



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

September 20, 2016

Heather McNally, CEO
Town of Windham
8 School Road
Windham, Maine 04062-4899

Subject: APPROVAL #53-2016, Shoreland Zoning Ordinance Amendments

Dear Heather,

Please find enclosed a copy of Department Order #53-2016, approving the shoreland zoning amendments to the Town of Windham Shoreland Zoning Ordinance, as adopted on July 26, 2016. The amendments comply with State minimum shoreland zoning requirements.

The Department appreciates the Town's significant efforts to bring the Ordinance into compliance with the 2015 State guidelines. Should you or other Town officials have any questions, please contact me at 822-6328.

Sincerely,

Mike Morse
Assistant Shoreland Zoning Coordinator
Bureau of Land Resources

enclosed: Department Order #53-2016

cc: Planning Board
file



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF WINDHAM) MANDATORY SHORELAND ZONING ACT
CUMBERLAND COUNTY)
SHORELAND ZONING ORDINANCE)
ORDER #53-2016) APPROVAL

Pursuant to the provisions of 38 M.R.S. §§ 435-448, the *Mandatory Shoreland Zoning Act* ("Act"), and the Maine Department of Environmental Protection's *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 C.M.R. ch. 1000 (amended January 26, 2015) ("Guidelines"), the Department of Environmental Protection has considered the request for approval of the Town of Windham Code (Ordinance), as amended on July 26, 2016, and FINDS THE FOLLOWING FACTS:

1. The Act requires municipalities to establish zoning controls in areas within 250 feet of the normal high-water line of great ponds and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the Guidelines. 38 M.R.S. §§435 & 438-A.
2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendment to that ordinance, is effective, it must be approved by the Commissioner of the Department of Environmental Protection ("Commissioner"). The Commissioner may approve, approve with conditions, or deny the ordinance or amendment. If denied, or approved with conditions, such action must be preceded by notice to the municipality. If the Commissioner fails to act within 45 days of receipt of the ordinance or amendment, then the ordinance or amendment is automatically approved. 38 M.R.S. § 438-A.
3. On August 12, 2016, the Town of Windham submitted amendments to its Ordinance as adopted on July 26, 2016 to the Department for review. The amendments make extensive revisions throughout the Ordinance, including minor corrections and clarifications, as well as substantive changes in standards including, but not limited to: expansion of nonconforming structures, shoreline stabilization projects, hazard and storm-damaged tree removal, revegetation requirements, and associated definitions. The submitted amendments purport to update the Ordinance to bring it into compliance with the Guidelines as amended on January 26, 2015.
4. The Department's review of the submitted amendments determined that the Ordinance is consistent with the Act and the Guidelines, as amended on January 26, 2015.

BASED on the above Findings of Fact, the Commissioner makes the following CONCLUSION:

TOWN OF WINDHAM) MANDATORY SHORELAND ZONING ACT
CUMBERLAND COUNTY)
SHORELAND ZONING ORDINANCE)
ORDER # 53-2016) APPROVAL

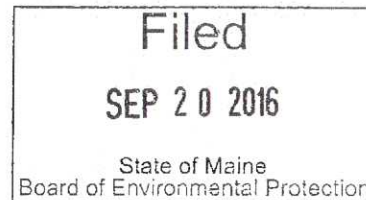
1. The Town of Windham has adequately met the requirements of the Act, and the Ordinance is consistent with the Guidelines.

THEREFORE, the Commissioner APPROVES the ordinance, as amended on July 26, 2016.

DONE AND DATED AT AUGUSTA, MAINE, THIS 19TH DAY OF SEPTEMBER, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Paul Mercer*
For: Paul Mercer, Commissioner



PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.



DEP INFORMATION SHEET

Appealing a Commissioner's Decision on a Shoreland Zoning Ordinance

Dated: April 2013

Contact: (207) 287-2811

SUMMARY

There are two methods available to a municipality seeking to appeal a shoreland zoning ordinance decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board), or (2) in a judicial process before Maine's Superior Court.

This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 Maine Revised Statutes Annotated (M.R.S.A.) § 438-A(3); & 38 M.R.S.A. § 341-D(4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

APPEAL PERIOD TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. An appeal filed after 30 calendar days will be rejected.

SUBMITTING AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a shoreland zoning ordinance decision must also send the documents to the DEP's Commissioner. All the information listed in the next section must be submitted at the time that the appeal is filed. Evidence that is not in the DEP's record at the time of the decision may be offered as part of an appeal for consideration by the Board only as described at the end of the following section.

INCLUDE IN THE APPEAL PAPERWORK

The documents constituting an appeal must contain the following information at the time submitted:

1. Aggrieved Status. Standing to maintain an appeal requires the appellant to show they are submitting the appeal on behalf of the municipality subject to the Commissioner's decision and to show the municipality is particularly injured by the Commissioner's decision.

2. The findings, conclusions or conditions objected to or believed to be in error. Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. The remedy sought. This can range from reversal of the Commissioner's decision on the shoreland zoning ordinance to changes in specific conditions imposed on the shoreland zoning ordinance.
4. The basis of the objections or challenge. If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
5. All the matters to be contested. The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. Request for hearing. The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. New or additional evidence to be offered. The Board may allow new or additional evidence as part of an appeal only when the person seeking to supplement the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the ordinance review process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for new or additional evidence are found in Chapter 2, Section 24(B)(5)

OTHER CONSIDERATIONS

1. Be familiar with all relevant material in the DEP record. A municipal shoreland zoning file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. Be familiar with the regulations and laws under which the shoreland zoning ordinance was processed, and the procedural rules governing your appeal. DEP staff will provide this information upon request and answer questions regarding applicable requirements.
3. The filing of an appeal does not operate as a stay to any decision. A municipality proceeding with shoreland zoning matters pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

AFTER A TIMELY APPEAL HAS BEEN FILED WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP shoreland zoning staff member assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as new or additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal a final Commissioner or Board decision to Maine's Superior Court, see 38 M.R.S.A. § 346(1); Chapter 2, section 26; 5 M.R.S.A. § 11001 *et seq.*; &

MRCivP 80C. Parties to the shoreland zoning ordinance decision must file a petition for review within 30 days after receipt of notice of the Commissioner's or Board's decision. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal. The filing of an appeal or a petition for reconsideration to the Board is not a prerequisite for a judicial appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, and for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
