

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

The following are minutes of the June 1, 2009 City Council Meeting.

- I. CALL TO ORDER** – On Monday, June 1, 2009 at 7:00 p.m. a Council Meeting was held in the City Hall Auditorium.

**ROLL CALL OF MEMBERS** - – Mayor Roland Michaud conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: Margaret Mills, Leslie Smith Jr., Ronald E. Morton, Sandra Bastille, Arthur Tardif, Eric Cote and Marston Lovell.

City Administrator Rick Michaud and Lucette S. Pellerin, City Clerk were also present.

- II. PLEDGE OF ALLEGIANCE**

- III. GENERAL:**

- IV. APPROVAL OF MINUTES:**

Minutes were not presented this evening.

- V. AGENDA ITEMS:**

**A. (Public Hearing) Zoning Ordinance Amendment: Shoreland Zoning Article 3**

These proposed Zoning Ordinance amendments would update the City's approach to Shoreland Zoning, consistent with the July 1, 2009 deadline imposed by the State of Maine Guidelines for Municipal Shoreland Zoning Ordinance that was amended May 1, 2006 by the DEP. DEP staff has reviewed the proposed changes and found them acceptable. Formal acceptance of the changes by the DEP Commissioner will occur after Council action.

The Planning Board considered the proposed Ordinance and Map amendments on April 14, 2009, and made a positive recommendation for passage. The Board held a second public hearing on May 19, 2009 after notice was mailed to certain property owners, and made a negative recommendation for passage, with the added recommendation that options be explored for reducing the impacts of the proposed rezoning of all or parts of 31 parcels to Resource Protection (RP).

Councilor Cote moved, Councilor Mills seconded, to open the Public Hearing on 'Amendments to Zoning Ordinance §7-1, Article 3, §504, §902-4 and Zoning Map, dated April 27, 2009'. The motion passed with seven (7) yeas.

Mrs. Lorraine Doyon, 101 Boom Road, asked if someone could address the RP rezoning which would impact approximately twenty (20) families in her area.

Mr. Robert Hamblen, City Planner addressed the definitions and the impact it would have on the area being rezoned as Resource Protection (RP).

Mr. Robert Hebert, 105 Boom Rd., stated that with the new changes he would be the property owner that would be most impacted. The rezoning would prevent him from deeding land to his daughter and grandchild.

Mr. Christian Doyon, a resident of Biddeford, who is a real estate broker spoke of the damage the rezoning would have on real estate value for these property owners.

Councilor Cote moved, Councilor Bastille seconded, to close the Public Hearing and that this matter be referred to workshop on June 15, 2009 and scheduled for a second and final reading on June 29, 2009. The motion passed with seven (7) yeas.

**‘Amendments to Zoning Ordinance Section 7-1, Article 3, Section 504, Section 902-4 and Zoning Map, dated April 27, 2009’**

**Section 7-1**

**Natural Resource Districts/  
Shoreland Performance Standards**

**7.1-1. Purposes**

The purposes of this Article are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to manage building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

**7.1-2.a. Applicability**

The provisions of this Article apply to all land areas within 250 feet, horizontal distance, of the:

- Normal high water line of any great pond or river,
- Upland edge of a coastal wetland, including all areas affected by tidal action, or
- Upland edge of a freshwater wetland, and

All land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

**b. Official Shoreland Zoning Map**

The areas to which this Article is applicable are divided into the following districts as shown on Zoning Map of the City of Saco, which is a part of this Ordinance:

~~areas that are included in the following districts:~~

- a. Resource Protection
- b. Saco River Overlay District
- c. Shoreland Overlay District

## Resource Protection

The RP District shall include the areas shown as RP on the Official Zoning Map and the following areas when they occur within the limits of the shoreland zone as mandated by the State of Maine Mandatory Shoreland Zoning Act 38 M.R.S.A. § 435 et. seq. whether or not such areas are shown on the zoning map:

1. Areas within 250 feet, horizontal distance, of the upland edge of salt marshes and salt meadows that are rated "moderate" or "high" value by Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973; and areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands salt marshes and salt meadows and wetlands associated with rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W,) that are depicted on a GIS data layer maintained by either MDIF&W or the DEP as of December 31, 2008; as of January 1989 and the area within one hundred (100) feet, horizontal distance, of the upland edge of the unrated mapped freshwater wetlands along Stackpole Creek and the Nonesuch River.
2. Land areas within the 100 year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
3. Areas of two or more contiguous acres with sustained slopes of 20% or greater.
4. Areas of two (2) or more contiguous acres with hydric soils and supporting wetland vegetation that are not part of a freshwater or coastal wetland as defined, and that are not surficially connected to a water body during the period of normal spring high water.
5. Land areas adjacent to tidal waters that are subject to severe erosion or mass movement, such as steep coastal bluffs.
6. All land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.
7. All land area within 250', horizontal distance, from the following natural features:
  - Cascade Brook Falls
  - Nonesuch River Fault
  - Saco Heath
8. All land area known as Stratton Island, Bluff Island, Ram Island and Eagle Island.
9. All land area currently being used as general public access to tidal beaches or the Saco River.
10. All land area within one hundred (100) feet, horizontal distance, of Philips Spring, Seal Rock Spring, Heath Road Spring and Jenkins Road Spring.
11. Areas designated by federal, state or municipal government as natural areas of significance to be protected from development, including but not limited to:

## **Saco River Overlay District**

The Saco River Overlay District includes all lands subject to the jurisdiction of the Saco River Corridor Commission whether or not such areas are shown on the zoning map. The Overlay District includes all lands adjacent to the Saco River to a distance of five hundred (500) feet as measured on a horizontal plane from the mean high water line of the river or to the edge of the 100-year flood plain if the flood plain extends beyond five hundred (500) feet, up to a maximum of one thousand (1,000) feet from the mean high water line.

## **Shoreland Overlay District**

The Shoreland Overlay District includes all lands subject to Shoreland Zoning as mandated by the State of Maine Mandatory Shoreland Zoning Act 38 M.R.S.A. § 435 et. seq. that are not included in the Resource Protection District or the Saco River Overlay District whether or not such areas are shown on the zoning map.

This Section also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond the normal high-water line of a water body or within a wetland. In addition, this Section applies to various areas listed on the State Register of Critical Areas. The provisions of this Article are in addition to the provisions of the underlying zone.

### **c. Effective Date**

**1. Effective Date of Ordinance and Ordinance Amendments.** This Article, which was amended by the municipal legislative body on \_\_\_\_\_, 2009, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Article as amended, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Article amendment within forty-five (45) days of his/her receipt of the amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Article as amended if the amendment is approved by the Commissioner.

**B. Repeal of Municipal Timber Harvesting Regulation.** The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A section 438-B(5), the following provisions of this Ordinance are repealed:

- Section 7.1-12. Timber Harvesting;
- Section 410-15.13. RP Resource Protection District Selective timber harvesting according to a plan approved by a forester registered in the State of Maine on a non-commercial basis; and
- Section 3. Definitions, the definition of "forest management activities".

NOTE: The statutory date established under 38 M.R.S.A. section 438-B(5) is the effective date of state-wide timber harvesting standards. That date is “the first day of January of the 2<sup>nd</sup> year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards.” 38 M.R.S.A. section 438-A(5) further provides that “the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards.”

### **7.1-3. Land Use Standards**

Activities within the districts subject to these requirements shall conform with the following additional dimensional requirements.

#### 7.1-3.1 Minimum Lot Requirements

1. The minimum lot size and lot area per dwelling unit for uses in the Resource Protection

District are set forth in Table 412-1.

2. The minimum lot size and minimum lot area per dwelling unit in the Saco River Overlay District shall be the requirements of the underlying district unless a larger lot is required by the Corridor Commission’s requirements.
3. The minimum lot size and minimum lot area per dwelling unit in the Shoreland Overlay District shall be the requirements of the underlying district.
4. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

#### 7.1-3.2 Minimum Shorefront Requirements

1. Lots in the Resource Protection District shall have a minimum shore frontage of two hundred (200) feet.
2. Lots in the C-1 or R-1a Districts subject to the Saco River or Shoreland Overlay provisions shall have a minimum shore frontage of one hundred fifty (150) feet.
3. Lots in all other districts subject to the Saco River or Shoreland Overlay provisions shall have a minimum shore frontage of one hundred (100) feet.
4. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

### 7.1-3.3 Minimum Lot Width

Within one hundred (100) feet, horizontal distance, of the normal high water line of a water body or upland edge of a wetland, the minimum width of any portion of any lot shall be equal to or greater than the required shore frontage for the proposed use.

