Supplement No. 1 (2019)
to
Maine Municipal Association's
Manual for Local Land Use Appeals Board

This supplement is an update to Maine Municipal Association's *Manual for Local Land Use Appeals Board* published in February 2017. Place this Supplement No. 1 at the front of your copy of the manual.

This Supplement updates or adds the following pages in the February 2017 version of the manual:

4, 7, 10, 11, 13, 25, 35, 59-60, 61, 62-63, 67, 84-85, 112; Appendix 1, p. 133 and 137; Appendix 2, p. 143; Appendix 3, p. 324 and 325.

Instructions for use: When reading the text of this Manual, check this page to see if the page you are reading is listed above. If so, please read through this Supplement to find the page you are reading in the Manual and review the updated material for that page contained in this Supplement. New language is underlined and deletions are in ~~strike through~~. If you have any questions about this Supplement, please contact MMA Legal Services at 1-800-452-8786. This Supplement No. 1 is issued December 20, 2019 by the Legal Services Department, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330.

Page 4. Add the following to the end of the second paragraph under the heading **Elected Board Members:**

In communities establishing an appeals board for the first time, the board members may be elected or appointed. The method of selection must be stated in the ordinance or charter provision creating the board. The adoption of the ordinance or charter provision creating an elected board must occur at least 90 days before the annual meeting at which the first board members will be elected. 30-A M.R.S.A. § 2525 and § 2528. In 2017, the Legislature extended the filing deadline for nomination papers from 45 days prior to the date of the election to 60 days prior to the date of the election, which means nomination papers now must be made available 100 days prior to the election (P.L. 2017, ch. 249, § 9). Municipalities should consider holding a vote on an ordinance or charter provision establishing a board of appeals or changing from an appointed to elected board, or vice versa, at least 100 days prior to the annual town meeting at which it will take effect to ensure compliance with the new nomination paper timeframe.

Page 7. Amend the paragraph under the heading **Removal** as follows:

If an appeals board position is one which is filled by an appointment made by the municipal officers for a definite term, then the municipal officers may remove that person before the end of the term only for just cause, after notice and hearing. 30-A M.R.S.A. § 2601 and § 2691(2)(D). "Just cause" means a legally justifiable reason, such as a blatant disregard for the law. "Just cause" probably does not include a philosophical disagreement with decisions made by the board or personality conflicts. An elected board member cannot be removed from office either by the municipal officers or the voters prior to the expiration of his or her term unless the municipality has adopted a recall provision by charter or by ordinance or unless authorized under the recall provision in state law, which provides a recall process for removal of municipal officials in certain limited circumstances. 30-A M.R.S.A. §§ 2602 and 2505.

Page 10. Amend the paragraph under the heading **Maine Freedom of Access Act** as follows:

The Maine Freedom of Access Act (FOAA) (1 M.R.S.A. § 401 et seq.) (Also known as the "Right to Know Law") requires the appeals board to allow the general public to attend board meetings and workshops, to open its records for public inspection, and to give prior public notice of its meetings. A more detailed discussion of how it affects the appeals board appears in Chapter 3 of this manual. If the board willfully violates the FOAA, the municipality or the board members could be liable to pay a $500 fine for the first violation, $1,000 for a second violation within four years and $2,000 for a third violation within four years. 1 M.R.S.A. §§ 409, 410. Also, section 409 states that certain decisions made in violation of the FOAA are void.

Pages 10 and 11. Amend the first, second and third paragraphs under the heading **Records Retention and Preservation and Public Access** as follows:

Title 5 M.R.S.A. § 95-B requires municipal boards and officials to comply with regulations adopted by the State Archives Advisory Board when destroying or disposing of public records. Those regulations set out specific retention periods for many public records and establish a general rule of indefinite retention for records not expressly covered. They are available on the State of Maine's website at ~~www.maine.gov/sos/cec/rules/index.html~~ http://www.maine.gov/sos/arc/records/local/localschedules.html. Any person who violates those rules is guilty of a Class D crime. Section 95-B also requires boards and officials to protect the public records in their custody from damage or destruction. An official who leaves public office has an obligation under this statute to turn over any public records in his or her possession to his or her successor.

