

# CREATING USER FRIENDLY LAND USE ORDINANCES AND PROCEDURES

## TECHNICAL BULLETIN #3

### Table of Contents

	<u>Page</u>
Purpose.....	1
Introduction .....	1
Basic components of a user friendly ordinance .	3
1. Keep it Simple .....	4
2. Format & Style.....	4
3. Table of Contents & Cross References..	5
4. Text Organization .....	6
5. Goal & Purpose Statements.....	6
6. Review Criteria .....	7
7. Application Forms.....	7
8. Pre-Review applications.....	8
9. Availability of Ordinances & Maps.....	9
10. Accurate Maps .....	9
11. Prescriptive & Performance Standards.	10
12. Comprehensive Plans .....	10
13. Ordinances Should Further the Stated Purpose & Goals .....	11
14. Variances & administrative Appeals.....	11
15. Regulations & Prohibitions .....	12
16. Volunteer & Part-Time Ordinance Administration .....	12
17. Incentives .....	13
18. Revisions & Amendments .....	13

### Purpose

The purpose of this technical bulletin is to provide some insights, ideas and suggestions on how to develop user friendly land use ordinances and procedures. The hope is that the ideas presented in the bulletin will initiate a discussion among planning boards, municipal officials and the public on ways local laws can be improved for the benefit of the community.

The information provided deals with issues of format, style, language and equality rather than specific types of land use options or regulations. The content of any land use ordinance is dependent upon the comprehensive plan and the needs and concerns of the local community.

The goal is to provide the reader with the skills and insight necessary to organize a fair and relevant ordinance.

### Introduction

The recent debate in both the Congress and the Maine Legislature over property rights, government taking, and over-regulation is a good reason to initiate discussion about User Friendly Land Use Ordinances and other related Laws and Regulations. Included within this category are the following: Zoning and Land Use Maps; Performance Standards; Site Review and Subdivision Ordinances; Environmental Regulations Shoreland Zoning; Application Procedures; Permit Requirements; Building Ordinances; and any other Land Use or Zoning Document.

Continued on Page -2-

This technical Bulletin was written by Kennebec Valley Council of Governments (KVCOG) with funds provided by the State Planning Office. KVCOG serves the planning and economic needs of Kennebec, Somerset and portions of Waldo County and is located at 17 Main Street, Fairfield, Maine 04937. KVCOG can be reached by calling (207) 453-4258 or in state at 1-800-731-5019.

## Introduction Continued from Page 1

While concern about the fairness of zoning and land use regulations is a timely reason to raise the issue of User Friendly laws and regulations it is by no means the most important. The single most important reason for developing land use documents that are easy for the public to use is that it will enhance compliance with out laws and regulations. Another major reason is that they will be easier to understand and enforce by Planning Boards, Planners and Code Enforcement Officers.

The Term User Friendly is a recent and widely used addition to government terminology and perhaps it has been over-used to a point that its meaning is somewhat unclear. We shall define the term for our purposes as follows:

User Friendly Land Use Documents shall mean: laws, regulations, procedures and associated maps that are designed and written in a clear and precise manner in order to communicate necessary land regulatory information to a non-technical audience. The primary focus is to present all necessary information in such a manner that allows the reader or user to comply with the stated goals and objectives of the document with a minimum of outside technical assistance.

The definition appears fairly basic and some might even say that most land use ordinances already fulfill the qualification. However, we should first look at some of the problems with many existing land use ordinances.

Compare your ordinance and procedures with some of the following common failings:

- ✓ Whenever an applicant inquires about a regulation or requests a copy of an ordinance, town staff makes a mad scramble to locate a copy of the most recent version.
- ✓ Only one or two land use zoning maps exist and none are easily accessible to the public.