### **7.1-4 Principal and Accessory Structures**

1. All new principal and accessory structures shall be set back from ~~both~~ the normal high-water line of freshwater bodies, the Maximum Spring High Tide Level (MHHW) of tidal waters, and the upland edge of a wetland, depending upon the district in which they are located as shown in Table 412-1.
2. The water body or wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
3. The ~~first~~ lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils. Accessory structures may be placed in accordance with City Code Chapter 106. Floodplain Management, and need not meet the elevation requirements of this paragraph.
4. The total footprint area of all structures, parking lots and other non-vegetated surfaces within a resource protection district, shoreland overlay district, conservation district, or residential district shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including areas previously developed. ~~Parking lots and other non-vegetated surfaces within the shoreland zone shall not exceed an additional twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed.~~ In a business or industrial district including the B-5 Marine Business and Residential District, the total area of all structures, parking lots and other non-vegetated surfaces shall not exceed seventy (70) percent.
5. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided; that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A., ~~S~~section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.
6. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified

Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

7. On a non-conforming lot of record on which only a residential structure exists, and on which it is not possible to place an accessory structure meeting the required setbacks whether from water body, tributary stream or wetlands, the Code Enforcement Officer may issue a permit to place a single accessory structure not to exceed eighty (80) square feet in area nor eight (8) feet in height, with no utilities, for the storage of yard tools and similar equipment. The accessory structure shall be located as far from the shoreline or tributary stream or wetland as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing standards. The accessory structure shall not be located closer to the shoreline, tributary stream or wetland than the principal structure.
  
8. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill, provided each of the following conditions are met:
  - a) The site has been previously altered and an effective vegetated buffer does not exist;
  - b) The wall is at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - d) The total height of the wall, in the aggregate, is not more than 24 inches;
  - e) Location is outside the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps;
  - f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
  - g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
    - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking, leaf or bark mulch or an equivalent alternative acceptable to the Code Enforcement Officer shall be utilized;
    - (ii) Plantings, native species only, shall be installed to retard erosion and provide for effective infiltration of stormwater runoff;
    - (iii) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicular to the normal high-water line or upland edge of a wetland
    - (iv) A footpath no greater than four feet in width may traverse the buffer at a right angle.
  - (h) All permits required by the Maine DEP and/or other regional, state or federal agencies shall have been issued prior to the start of work.

#### **7.1-5. Minimum Lot Width**

~~Within one hundred (100) feet, horizontal distance, of the normal high water line of a water body or upland edge of a wetland, the minimum width of any portion of any lot shall be equal to or greater than the required shore frontage for the proposed use.~~

#### **7.1-6. Piers, Docks, Wharves, And Other Marine Structures Extending Over Or Below Beyond The Normal High-Water Line Of A Water Body, Or Within A Wetland**

##### 1. PERFORMANCE STANDARDS

All applications for temporary piers, docks, wharves and other marine structures shall be reviewed by the Code Enforcement Officer, and all applications for permanent piers, docks, wharves and other marine structures shall be reviewed by the Planning Board. All such applications shall be reviewed for conformance with the following standards listed below.

If the reviewing authority is unable to reach a decision using the criteria below due to either inconclusive or conflicting information, the reviewing authority will require the applicant to submit an environmental impact analysis assessing the proposal's impact on natural areas, including impacts of the proposed structure in conjunction with other adjacent or abutting structures.

The reviewing authority may also require that the proposal be modified to ensure conformance with the standards set forth below. Mitigation measures may include, but are not limited to, changes in the design and construction of the marine structure, or changes in magnitude, duration, and location of activities carried out at the marine structure.

An application shall be approved by the reviewing authority if there is a finding that:

- a) Access from the shore shall be developed on soils appropriate for such use, as determined through consultation with the local Soil and Water Conservation District Office. Whenever possible, access from the shore to the marine structure shall be placed on bedrock. Measures shall be taken to minimize soil erosion both during and after construction.
- b) The proposed location of the marine structure shall not unreasonably interfere with access to existing marine structures or points of public access, nor shall it unreasonably interfere with existing developed or natural beach areas.
- c) The marine structure shall be designed, sited, and constructed to mitigate unreasonable adverse impacts on significant wildlife habitats or unique natural areas including, but not limited to: fin fish and shellfish fisheries, salt marshes, eel grass beds, shorebird feeding and nesting habitats, critical fish spawning and nursery areas, etc.
- d) Unreasonable interference with the natural flow of any surface or subsurface waters, or impedance of the flow of the current of any river or channel shall be minimized during the construction and subsequent use of the marine structure.
- e) The marine structure shall be designed, sited, and constructed so as not to encroach upon Federally designated navigation channels or mooring areas or

otherwise obstruct by any means whatsoever the free use of piers, docks, and other common landing places.

- f) The marine structure shall be no larger than necessary to accomplish the purposes for which it is designed, notwithstanding the dimensional limits listed below. Its size and construction shall not change the intensity of the adjoining land use, and by no means shall exceed a total distance of more than 1/3 the width of the water body, when proposed for coastal or inland waterways. The applicant may request a variance from the dimensional requirements due to the additional requirement of handicap access or unusual wind or wave conditions.

	Max. Width	Max. Length
Private Piers	Six (6) ft.	100 ft.*
Commercial Piers	Twelve (12) ft.	100 ft.*
Ramps	Four (4) ft.	As appropriate
Docks, Floats	200 sq. ft	

\* landward of the mean low water line

- g) New subdivisions that propose docks as part of the subdivision, shall provide a community dock in lieu of the development of docks on individual lots. The applicant may request a variance for additional community docks provided a demonstrated need can be shown for the additional facilities.
- h) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- i) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- j) Except in business districts including the Marine Business and Residential District, structures built on, over or abutting a pier, wharf, dock or other structures extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
- k) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

## 2. APPLICATION SUBMISSION REQUIREMENTS

In addition to the information listed in Article XI of this Ordinance, Site Plan Review, all applications shall contain the following information:

- a) A photocopy of relevant locational maps indicating the site of the project;

- b) Site plan, plan and section drawings (to scale) of the proposed structure, including an indication on separate scale drawings of any shoreline stabilization or other modification required by the project;
- c) A complete list of materials to be used, including a list of all intended coatings (paint, etc) for all proposed marine structures.

#### 7.1- ~~67~~. **Campgrounds**

Campgrounds shall conform to the minimum requirements imposed under State Licensing procedures, Section 703 of this Ordinance, and the following:

1. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

#### 7.1- ~~78~~. **Parking Areas**

1. In addition to the requirements of Section 708 of this Ordinance, parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Marine Business and Residential District parking areas shall be set back at least twenty-five (25) feet from the normal high-water line or the upland edge of a wetland. The setback requirement for parking areas serving public boat launching facilities in other districts may be reduced to no less than fifty (50) feet from the normal high-water line or upland edge of a wetland if the Planning Board finds that no other reasonable alternative exists.
2. Parking areas shall be designed to prevent stormwater runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.
3. All parking spaces shall be nine (9) feet wide and eighteen (18) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.

#### 7.1-9. **Roads And Driveways**

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. Roads and driveways shall be set back at least seventy-five (75) feet, horizontal distance, from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, ~~the Planning Board may reduce~~ the road and/or driveway setback requirement ~~to~~ shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline due to an operational necessity.

2. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body, tributary stream or wetland.
3. New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
4. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 7.1-13.
5. Road and driveway grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet.
6. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. ~~Road s~~Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow ~~in the road or ditches~~ gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply:

a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Road Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

b. Drainage dips may be used in place of ditch relief culverts only where the ~~road~~ grade is ten (10) percent or less.

c. On ~~road~~ sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed ~~across the road~~ at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road or driveway.

d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be established with appropriate materials.

8. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

### 7.1-10 Mineral Exploration And Extraction

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph 4 below.
2. ~~Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A., Section 480-C no~~ No part of any extraction operation, including

drainage and runoff control features shall be permitted within seventy-five (75) feet, horizontal distance, of the normal high-water line of any water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within one hundred and fifty (150) feet, horizontal distance, of any property line.

3. Gravel pits within the shoreland zone shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing or planted landscaping vegetation.
4. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
  - b. The final graded slope shall be two to one (2:1) slope or flatter.
  - c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
5. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

#### **7.1-11. Agriculture**

1. All spreading ~~or disposal~~ of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209. ~~Maine Guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission in July, 1972.~~
2. Manure shall not be stored or stockpiled within three hundred (300) feet horizontal distance, of a water body, tributary stream, or wetland. ~~Within five (5) years of the effective date of this Section a~~ All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water. ~~Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five (5) year period.~~
3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, ~~or the spreading, disposal or storage of manure~~ within the shoreland zone shall require a ~~Soil and Water~~ Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, from water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained, provided that such tilling is conducted in accordance with a Soil and Water Conservation Plan.
5. ~~After the effective date of this ordinance, n~~Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance, of water bodies, nor within twenty-five (25) feet, horizontal distance of tributary streams, and wetlands. Livestock grazing associated with on-going farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a ~~Soil and Water~~ Conservation Plan.

