

Timothy J. Beidel

April 10, 2025

Penobscot Planning Board
Town of Penobscot
1 Southern Bay Road
Penobscot, ME 04476

My name is Tim Beidel. I've owned and lived at 15 Bayview Road for over two years. It's the property downhill from the proposed apartments, marked as "Land of Constance M. Bridges" in the application.

At this stage, I'd like to raise seven concerns.

1. Protecting groundwater, as required by our Subdivision Ordinance, Land Use Regulations, and Comprehensive Plan.
2. Protecting Northern Bay, as highlighted in our Aquaculture Ordinance, Land Use Regulations, and Comprehensive Plan.
3. Designating the proposed sewage disposal system as "Replacement System," which relaxes health and safety standards to encourage dismantling of overboard discharge systems, as defined by Maine's Subsurface Wastewater Disposal Rule.
4. Requiring the developer to install and meet state standards for an "engineered system" because the combined sewage flow will exceed 2,000 gallons per day in Phase 1 on land the Comprehensive Plan describes as having solid with "very limited" suitability for dwelling construction.
5. Imposing conditions to mitigate negative impacts and reflect the stated goals in our ordinances, state law, and comprehensive plan for any plan approval.
6. Recognizing that there is no cause for "undue hardship" variances.
7. Defining "workforce housing" for this project.

1. Protecting of ground water

Soon after I moved into 15 Bayview, I learned that some decades ago a nursing home sewage spill flooded the basement of my home.

Naturally, I am deeply concerned about protection of my own well and property from sewage contamination. I'm also concerned about depleting my well water.

Fortunately, state law and our town's rules and regulations support that concern. Virtually all our ordinances, regulations, and the comprehensive plan make protecting water and safely disposing of sewage Job 1.

For example, the first item in the first section of Penobscot's Subdivision Ordinance states that a proposed subdivision "will not result in undue water or air pollution", and three more items in that "Purpose" section deal expressly with protecting water and safely disposing of sewage. Moreover, the ordinance calls on the planning board to 'affirmatively determine' that the development meets environmental safety standards.¹

In addition, the first section of Penobscot's Land Use Regulations refers to preventing and controlling water pollution, and lists as "expected impact" factors "Pollution of air, water and land erosion control," "The effect on irreplaceable natural resources, areas, historical sites or buildings and natural beauty," and "The probable impact on water supplies, bodies of water and water tables."²

- I appreciate the board's ongoing attempt to affirmatively determine - rather than passively accept - that the property can be safely developed.
- In order to meet the "affirmatively determine" standard, I believe it is necessary for the town to hire an independent consultant or consultants to expertly assess the sewage disposal plan and the impact of the development on groundwater supply.

2. Protecting Northern Bay

A proposed leach field is very close to a drainage culvert that is a direct tributary to Northern Bay. That culvert flows between 19 and 29 Bayview Road, and water is flowing through it pretty heavily this week.

A failure of the nursing home's overboard discharge system once resulted in a spill directly into the bay, routed through that brook.

The safety of this development is not just a concern for the development's downhill neighbors. Protecting the bay is the town's official legal position, as outlined in our ordinances.

Among the ways the town has committed to protecting and restoring the bay are to "protect and manage critical habitat and natural areas of local, state, and national significance and maintain[ing] the scenic beauty and character of the coast even in areas where development occurs", and to "restore and maintain the quality of our fresh, marine, and estuarine waters to allow for the broadest possible diversity of public and private uses."³

¹ See Attachment 1

² See Attachment 2

³ See Attachment 3

A significant amount of public and private money has already been spent to restore it.

Despite these efforts, a previously-opened section, Hutchins Cove, had to be closed again last year due to pollution.⁴

- We should take great care as a town to prevent moving backward when it comes to cleaning up Northern Bay.
- No matter your decision, your Findings of Fact should include an accounting or estimate of how much has been spent to restore and protect the Bay, not only by the federal, state and town government, but by private landowners as well who have been required to replace their septic systems.

