec. A-16. PL 2007, c. 699, §21, sub-§3 is amended to read:

3. The board shall adopt the Maine Uniform Building and Energy Code no later than ~~January~~ June 1, 2010.

A. Between ~~January~~ June 1, 2010 and ~~July~~ December 1, 2010, building construction and renovation projects may utilize either the Maine Uniform Building and Energy Code or existing building and energy codes adopted by any political subdivision of the State.

B. The board shall maintain an adoption cycle for future versions of the Maine Uniform Building and Energy Code that is coordinated with the State Fire Marshal's adoption cycle and that does not lapse more than 5 years or one national model code version cycle.

Sec. A-17. PL 2007, c. 699, §27 is amended to read:

Sec. 27. Staggered effective date for enforcement of Maine Uniform Building and Energy Code. A municipality that has more than 2,000 residents that has adopted any building code by August 1, 2008 shall begin enforcement of the Maine Uniform Building and Energy Code adopted pursuant to the Maine Revised Statutes, Title 10, chapter 1103 by ~~June~~December 1, 2010. Any municipality with more than 2,000 residents that has not adopted any building code by August 1, 2008 shall begin enforcement of the Maine Uniform Building and Energy Code by January 1, 2012.

Sec. A-18. Resolve 2007, c. 219, §1 is amended to read:

Sec. 1. Study. Resolved: That the Department of Professional and Financial Regulation shall study the issue of residential contractor licensing. The department shall include in its study a review of the various building and energy codes in existence throughout the State. The department shall report its recommendations for residential contractor licensing to the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters no later than ~~January 4,~~December 1, 2010. The joint standing committee of the Legislature having jurisdiction over business, research and economic development matters may submit legislation regarding residential contractor licensing to the ~~Second~~First Regular Session of the ~~124th~~125th Legislature.

Sec. A-19. Review. The Technical Building Codes and Standards Board established under the Maine Revised Statutes, Title 10, section 9722 shall review issues regarding 3rd-party inspectors and inspections, including, but not limited to, tort claims protection, and make any recommendations for changes to the law, including any necessary implementing legislation, to the Joint Standing Committee on Business, Research and Economic Development no later than December 1, 2010.

Sec. A-20. Retroactivity. That section of this Act that amends Public Law 2007, chapter 699, section 23 applies retroactively to March 1, 2009.

PART B

Sec. B-1. 25 MRSA §2351, as corrected by RR 1995, c. 2, §56 and amended by PL 2007, c. 699, §7 and affected by §26, is repealed and the following enacted in its place:

§ 2351. Building official; compensation; jurisdiction; deputy

In every town and city of more than 2,000 inhabitants, and in every town of 2,000 inhabitants or less, if such a town so votes at a town meeting, and in each village corporation, if such a corporation so votes at the annual meeting of the corporation, the municipal officers shall annually in the month of April appoint a building official, who must be a person skilled in the construction of buildings, and shall determine the building official's compensation. The municipal officers shall define the limits within which the building official has jurisdiction, which includes the thickly settled portion of each such city or of each village in each such city or town. Whenever the building official becomes incapacitated, the municipal officers may appoint or authorize the building official to appoint a deputy building official, who shall serve until removed by the municipal officers, but in no event beyond the term for which the building official was appointed. The deputy building official shall perform such duties as may be required of the deputy building official by the building official. The compensation of the deputy building official is determined by the municipal officers.

This section is repealed December 1, 2010.

Sec. B-2. 25 MRSA §2351-A is enacted to read:

§ 2351-A. Building official; compensation; deputy

In every town and city of more than 2,000 inhabitants, and in every town of 2,000 inhabitants or less, if such a town so votes at a town meeting, and in each village corporation, if such a corporation so votes at the annual meeting of the corporation, the municipal officers shall annually in the month of April appoint a building official, who must be a person certified in building standards pursuant to Title 30-A, section 4451, subsection 2-A, paragraph E, and shall determine the building official's compensation. Whenever the building official becomes incapacitated, the municipal officers may appoint or authorize the building official to appoint a deputy building official, who shall serve until removed by the municipal officers, but in no event beyond the term for which the building official was appointed. The deputy building official shall perform such duties as may be required of the deputy building official by the building official. The compensation of the deputy building official is determined by the municipal officers.

This section takes effect December 1, 2010.