#### **7.1-12. Timber Harvesting**

1. Timber harvesting shall conform with the following provisions:
  - a. Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
    - i. Within seventy-five (75) feet, horizontal distance, of the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
    - ii. At distances greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of water bodies or the upland edge of a wetland, harvesting operations shall not create single clear cut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5,000) square feet, they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. ~~For the purposes of these standards v~~Volume may be considered to be equivalent to basal area.
  - b. No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
  - c. Timber harvesting equipment shall not use stream channels as travel routes except when:
    - i. Surface waters are frozen; and
    - ii. The activity will not result in any ground disturbance.
  - d. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

- e. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.
- f. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soils, shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increased slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25), horizontal distance, feet from the normal high-water line of a water body or upland edge of a wetland.

**7.1-13. Clearing or Removal Of Vegetation For Activities Development Other Than Timber Harvesting**

- 1. Within a Resource Protection District, the ~~clearing~~ cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district and shall be demonstrated on a lot clearing plan to be presented to the CEO or Planning Board as appropriate.
- 2. In areas that are not in RP, except to allow for the development of permitted uses, within seventy-five (75) feet, horizontal distance, from any water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
  - a. There shall be no cleared opening greater than two hundred fifty (250) square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) ~~ten (10)~~ feet in width as measured between tree trunks and/or shrub stems is allowed ~~permitted~~ provided that a cleared line of sight to the water through the buffer strip is not created.
  - b. Selective cutting of trees within the buffer strip is allowed ~~permitted~~ provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of this section, a "well-distributed stand of trees ~~and other vegetation~~" adjacent to water bodies, tributary streams, and wetlands, is defined as maintaining a minimum rating score of 16 or more ~~8~~ per 25-foot by 50-foot rectangular square area (1250 square feet) as determined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2 - ≤4 in.	1
≥4 - <8 <del>12</del> in.	2
8 - <≥12 in.	4

- c. For the purposes of Section 7.1-13.2.b “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one-half (4 ½) feet above ground level for each 25-foot by 50-foot rectangular area. If five (5) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- ~~de.~~ Pruning of tree branches, on the bottom 1/3 of the tree is allowed ~~permitted~~.

- ~~ed.~~ In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

- f. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described above.

The provisions contained in paragraph 2 above shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas, however, shall be limited to the minimum area necessary.

3. At distances greater than seventy-five (75) feet, horizontal distance, from the normal high-water line of any water body, tributary stream, or the upland edge of a wetland, ~~except to allow for the development of permitted uses,~~ there shall be ~~permitted~~ allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose development, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously ~~cleared developed~~. This provision shall not apply industrial or business districts including the Marine Business and Residential District.

4. Legally existing nonconforming c~~Cleared openings legally in existence on the effective date of this Section~~ may be maintained, but shall not be enlarged, except as ~~permitted~~ allowed by this Section.

5. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

### **7.1-14. Erosion and Sedimentation Control**

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - a. Mulching and re-vegetation of disturbed soil.
  - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - c. Permanent stabilization structures such as retaining walls or riprap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of a proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - a. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap. (Amended 4/3/02)

### **7.1-15 Septic Waste Disposal**

All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:

- a) Clearing or removal of woody vegetation necessary to site a new system and any associated fill extension, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high water line of a water body or the upland edge of a wetland;

- b) A holding tank is not allowed for a first-time residential use in the shoreland zone.
- c) **7.1-16 Soils**
- d)
- e) All land uses shall be located on soils in or upon which the proposes uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposes uses requiring subsurface wastewater disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soils Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.
- f)
- g) **7.1-17 Water Quality**
- h)
- i) No activity shall deposit on or into the ground or discharge to the water of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses of the water classification of the water body, tributary stream or wetland.
- j)
- k) **7.1-18 Archaeological Site**
- l)
- m) Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Authority prior to rendering a decision on the application.
- n)
- o)
- p)
- q) **(Shoreland Zoning Definitions Proposed for Amendment)**
- r)
- s) Article 3, Zoning Ordinance
- t)
- u) **Coastal wetland:** All tidal and subtidal lands; ~~all lands below any identifiable debris line left by tidal action;~~ all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any

swamp, marsh, bog, beach, flat or other contiguous low land that which is subject to tidal action during the ~~maximum spring~~ highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. Note: all areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marches and salt meadows. (Amended 4/21/92)

v)

w) **Dwelling:**

x) (g) Residential dwelling unit in the Shoreland Zone: a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes, and rental units that contain cooking, sleeping and toilet facilities regardless of the time period rented. Recreational vehicles are not dwelling units. (Amended 12/7/92; 4/5/99; 2/7/2000)

y)

z) **Foundation:** The supporting substructure of a building or other structure, excluding wooden sills and post supports, including but not limited to including basements, slabs, sills, posts or frostwalls, or other base consisting of concrete, block, brick or similar material. (Amended 4/21/92)

aa)

bb) **Normal high water line (non-tidal waters) mark of inland waters:** That line on the shores and banks of non-tidal waters which is apparent from visible markings, changes in the character of soils ~~because of the contiguous different character of soil or vegetation~~ due to the prolonged action of the water or changes in vegetation, and which distinguishes between ~~;~~ relative to vegetation, it is that line where the vegetation changes from predominantly aquatic and ~~to~~ predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

cc) By way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups - water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes, and marsh grasses and terrestrial vegetation includes but is not limited to the following plants and plant groups - upland grasses, aster, lady slipper, wintergreen, partridge berry, sarsaparilla, pines, cedars, oaks, ashes, alders, elms, and maples. In places where the shore or bank is of such character that the high water line mark cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks) the normal high water

~~line mark~~ shall be estimated from places where it can be determined by the above method.

- dd) **Tributary stream:** A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits ~~or~~ exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. This term is used solely in the Shoreland Development section of this Article. The rest of the Saco Zoning Ordinance uses this definition to define stream. (Amended 4/21/92)

**Shore Frontage:** The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline ~~at normal high water elevation~~. (Amended 4/21/92)

### (Nonconformance as related to Shoreland Zoning)

#### Section 504. Nonconforming Structures

##### 504-1. MAINTENANCE AND ENLARGEMENT

- 1) A structure in existence as of the effective date of this Ordinance which does not meet the lot and yard requirements in Section 412 may be repaired, maintained and improved. It may be enlarged and/or accessory structures may be added to the site without a variance, provided that the enlargement or accessory structure itself meets the setback and height requirements of the district in which it is located and that the enlargement or accessory structure in combination with the existing structure does not exceed the prescribed maximum lot coverage.
- 2) The following activities shall not constitute an enlargement of a nonconforming structure:
  - a) the addition of an open patio with no structure elevated above ground level, except in the Mandatory Shoreland Zone;
  - b) the addition of steps from the first floor to the ground level;
  - c) the placing of a foundation below a nonconforming structure

##### 3) FURTHER LIMITATIONS IN SHORELAND ZONES

Except as otherwise provided in this Article, a non-conforming condition shall not be permitted to become more non-conforming. Further limitations and exceptions in the Shoreland Zones:

- a. After January 1, 1989 if any portion of a structure is less than the required setback from ~~the normal high water line~~ of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 504-2 and is less than the required setback from a water body, tributary stream or wetland, the replacement

structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

- b. ~~Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided that the following are met~~ Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure,:
1. ~~the structure and new foundation must be~~ are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 504-4. If
  2. ~~the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with this section, and~~
  3. ~~the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.~~
- c. No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.
- d. Two or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date of the Shoreland provisions in this Ordinance shall be considered one lot.  
(Amended 4/21/92)

#### 504-2. RECONSTRUCTION

Any non-conforming building or structure which is removed, damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, ~~by any cause other than the willful act of the owner or his agent~~, may be reconstructed or replaced provided that a permit is obtained within twelve (12) eighteen (18) months of the date of said damage, destruction or removal, and provided that such reconstruction or replacement is in compliance with all dimensional requirements of this Ordinance to the greatest extent practical as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 504-1(3)above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 504-4.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding

normal maintenance and repair, may be reconstructed in place if with a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction or removal.

### 504-3. OFF STREET PARKING AND LOADING SPACES

- 1) A building or structure which is nonconforming as to the requirements for off-street parking space shall not be enlarged or altered to create additional dwelling units, seats, or accommodations, unless off-street parking is provided for such enlargement or alteration itself sufficient to satisfy the requirement of this Ordinance.
- 2) A building which is nonconforming as to the requirements for off-street loading space shall not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Ordinance for the addition or enlargement.