3. Replacement System designation

The state defines a replacement system as one designed to replace “an existing system, an overboard discharge, a malfunctioning system, or any legally existing, nonconforming subsurface wastewater disposal system, without any increase in design flow.”

Through the abandonment and ownership changes of the nursing home, the dismantling of the old overboard discharge system, and now this plan for an entirely different use for the property, it is hard to see that any “existing system” exists.

The town should also determine if the developer has received any advice from DEP or CDC about the new septic system. In its publication, “DEP ISSUE PROFILE: Overboard Discharges (OBDs)” the state writes:

“Prior to transfer of ownership of property containing an OBD, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with Maine plumbing standards. The evaluation must be based on documentation from a licensed site evaluator who has demonstrated experience in designing replacement systems for OBDs. ...

Questions regarding the requirements of Maine law and rule should be directed to DEP staff before finalizing any agreements on property transfers involving OBDs.” [Emphasis mine]⁵

I asked the state for any records of communications with prior, prospective or the new owner of the property, and the only record they provided was for a proposed new system in 2008 that was apparently never pursued.

- Have any of the prior, prospective, or current owners received any advice or communications from the Maine Department of Environmental Protection (DEP), Maine Center for Disease Control and Prevention (Maine CDC), Division of

⁴ See Attachment 4

⁵ See Attachment 5

Environmental Health, or any Licensed Plumbing Inspector from Penobscot? If so, what was it?

- Any Findings of Fact should include whether the system is determined to be a first-time installation or a replacement system, and if deemed a replacement, identify exactly which safety standards have been relaxed when compared to those for a first-time installation.

4. Engineered System

The State of Maine Subsurface Wastewater Disposal Rule consistently differentiates systems designed to dispose of more than 2,000 gallons per day⁶ from those for a typical residential system.

Given the poor quality of the soils (as identified by the Comprehensive Plan⁷) and the easy access to the Bay, the town should require an Engineered Disposal System and the greater standard of performance that requires. State law points out that “[t]he size and/or complexity of engineered systems require that analysis, design construction, operation, and maintenance be undertaken at a level that is higher than the minimum requirements for small residential systems.”⁸

- Given the challenges posed by the site, the board should require a “state of the art” system as outlined in the State of Maine Subsurface Wastewater Disposal Rule for Engineered Systems.

5. Impose Conditions to mitigate negative impacts

The Maine Municipal Association states that a “planning board has inherent authority to attach conditions to its approval of an application. ... Any conditions imposed by the board on its approval must be reasonable and must be directly related to the standards of review governing the proposal.”⁹

Our own Land Use ordinance also allows imposing conditions “to ensure the conformity with the purposes and provisions of this ordinance.”¹⁰

- Substantial language in Penobscot’s ordinances and Comprehensive Plan should guide the board in imposing conditions necessary to protect the environment, the neighbors and the neighborhood.

⁶ See Attachment 6

⁷ See Attachment 7

⁸ See Attachment 8

⁹ See Attachment 9

¹⁰ See Attachment 10

6. Undue Hardship variance

While we all have a desire to see something happen with the abandoned nursing home, the Maine Municipal Association points out that the only factors to be considered by a planning board are our laws and regulations. From their “Manual for Local Planning Boards: A Legal Perspective”:

The board should not base its decision on the amount of public opposition or support displayed for the project. Nor should its decision be based on the members’ general opinion that the project would be “good” or “bad” for the community. Its decision must be based solely on whether the applicant has met his or her burden of proof and complied with the provisions of the statute/ ordinance.¹¹

So whether the town Select Board weighed in on this development before an application was submitted, or whether we admire the developer for taking on this dangerous eyesore and his goal of creating low-rent housing – it’s all irrelevant to the decision.