- ✓ The zoning or land use map does not show property boundary locations.
- ✓ Land use inquiries made at the Town Office are routinely passed on to other town officials who are not always available to answer questions
- ✓ Permit applications are handed out to the public without any explanation or an offer to assist the applicant with understanding the permit submission requirements.
- ✓ The Code Officer and/or Planning Board frequently find that applications are incomplete. Often multiple review sessions are required in order to attain a complete application.
- ✓ The ordinance is poorly organized and is numbered or divided in a very confusing manner. The user is often unable to distinguish when one section ends and another begins. It is also difficult to physically locate all the sections of the ordinance that apply to the particular project.
- ✓ The ordinance lacks a Table of Contents or an Index.
- ✓ Definitions are lacking or troublesome terms are not defined.
- ✓ The criteria upon which the Code Officer or the Planning Board makes their decision to approve or deny a permit are poorly written or are vague. Often times the applicant is unaware that the application submitted in being judged by certain standards.
- ✓ Standard application forms are not used and often the applicant is unsure if all the required information necessary for the permit is being submitted.
- ✓ The goal or purpose of the ordinance or sections of the ordinance are not explained

- ✓ The application is not reviewed for completeness prior to formal review.
- ✓ The Appeal process is not fully explained in the ordinance and the applicant is not told that they have a right to appeal a decision whenever a permit application is denied.
- ✓ The ordinance only relies upon the use of prescriptive standards.
- ✓ The text contains legal jargon, confusing language and out-dated terms.
- ✓ The information is presented primarily in standard paragraph form without the use of tables, lists, or other graphics.
- ✓ The Boards responsible for reviewing applications meet infrequently.
- ✓ Often simple projects or low impact developments are needlessly subject to lengthy reviews.
- ✓ Ordinances are simplistic or are very short. Often these documents raise more questions than they attempt to answer.
- ✓ Planning Boards or Code Enforcement Officers are often required to make important interpretations of the ordinance because the text does not provide sufficient information or guidance.
- ✓ Sections of the ordinance are inconsistent with other sections of the ordinance.
- ✓ Administrative procedures are not included or are vague.
- ✓ Decisions of the Planning Board are often appealed
- ✓ Standards are out-dated or do not include new land use practices.
- ✓ Application reviews often drag on for months due to incomplete applications or problems over ordinance interpretation.

- ✓ The Board of Appeals deals with a high number of variance appeals.
- ✓ The review boards are often confused about voting procedures or other administrative issues.

If some of these examples appear to match situations in your community, then continue reading for some information, tips and suggestions that can help you address some of these problem areas.

Before proceeding with an explanation of how to design a more user friendly ordinance, it will be useful to list the basic components of what makes up a user friendly document. The following 10 items should be incorporated in each ordinance:

#### Basic components of a User Friendly Ordinance

1. The language of the ordinance is understandable by a non-technical audience.
2. The text should be efficiently organized.
3. Goals and purposes should be clearly laid out.
4. Application procedures and review criteria should be clear, timely and relevant.
5. Pre-review or application assistance should be offered to applicants.
6. Appropriate officials should be available to answer questions.
7. Maps should provide accurate and useful information.
8. Performance rather than prescriptive standards should be used whenever possible.
9. Laws and regulations should be based upon a comprehensive plan and both the plan and the ordinances should be reviewed and updated on a regular basis.
10. Laws and regulations should be written to accomplish the desired results.

## 1. Keep it Simple.

Keeping things simple has long been a goal of many ordinance writers; however, many times this has been accomplished by brevity. We have all seen one or two page ordinances that attempt to address complex issues only to create more questions than they answer. The users of such ordinances are then required to interpret the law with little guidance from the text. This situation leads to vague or arbitrary decision which creates an environment ripe for lawsuits.

The first item to keep in mind is that “keeping it simple” is a noteworthy goal; however, the final length or number of pages is not the appropriate criteria for determining if you have met this goal. I would like to propose that, on the contrary, most simple and understandable ordinances contain more pages than their counterparts. The following example should illustrate this point.