### 504-4. RELOCATION

A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.  
Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof. (Amended 4/21/92)

## **(Variances as Related to Shoreland Zoning)**

### 902-4. VARIANCE IN SHORELAND AREAS

A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

Prior to voting to grant a variance within the mandated shoreland area, the Zoning Board of Appeals shall, in addition, find that the proposed variance:

1. Will not result in unsafe or unhealthful conditions;
2. Will not result in erosion or sedimentation;
3. Will not result in water pollution;
4. Will not result in damage to spawning grounds, fish aquatic life, bird and other wildlife habitat;
5. Will conserve shoreland vegetation;
6. Will conserve visual points of access to waters as viewed from public facilities;
7. Will conserve actual points of public access to waters;
8. Will conserve natural beauty; and
9. Will avoid problems associated with flood plain development and use.

The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision.

## **B. (Public Hearing) Applications for Liquor License/Entertainment Permit: Elks Lodge 1597**

**Biddeford-Saco Elks Lodge No. 1597** has applied for their Liquor License/Entertainment Permit for a term of one year.

The applicant has paid all applicable permit fees and the clerk has properly advertised the public hearing in accordance with M.R.S.A., Title 28-A, Subsection 653 and in accordance with Saco City Code, Chapter 93, and Entertainment sub-section 93-2.

Councilor Morton moved, Councilor Smith seconded to open the Public Hearing. The motion passed with seven (7) yeas.

There being no comments from the public Councilor Morton moved, Councilor Smith seconded, to close the Public Hearing and Be it Ordered that the City Council grant the applications submitted by the Biddeford-Saco Elks Lodge No. 1597 for their Liquor License/Entertainment Permit for the period of one year. Further move to approve the Order. The motion passed with seven (7) yeas.

**C. (Second & Final Reading) Contract Zone – Wireless Telecommunication Facility at 202 McKenney Road**

U.S. Cellular d/b/a Maine RSA #1, Inc., proposes to erect a 190 foot telecommunications tower on a 100'X100' portion of the property at 202 McKenney Road. This applicant proposed the same project in 2008, an effort that ended in disagreement over space being made available on the tower for use by the City. The applicant has reconsidered its position, and submitted an agreement with the Police and Fire Chiefs.

Wireless Telecommunication Facilities are not an allowed use in the C-1 zone. The applicant has identified this location due to its desire to cover the service area in northwest Saco, where coverage is poor. A contract zone is the only option that would allow a cell tower to be built and operated in this location. There is precedent for cell towers being allowed via contract zoning; existing towers off Industrial Park Road, Rte. One and Flag Pond Road were approved as contract zones.

This item was reviewed by the Planning Board on April 7, 2009. The Board forwards a positive finding on each of the four standards found in Sec. 1403-6, and voted to make a positive recommendation on the proposed contract zone.

Councilor Mills moved, Councilor Bastille seconded that the City of Saco hereby Ordains and Approves the Second and Final Reading of the contract zone document entitled “Contract Zone Agreement By and between Maine RSA #1, Inc. and the City of Saco,” dated April 7, 2009. The motion passed with five (5) yeas and one (1) nay and one (1) abstention. Councilor Mills voted in the negative. Councilor Cote abstained due to the fact that the owner of record is a client.

**Contract Zone Agreement  
By and between  
Maine RSA #1, Inc. and the City of Saco**

**April 7, 2009**

THE CITY OF SACO HEREBY ORDAINS:

I. That the zoning ordinance of the City of Saco, dated January 2, 1985 as amended through December 5, 2008 is hereby amended by adopting the proposed change in use as further described in the following contract by and between the City of Saco and Maine RSA #1, Inc., (the U.S. Cellular Corporation).

This contract amends the Saco Zoning Ordinance in order to permit the construction of a Wireless Telecommunication Facility at 202 McKenney Road, identified as Tax Map 125, Lot 10, subject to the following conditions and restrictions, as provided for in Section 1403 of the Saco Zoning Ordinance:

1. Maine RSA #1, Inc., (the Applicant), and/or its affiliates, proposes to construct a single Wireless Telecommunication Facility in the form of a monopole tower one hundred ninety (190) feet in height at 202 McKenney Road (Subject Property).

2. The record owner of the Subject Property is Linda L. Fenderson. Right, title and interest for the application is demonstrated via an Option to Lease by and between Linda Louise Fenderson, 1018 South Street, Dayton, Maine and Maine RSA #1, Inc., with an address of Attention: Real Estate, 8410 West Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631, a Maine corporation.
3. Said Option to Lease would grant the right to construct operate and maintain a Wireless Telecommunications Facility, as defined by the City of Saco Zoning Ordinance, on a 100 foot by 100 foot portion (0.23 acre) of the Subject Property.
4. The Subject Property has an area of 8.25 acres, and is a legally nonconforming lot due to having only sixty (60) feet frontage on McKenney Road; two hundred (200) feet of frontage is required in the C-1 zone. A single family dwelling exists on the property.
5. The Subject Property is located in the C-1 zoning district.
6. Wireless Telecommunication Facilities not an allowed use in the C-1 district.
7. As stated in a letter dated March 5, 2009 from Robert Gashlin, KJK Wireless, 8 Providence Avenue, Falmouth, Maine, agent for U.S. Cellular, "U.S. Cellular is licensed by the Federal Communications Commission to provide telecommunications service to northwest Saco and the surrounding areas where it lacks adequate coverage and capacity."
8. The Applicant requests that the City of Saco establish a Contract Zone specifically and exclusively for the portion of the Subject Property subject to said Option to Lease in order to allow the construction, operation and maintenance of a Wireless Telecommunication Facility.

**II. This contract amends the Saco Zoning Ordinance as follows:**

- A. Notwithstanding Section 410-14, a single Wireless Telecommunication Facility, as described in the application materials submitted by KJK Wireless on behalf of Maine RSA #1, Inc., to include a one hundred ninety (190) foot monopole tower and supporting infrastructure, antennas, utilities, equipment shelter, back-up power generator, propane tank, associated equipment and an access road from McKenney Road, sited within a fenced enclosure as shown on a site plan submitted by the Applicant, entitled "U.S. Cellular, Site Name: Salmon Falls, Site No.: 853399," shall be regarded as a permitted use on the Subject Property.

**III. This Contract Zone is subject to the following conditions and restrictions, as provided for in Section 1403 of the Saco Zoning Ordinance:**

1. The Wireless Telecommunication Facility is subject to review under the provisions of Section 728, and Article 11, Site Plan Review of the Saco Zoning Ordinance.
2. Except as addressed in this Contract Zone document, the project shall adhere to all other applicable provisions of the City of Saco Zoning Ordinance.

3. All details as shown on the final plan approved by the Planning Board are hereby incorporated into this contract by reference. The site shall be developed in conformance with those plans. Minor changes may be approved by the staff of the City of Saco. Any changes determined by the staff to be "major" shall be submitted to the Planning Board for review. If it is determined that the changes constitute a change in the contract, then the developer shall also be required to obtain City Council approval of the changes.
4. This Document and Contract Zone affects only the Subject Property.
5. This contract and its provisions shall apply exclusively to the contract zone request submitted by the Applicant and/or its agents.
- 6. This Document and the Contract Zone it creates shall not be transferable prior to development as proposed by the Applicant, unless permission for said transfer or conveyance is approved by the City Council.**
7. Failure of the Applicant to secure site plan approval from the Planning Board, and any and all other permits or approvals that may be required by the City or other regulatory agencies including but not limited to the Maine Department of Environmental Protection and/or Federal Communications Commission within one year of the approval of this Contract by the Saco City Council shall render this Contract null and void. In the event that permits or approvals are delayed due to circumstances beyond the control of the Applicant, this one year deadline may be extended by one year upon written request submitted by the Applicant, subject to approval by the City Council.
8. Breach of these conditions and restrictions by the developer shall constitute a breach of the contract. Said breach of contract shall constitute a zoning violation, subject to enforcement action by the City of Saco.
9. The Applicant shall provide the City of Saco with a co-location position on the proposed tower at an elevation between ninety (90) and one hundred ten (110) feet above the base of the tower, and with other considerations as specified in the "Agreement to Provide Space at US Cellular Telecommunications Facility to be Located at 202 McKenney Road, Saco, ME 04072" at no cost to the City, in order that the City may install or have installed an antenna for wireless telecommunication purposes.
10. It is the intent of the City that towers, structures or similar installations erected as part of a Wireless Telecommunication Facility shall be available to multiple tenants, carriers, and/or providers of wireless telecommunication service. The Applicant shall provide a signed statement obligating the owner of the Facility and its successors and assigns to:
  - a. Respond in a timely, comprehensive manner to any request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of what is commonly charged within the telecommunications industry;
  - b. Negotiate in good faith based on commonly accepted practices within the telecommunications industry for shared use of the facility by third parties,

thereby agreeing to not limit the number of carriers utilizing the Facility to less than the carrying capacity of the Facility;

- c. Allow shared use of the facility on a first come, first served basis if any applicant agrees in writing to pay charges for co-location that are commonly accepted within the telecommunications industry;
- d. Require no more than a reasonable charge for shared use, based on based on commonly accepted practices within the telecommunications industry. This charge may include , but is not limited to a pro-rata share of the cost of planning project administration, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the Facility or equipment to accommodate a shared user without causing electromagnetic interference.
- e. The City of Saco is specifically recognized as not being a potential co-location applicant, and is not bound by terms herein.