Moreover, there is no loophole to overlook health and safety standards because doing the job right might be expensive. Our own Land Use Regulations specifically preclude a relaxation of its terms because of expense: “A financial hardship shall not constitute grounds for granting a variance.”¹²

That general principle exists in cases where towns have adopted a zoning ordinance, and even though Penobscot has not, its Land Use Regulations suggest that the same principle applies.

An example of the court’s looking at “reasonable return” is *Rowe vs City of South Portland*, in which the Maine Supreme Judicial Court ruled that “[f]ailure to yield a ‘reasonable return’ means ‘the practical loss of *all* beneficial use of the land’ ” (emphasis mine) and says the court has “often stated that reasonable return does not mean maximum return.”¹³

The size, condition and location of the property was well-understood to pose challenges for sewage disposal, and the property sold for a fraction of what it was deemed worth as a licensed nursing home - in fact, for about a tenth as much as it had sold for in the past.

- The board should not grant any variances for rules that are meant to protect the health and safety of its future residents, its neighbors, or the town, least of all because it is concerned about the cost to the developer.

¹¹ See Attachment 11

¹² See Attachment 12

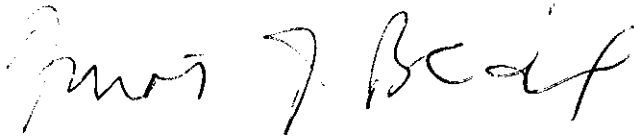
¹³ See Attachment 13

7. “Workforce housing”

The developer’s agent has said the development will provide “workforce housing”.
What exactly does that mean?

- Is the developer or development being subsidized by programs such as Maine’s Rural Affordable Rental Housing Program or other state or federal programs that subsidize either developers or renters?
- If so, what programs are they; what requirements do those programs impose on developers, their projects, and on renters; and who is the enforcing authority for all of those requirements?

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Beidel". The signature is written in a cursive, flowing style.

Tim Beidel
15 Bayview Rd / PO BOX 111
Penobscot, ME 04476-0111

ATTACHMENTS

Penobscot Subdivision Ordinance

SUBDIVISION ORDINANCE OF THE TOWN OF PENOBSCOT, MAINE

SECTION I: PURPOSES

- A. The purposes of this ordinance shall be to assure the comfort, convenience, safety health and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Penobscot, Maine, the Planning Board shall consider the following criteria and before granting approval shall affirmatively determine that the proposed subdivision:
1. **Will not result in undue water or air pollution.** In making this determination it shall at least consider: the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;
 2. **Has sufficient water available for the reasonably foreseeable needs of the subdivision;**
 3. **Will not cause an unreasonable burden on an existing water supply, if one is to be utilized;**
 4. Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
 5. Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;
 6. **Will provide for adequate sewage waste disposal;**
 7. Will not cause an unreasonable burden on the ability of the municipality to dispose of solid waste and sewage if municipal services are to be utilized;
 8. Will not have an undue adverse effect on the scenic or natural beauty of the area aesthetics, historic sites or rare and irreplaceable natural areas;
 9. Is in conformance with a duly adopted comprehensive plan, development plan, or land use plan, if any;
 10. The subdivider has adequate financial and technical capacity to meet the above stated criteria; and
 11. Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.

SECTION II: AUTHORITY AND ADMINISTRATION

- A. Authority
1. This ordinance has been prepared in accordance with the provisions of Title 30 M.R.S.A., Section 4956
 2. This ordinance shall be known and may be cited as "Subdivision Standards of the Planning Board of the Town of Penobscot, Maine.