The computer age, along with E-mail and the internet, has forced those of us with fond memories of such archaic instruments as slide rules and manual typewriters to learn to function in the silicon chip era by painstakingly learning our new skills from software instruction manuals. The authors of these manuals usually make the mistaken assumption that they are explaining their software to fellow computer programmers instead of the computer illiterate. Instructions provided in the manuals require my pre-silicon chip associates to re-read each item and plod slowly through until we finally master how to turn on the machine and then promptly toss the manual out, too frustrated to proceed any further.

Not that long ago such a situation would have sealed our fate and kept us members of the computer illiterate class until manual book began appearing on the market with names such as computers for dummies and other similar titles. These new manuals offered explanations and instructions geared for a very non-technical audience.

One of the key differences between the original software manuals and these new books is their size. The original manuals are well written technical documents that can communicate to their audience all the necessary information in 100 pages. These newer non-technical books may take 300 pages to accomplish the same task. A technical audience would not need each and every step explained; however, a non-technical audience would be lost without this type of guidance.

A similar situation exists in the area of land use planning when laws and regulations are designed and written for a technical audience of planners, engineers, lawyers and Code Enforcement Officers instead of the general public. While many of the above listed parties regularly use land use documents, these ordinances impact all the citizens of a community and as such should be written for their use. Another important issue to keep in mind is that in most towns, planning boards are not made up of professional planners but rather represent a cross section of the general community.

## 2. Formatting and Style

The language and the style of the ordinance are extremely important issues if your aim is to communicate information to the general public. The excessive use of legal jargon, technical terms, words with double meanings, and complex sentence structures should be avoided. Your writing style should be simple and direct, comprised of short precise sentences with ample use of lists and tables. Some other important items to consider are the following.

- ✓ Terms used in various parts of the ordinance should be consistent. An example would be to refer to all public ways as roads instead of calling them streets in the subdivision section and roads in the performance standards.
- ✓ The font should be at least a number 12. Smaller fonts may be considered based

upon your word processing capabilities however keep in mind all those readers over the age of 40.

- ✓ The recommended page size is 8 ½ by 11 with portrait style printing. Portrait printing is how this document is arranged and differs from landscape printing which has the print run along the long side of the page. Combining these two styles should be avoided because it makes it difficult for the reader to follow text.
- ✓ Numbers should be expressed in the numerical presentation instead of writing them out. Double referencing should be avoided because it confuses the reader.
- ✓ Avoid the use of excessively large margins because it required the use of additional pages and forces the reader to turn more pages to gain information.
- ✓ Choose your paper color with photocopying in mind. The use of white paper stock is recommended because it can be clearly reproduced. Color stock may be used for title pages and section separations.
- ✓ Choose a numbering system that is easy to follow and quickly communicates to the reader the relationship of a paragraph or section to the rest of the document. A good example is to look at how some of the national building codes are organized.
- ✓ Design a system or method to note amendments to the text. Some ordinances indicate amendments at the bottom of each page; however a better way to do this is to incorporate an amendments page at the beginning of the text. This enables you to provide a little more information about the revision and it does not clutter up the bottom of the page. All amendments should be labeled with the date enacted.
- ✓ Organize and number the document in a manner that makes it easy to incorporate

future changes and revisions. A standard way to number pages of a document is to consecutively number each page from beginning to the end. This method poses a problem for fitting in future changes without re-printing the entire document or adding a dash and letter or number to the new pages. One option is to number each section separately so that the addition of new pages would be limited to only a portion of the document.

- ✓ Always begin a new ordinance section on the right side of the page. This will enable the reader to locate the new section faster.
- ✓ Provide a sufficient break or space between ordinance sections and sub-sections. This will keep the document from looking crowded and it will help the reader distinguish when a new section begins.
- ✓ Use the best quality printing and reproduction available. Faded or illegible text is hard to read and tends to frustrate the reader. If the document was written on a computer, you can take the disk to a professional service for printing.

### 3. Table of Contents, Index and Cross Reference

A well organized table of contents, index for key terms and cross references within the document are critical for designing a user friendly ordinance.