**IV. By vote of the Saco Planning Board on April 7, 2009, and the Saco City Council on \_\_\_\_\_, 2009, the following findings are hereby adopted:**

A. The portion of Map 125, Lot 10 proposed as a site for a Wireless Telecommunication Facility by the Applicant and/or its agents is of an unusual nature and location, for the following reasons:

- 1. The property is unique because it is located in an area that has substandard or no wireless telecommunications service. Also, US Cellular has determined that this specific location is required to effectively implement its Federal Communications Commission license.
- 2. U.S. Cellular's intended service area is in northwest Saco where the overwhelming majority of land is zoned Conservation District (C-1). The Ordinance provides that telecommunications facilities are permitted only in the Light Industrial / Business Park District, Highway Business District, Business Park District, and Industrial District. No such districts are located in close enough proximity to U.S. Cellular's intended coverage area to provide adequate service. Accordingly, U.S. Cellular proposes to construct its Facility in the Conservation District pursuant to contract zoning.

B. The proposed rezoning is consistent with the Saco Comprehensive Plan, based on the following goals:

Part One and Part Two of the *Saco Comprehensive Plan* discusses the origins, trends, and existing socio-economic conditions in Saco. Like many northern New England manufacturing based communities, Saco has recognized the need to transition to a more diverse, dynamic, and contemporary orientation which is a basis for a viable community. Saco has successfully made this transition and the catalyst has been innovation and forward thinking community planning. Wireless telecommunication facilities do provide a stimulus for a diverse, dynamic and contemporary community. For example, currently 85% of all citizens own cell phones and 22% have replaced traditional land based telephones with cell phones as their only means of communications. Many people work from their homes and require adequate cell phone service and broadband (which wireless telecommunications facilities provide). Many people also require

cell phone service while they commute to work, while they conduct routine errands, and during emergency situations. Last year up to 30% of all calls for emergency services in Maine came from cell phones. Wireless telecommunications have become a fundamental need in many people's lives and this trend is still evolving.

U.S. Cellular's proposed Facility is also consistent with Part Four of the *Saco Comprehensive Plan* that encourages compatibility with regional plans. Specifically, US Cellular's intent to provide cellular service to northwest Saco that currently has inadequate or no such service is directly compatible with Governor Baldacci's Wireless Telecommunications Initiative and the Federal Government's Telecommunications Act of 1996.

The *Saco Comprehensive Plan*, Section 17B, states a goal is "To assure that new commercial and industrial development occurs in a way that is visually and environmentally sound and that protects established residential neighborhoods." The location of the Facility will have a minimal impact on the area because it is located in a relatively remote and forested area on an 8.25-acre parcel that is 200' back from the closest property line and approximately 750' back from McKenney Road. The Facility will produce minimal or no noise, dirt, dust, glare, odor, fumes, smoke, gas, sewerage, refuse, vibration, or danger of explosion or fire.

The *Saco Comprehensive Plan*, Section 17F, states a goal is "To accommodate the growth of commercial and industrial activities in designated growth areas where public services and facilities are or can be provided." The *Saco Comprehensive Plan* has identified northwest Saco as one of the fastest growing areas in Saco. This area currently has substandard or no telecommunications service and the Facility will provide such service that will accommodate the growth of commercial and residential activities.

The *Saco Comprehensive Plan*, Section 17M, states a policy that "The City should continue to pursue economic growth that expands the City's tax base." It is anticipated that the Facility will produce a revenue stream for the City in the form of personal property taxes.

- C. The proposed use is consistent with, but not limited to, existing uses and allowed uses within the C-1 zone. Similar existing uses in the C-1 zone include a Wireless Telecommunication Facility off Flag Pond Road, a cable television tower off Boom Road, and a radio broadcast tower off Simpson Road. Allowed uses include agriculture, single and two-family dwellings, essential services, kennels, timber harvesting, golf courses, hospitals and clinics, extractive industry, etc.
- D. The conditions and restrictions noted above are adequate to meet the intent of the Saco Zoning Ordinance.

Based on the above findings, and the conditions and restrictions listed above, the City Council hereby incorporates this Contract Zone agreement into the Saco Zoning Ordinance by reference. By signing this contract, both parties agree to abide by all the conditions and restrictions as contained herein.

Adopted by the Saco City Council on June 1, 2009.

City of Saco

Maine RSA #1, Inc.

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Richard Michaud, City Administrator

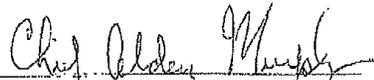
**AGREEMENT TO PROVIDE SPACE AT US CELLULAR TELECOMMUNICATIONS FACILITY TO BE LOCATED AT 202 MCKENNEY ROAD, SACO, ME 04872**

US Cellular shall provide the City of Saco the right to install certain equipment at US Cellular's proposed telecommunications facility at 202 McKenney Road as listed below.

- ❖ Two (2) 20' tall whip antennas to be located at the 90' - 110' tower elevation.
- ❖ One (1) coaxial cable for each antenna for a total of two (2) cables. Each cable shall not exceed 7/8" diameter
- ❖ One (1) 6' x 8' equipment cabinet. US Cellular shall approve the final location of the cabinet inside US Cellular's fenced compound. US Cellular shall provide the equipment cabinet to the City of Saco free of charge.

The City of Saco shall be responsible for all costs associated with the purchase and installation of its equipment that will be installed at the facility except for the equipment cabinet which US Cellular shall provide free of charge. The City of Saco shall also be responsible to pay for any structural analysis for the installation of its equipment to the extent one may be required.

US Cellular agrees to waive all application fees and rental fees associated with the City of Saco's use of US Cellular's proposed facility contemplated herein.

  
 Alden Murphy, Chief, Saco Fire Department

3/2/09  
 Date

Bradley Paul, Chief, Saco Police Department

Date

  
 Authorized Representative for US Cellular

3/2/09  
 Date

**D. (Second & Final Reading) Contract Zone – Bear Brook Estates, LLC, Mobile Home Park, Ocean Park Rd**

Applicant Bear Brook Estates LLC, represented by John Daigle of the Old Orchard Beach Campground, proposes a contract zone that would allow a 41-unit mobile home park to be constructed on a 16.5 acre portion of the campground parcel. Mobile home parks are not an allowed use in the B-2c and R-4 zoning districts in which the campground is located. The contract zone would limit dwelling units within the park to manufactured homes installed on foundations, and establishes the minimum lot size at 7,500 s.f.

Units are probably best described as “modular homes,” ranging from 1,000 to 1,400 s.f. in size with 2-3 bedrooms, installed on a slab foundation. Lots would be accessed via a proposed interior roadway off Ocean Park Road, which will remain private. Utilities would be public. The Affordable Housing Committee has reviewed this proposal favorably. If the contract zone is approved, the applicant would return to the Board for site plan and subdivision review.

This item was reviewed by the Planning Board on April 7, 2009. The Board made a positive finding on each of the four standards found in Section 1403-6, and makes a positive recommendation for the proposed contract zone.

Councilor Morton moved, Councilor Bastille seconded, that the City of Saco hereby Ordains and Approves the Second and Final Reading of the contract zone document entitled “**Contract Zone Agreement By and between Bear Brook Estates, LLC and the City of Saco,**” dated April 7, 2009 as amended. The motion passed with six (6) yeas and one (1) nay. Councilor Tardif voted in the negative.

1<sup>st</sup> Amendment: Councilor Morton moved, Councilor Mills seconded, that the City of Saco hereby approves the Second and Final Reading of the document titled ‘**Contract Zone Agreement By and between Bear Brook Estates, LLC and the City of Saco**’, dated April 7, 2009’ with all amendments indicated by strikethrough and underline as presented to the Council at the Public Hearing on May 18, 2009. The motion passed with seven (7) yeas.

2<sup>nd</sup> Amendment: Councilor Morton moved, Councilor Mills seconded, that the City of Saco hereby approves the following amendments to the ‘**Contract Zone Agreement By and between Bear Brook Estates, LLC and the City of Saco,**’ dated April 7, 2009’ as presented to the Council at the Second and Final Reading on June 1, 2009, as follows:

I.5 The Applicant proposes to develop a ~~forty-one (41) lot~~ mobile home park on the Subject Property with up to forty-one (41) lots, as shown on the plan attached as Exhibit B.

II.k. No vehicular access or egress to the Subject Property shall be permitted to or from Cumberland Avenue.