Sec. B-3. 25 MRSA §2352, as amended by PL 1975, c. 623, §34, is further amended to read:

§ 2352. Right to enter buildings

~~An inspector of buildings~~A building official in the performance of ~~his~~the building official's official duty may enter any building for the purpose of making the inspection required by chapters 313 to 321.

Sec. B-4. 25 MRSA §2353-A is enacted to read:

§ 2353-A. Duty to inspect buildings under construction

Unless the municipality is enforcing the Maine Uniform Building and Energy Code by means of 3rd-party inspectors pursuant to section 2373, subsection 4, the building official shall inspect each building during the process of construction for compliance with the Maine Uniform Building and Energy Code adopted pursuant to Title 10, chapter 1103 and so far as may be necessary to see that all proper safeguards against the catching or spreading of fire are used, that the chimneys and flues are made safe and that proper cutoffs are placed between the timbers in the walls and floorings where fire would be likely to spread, and may give such directions in writing to the owner or contractor as the building official considers necessary concerning the construction of the building so as to render the building safe from the catching and spreading of fire.

This section takes effect December 1, 2010.

Sec. B-5. 25 MRSA §2354, as amended by PL 1991, c. 714, §6, is further amended to read:

§ 2354. Inspection of buildings being repaired

Subject to Title 32, chapter 33, ~~the inspector of buildings~~building official shall inspect all buildings while in process of being repaired and see that all reasonable safeguards are used against the catching and spreading of fire and that the chimneys and flues are made safe. ~~The inspector~~building official may give directions in writing to the owner as necessary concerning such repairs to render the building safe from the catching and spreading of fire.

Sec. B-6. 25 MRSA §2356 is amended to read:

§ 2356. Appeals

An appeal in writing may be taken from any order or direction of the ~~inspector of buildings~~building official to the municipal officers, whose order thereon ~~shall be~~is final.

Sec. B-7. 25 MRSA §2357-A is enacted to read:

§ 2357-A. No occupancy without certificate; appeal

Subject to the provisions of Title 10, chapter 951, a building may not be occupied until the building official has given a certificate of occupancy for compliance with the Maine Uniform Building and Energy Code adopted pursuant to Title 10, chapter 1103, pursuant to the required inspections in section 2373 that the

building has been built in accordance with section 2353-A, and so as to be safe from fire. The inspector of buildings may issue the certificate of occupancy upon receipt of an inspection report by a certified 3rd-party inspector pursuant to section 2373, subsection 4. The municipality has no obligation to review a report from a 3rd-party inspector for accuracy prior to issuing the certificate of occupancy. If the owner permits it to be so occupied without such certificate, the owner must be penalized in accordance with Title 30-A, section 4452. In case the building official for any cause declines to give that certificate and the builder has in the builder's own judgment complied with section 2353-A, an appeal may be taken to the municipal officers and, if on such appeal it is decided by them that the section has been complied with, the owner of the building is not liable to a fine for want of the certificate of the building official.

This section takes effect December 1, 2010.

Sec. B-8. 25 MRSA §2358, as amended by PL 1989, c. 502, Pt. A, §102, is further amended to read:

§ 2358.Failure to comply with order of building official

If the owner of any building neglects or refuses for more than 30 days to comply with any direction of the ~~inspector of buildings~~building official concerning the repairs on any building as provided in section 2354, the owner ~~shall~~must be penalized in accordance with Title 30-A, section 4452.

Sec. B-9. 25 MRSA §2359, as repealed and replaced by PL 1995, c. 462, Pt. A, §48, is amended to read:

§ 2359.Refusing admission to building official

An owner or occupant of a building, who refuses to permit ~~an inspector of buildings~~a building official to enter the ~~buildings~~building or willfully obstructs the ~~inspector~~building official in the inspection of ~~such~~the building as required by chapters 313 to 321; must be penalized in accordance with Title 30-A, section 4452.