The table of contents should contain each important section and sub-section and care should be taken to make sure that correct page numbers are listed. The various sub-sections under each section heading should be properly indented so that the reader can quickly determine how it related to the entire document. The use of bold or larger print is recommended in order to make it easier for the reader to scan.

An index is another feature that will assist the reader to quickly locate a particular area or

topic within the ordinance. All key terms would include such things as: subdivisions, signs and building. Important issues would include such things as; drainage, erosion control, landscaping standards and non-conforming uses. The index should provide the appropriate page number rather than the section number.

Cross references are another important way to alert the reader to other sections of the ordinance that directly relate to a topic area or issue. This helps the reader locate all the applicable requirements that refer to a certain issue. An example would be to include a reference to clearing for development in shoreland zones in the ordinance section dealing with maximum lot coverage or destiny.

The use of application forms can further enhance the benefits of cross reference if the forms include a checklist or punch list that directs the applicant to check other sections of the ordinance to see if they apply to the project.

#### 4. Text Organization

The layout or organization of the ordinance will depend a great deal upon the size and complexity of the particular document. A comprehensive land use ordinance will need to be constructed much differently than, for instance, an ordinance that only addresses building permits or minimum, lot sizes. The State Planning Office and the Regional Councils can provide you with a number of ordinance examples which can assist you in finding a well organized document. As a general rule an efficient organized document will include the following:

- A. Related sections or topics will be grouped together.
- B. The application of each section will be listed and explained. This means that the reader will be told how and where the regulations contained in this section are meant to be used and enforced.

- C. Separate sections should be included for the following topics.
  - Non-conforming uses, structures and lots.
  - Administrative procedures.
  - Planning Board and other municipal board administration and regulations.
  - Performance standards.
  - Enforcement
- D. Consideration should be given to developing a unified ordinance which combines multiple review processes such as subdivisions and site review. This approach allows for combining the administrative process and performance requirements.

Another important item to consider when deciding upon the final organization of the ordinance is to make sure that a non-professional reviews the document for ease of understanding and use. This will alert you to problems that you will likely encounter when the ordinance is used by the public.

#### 5. Goal and Purpose Statements

Each major section of the ordinance should begin with a goal or purpose statement that communicates to the reader the overall intent and aim of the particular section. This technique can be used equally well for sub-sections of the ordinance. These statements allow the authors of the ordinance to inform the public of the philosophy or logic behind the regulations and standards of the section. It also serves an important function of allowing future users to gain an insight into why the law as written in a certain manner.

The goal or purpose statements do not have the same force of law as a particular standard. However they do serve to guide both the municipal official and the user toward a common understanding of why this regulation exists and how it was meant to be interpreted. It is important to note that the courts look very favorable upon such goals and purpose

statements because it provides insight into how this section of the law should be enforced and applied.

The length and format of the goal and purpose statement is up to the discretion of the ordinance authors. It should clearly communicate to the reader the context that the particular section should be viewed, enforced and applied.

## 6. Review Criteria

Each permit review process or requirement should contain clearly written criteria which list the items that the person or board reviewing the permit application will use to determine if a permit should be granted. The review process would include such item as: building permits, land use permits, shoreland zoning permit, subdivision permits, signs permits and use permits.

The review criteria should be based upon the particular goals of the ordinance and various subsections that apply to the permit. The criteria should attain the aims of the ordinance and the authors constantly ask themselves if meeting the criteria will further the goals of the ordinance. The criteria should be measurable and as objective as possible and based upon requirements contained in the ordinance. Requiring an applicant to meet storm water standards when they are not contained in the ordinance is unreasonable. Similarly, subjective statements that require an applicant, "to provide adequate storm water drainage" when the ordinance fails to supply quantifiable standards is also unreasonable.

The review criteria should be listed in a prominent place in the ordinance and it should likewise be included on the permit application for. It is also advisable to cross reference the review criteria with the applicable sections of the ordinance so that the applicant will know what specific regulations apply to their proposal.