II.n. The base, or starting, price for the proposed units is \$119,000, as represented by the Applicant. This shall remain the base sales price of individual units offered for sale by the

Applicant, subject to annual increases equal to the rate of inflation as determined by the Consumer Price Index. The intent of this subsection is to affirm the Applicant's and the City's stated goal of providing affordable housing to potential buyers.

The motion passed with six (6) yeas and one (1) nay. Councilor Tardif voted in the negative.

3<sup>rd</sup> Amendment: Councilor Cote moved, Councilor Tardif seconded that no vehicular or emergency vehicles access or egress to the Subject Property shall be permitted to or from Cumberland Avenue. Councilor Cote withdrew his motion.

4<sup>th</sup> Amendment: Councilor Lovell moved to strike the second sentence in paragraph II.n. There was no second on this motion.

5<sup>th</sup> Amendment: Councilor Morton moved, Councilor Smith seconded that item II.n. be struck from the document. The motion passed with five (5) yeas and two (2) nays. Councilor Tardif and Cote voted in the negative.

### **E. (Public Hearing) Consolidate Polling Places**

The staff of the City Clerk's office is recommending that all seven (7) Wards be consolidated into one (1) location, such as the Community Center, for all municipal/state elections. The action would also result in:

- Elimination of confusion as to where the voters' polling places are located.
- Reduction of overtime for Public Works employees since they would have access to the building at the beginning of their work day.
- Eliminate the disruption of school activities at three (3) polling places.
- The gymnasium at the Community Center is a secured area in the building eliminating the possibility of vandalism the night prior to any election.
- Ease of distribution of ballots and supplies to the Wardens.
- Access to a telephone at the polling place.
- Testing of the AVS System on one day instead of five days.
- Elimination of State phone lines at three of the schools.
- A well lit parking lot with ample parking for the voters.
- Child safety, at the schools, would no longer be a concern.
- Ability to deliver all absentee ballots to Wardens at 8:00 p.m.

During the February 10, 2009 RSU Board of Education Election only 102 residents cast ballots at the seven (7) wards. The office processed 35 absentee ballots which resulted in 137 total ballots cast City wide.

The consolidation of polling places is supported by Park and Recreation as well as the Public Works Department. The Council discussed this item at Workshop on May 18, 2009.

Councilor Morton moved, Councilor Cote seconded, to open the Public Hearing. The motion passed with seven (7) yeas.

Mr. Jeff Robinson stated that he had concerns about parking and that this new procedure would alienate the voters.

Councilor Morton moved, Councilor Bastille seconded to close the Public Hearing and be it ordered that the City Council approve the Consolidation of Polling Places for 2009. Further move to approve the Order. The motion passed with four (4) yeas and three (3) nays. Councilors Smith, Bastille and Lovell voted in the negative.

#### **F. FY2010 Regional School Unit 23 Budget**

The Board of Directors of the Regional School Unit (RSU) #23 presented the FY2010 budget to the public on May 30, 2009. The Board is charged with putting together a reasonable and needs based budget that incorporates necessary start-up expenses and meets the stated goal of providing a quality education to each student in the district and to do so in a fiscally responsible manner.

The recent Journal Tribune article quotes “officials this year were under time constraints to get the new budget ready for the regional school union and both Lafortune and Curtis said that in future years, officials may discover ways to make the budget more efficient”.

The RSU budget is being drafted in the current economic environment where, local businesses are closing, ie. Wood Structures, and Pepperell Mill; individuals are losing jobs at Goodall Hospital, Mercy Hospital, Sweetser, and Thornton Academy; state government is implementing 10 unpaid days off, no merit increases, and no longevity increases; the City of Saco has no salary increases and no mil-rate increase; the Town of Dayton has no mil rate increase; and the Town of Old Orchard Beach is waiting on a school budget. The proposed RSU 23 budget increases the mil rate for the citizens of Saco .42 cents.

The RSU 23 FY2010 budget presented to the public on Saturday May 30, 2009 is an operational budget only. There is said to be \$200,000 in savings by regionalizing administration functions – where? There is \$420,000 more in state funding this year over last year. What are the fuel savings as a result of the new contract? What percent of increase is in the budget for salaries? Are any positions being eliminated? These are important questions that require disclosure.

**Councilor Morton moved, Councilor Bastille seconded, that Due to the economic climate, the Saco City Council Resolves to not support the FY2010 Regional School Unit 23 Budget to be voted on June 9, 2009; a budget that will place an additional burden on the citizens of Saco with a mil rate increase of .42 cents. The Council encourages voters to vote NO on June 9, 2009 to send a message to the RSU 23 Board of Directors to revise the budget – to no mil rate increase. The motion passed with six (6) yeas and one (1) nay. Councilor Cote voted in the negative.**

#### **An Act To Remove Barriers to the Reorganization of School Administrative Units**

**Sec. 21. 20-A MRSA §1487**, as enacted by PL 2007, c. 240, Pt. XXXX, §13, is amended to read:

#### **§ 1487.Failure to pass budget**

If a budget for the operation of a regional school unit is not approved prior to July 1st, the latest budget ~~as submitted by the regional school unit board~~ approved at a regional school unit budget meeting and submitted to the voters for validation at a referendum in accordance with section 1486 is automatically considered the budget for operational expenses for the ensuing year until a final budget is approved, except that, when the regional school unit board delays the

regional school unit budget meeting, the operating budget must be approved within 30 days of the date the commissioner notifies the regional school unit board of the amount allocated to the regional school unit under section 15689-B, or the latest budget submitted by the regional school unit board becomes the operating budget for the next school year until a budget is approved at a regional school unit budget meeting and validated at a referendum. If the budget of a regional school unit is not approved and validated before July 1st and the officers of any affected municipality determine that the property taxes must be committed in a timely manner to the collector pursuant to Title 36, section 709, the municipal assessor or assessors may commit the property taxes on the basis of the latest budget approved at a regional school unit budget meeting and submitted to the voters for validation at a referendum in accordance with section 1486.

**VI. Consent Agenda:**

**A. (Second & Final Reading) Code Amendment: Chapter 112 General Assistance Maximum Changes**

As part of the newly adopted Stimulus Bill signed by President Obama on February 17, 2009, the U.S.D.A. Thrifty Food Plan has increased to help provide additional food to the households receiving Food Supplements and to put additional money into the economy. The change is effective from April 1, 2009 to September 30, 2009, when the new Food Supplement allotments are usually developed.

Councilor Tardif moved, Councilor Mills seconded, The City of Saco hereby ordains and approves the Second and Final Reading of the code amendment to Chapter 112, General Assistance Program, Appendix B – Food Maximums for June 1, 2009. Further move to approve the Order. The motion passed with seven (7) yeas.

**General Assistance Ordinance Appendix B – Food Maximums**

***Proposed Figures dated April 1, 2009***

Numbers that have ~~strike through~~ are to be deleted while underline indicates new figures.

# IN HOUSEHOLD	WEEKLY MAX.		MONTHLY MAX.	
	Current	New Proposed	Current	New Proposed
1	<del>\$40.93</del>	<u>\$46.51</u>	<del>\$176.00</del>	<u>\$200.00</u>
2	<del>\$75.12</del>	<u>\$85.35</u>	<del>\$323.00</del>	<u>\$367.00</u>
3	<del>\$107.67</del>	<u>\$122.33</u>	<del>\$463.00</del>	<u>\$526.00</u>
4	<del>\$136.74</del>	<u>\$155.35</u>	<del>\$588.00</del>	<u>\$668.00</u>
5	<del>\$162.33</del>	<u>\$184.42</u>	<del>\$698.00</del>	<u>\$793.00</u>
6	<del>\$194.88</del>	<u>\$221.40</u>	<del>\$838.00</del>	<u>\$952.00</u>
7	<del>\$215.35</del>	<u>\$244.65</u>	<del>\$926.00</del>	<u>\$1052.00</u>
8	<del>\$246.05</del>	<u>\$279.53</u>	<del>\$1058.00</del>	<u>\$1202.00</u>
EACH ADDITIONAL		-----	\$132.00	<u>\$150.00</u>

**B. (Second & Final Reading) Zoning Ordinance Amendment: Storm-water Runoff § 805**

This proposed Zoning Ordinance amendment would update the City's approach to stormwater management as required by the Maine Department of Environmental Protection (MDEP) under its Small Municipal Separate Storm Sewer Systems program (MS4). This is one piece of a comprehensive stormwater plan designed to reduce the discharge of pollutants within Saco's urban area, and to protect water quality in keeping with requirements of the federal Clean Water Act.

The Planning Board considered the proposed amendments on April 14, 2009 and forwards a positive recommendation for passage.

Councilor Lovell moved, Councilor Mills seconded, that the City of Saco hereby ordains and approves the Second and Final Reading of the document titled, 'Amendments to Zoning Ordinance Section 805. Stormwater Run-Off, dated April 27, 2009'. The motion passed with four (4) yeas and three (3) nays. Councilor Bastille, Smith and Tardif voted in the negative.