Penobscot Land Use Regulation

Town of Penobscot, ME – Land Use Regulations

LAND USE REGULATIONS

TOWN OF PENOBSCOT

HANCOCK COUNTY, MAINE

Adopted June 28, 1974

Effective July 1, 1974

Updated January 1986

Section 1. PURPOSE

In general, the philosophy of the Planning Board is that we believe in reasonable and orderly growth of the Town of Penobscot. In order that we may all enjoy the benefits of abundance of space, clean air, unpolluted waters and freedom from pressure of close complex living conditions, it would seem wise to plan ahead to the best of our abilities to assure that we can continue to experience these same benefits and privileges. Therefore, with understanding and patience, hopefully we can adopt reasonable methods through proper planning and acceptance of the requirements of the State Statutes plus additional regulations the Town may deem proper to include, thus assuring orderly growth without the undesirable impact of an undue surge of speculation and development within the boundaries of the Town of Penobscot.

To further the maintenance of safe and healthful conditions and the general welfare, prevent and control water pollution, protect spawning grounds, fish, aquatic and land uses, and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

"Expected Impact" involves the following major factors and possible others not delineated in these Regulations. These factors are:

Population density and open space

Vehicular traffic

Pollution of air, water and land erosion control

Noise pollution

The effect on irreplaceable natural resources, areas, historical sites or buildings and natural beauty.

The probable impact on water supplies, bodies of water and water tables.

Demand for public services such as education, street lighting, maintenance of roads, new road construction, snow plowing, and police and fire protection to name a few.

Town of Penobscot Aquaculture Ordinance

TOWN OF PENOBSCOT AQUACULTURE ORDINANCE

I. GENERAL PROVISIONS

- A. Authority.** This Aquaculture Ordinance ("this Ordinance") has been duly adopted and enacted by the legislative body of the Town of Penobscot (the "Town") pursuant to the Maine Constitution, Article VIII, Part Second; 30-A M.R.S. §§ 2101 *et seq.*, 3001-3006; reference is also made to 38 M.R.S. §§ 2, 7, 439-A(1), (2), 480-F(3), 481, 1801, and any other enabling statutes.
- B. Purpose.** The purpose of this Ordinance is to regulate Coastal Waters Aquaculture Facilities, including (1) any structures associated with such facilities that are located below the normal high water line or over or within Coastal Waters or Coastal Wetlands, and (2) the construction, operation, and expansion of such facilities, in order to: prevent a shortage or overburdening of public facilities and water access sites within the Town; protect existing and permitted functionally water-dependent uses; prevent loss of public and private access to Coastal Waters; prevent the displacement of traditional public and commercial uses from Coastal Waters, including lobstering and other heritage fisheries, water-based recreation, and other public trust uses; protect public and private properties from environmental pollution and other adverse effects of Coastal Waters Aquaculture Facilities; further the Town's municipal interest in each and all of the coastal management policies set forth in 38 M.R.S. § 1801 and Section I.C. below; and protect the health, safety, and welfare of the residents of and visitors to the Town.
- C. Legislative Findings.** The Town finds that it has a municipal interest in the conservation, beneficial use, and effective management of its coastal resources, including its Coastal Waters and Coastal Wetlands. After considering the Town's coastal management policies to (1) promote the maintenance, development, and revitalization of the Town's ports and harbors for fishing, transportation, and recreation; (2) manage the marine environment and its related resources to preserve and improve the ecological integrity and diversity of marine communities and habitats, expand understanding of the productivity of Coastal Waters, and enhance the economic value of the Town's renewable marine resources; (3) support shoreline management that gives preference to water-dependent uses over other uses, promotes public access to the shoreline, and considers the cumulative effects of development on coastal resources; (4) discourage growth and new development in coastal areas where, because of coastal storms, flooding, landslides or sea-level rise, it is hazardous to human health and safety; (5) encourage and support cooperative state and municipal management of coastal resources; (6) protect and manage critical habitat and natural areas of local, state, and national significance and maintain the scenic beauty and character of the coast even in areas where development occurs; (7) expand the opportunities for outdoor recreation and encourage appropriate coastal tourist activities and development; (8) restore and maintain the quality of our fresh, marine, and estuarine waters to allow for the broadest possible diversity of public and private uses; and (9) restore and maintain coastal air quality to protect the health of citizens and visitors and to protect enjoyment of the natural beauty and maritime characteristics of the Maine coast, the Town finds that additional local review is necessary for Coastal Waters Aquaculture Facilities including structures accessory to those facilities that are currently exempt from certain state environmental review pursuant to 38 M.R.S. §§ 480-Q(10), 488(13). The Town further finds that Coastal Waters Aquaculture Facilities impose unreasonable adverse impacts on the Coastal Waters and other coastal resources within the Town, particularly where such activities may occur outside of Coastal Waters without imposing similar adverse impacts. Accordingly, the Town declares it necessary and appropriate to regulate and control Coastal Waters Aquaculture Facilities, as specifically set forth in this Ordinance.