Sec. B-10. 25 MRSA §2360, as amended by PL 1987, c. 35, §3, is further amended to read:

§ 2360.Authority to enter buildings; remedy of conditions appeals

The ~~inspector of buildings~~building official, the fire inspector and the municipal officers of any city or town may at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within their jurisdiction. Whenever any of ~~said~~those officers ~~shall~~ find in any building or upon any premises combustible material, inflammable conditions or heating fixtures or apparatus so situated or constructed as to be dangerous to the safety of such buildings or premises, they shall order the same to be removed or remedied, and such order ~~shall~~must be forthwith complied with by the owner or occupant of ~~said~~those buildings or premises. ~~If the said~~An owner or occupant ~~shall deem himself~~ aggrieved by such order when made by the ~~inspector of buildings~~building official or the fire inspector, ~~he~~ may within 24 hours appeal to the municipal officers, and the cause of the complaint ~~shall~~must be at once investigated by the direction of the latter and, unless by their authority ~~the~~that order ~~above named~~ is revoked, ~~such~~that order ~~shall remain~~remains in force and must be forthwith complied with by ~~said~~the owner or occupant. The ~~inspector of buildings~~building official, the fire inspector or the municipal officers shall make, or cause to be made, an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction, upon complaint of any person having an interest in ~~said~~those buildings or premises or property adjacent thereto. Any owner or occupant of buildings or premises, failing to comply with the orders of the authorities above specified, ~~shall~~must be punished by a fine of not less than \$5 for each day's neglect.

Sec. B-11. 25 MRSA §2361, sub-§1, as enacted by PL 1985, c. 101 and amended by PL 2007, c. 699, §10 and affected by §26, is repealed and the following enacted in its place:

- 1. Municipal enforcement.** Duly appointed fire chiefs or their designees, municipal building officials and code enforcement officers may bring a civil action in the name of the municipality to enforce any of the state laws, duly adopted state rules or local ordinances enacted pursuant to chapters 313 to 321. This subsection is repealed December 1, 2010; and

Sec. B-12. 25 MRSA §2361, sub-§1-A is enacted to read:

- 1-A. Municipal enforcement.** Effective December 1, 2010, duly appointed fire chiefs or their designees,

municipal building officials and code enforcement officers may bring a civil action in the name of the municipality to enforce any of the state laws, duly adopted state rules or local ordinances enacted pursuant to this Part and Title 10, chapter 1103; and

Sec. B-13. 30-A MRSA §7060, sub-§1, ¶B, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

B. Establishing adequate standards for all features of means of exit, fire protection, fire prevention, accident prevention and structural safety of buildings ~~which~~that are used occasionally or regularly for public assembly; compelling the owners to make improvements to bring these buildings up to the established standards; requiring the owner or lessee of a building used for public assembly ~~which~~that is regulated by an ordinance authorized by this section and operated with the intent of financial gain to obtain a permit for which a fee may be imposed commensurate with its size or capacity; and requiring the owner or lessee of such a building to file a plan showing all safety features as a condition precedent to the issue of a permit or the further use of one already issued.

(1) The building ~~inspector~~official shall send a written order to the owner or lessee of a building used for public assembly requiring any conditions ~~which~~that exist in violation of an ordinance to be corrected within 30 days after the order is sent.

(2) After the 30-day period expires, the owner or lessee is strictly liable for all injury caused by the failure to correct the violations and the building ~~inspector~~official shall order the building vacated.

(3) As used in this section, "building used for public assembly" means a room or space in or on any structure ~~which~~that is used for the gathering of 100 or more persons for any purpose and includes any room or space on the same level, above or below, ~~which~~that has a common entrance; and

Sec. B-14. 30-A MRSA §7060, sub-§2, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. A, §56 and Pt. C, §§8 and 10, is further amended to read:

2. Additional provisions. The provisions of this subsection apply to subsection 1.

A. The provisions pertaining to buildings apply equally to all structures and parts of them, including mobile and modular homes.

B. The building ~~inspector~~official is the licensing authority, unless otherwise provided by the plantation.

C. Ordinances defining the duties of the building ~~inspector~~official and other enforcement officers, not contrary to Title 25, chapter 313, may be enacted. All enforcement officers designated by ordinance ~~shall~~must be given free access at reasonable hours to all parts of buildings regulated by ordinance.

D. An application for a permit must be in writing and must be signed by the applicant and directed to the building ~~inspector~~official. The failure of the building ~~inspector~~official to issue a written notice of the decision, directed to the applicant within 30 days from the filing of the application, constitutes a refusal of the permit. The building ~~inspector~~official ~~shall~~may not issue any permit:

(1) For a building or use for which the applicant is required to obtain a license under Title 38, section 413, until the applicant has obtained that license; ~~nor~~or

(2) For a building or use within a land subdivision, as defined in section ~~45514401~~, unless that subdivision has been approved in accordance with that section.