***'Amendments to Zoning Ordinance Section 805, dated April 27, 2009'***

(Please note that underline represents new language while ~~strikethrough~~ represents language to be deleted)

**Section 805. Stormwater Run-Off** (Amended 3/2/92; 6/18/2001)

In general, surface water run-off shall be minimized, and it shall be the responsibility of the person developing the land to demonstrate that the work will not have an adverse impact on abutting properties or downstream properties.

The volume of stormwater discharged from any parcel must be minimized through the use of on-site infiltration, detention, or retention to the extent practical. When stormwater must be discharged from a parcel, the preferred method is discharge into the natural drainage system. Discharge of stormwater to the City's MS4 shall be allowed only when on-site retention and/or discharge to the natural system is not practical.

Infiltration, detention, or retention of stormwater shall assure that the Total Maximum Daily Loads (TMDLs) that have been established by the U.S. Environmental Protection Agency for various waterbodies in the City will be met to the extent practical. The disposal of stormwater shall not constitute a threat to public health, safety and welfare and shall not degrade the quality of surface water or groundwater below city, state or federal standards.

**805-1. STORMWATER QUANTITY**

Adequate provisions shall be made for the disposal of all stormwater from a proposed development through a stormwater drainage system which will not have adverse impacts on abutting or downstream properties. All projects disturbing less than one acre shall be designed to meet the requirements of this Section, 805-1. All projects including one acre or more of disturbed area shall meet the requirements of this section, 805-1 and the requirements of the Site Location of Development Law, 38 MRSA, 481 – 490, the Maine Stormwater Management Law, 38 MRSA Section 420-D, and regulations promulgated there under, specifically Chapter 500 and

502, having an amended on December 21, 2006. In determining if the threshold is met, all disturbed area created after the effective date of this provision shall be included in that total.

1. To the extent possible, the design shall dispose of stormwater runoff on the land at the proposed development through the appropriate use of the natural features of the site. Stormwater runoff systems will infiltrate, detain, or retain stormwater falling on the site such that the rate of flow from the site does not exceed that which would occur in the undeveloped state for a storm of intensity equal to the 2, 10, 25 and 50-year storm events.
2. If the postdevelopment peak runoff rate exceeds the predevelopment peak runoff rate, on-site mitigation measures, such as detention basins or flow restrictors, shall be required.
3. All natural drainage ways shall be preserved at their natural gradients and shall not be filled or converted to a closed system except as approved by the Planning Board and appropriate state agencies.
4. The design of the storm drain system shall fully incorporate the existing upstream runoff which must pass over and/or through the site to be developed. The system shall be designed to pass upstream flows, based upon quantities calculated per this section 805-1, from the land, as fully developed, without surcharging the system.
5. Proposed alterations in stormwater drainage paths shall not enable the crossing of runoff over a city street in order to enter a drainage system.
6. A waiver may be granted by the Department of Public Works to discharge an insignificant increase in stormwater runoff to the municipal stormwater system when all of the following conditions are met:
  - a. A drainage plan is prepared by a professional engineer licensed in the State of Maine, which demonstrates that the increase has no adverse impact to the downstream conditions, including impacts on abutting or city properties. Improvements may be required of the developer to prevent adverse downstream impacts caused by the project.
  - b. The increase in the peak flow from the site or in the peak flow of the receiving waters cannot be avoided by reasonable changes in project design or density.
  - c. Written authorization to discharge the increased peak flow rates has been provided by the Director of Public Works.

## 805-2. STORMWATER QUALITY

Sites shall be designed to minimize the amount of impervious area with a focus on reducing vehicle areas including parking, drives, and service areas. All activities, including the enlargement or modification of existing uses, that involve the creation of a total of more than ten thousand (10,000) square feet of new impervious area or five (5) or more acres of new disturbed area shall manage the quality of the stormwater runoff to meet the following standards. In determining if the threshold is met, all impervious area or disturbed area created after the effective date of this provision shall be included in the total. In the case of enlargements or modifications of existing uses that drain in more than one direction, the treatment standard shall apply to any watershed or subwatershed in which the amount of impervious area or disturbed area is increased.

~~Stormwater Best Management Practices (BMP's) appropriate for the site and type of activity must be used to meet the standards specified in this section. Preference shall be given to the use of nonstructural BMP's where feasible. The standards must be met at the property line or before the runoff enters a waterbody, whichever point is first reached by the runoff:~~

- ~~1. Sliding Scale Total Suspended Solids (TSS) Standard—Stormwater from the impervious areas and disturbed areas in each identified subwatershed on the site must be treated by the use of stormwater Best Management Practices designed to remove total suspended solids to the levels indicated in the Maine Department of Environmental Protection’s “Sliding Scale TSS Standard (Chapter 500 Stormwater Management, Section 4.A.(2)(a))”. The prescribed level of treatment must be applied to all impervious areas such that the areally weighted average TSS removal equals or exceeds the prescribed removal level.~~
- ~~2. Floating Hydrocarbons Standard—The following uses shall utilize appropriate Best Management Practices to minimize the amount of floating hydrocarbons discharged from the site. The BMP’s shall be designed to treat the first 0.5 inches of runoff. Preference shall be given to BMP’s that are “off line” from the major stormwater conveyance system. The uses covered by this standard are:
  - ~~a. Facilities for the sale, fueling, servicing, cleaning, or repair of motor vehicles, recreational vehicles or heavy equipment~~
  - ~~b. Motor vehicle fleet storage areas~~
  - ~~c. Truck terminals and similar facilities~~
  - ~~d. Drive-through restaurants~~
  - ~~e. Convenience stores~~
  - ~~f. Vehicle recycling facilities including scrapyards and similar operations~~
  - ~~g. Facilities for the long term parking of motor vehicles such as commuter parking lots or transportation terminals~~
  - ~~h. Other non residential uses or multifamily residential uses with parking lots with a combined impervious area of more than 50,000 square feet~~
  - ~~i. Any other use identified by the Director of Public Works as having a high potential for hydrocarbon pollution due to the nature of the use or the particular characteristics of the site~~~~
- ~~3. Basic Stabilization Standard—Activities located in the portions of the watershed of the Saco River that are tributary to the river upstream of the public water supply intake of the Biddeford Saco Water Company or that are located in the watershed of the Scarborough River including areas tributary to the Nonesuch River, Nonesuch Brook, Ricker Brook, Boynton Brook, Merrill Brook, Mill Brook, and Stewart Brook shall comply with the following additional requirements:
  - ~~a. Ditches, swales, and other open stormwater channels must be designed, constructed, and stabilized using erosion and sedimentation control Best Management Practices that achieve long term erosion control, and must receive adequate routine maintenance to maintain capacity and prevent or correct any erosion of the channel’s bottom or side slopes.~~
  - ~~b. Gravel roads must be designed and constructed with crowns or other measures, such as water bars, to ensure that stormwater is immediately delivered to adjacent stable ditches or vegetated buffer areas. Grading of gravel roads, or grading of the~~~~

~~gravel shoulder of gravel or paved roads, must be routinely performed to ensure that stormwater drains immediately off the road surface to adjacent buffer areas or stable ditches, and is not impeded by accumulations of graded material on the road shoulder or by excavation of false ditches in the shoulder.~~

- e. ~~The project site must be maintained to prevent or correct erosion problems.~~

### ~~805-3. DESIGN, CONSTRUCTION, AND MAINTENANCE OF STORMWATER FACILITIES~~

~~—All elements of stormwater systems shall be designed, constructed, and maintained in accordance with the City's Stormwater Management Systems Inspection and Maintenance Program Guidelines, Volumes 1 and 2. Each project subject to the stormwater quality standards of Section 805-2 shall prepare a stormwater facilities management plan which shall be reviewed and approved as part of the project approval. This plan shall set forth the types and frequencies of proposed maintenance activities and shall identify the party responsible for carrying out each maintenance activity. The plan shall provide for a report to be submitted annually to the Director of Public Works documenting that the required maintenance has been performed as set forth in the management plan. Failure to conduct the necessary maintenance as set forth in the maintenance plan shall be a violation of the ordinance.~~

1. Post-Construction Stormwater Management Plan -- Subdivisions and activities subject to site plan review that involve more than one acre (1) of disturbed area must meet the requirements for a Post-Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet one of the following:

A. If the project requires a stormwater permit from the Maine Department of Environmental Protection ("DEP") under its Chapter 500 Stormwater Management Rules, as amended December 21, 2006 ("DEP Chapter 500 Rules"), the plan must, at a minimum, meet the "basic" and "general" standards of Section 4 of DEP Chapter 500 Rules. The plan shall also meet the "urban impaired stream standard" and "flooding standard" of Section 4 of DEP Chapter 500 Rules and the "other applicable standards" of Section 5, if applicable, as contained in DEP Chapter 500 Rules, and shall comply with the practices described in the manual *Stormwater Management for Maine*, published by the DEP in January 2006 ("*DEP Stormwater Manual*"); or

B. If the project does not require a stormwater permit from the DEP under its Chapter 500 Rules, the plan may either meet the Chapter 500 standards as set forth in (a) above, or provide for the treatment of 0.5 inches of runoff from ninety percent (90%) of the impervious surfaces on the site, and 0.2 inches of runoff from all disturbed pervious areas of the site using LID design practices and techniques determined by the Planning Board or its agents to be appropriate for the site. The treatment techniques used may include those set forth in Chapter 10 of the *DEP Stormwater Manual*, or *Volume III-BMPs Technical Design Manual*. Provisions must be made in the Stormwater Management Plan for all stormwater treatment techniques to be maintained in perpetuity.