4. Shellfish Harvesting Area Classification - Notification of Changes: July 1, 2024



STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELHER
COMMISSIONER

Shellfish Harvesting Area Classification – Notification of Changes

July 1, 2024

This notice is in effect until repealed or replaced.

Ladies and Gentlemen:

Under the authority of 12 M.R.S.A. § 6172; the Commissioner has made the following changes to Growing Area EA, Dice Head (Castine) to Head of Cape Rosier (Brooksville). This notice reclassifies an area in Hutchins Cove (Penobscot) from Approved to Restricted due to water quality not meeting approved standards. An interactive map that allows the user to zoom in to specific areas can be found on the ME DMR website: <https://www.maine.gov/dmr/fisheries/shellfish/shellfish-closures-and-aquaculture-leases-map>. All existing pollution and biotoxin closures remain in effect.

The boundary descriptions of the area are as follows (struck text is being removed and underlined text is being added):

Prohibited: Effective immediately, because of pollution, it shall be unlawful to dig, take or possess any clams, quahogs, oysters, mussels or whole or roe-on scallops taken from the shores, flats and waters of the following Prohibited areas:

- P1. Winslow Cove (Penobscot): southeast of a line beginning at a red painted post located on the shore at an unnamed point of land east of Bridges Point, then running northeast to a red painted post located on the shore at the tip of Freethy Point.
- P2. Bagaduce River (Castine, Brooksville): north of a line beginning at the southern tip of Dice Head, Castine, running east to the northern tip of High Tide Island; AND west of a line beginning at the northern tip of High Tide Island running northeast to the southern tip of Lower Negro Island, then running north to the eastern point on Upper Negro Island, then running northwest to a red painted post on the western shore of the Bagaduce River.
- P3. Upper Bagaduce (Brooksville/Sedgewick): west and south of a line beginning at the northern tip of the point at the end of Bagaduce Lane running northwest to the eastern tip of the point at the end of Judy Point Lane.
- P4. Harborside (Brooksville): southeast of a line beginning at a red painted post located on the most western tip of land in Tom Cod Cove and running southwest to the most northwestern prominence at Harborside; AND east of a line beginning at the most northwestern prominence at Harborside running south following the lowest tide mark to a red painted post located on a stone pier.

Nu

5. DEP ISSUE PROFILE: Overboard Discharges (OBDs)

shellfish and wildlife and provide for recreation in and on the water. These objectives are consistent with those set forth in the Federal Clean Water Act.

Simply stated, eliminating OBDs results in overall higher water quality and the reopening of more shellfish growing and harvesting areas.

What are the significant highlights from Maine's laws and rules pertaining to OBDs?