E. An appeal may be taken from any order issued by the building ~~inspector~~official or from the licensing authority's refusal to grant a permit.

(1) A person aggrieved by an order of the building ~~inspector~~official or a permit applicant may appeal in writing to the plantation assessors. At their next meeting following receipt of the appeal, the plantation assessors shall affirm, modify or set aside the decision of the building ~~inspector~~official according to the terms of the pertinent ordinance. They may permit a variation from the terms of an ordinance when necessary to avoid undue hardship, ~~provided that as long as~~ there is no substantial departure from the intent of the ordinance. They may permit an exception to an ordinance only when the terms of the exception have been specifically set forth by the plantation. The failure of the plantation assessors to issue a written notice of their decision, directed to the applicant, within 30 days from the filing of the appeal constitutes a denial of the appeal. If a plantation has by ordinance required that all such appeals be taken to a board of appeals, the procedure ~~shall~~must be the same as in appeals directed to the plantation assessors, unless the plantation has provided otherwise.

(2) An appeal may be taken from the decision of the plantation assessors or the board of appeals as provided in section 2691, subsection 3, paragraph G.

Sec. B-15. 33 MRSA §592, sub-§7, ¶A, as enacted by PL 1999, c. 478, §1, is amended to read:

A. The escrow agreement must provide that the funds or other consideration may be released only as provided in this paragraph.

(1) If the purchaser gives a valid notice of cancellation pursuant to this section or is otherwise entitled to cancel the sale, the funds or other consideration received from or on behalf of the purchaser must be returned to the purchaser.

(2) If the purchaser defaults in the performance of any obligation relating to the purchase or ownership of the time-share following the expiration of the cancellation period set out in subsection 1, the developer shall provide an affidavit to the escrow agent requesting release of the escrowed funds or other consideration and shall provide a copy of the affidavit to the purchaser who has defaulted. If, within 7 calendar days of mailing the affidavit, the developer has not received from the purchaser a written notice of a dispute between the purchaser and the developer or a claim to the escrowed funds or other consideration, the funds or other consideration received from or on behalf of the purchaser must be immediately released to the developer.

(3) If no cancellation or default has occurred, the escrow agent may release the funds or other consideration upon presentation of an affidavit by the developer that:

(a) The cancellation period has expired; and

(b) A certificate or statement of substantial completion has been executed by an engineer or architect or a certificate of occupancy has been issued by the municipal ~~inspector of buildings~~building official for the time-share unit containing the time-share.

Sec. B-16. 33 MRSA §1602-101, sub-§(b), as enacted by PL 1981, c. 699, is amended to read:

(b) No interest in any unit may be conveyed to a purchaser until the unit is substantially completed as evidenced by a certificate or statement of substantial completion executed by an engineer or architect, or until a certificate of occupancy is issued by the municipal ~~inspector of buildings~~building official; ~~provided except~~ that this limitation ~~shall~~does not apply to contracts, options or reservations for sale of units later to be so completed ~~nor~~ to mortgages or transfers of units as security for an obligation, deeds in lieu of foreclosure, foreclosures and foreclosure sales, conveyances to successor declarants or to any person in the business of selling real estate for ~~his~~that person's own account, or to financial institutions.

Effective September 12, 2009

Shoreland Zoning Law Amendment

An Act To Protect Lake Water Quality

Sec. 2. 38 MRSA §439-B is enacted to read:

§ 439-B. Contractors certified in erosion control

1. Definition. For purposes of this section, “excavation contractor” means an individual or firm engaged in a business that causes the disturbance of soil, including grading, filling and removal, or in a business in which the disturbance of soil results from an activity that the individual or firm is retained to perform.

2. Certification required. An excavation contractor conducting excavation activity in a shoreland area shall ensure that a person certified in erosion control practices by the department:

A. Is responsible for management of erosion and sediment control practices at the site; and

B. Is present at the site each day earth-moving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed.

The requirements of this subsection apply until erosion control measures that will permanently stay in place have been installed at the site or, if the site is to be revegetated, erosion control measures that will stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion have been installed.

3. Application. This section does not apply to activities resulting in less than one cubic yard of earth material being added or displaced.

Effective date January 1, 2013.