

Regulation #3

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SOUTH PORTLAND PLANNING BOARD

SUBDIVISION AND SITE PLAN APPLICATIONS

Purpose:

Several recent decisions of the Maine Supreme Judicial Court and newly enacted legislation have important implications for the review of proposed developments within the City of South Portland. This new regulation is intended to address subdivision and site plan review as these are affected by the court decisions and legislative changes.

1. Subdivisions – Definitions, Scope of Review

A “subdivision” shall mean a subdivision as defined in 30 M.R.S.A. §4956, as further interpreted in Town of York v. Cragin, Decision No. 4977, May 26, 1988 which is attached and partially quoted below:

“The statute provides that a subdivision is created when there is a ‘division of a tract or parcel of land into 3 or more lots.’ Although the statute deals comprehensively with methods of division (i.e., ‘sale, lease, development, buildings or otherwise’), the remaining language of the statute and our prior rulings require the splitting off of a legal interest to another and the division of a ‘parcel of land’ into lots...the division of a structure, as distinguished from the division of a parcel of land into lots, does not result in the creation of a subdivision...”

Lots of 40 or more acres shall be considered as lots for purposes of subdivision review in applications filed after April 19, 1988.

2. Subdivisions – Procedure to Modify “Subdivision” Applications:

All subdivision applications presently filed with the Planning Board and not yet given final approval or denial by the Board shall be reviewed by the Planning Director to determine if they are subdivisions within the meaning of 30 M.R.S.A. §4956. Those applications which do not fall within the statutory definition, as defined by the Law Court in Town of York v. Cragin, shall be returned to the applicant with instructions to resubmit the materials, appropriately designated, as part of a site plan application.

All subdivision approvals previously granted by the Board which are not subdivisions as defined by Cragin shall remain in effect and shall be treated as site plan approvals, thereby merging site plan and subdivision approvals into one "approval" decision. All procedural and substantive requirements which governed subdivision review and approval by the Board at the time will remain in effect, e.g., the developer will be required to complete public improvements pursuant to the Subdivision Ordinance, to post performance guarantees, to complete all conditions of approval, etc., as originally proposed and approved.

In any phased project which is not a "subdivision" within the statutory definition, the Board may clarify the type and status of the project in any subsequent decision on the project by making an appropriate finding of fact that the project shall be treated henceforth as a site plan development. A site plan application or application for amendment shall be governed by the site plan ordinance provisions in effect at the time of the application.

3. Site Plan Applications – Review

All subdivision applications presently on file which do not fall within the statutory definition of "subdivision" as interpreted by the Law Court shall be reviewed as site plan applications if such developments fall within the definition established in Chapter 27 of projects requiring site plan review. All materials provided for the pending subdivision application shall be deemed part of the site plan application materials.

Proposed condominium projects which fall under site plan review shall include as part of the application materials all relevant condominium documents previously required as part of the final subdivision application.

Design standards and other requirements established in the Code of Ordinances and applicable to sewers and drains, roadways and other improvements relating to residential and nonresidential subdivisions shall serve as guidelines for determining the adequacy of improvements proposed for residential and nonresidential site plan developments.

All approved site plan developments which include improvements as part of the design or conditions of approval shall be required to post performance guarantees.

The Board shall hold a public hearing on any application for site plan approval. At the time the proposal is reviewed by the Board, the chairman shall accept public comment on the project.

This regulation was adopted on June 28, 1988, pursuant to 30 M.R.S.A. §4956 (2) (B) and Ord. §2-116.