Records in the custody and control of the board of appeals are public records under Maine's Freedom of Access Act, with rare exceptions. Any member of the general public has a right to inspect public records at a time that is mutually convenient for the custodian and the person wanting to inspect them. Inspection should be done with supervision of the custodian or someone designated by the custodian; a member of the public should never be allowed to remove public records and take them somewhere else to review and copy. If the person wants a copy of a public record, the municipality may charge a reasonable fee and may charge for research and retrieval time to the extent authorized by 1 M.R.S.A. § 408-A. When a person wants to inspect or obtain a copy of a record which might be confidential, the custodian has five working days to determine whether the record is public and to issue a written denial if it is not. 1 M.R.S.A. § 408-A(4)~~§ 402, 409~~. Written, audio- or video-recorded and electronic materials all generally fall within the definition of "public record" for the purposes of the Freedom of Access Act if they are received or made by the board in connection with the transaction of public business. Application materials, board minutes, email communications, electronic records, audio recordings and personal notes taken by board members at board meetings are all examples of "public records" for the purposes of the FOAA.

The custodian of the record or other designated local official must acknowledge a request to inspect and/or copy public records within ~~a reasonable time~~5 working days of receiving the request and may request clarification concerning which public record or records are being requested. 30-A M.R.S.A. § 408-A(3). The record itself must be provided to the requestor for inspection or copying within a reasonable time of receiving the request, which may be longer than the 5 working days timeframe for providing the acknowledgement. Although a request need not be made in writing, the custodian should acknowledge the request in writing if possible. The acknowledgment must include a good faith, non-binding estimate of the time within which the appropriate official will comply with the request.

Page 13. Delete the following from the paragraph under the heading **Chapter 2- Jurisdiction of the Appeals Board:**

In the absence of a State statute, local ordinance, or charter provision expressly stating that a decision may be appealed to a local board of appeals, the board of appeals has no "jurisdiction" (legal authority) to hear such an appeal. *Fisher v. Dame*, 433 A.2d 366 (Me. 1981); *Lakes Environmental Association v. Town of Naples*, 486 A.2d 91, 95 (Me. 1984). Where no local appeal is authorized, a person's only appeal (if any) is to the Superior Court under Civil Rule of Procedure 80B. 30-A M.R.S.A. § 2691; *Lyons v. Board of Directors of SAD No. 43*, 503 A.2d 233 (Me.1986); *Levesque v. Inhabitants of Town of Eliot*, 448 A.2d 876 (Me. 1982). ~~A copy of § 2691 appears in Appendix 1.~~

Page 13. Amend the paragraphs under the heading **Statutory Appeals Jurisdiction** as follows:

There are ~~three~~ four statutory provisions which give jurisdiction to the appeals board over certain types of appeals.

Zoning
Title 30-A § 4353 authorizes the appeals board to hear and decide administrative appeals, interpretation appeals, and requests for variances filed in connection with decisions made under a zoning or shoreland zoning ordinance. That section also authorizes the board to grant special exception or conditional use permits in strict compliance with the ordinance, except where the planning board has been authorized by ordinance to act; in that case, the board of appeals is authorized to hear appeals from such decisions unless the ordinance requires appeals to go directly to Superior Court. (A copy of § 4353 appears in Appendix 4.)

Enforcement Decisions
Title 30-A § 2691 authorizes an appeals board to hear and decide appeals from enforcement decisions (i.e. notices of violation or enforcement orders) issued by a code enforcement officer under a land use ordinance, unless a municipality has expressly provided by charter or ordinance that certain decisions from its CEO are only advisory and may not be appealed. The Maine Supreme Court has held that a notice of "no violation" is also appealable, unless a municipality expressly provides otherwise. *Raposa v. Town of York*, 2019 ME 29, 204 A.3d 129.

Page 25. Amend the first paragraph on this page as follows:

Board records must be protected from damage or destruction. 5 M.R.S.A. § 95-B. Retention periods and legal destruction methods are governed by the rules of the State Archives Advisory Board, which are available in hard copy or on the State's website at ~~www.maine.gov/sos/cec/rules/index.html~~ http://www.maine.gov/sos/arc/records/local/localschedules.html. A record which doesn't appear to be covered by one of the categories in the State rules must be retained forever, unless written permission is received from the State to destroy it sooner.