The Code Officer and Planning Board should always refer to the review criteria when making their final decision on an application. This procedure is necessary in order to communicate to the public that all applications are reviewed and treated equally under the ordinance by a common set of standards.

## 7. Application Forms

The use of application forms for every type of permit is a perfect way to complement and enhance the goals and purposes of the ordinance. Application forms provide each applicant with a uniform and standard method for seeking permit approval. The forms should follow the particular requirements for each permit as established in the ordinance and the review criteria should also be included on the forms. The forms themselves do not have to become part of the ordinance, however, the ordinance should empower the Code Officer and/or the Planning Board to develop standard application forms.

Consider including the following elements into your application forms:

- ✓ Keep the forms simple and use a clean format free of fancy graphics.
- ✓ Clearly indicate on the form that the applicant must refer to the ordinance in order to check for all particular requirements that will apply to the proposal.
- ✓ The application should include a complete checklist of various design or development conditions and their appropriate references to ordinance requirements.
- ✓ Application procedures should be included within the application.
- ✓ The review criteria should be listed on the application with an explanation about how the reviewing body will use these criteria to evaluate the application.

- ✓ The form should explain any waiver procedure.
- ✓ The form should clearly explain the importance of submitting a complete application.
- ✓ The form should indicate a person or department responsible for answering any questions about the ordinance or application.

## 8. Pre-Review of Applications

Most applicants are intimidated by the permit application and approval process especially if it involves any sort of public presentation such as a Planning Board hearing. The anxiety caused by the application process is further complicated by the legal requirements inherent in any permit and review procedure such as sending out notification letters; placing ads in the newspaper and assembling application submission packages. Some of this apprehension by the public can be mitigated if a town official such as the Code Officer or Planning Board member is available to assist individuals with the application process.

Assistance can include explaining the procedure; going through the application and ordinance requirement; and explaining the importance of the review criteria. Many officials are wary of offering this type of assistance because they do not want to be put in a position of filing out the application for the applicant or designing their project for them. These concerns are valid. However they can be overcome if a policy is established that exactly sets forth the responsibility and limits of staff assistance. A good rule of thumb to use when offering this type of hands on assistance is to “explain the ordinance requirements and/or the application process in detail”, and do not cross the line by offering design assistance. Another tip is to offer multiple examples of how a person could potentially meet the requirements of the ordinance and strongly recommend the use of professional assistance when a project is complicated or

when the applicant lacks the skills to complete the application on their own.

The other component to the Pre-review assistance is to establish a procedure that requires a completeness check of the application before it is formally reviewed. This will ensure that all the appropriate information is provided and allow the review to proceed in a timely manner. The ordinance should also provide a definition of what constitutes a complete application and circumstances involving any waiver request.

A considerable amount of staff time and effort can be expended throughout the Pre-review process; however, the following benefits should be kept in mind:

- ✓ A beneficial public service is being offered.
- ✓ The pre-review process will increase compliance with the ordinance.
- ✓ The formal review process will become more efficient and timely.
- ✓ The public’s understanding about the ordinance will be increased.
- ✓ Public objections to the review process will be reduced.

Another issue which is implicit in our discussion about the importance of Pre-review assistance is that a knowledgeable official is available to answer questions about the ordinance and provide information about the process. Towns with full-time Code Officials or Planners are in the best position to offer this service; however, this service is not beyond the reach of most small towns. Smaller communities with part-time staff can be more creative in their approach. Some ideas that might help include the following:

- ✓ Publicize the days and times that the Code Official is available to meet with the public.
- ✓ Offer assistance before the start of a planning board meeting.

Consider having more than one planning board meeting a month especially during the construction season.

- ✓ Contact Regional Council to see if they could provide some types of assistance.
- ✓ Write a development guide which lists all the requirements and procedures necessary for obtaining a permit. Display the guide at the town officer and the library.