- OBD owner(s) must maintain a current Waste Discharge License for each OBD. Failure to submit an application for renewal before the expiration date of the current license may result a lapse in legal coverage to discharge wastewater. Waste Discharge Licenses are typically issued for a five-year term.
- The licensee is required to pay an applicable annual fee for discharges authorized by this license. The Department may pursue enforcement, including, but not limited to, penalties and suspension or revocation of a license for the failure to pay any portion of licensing fees.
- There may be no new or expanded OBD discharges to Maine waters. New sources include wastewater that was not licensed as of June 1, 1987, and increases in the volume (such as by increasing the number of bedrooms associated with the dwellings connected to the OBD) or duration (number of months per year) of the discharge.
- OBD owners must demonstrate to the Department whether a technologically proven alternative to the OBD is practicable on land owned or controlled by the OBD owner(s). This documentation must be available at the time of property transfer and license renewal.
- A grant program is available to assist certain OBD owners with the cost of OBD replacement. Transfer applicants and non-primary residence OBDs do not qualify for grant assistance.
- DEP must inspect all licensed OBDs. The cost of the inspections is assessed as part of the annual license fee.
- **Prior to transfer of ownership of property** containing an OBD, the parties to the transfer shall determine the feasibility of technologically proven alternatives to the overboard discharge that are consistent with Maine plumbing standards. The evaluation must be based on documentation from a licensed site evaluator who has demonstrated experience in designing replacement systems for OBDs. If an alternative to the overboard discharge is identified, the alternative system must be installed within 180 days of property transfer. Grant assistance is generally not available for OBD removal costs associated with a property transfer. Transfer is a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. Deeding a property to your children or to a trust, for example, DOES constitute a transfer of ownership. Questions regarding the requirements of Maine law and rule should be directed to DEP staff before finalizing any agreements on property transfers involving OBDs.

What is the OBD Removal Grant Program?

State contribution to residential overboard discharge replacement projects, 38 M.R.S.A. § 411-A provides, subject to the availability of funds, that the Maine DEP shall pay a portion of the expense of a technologically feasible alternative that results in the elimination of an OBD. There are two significant changes to this law:

1. The DEP may not provide grant funding to a residential OBD owner unless the residence is the owner's primary residence.
2. The DEP may not provide grant funding to an OBD owner with an annual income of more than \$125,000.

OBD owners who *are* eligible for grant funding are not required to eliminate the OBD until such time that a technologically-proven alternative system is identified and the DEP offers a grant. If a technologically-proven alternative system has been identified, residential and commercial **OBD owners who are not eligible for grant funding because the OBD serves a secondary residence or have an annual income of more than \$125,000 will be required to eliminate the OBD after July 2, 2012.** If you have an alternative and believe you are not eligible for a grant, the Department strongly encourages you to contact us before your license expires to discuss these requirements in greater detail.

6. STATE OF MAINE SUBSURFACE WASTEWATER DISPOSAL RULE

10-144 CODE OF MAINE RULES, Chapter 241

10-144 CMR Ch. 241

- 175. **Soil profile** means a vertical cross section of the undisturbed soil showing the characteristic soil horizontal layers or soil horizons that have formed as a result of the combined effects of parent material, topography, climate, biological activity, and time.
- 176. **Soil saturation** means the state in which all the pores in the soil are filled with water. Water will flow from saturated soils into an observation hole.

1(B) DEFINITIONS (cont.)