Page 35. Delete the following from the first paragraph under the heading **Procedure**:

At this point the chairperson should explain the rules of procedure which the board must follow during its meeting and the extent to which public comments and questions will be allowed. The chairperson, using the procedures adopted by the board, regulates the conduct of the meeting—recognizing members of the board and audience who want to speak, entertaining motions, ruling on the relevance of questions asked, and otherwise keeping the meeting in order if tempers start to flare, even to the extent of having an unruly person removed by a law enforcement officer. The Maine Supreme Court has recognized that boards generally have the inherent authority to adopt their own rules of procedure, e.g., *Jackson v. Town of Kennebunk,* 530 A.2d 717 (Me. 1987). Board

procedures do not need to provide an applicant with a full adjudicatory hearing complete with cross-examination and rebuttal in order to satisfy due process requirements. *Fichter v. Board of Environmental Protection*, 604 A.2d 433 (Me. 1992). Sample procedures and introductory remarks by the chairperson are included in Appendix 2~~and a copy of 30-A M.R.S.A. § 2691(3) is included in Appendix 1~~. One issue which the board should be sure to address in its rules of procedure is the effect of a tie vote. *Stevenson v. Town of Kennebunk,* 2007 ME 55, 930 A.2d 1046. The rules also should address participation by the chairperson in votes taken by the board; unless the rules provide otherwise, the chairperson may participate in all votes of the board, not just when necessary to break a tie.

Pages 59 and 60. Amend the paragraphs under the heading **Enforcement Decisions** as follows:

When an appeal involves an enforcement decision by a code enforcement officer or planning board rather than a decision involving a permit application, the board of appeals will have to study the ordinance provisions and state law carefully to determine whether it has jurisdiction. Until recently, enforcement actions (i.e. notices of violation) were generally advisory and not appealable, unless expressly authorized by local ordinance. Now, state law expressly provides that enforcement decisions may be appealed to a board of appeals and in turn to Superior Court, unless a local ordinance or charter provides otherwise. 30-A M.R.S.A. § 2691(4).

Some ordinances say that "any decision of the code enforcement officer or planning board" may be appealed to the board of appeals. Others say that "decisions in the administration of this ordinance" may be appealed. Some ordinances authorize appeals from "decisions made in the administration and enforcement" of the ordinance. The first and third examples above authorize appeals from decisions regarding the enforcement of the ordinance, while the language of the second example is intended to authorize only appeals from decisions regarding the approval or denial of a permit ("administration"). ~~However, one Superior Court justice has interpreted the phrase "administration of this ordinance" to include both decisions on permit applications and enforcement orders/stop work orders. *Inhabitants of Levant v. Seymour*, AP-02-26 (Me. Super. Ct., Pen. Cty., June 9, 2003). Other cases which have addressed this issue include:~~ The following cases illustrate how the court has interpreted specific ordinance provisions: *Nichols v. City of Eastport*, 585 A.2d 827 (Me. 1991); *Town of Freeport v. Greenlaw*, 602 A.2d 1156 (Me. 1992) (where ordinance language authorized an appeal from any decision by the CEO); *Town of Boothbay v. Jenness*, 2003 ME 50, 822 A.2d 1169 (where the court found that ordinance language authorized an appeal from an enforcement order issued by the CEO and that failure to appeal limited issues that could be raised as a defense in a land use violation prosecution); *Inhabitants of Levant v. Seymour*, AP-02-26 (Me. Super. Ct., Pen. Cty., June 9, 2003) (where the court interpreted the phrase "administration of this ordinance" to include both decisions on permit applications and enforcement orders/stop

work orders); *Seacoast Club Adventure Land v. Town of Trenton*, AP-03-04 (Me. Super. Ct., Han. Cty., June 10, 2003); *Pepperman v. Town of Rangele*y, 659 A.2d 280 (Me. 1995) (where it was held that the appeals board decision was advisory because the enforcement section of the ordinance did not provide for an administrative appeal of an enforcement order and because the administrative appeal section limited the board's authority to recommending that the CEO reconsider the decision being appealed if the board disagreed with the CEO's decision); *Herrle v. Town of Waterbor*o, 2001 ME 1, 763 A.2d 1159 (where the court concluded that, under the language of the ordinance, the board of appeals decision was purely advisory regarding violation determinations of the CEO and therefore was not subject to judicial review); *Salisbury v. Town of Bar Harbor*, 2002 ME 13, 788 A.2d 598 (holding that a decision to issue or deny a certificate of occupancy was appealable); *Farrell v. City of Auburn*, 2010 ME 88, 3 A.3d 385, and *Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, 9 A.3d 806 (holding that the appeals board's decision related to the appeal of an enforcement order was advisory and not appealable based on language in the ordinance).