#### 9. Availability of Ordinances and Maps

An adequate supply of ordinances and maps should be kept on hand for both the use and purchase by the public. It is at times amazing how the public is expected to comply with land use and zoning regulations, yet public access to this information is limited, by not adequately displaying official maps or making it difficult to obtain copies of the laws and regulations.

Some things that could help this situation are the following.

- ✓ Provide copies of the official maps and all ordinances to the local library.
- ✓ Display the official maps in a prominent place at the town hall.
- ✓ Alert the public to availability of these documents in the town report, local newsletter or newspaper article and the town meeting.
- ✓ Consider including a copy of the ordinance with each permit application. The permit fee could cover the cost. Another option is to supply appropriate section of the ordinance depending upon the type of application.
- ✓ The ordinance could be made available to the public via the Internet or other similar computer network.
- ✓ Print adequate copies of the ordinance for future use.

- ✓ Offer various professionals with the community such as real estate firms and engineering and construction companies copies of the ordinance.

#### 10. Accurate Maps

Official Maps should be as accurate as possible and in most circumstances should be presented on a property boundary base map or other similar map that provide the user with an easy way to locate their property. All ordinances should also include rules for the interpretation of the official maps and assign responsibility to a municipal board for making official interpretations.

A general rule of thumb is that the most restrictive zoning, land use or overlay districts should be displayed on the most accurate map possible. The logic behind this rule is that the public should be provided with the most accurate maps possible. The logic behind this rule is that the public should be provided with the most accurate information whenever the use of their property is most limited. Implicit in this concept is that the accuracy of the map is a result of a comprehensive study of the particular circumstance that requires such a restrictive designation. The information used to create the highly restrictive designation should be referenced on the map or in the ordinance. The most highly restrictive land use designation for most Maine communities will be the Resource Protection Zoning District contained in the Shoreland Zoning Ordinance.

Whenever official maps cannot be developed using Property Boundary Base maps, the following items should be considered:

- ✓ A narrative description of the boundaries should be included in the ordinance.
- ✓ Rules for locating and interpreting boundary lines should be developed.
- ✓ The ordinance should specify, in the event of a conflict, whether the ordinance or the maps take precedence.

- ✓ The map should refer the user to the ordinance for instruction on how to interpret boundary lines.
- ✓ The map should include a note which states that the information is for illustration only and site verification will be necessary to determine exact boundary lines.

## 11. Perspective and Performance Standards

All land use and zoning ordinances contain standards that instruct the user how to comply with the ordinance. These standards can be one or two basic types which are prescriptive or performance standards. A prescriptive standard is one which prescribes or directs the user to follow a specify action to comply with the ordinance. An example would be as follows:

- ✓ “All garages located within 10 feet of a property line shall have their walls constructed of 8 inch concrete blocks.”
- ✓ A double row of hay bales shall be placed on the down slope side of all disturbed areas. The bay bales shall be anchored in the ground with a wooden or metal stake.”
- ✓ “The maximum height of all structures shall be 50 feet.”

A performance standard established goals or end results that must be met by the user without exactly spelling out hoe it must be accomplished. An example would be as follows:

- ✓ “All garages located within 10 feet of a property line shall have walls and a roof within a minimum fire rating of 1 ½ hours.”
- ✓ “All disturbed areas shall be protected from erosion until a permanent vegetative cover is installed. All erosion control measures shall comply with the minimum standards contained in the Erosion and Control Handbook.”

- ✓ All new, enlarged or expanded structures shall not exceed the average height of all structures with 500 feet of the proposed structures.”

These examples illustrate the difference between theses two types of standards. The first example of the garage shows how the perspective standard requires the use of concrete block, while the performance standard allows the user to select the type of construction material as long as it meets a certain threshold. The other two examples also show similar differences and one can easily see that more choices are provided by the performance type of standard. There is however a drawback with using the performance standard because it does require additional work and research on the part of the applicant to find out what is a 1 ½ hour fire rated wall; what erosion control methods are contained in the Erosion Control Handbook; or what is the height of all the other structures win 500 feet of the proposed building.