#### 2. Additional Requirements.

a. The applicant may meet the quantity and quality standards above either on-site or off-site, but where off-site facilities are used, the applicant must document a sufficient property interest where the off-site facilities are located –

by perpetual easement or other appropriate legal instrument – to ensure that the facilities will be available to provide post-construction stormwater management for the project and that the property will not be altered in a way that interferes with the off-site facilities.

b. Where the applicant proposes to retain ownership of the stormwater management facilities shown in its Stormwater Management Plan, the applicant shall submit documentation that the applicant, his/her/its successors, heirs and assigns, shall have the legal obligation to operate, repair, maintain and replace the stormwater management facilities, and, shall enter into a Drainage Maintenance Agreement with the City in a form acceptable to the Department of Public Works.

c. Whenever elements of the stormwater management facilities are not within the right-of-way of a public street and the facilities will not be offered to the City for acceptance as public facilities, the Planning Board may require that perpetual easements be provided to the City allowing access for maintenance, repair, replacement and improvement of the stormwater management facilities in accordance with the approved Drainage Maintenance Agreement. If an offer of dedication is proposed, the applicant shall be responsible for the maintenance of these stormwater management facilities until such time (if ever) they are accepted by the City.

d. In addition to any other applicable requirements of this ordinance, any activity which also requires a stormwater management permit from the DEP under 38 M.R.S.A. Sec. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. Sec. 420-D(1), and the applicant shall document such compliance to the Planning Board. Where the standards or other provisions of such stormwater rules conflict with City ordinances, the stricter (more protective) standard shall apply.

e. At the time of application, the applicant shall notify the Department of Public Works if its Stormwater Management Plan includes any Stormwater BMP(s) that will discharge to the City's MS4 and shall include in this notification a listing of which Stormwater BMP(s) will so discharge.

3. Any person, business, corporation or other entity owning, leasing or having control over stormwater management facilities required by a Post-Construction Stormwater Management Plan shall demonstrate compliance with that Plan as follows:

i. That person shall, at least annually, inspect, clean and maintain the stormwater management facilities, including, but not limited to, any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all City and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.

ii. That person shall repair any deficiencies found during inspection of the stormwater management facilities.

iii. That person shall, on or by July 15th of each year, provide a completed and signed certification to the Department of Public Works in a form provided by that Department, certifying that the person has inspected, cleaned and maintained the Stormwater Management Facilities, describing any deficiencies found during inspection of the stormwater management facilities and certifying

that the person has repaired any deficiencies in the stormwater management facilities noted during the annual inspection.

iv. The required inspection(s) must be conducted by a qualified third-party inspector employed by the responsible person if the property is subject to a DEP stormwater permit. The third-party inspector shall perform an initial inspection to determine the status of the Stormwater Management Facilities. If the initial inspection identifies any deficiencies with the facilities, the same third-party inspector shall re-inspect the facilities after they have been maintained or repaired to determine if they are performing as intended.

v. The qualified third party inspector must meet the following standards:

a. The inspector must not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property; and

b. The inspector must be on the list of approved third-party inspectors maintained by the Department of Environmental Protection.

In order to determine compliance with this section and with the Post-Construction Stormwater Management Plan, the Director of the Department of Public Works or his/her designee may enter upon a property at reasonable hours and after making a good faith effort to contact the owner, occupant or agent to inspect the Stormwater Management Facilities. Entry into a building shall only be after actual notice to the owner, occupant or agent.

#### 4. Submission Requirements.

A Post-Construction Stormwater Management Plan shall conform to the applicable submission requirements of Section 8 of DEP Chapter 500 Rules.

The applicant shall provide the City with an electronic version of the Post-Construction Stormwater Management Plan in a format that is compatible with the City's requirements. Following completion of construction, the applicant shall provide the City with an updated version of the plan showing the Stormwater Management Facilities as actually constructed.

The Planning Board may modify or waive any of the submission requirements for a Post-Construction Stormwater Management Plan if the Board finds that, due to the unique physical characteristics of the site or the scale of the proposed activity, the information is not required to allow the Board to determine if the applicable stormwater management standards are met.

805.3.2 Drainage Plan – Activities that are not subject to site plan review that result in the expansion or alteration of an existing building or structure that increases the amount of impervious surface area by more than ten thousand (10,000) square feet or the construction of a new principal building or structure must meet the requirements for a Drainage Plan. New principal buildings that are located in a subdivision with an approved Post-Construction Stormwater Management Plan are not required to comply with the requirement for a Drainage Plan if the approved Stormwater Management Plan contains

provisions that adequately address surface drainage related to the construction of the building as determined by the Code Enforcement Officer.

The Drainage Plan shall meet the “urban impaired stream standard” when located within a watershed designated by the Maine Department of Environmental Protection as an Urban Impaired Watershed.

The plan must demonstrate that the proposed improvements are designed to minimize the amount of stormwater leaving the site. This must include consideration of the design and location of improvements to minimize the total area of impervious surface on the site and stormwater management techniques to minimize both the volume and rate of runoff from the lot. The use of LID practices appropriate for the type of development as set forth in Chapter 10 of the *DEP Stormwater Manual, Volume III-BMPs Technical Design Manual*, and/or any City of Saco LID Manual adopted by the Planning Board is encouraged but not required. The Drainage Plan must also demonstrate that:

A. If the project requires a stormwater permit from the Maine Department of Environmental Protection (“DEP”) under its Chapter 500 Stormwater Management Rules, as amended December 21, 2006 (“DEP Chapter 500 Rules”), the plan must, at a minimum, meet the “basic” and “general” standards of Section 4 of DEP Chapter 500 Rules. The plan shall also meet the “urban impaired stream standard” and “flooding standard” of Section 4 of DEP Chapter 500 Rules and the “other applicable standards” of Section 5, if applicable, as contained in DEP Chapter 500 Rules, and shall comply with the practices described in the manual *Stormwater Management for Maine*, published by the DEP in January 2006 (“*DEP Stormwater Manual*”); or

- a. any stormwater draining onto or across the lot in its pre-improvement state will not be impeded or re-directed so as to create ponding on, or flooding of, adjacent lots;
- b. any increase in volume or rate of stormwater draining from the lot onto an adjacent lot following the improvement can be handled on the adjacent lot without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the adjacent lot;
- c. any increase in volume or rate of stormwater draining from the lot onto City property following the improvement can be handled without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the City’s property; and
- d. Any increase in volume or rate of stormwater draining from the lot into the City’s separate storm sewer system can be accommodated in the system without creating downstream problems or exceeding the capacity of the storm sewer system.

A. Submission Requirements

A Drainage Plan must include a written statement demonstrating how the project has been designed to minimize the volume and rate of stormwater leaving the site including provisions for minimizing the area of impervious surface or the use of LID practices, and a plan and supporting documentation with at least the following information:

- a. The location and characteristics of any streams or drainage courses existing on the parcel and/or abutting parcels.
- b. The existing and proposed grading of the site using one-foot contours.

- c. The location and area of existing and proposed buildings and impervious surfaces on the site.
- d. The existing pattern of stormwater drainage on the site, including points of discharge to the City's storm sewer system or adjacent properties.
- e. The proposed pattern of stormwater drainage after development, including the location and design of any stormwater facilities.

The Code Enforcement Officer may modify or waive any of the submission requirements for a Drainage Plan if the Code Enforcement Officer determines that the information is not required to determine if the drainage standard is met.

### **C. Regional School Unit Warrant Articles for Election 6/9/09**

Councilor Morton moved, Councilor Mills seconded, to approve the Warrant and Notice of Election Calling Regional School Unit 23 Budget Validation Referendum. The motion passed with six (6) yeas and one (1) nay. Councilor Smith voted in the negative.

### **VIII. ADJOURNMENT**

Councilor Mills moved, Councilor Morton seconded, to adjourn. The motion passed with seven (7) yeas. TIME: 9:02 p.m.

ATTEST: \_\_\_\_\_  
Lucette S. Pellerin, City Clerk