In 2013, the Legislature amended the law governing appeals to a board of appeals to provide that notices of violation and enforcement orders by a CEO under a land use ordinance are appealable to the board of appeals and in turn to Superior Court, unless the ordinance expressly provides that these decisions are advisory or may not be appealed (30-A M.R.S.A. § 2691(4)). This amendment was intended to address the issues in *Eliot Shores* and *Farrell* and to allow appeals of decisions that affect the property interests of landowners [L.D. 1204, Summary (126th Legis. 2013)]. ~~The statute now reads as follows: "Any municipality establishing a board of appeals may give the board the power to hear any appeal by any person, affected directly or indirectly, from any decision, order, regulation or failure to act of any officer, board, agency or other body when an appeal is necessary, proper or required. No board may assert jurisdiction over any matter unless the municipality has by charter or ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or non-action may be appealed to the board. Absent an express provision in a charter or ordinance that certain decisions of its code enforcement officer or board of appeals are only advisory or may not be appealed, a notice of violation or an enforcement order by a code enforcement officer under a land use ordinance is reviewable on appeal by the board of appeals and in turn by the Superior Court under the Maine Rules of Civil Procedure, Rule 80B. Any such decision that is not timely appealed is subject to the same preclusive effect as otherwise provided by law. Any board of appeals shall hear any appeal submitted to the board in accordance with Title 28-A, section 1054."~~ The Maine Supreme Court decision in *Dubois Livestock, Inc. v. Town of Arundel*, 2014 ME 122, 103 A.3d 556, discusses section 2691(4). *Dubois* acknowledges that section 2691(4) was amended and that it expressly authorizes appeals to Superior Court from a board of appeals decision on an appeal of a notice of violation issued by a code enforcement officer. See also, *Paradis v. Town of Peru*, 2015 ME 54, 115 A.3d 610; *Raposa v. Town of York*, 2019 ME 29; 204 A.3d 129. In *Raposa*, the Court held that a CEO's written decision interpreting a land use

ordinance is appealable to the board of appeals, even when the CEO finds that there is no violation of the ordinance. The Court noted a decision that an ordinance has not been violated is a legal determination (and not merely advisory), which often determines the use and value of property. Until recently, landowners with property interests affected by these decisions had no remedy. A court will now probably find that these landowners may appeal a notice of no violation to a board of appeals, unless a local ordinance or charter provides otherwise. To the extent that *Herrle* and other cases cited above hold otherwise, they are overturned. See also, *Richert v. City of South Portland*, 1999 ME 179, 740 A.2d 1000; *Toussaint v. Town of Harpswell*, 1997 ME 189, 698 A.2d 1063. A municipality should be as explicit as possible in its ordinance regarding the extent to which it wants a CEO's notice of violation, stop work order, cease and desist order, or similar type of enforcement notice to be appealable in order to eliminate any confusion.

Page 61. Delete the heading **Appeal of Failure to Enforce** and subsequent paragraph.

~~**Appeal of Failure to Enforce**~~
~~The court will allow a person with legal standing to file a direct legal challenge in court where a municipality refuses to bring an enforcement action because it believes that the ordinance is not being violated. *Richert v. City of South Portland*, 1999 ME 179, 740 A.2d 1000; *Toussaint v. Town of Harpswell*, 1997 ME 189, 698 A.2d 1063.~~

Pages 62 and 63. Amend the second and third paragraphs under the heading **Appeal to Court** as follows:

The Maine Supreme Court addressed the issue of what constitutes a "final decision" that may be appealed to court in *Bryant v. Town of Camden*, 2016 ME 27, 132 A.3d 1183. ~~This must be determined in the context of the municipality's particular ordinance(s) and what approvals are needed under those ordinances before a project may be conducted. Legislation is being proposed during the 2017 legislative session in an effort to clarify when a decision in "final."~~ In this decision, the Court expressed frustration with an ordinance provision that authorized an appeal of "any" municipal land use decision (noting that this results in a process that is "inefficient, time-consuming and expensive") and held that municipalities do not have any home rule authority to override judicial authority to decide when a decision is appealable. In response to this decision, the Legislature amended the laws governing appeals of municipal land use decisions to clarify what constitutes a "final decision" that may be appealed to court. P.L. 2017, ch. 241, § 3. A final decision is now defined as "when a project for which approval is requested has received all required municipal administrative approvals by the [local appeals] board, planning board, or municipal reviewing authority, a site plan or design review board, a historic preservation review board an any other review board created by municipal charter or ordinance." 30-A M.R.S.A. § 2691(H). Any denial of a request for approval by the board of appeals is also considered a final decision even if other municipal administrative approvals are required for the project and remain pending.

Local land use decisions that satisfy the definition of "significant municipal land use decision" found in 30-A M.R.S.A. § 4481 may be appealed either by filing a complaint in the general Superior Court docket or in the "Business Court" docket pursuant to 30-A M.R.S.A. § 4482. A party may not file an appeal of a significant municipal land use decision, if the decision is by a board of appeals, until the decision is a final decision pursuant to § 2691, as discussed above. 30-A M.R.S.A. § 4482(3).

Pages 67. Amend the first paragraph under the heading **Nature of Review–*De Novo* vs. Appellate** as follows:

The Maine Supreme Court has held that 30-A M.R.S.A. § 2691 requires a board of appeals to conduct a *de novo* review of an appeal, unless the municipal ordinance explicitly directs otherwise. *Stewart v. Town of Sedgwick*, 2000 ME 157, 757 A.2d 773; *Yates v. Town of Southwest Harbor*, 2001 ME 2, 763 A.2d 1168; *Gensheimer v. Town of Phippsburg*, 2005 ME 22, 868 A.2d 161. In 2017, the Legislature amended § 2691 to codify these decisions. P.L 2017, ch. 241, § 1. The law now specifically provides that a board of appeals must conduct a *de novo* review of any matter before it, unless the municipality provides otherwise by charter or ordinance. If a charter or ordinance establishes an appellate review process, the board of appeals must limit its review to the record established by the board or official whose decision is the subject of the appeal and to the arguments of the parties. No new evidence may be accepted.

In a *de novo* review proceeding ~~This means that~~the board of appeals steps into the shoes of the original decision-maker and starts the review process from scratch, holding its own hearings, creating its own record, and making its own independent judgment of whether a project should be approved based on the evidence in the record which the board of appeals created…

Pages 84 and 85. Amend the paragraph under the heading **Recording Requirement** as follows:

State law (30-A M.R.S.A. § 4353 and § 4406) requires the board of appeals and the planning board to prepare a certificate which can be recorded in the Registry of Deeds and provide it to the applicant for recording whenever they grant a zoning variance or a subdivision variance or waiver. A sample zoning variance certificate and a copy of the law are included in Appendix 4. To be valid, zoning variance certificates must be recorded within 90 days of the decision. Subdivision variances or waivers must be recorded within ~~90 days~~two years of final approval of the plan…

Page 112. Add the following sentence to the end of the paragraph under the heading **Docks; Related Easements**:

For easements or rights-of-way leading up to or touching a water body established after January 1, 2018, the owner of the easement or right-of-way does not have the right by implication to construct a dock on the easement or use the easement to facilitate the construction of a dock on a water body, unless the easement expressly includes those rights. 33 M.R.S.A. § 459.

Page 133. Replace the **Appeal and Variance Provisions from DEP Model Shoreland Zoning Guidelines (2006 edition)** with the 2015 edition as follows.

Appeal and Variance Provision from DEP Model Shoreland Zoning Guidelines (~~2006~~ 2015 Edition)

Section 16(H). Appeals

(1) Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:

(a) **Administrative Appeals**: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

NOTE: Whether an administrative appeal is decided on an "appellate" basis or on a "de novo" basis, or whether an enforcement decision is appealable to the board of appeals, shall be the decision of the municipality through its specific ordinance language. The Department is not mandating one alternative over the other. If a municipality chooses appeals procedures different from those in Section 16(H), it is recommended that assistance be sought from legal counsel to ensure that the adopted language is legally sound.