The price of having choices as opposed to a set perspective standard is that the applicant will be required to perform additional research and so will the municipal reviewing official responsible for confirming that the proposal meets the performance standard/ The advantage of using the performance standard is that diverse situations and design problems are more easily addressed and the public is offered greater choice and freedom.

Despite the advantages of using performance standards, most communities will still rely upon prescriptive standards for some areas that have wide public consensus or that enhance the existing character of the community. Some examples could include setbacks, lot size, and road widths.

## 12. Comprehensive Plans

All land use ordinances should be developed as per the direction of a community’s comprehensive plan which is also a requirement of Maine law. The most important

reason for having the land use ordinance comply with the comprehensive plan is that it legitimizes a community's land use regulations in the context of its overall vision for the future direction of the municipality. The land use regulations are critical components of how a community wishes to direct future development and growth and as such need to fit harmoniously within the framework of the plan.

Another critical concept is that all comprehensive plans and likewise land use ordinances are essentially works in progress. The effects of global, regional, state and local changes will impact and change the needs, desires and goals of a community and as should the community's plan. The ability of a community to revise and adapt their plans and laws in response to changing times is a positive attribute that should be encouraged.

Land use regulations that most closely address current concerns and local issues will be the most widely accepted, as opposed to those ordinances that have not been updated. Land use regulations more than any other type of local law have the most profound affect upon the daily life of the average citizen and as such care, must be taken whenever changes are made. A certain degree of predictability develops over time with a body of law and along with this a feeling of comfort which will create a certain amount of resistance whenever changes are proposed.

The only adequate ways to address this issue us to make sure that the public is fully informed about the need for any ordinance change and that ample time is provided to collect public opinion and ideas. Another important factor is to ensure that any revision builds upon the ideas and approach of the existing ordinance. Radical departments form the style and scope of the exiting regulations will always be met with stiff opposition and in most cases this public displeasure is well founded.

### 13. Ordinances Should further the Stated Purpose and Goals

Careful consideration and analysis should be given to making sure that the end result of a regulation meets the intended purposes and goals stated in the ordinance. While this seems as an obvious concept it is on that is commonly violated by both professional and lay planners. Most communities have had the experience of being frustrated over the final outcome of a development project when it did not meet the intent of an ordinance even though the developer complied with all the ordinance requirements. This is a very difficult problem to overcome because no one has the ability to predict the future. Some of the following ideas can help reduce this situation from occurring:

- ✓ Develop a clear set of goals for a particular regulation.
- ✓ Locate ordinance examples from other communities that have situations or conditions that have situations or conditions that mirror your own community.
- ✓ Develop some hypothetical design scenarios using the proposed ordinance and see if the results match your intentions.
- ✓ Solicit advice and insight from developers or others that would be impacted by these regulations.
- ✓ Involve a wide variety of individuals in the ordinance writing process.
- ✓ Be willing to change or revise the regulation if it does not work as originally intended.

### 14. Variances and Administrative Appeals

Variances and administrative appeals are a necessary and important component to every land use ordinance. These provisions further the public's right to due process by allowing for consideration of hardship situations and for addressing potential abuses by municipal officials and boards. However frequent

variance and/or administrative appeals should alert planners to problems with the ordinance. A well written and relevant ordinance that is fairly administered should result in a low number of variance and administrative appeals.

Variations are designed for unusual circumstances and should be the exception rather than the rule. If a town is experiencing a high number of variance requests they should attempt to identify those sections or regulations in the ordinance that are causing the requests. Serious consideration should be given whenever possible to change the ordinance in a manner that would reduce or eliminate the need for a variance.

Administrative appeals are necessary to protect the public from arbitrary decisions on the part of municipal officials and boards. However if decisions are frequently appealed this should raise concerns about the ordinance procedures, readability of the ordinance, review criteria and board training. It is never easy to have a decision questioned or challenged, however it is important to objectively review the merits of each appeal and make changes in order to avoid future problems.