(b) **Variance Appeals**: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(2) **Variance Appeals**. Variances may be granted only under the following conditions:

(a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

(b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

(c) The Board shall not grant a variance unless it finds that:

(i) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

(ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

a. That the land in question cannot yield a reasonable return unless a variance is granted;

b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

c. That the granting of a variance will not alter the essential character of the locality; and

d. That the hardship is not the result of action taken by the applicant or a prior owner.

(d) Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals, or the codes enforcement officer if authorized in accordance with 30-A MRSA §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to Sections 16(H)(2)(f) and 16(H)(4)(b)(iv) below.)

(e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

(f) 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.

(3) **Administrative Appeals**

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(4) **Appeal Procedure**

(a) **Making an Appeal**

(i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

(ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:

a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.

b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

(iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

(iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) **Decision by Board of Appeals**

(i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.

(ii) The person filing the appeal shall have the burden of proof.

(iii) The Board shall decide all administrative appeals and variance appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

(iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. 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. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

(5) **Appeal to Superior Court**. Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

(6) **Reconsideration**. In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement

officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

Page 137. Delete **30-A M.R.S.A. § 2691**.

Page 143. Amend the **"Right to Know Law" Information Packet** as follows:

The packet includes:

- A multi-page memo discussing a variety of issues.
- A copy of the law (1 M.R.S.A. § 401 et seq.)
- A link to the state FOAA website.
- Executive Session Citation Guide
- An article entitled "The Devil's in emails: How to manage FOAA requests" from the May 2016 *Maine Town & City*.
- ~~An article entitled "Right to Know" from the November 1990 Maine Townsman magazine.~~
- Miscellaneous *Maine*~~Townsman~~ *Town & City* Legal Notes regarding email, executive sessions and other issues.

Page 324. Add the following to the "Editor's Note" at the end of the appendix item entitled **"Expanding Nonconforming Structures Revisited," "Legal Notes," *Maine Townsman*, December 1998**:

[Editor's Note: The DEP model shoreland zoning guidelines now include a definition of "increase in nonconformity" that addresses the *Lewis* decision.~~]~~ State law has also been amended to eliminate the 30% rule discussed in this article see 38 M.R.S.A. § 439-A.]

Page 325. Add the following article to **Shoreland Zoning News, DEP- Bureau of Land Quality Control-Tracking Expansions of Non-conforming Structures**:

Maine DEP "Shoreland Zoning News"
Spring 2017, Vol. 30, No. 1

Municipal Choices Under the Nonconforming Structures Expansion Section

In 2015 the Department amended the Municipal Shoreland Zoning Guidelines (Chapter 1000) in an effort to bring the guidelines into compliance with 38 M.R.S. § 439-A (4), which was amended in 2013. One primary amendment in Title 38 M.R.S. § 439-A (4), Setback requirements, commonly referred to as the Expansion Provision, no longer permits the old "30% expansion rule" that allowed nonconforming structures in the Shoreland Zone to expand by 30% of the floor area and volume. The legislature replaced that language with new expansion limits for nonconforming structures that are based on square footage and height. We introduced the new provisions in the summer 2014 Shoreland Zoning News.

The new provisions limit footprint by square footage or percent, whichever allows for more expansion. Including both limitations would provide landowners with the choice of which limitation to apply to their property. Municipal officials may choose to include only one of the limitations, either square footage or percent. This would be more restrictive on the landowner, but simpler for municipal officials to administer and enforce.

Many municipalities continue to use the old "30% rule" even though the law requires municipalities to adopt "ordinances that are consistent with or are no less stringent than the minimum guidelines" 38 M.R.S. § 438-A (2).

The Department strongly urges these municipalities to amend local ordinances in a manner that is consistent with current state law. Consistency between local ordinances and state law will provide clarity to property owners and code enforcement officials, which will in turn reduce the likelihood of costly legal disputes. Additionally, in the event the "old 30% rule" is less restrictive than 38 M.R.S. § 439-A (4), municipalities run the risk of violating 38 M.R.S. § 443-A(3).

The Chapter 1000 Guidelines must be modified for local adoption. Shoreland zoning staff is available to assist municipalities with this process. Ordinances must be approved by the Department in order to become effective, and the Shoreland zoning staff urges municipalities to contact us early in the amendment drafting process.