#### 15. Regulations and Prohibitions

The use of regulations to control or limit negative impacts of land use activities is preferable to outright prohibitions of a particular use or activity.

The prohibition of an activity or use should always be considered with caution and prudence. The decision to use prohibitions should be based upon solid reasons that can be supported by relevant data. There are certainly many valid reasons to completely ban some land use activities, such as environmental conditions, density, transportation issues, or pre-existing character and growth trends within the community.

While prohibiting some activities are necessary in many circumstances, it must be remembered that this does not allow any option for a town to consider unique development proposals that could provide beneficial opportunities to a municipality.

Some degree of regulation, in most instances, will adequately control the placement, design and operations of land use activities. Performance based standards can be used to provide flexibility and will successfully handle diverse and unique proposals. The disadvantage to relying upon regulations is that they take time and great deal of effort to develop and administer. This is in contrast to prohibitions which are easy to implement.

The hard work spent on developing well crafted regulations will result in an ordinance that provides flexibility and gives the public choices in how then can potentially use their property.

The following maxim is worthy to keep in mind:

“If it’s not a problem don’t regulate it. If it is a problem, only regulate to the extent necessary and only prohibit when it is in the best interest of the entire community.”

#### 16. Volunteer and Part-Time Ordinance Administration

Volunteer planning boards and part-time code officers are the norm or most Maine towns. Volunteerism is a strong Maine tradition; however, it does create a constant turn-over of municipal officials. The constant influx of new officials raises concerns about their training and knowledge of both local and State land use regulations.

Many towns seem to rely upon the knowledge and memory of a key person such as a board member to provide reliable interpretation of land use ordinances. This practice will work, however when that particular person leaves the board, all the accumulated knowledge also leaves as well. This over reliance upon a single

person or even a couple of persons to interpret ordinances is a dubious practice considering the high turn-over rate of officials and board members.

The following ideas and suggestions should be considered as a way to address this issue:

- ✓ Simple and well written ordinances will eliminate the need for frequent and complex ordinance interpretations.
- ✓ Revise the ordinance as necessary to reflect how the planning board commonly interprets the ordinance.
- ✓ Use alternate board members as a ways to provide hands-on training for future members.
- ✓ Regular board training should be a priority especially for new members.
- ✓ Provide new board members with a complete package of all the town maps and land use ordinances.
- ✓ Use the services of you regional council or council of governments to provide training and assistance with complex permit applications.

### 17. Incentives

All land use ordinances should take advantage of the use of incentives to further the goals of the ordinance; meet community wise goals and offer options to developers. An incentive gives benefits to a developer whenever they exceed a certain ordinance requirement or addresses a community goal such as recreation or affordable housing.

A common incentive found in many ordinances is the use of a density bonus which allows a developer to build more structures than would normally be allowed in exchange for meeting certain requirements such as setting aside land for recreation, constructing affordable housing or preserving open space.

### 18. Revisions and Amendment

Land use laws are works in progress and need to be up-dated and revised on a regular basis. The logistics of dealing with a document that is always being revised can be a nightmare unless it is designed to easily accommodate future changes. The following tips should help you to design the ordinance in a manner that will make it easy to amend and change in the future:

- ✓ The ordinance should be written on a word processor with software that allows for easy text editing.
- ✓ The final printed version should be designed to allow for the addition of new pages. The use of a loose leaf format is a perfect way to accommodate new pages.
- ✓ Always begin a new section on the right side of the page so it is easier to insert revisions.
- ✓ Consider leaving blank pages at the ends of each section for future additions.
- ✓ Page number each section separately by using the section number and then a consecutive page number such as; 1-1, 1-2, 1-3, and so on.
- ✓ Allow for the addition of new sections by leaving gaps between section numbers. Write the original ordinance with section numbers such as 10, 20, 30, etc. This will allow for future sub-sections additions of 11, 12, 13 etc.
- ✓ Insert a table at the beginning of the ordinance for listing the date and section number of amendments.