- 177. **Soil texture** means the relative proportions of sand, silt, and clay.
- 178. **Stone** means a rock fragment that is rounded or semi-rounded in shape and greater than 10 inches in diameter.
- 179. **Stormwater buffer zone** means a vegetated, non-lawn area or areas located down gradient from a project that serves to store and remove pollutants from stormwater runoff flowing from a project, as defined in Appendix F, Stormwater Management Rules, 06-096 CMR 500).
- 180. **Stormwater treatment structures** means structures that provide some form of stormwater quality treatment through physical, chemical, or biological treatment processes. These structures include stormwater infiltration systems or basins, detention basins, wet ponds, retention ponds, soil filters, under-drained swales, under-drained outlets, and similar structures.
- 181. **Stream** means a major water course from the outlet of a great pond or the confluence of two perennial streams depicted as blue lines on the most recent edition of a United States Geological Survey 7.5 minute topographical map or, if not available, a 15-minute topographic map, to the point where the stream becomes a river or enters another water body or wetland (consistent with the DEP Shoreland Zoning definition).
- 182. **Structure** means anything constructed or erected with a fixed location on or in the ground or attached to something having a fixed location on or in the ground, including, but not limited to, buildings and mobile homes. A structure is anything built for support, shelter or enclosure of persons, animals, goods or property of any kind, exclusive of fences and poles, wiring and other aerial equipment normally associated with service drops. The term includes structures temporarily or permanently located.
- 183. **Subsurface wastewater disposal system or system** means any system designed to dispose of waste or wastewater on or beneath the surface of the earth; including, but not limited to, the following: septic tanks; disposal fields; legally existing, nonconforming cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 MRS §414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.
- 184. **Sustained slope** means an original ground slope that is maintained for 90 percent of the measured area.
- 185. **System cleaner** means any solid or liquid material intended or used primarily for the purpose of cleaning, treating, degreasing, unclogging, disinfecting, or deodorizing any part of a system. System cleaners do not include those liquid or solid products intended or used primarily for manual cleaning, scouring, treating, deodorizing, or disinfecting the surfaces of common plumbing fixtures.
- 186. **System, engineered** means any subsurface wastewater disposal system designed, installed, and operated as a single unit to treat and dispose of 2,000 gallons of wastewater per day or more; or

6. Continued

10-144 CMR Ch. 241

any system designed to dispose of wastewater with a combined BOD5 and total suspended solids concentration greater than 1,400 mg/L.

1(B) DEFINITIONS (cont.)

- 187. **System, experimental** means any subsurface wastewater disposal system, including components thereof, designed upon unproven concepts; processes otherwise untried in Maine; or field applications of processes developed under controlled research conditions.
- 188. **System, first time** means the first system designed to serve a specific structure; a new system.
- 189. **System, legally existing** means a subsurface wastewater disposal system that was either installed prior to July 1, 1974 or was permitted on or after July 1, 1974, in accordance with a design permitted by the LPI.
- 190. **System, limited** means a system that consists of a grey wastewater disposal field to handle water supplied from elevated storage tanks or cisterns of no more than 1,000 gallons capacity, and portable pumps, among other non-conventional pressurized water supplies, and an alternative toilet.
- 191. **System, malfunctioning** means a system that is not operating or is not functioning properly, based on the following indicators: ponding or outbreak of wastewater or septic tank effluent onto the surface of the ground; seepage of wastewater or septic tank effluent into parts of buildings below ground; back-up of wastewater into the building being served that is not caused by a physical blockage of the internal plumbing; and contamination of nearby water wells and waterbodies/courses.
- 192. **System, multi-user** means a disposal system designed to serve three or more parcels with structures under individual and separate ownership, when the disposal systems are not under common ownership.
- 193. **System, non-conforming** means a system that does not conform to the location, design, construction, or installation requirements in this rule.
- 194. **System, non-engineered complete** means any system designed, installed, and operated as a single unit to treat and dispose of less than 2,000 gallons of wastewater per day; or any system designed to dispose of wastewater with a combined BOD5 and total suspended solids concentration less than 1,400 mg/L, including one disposal field and one septic tank.
- 195. **System, primitive** means any disposal system consisting of a grey-water disposal field designed to only handle hand-carried or hand-pumped water with an alternative toilet.
- 196. **System, replacement** means a system designed to replace an existing system, an overboard discharge, a malfunctioning system, or any legally existing, nonconforming subsurface wastewater disposal system, without any increase in design flow, except as allowed in Section 10.
- 197. **Test boring** means the drilling of a narrow observation hole into the ground such that soil strata or horizons can only be observed and measured by the extraction of soil samples. Typical methods include the use of a hand-auger or bucket auger.
- 198. **Temporary portable toilet:** means a prefabricated toilet designed for temporary use, typically at social functions, work sites, and outdoor gatherings.

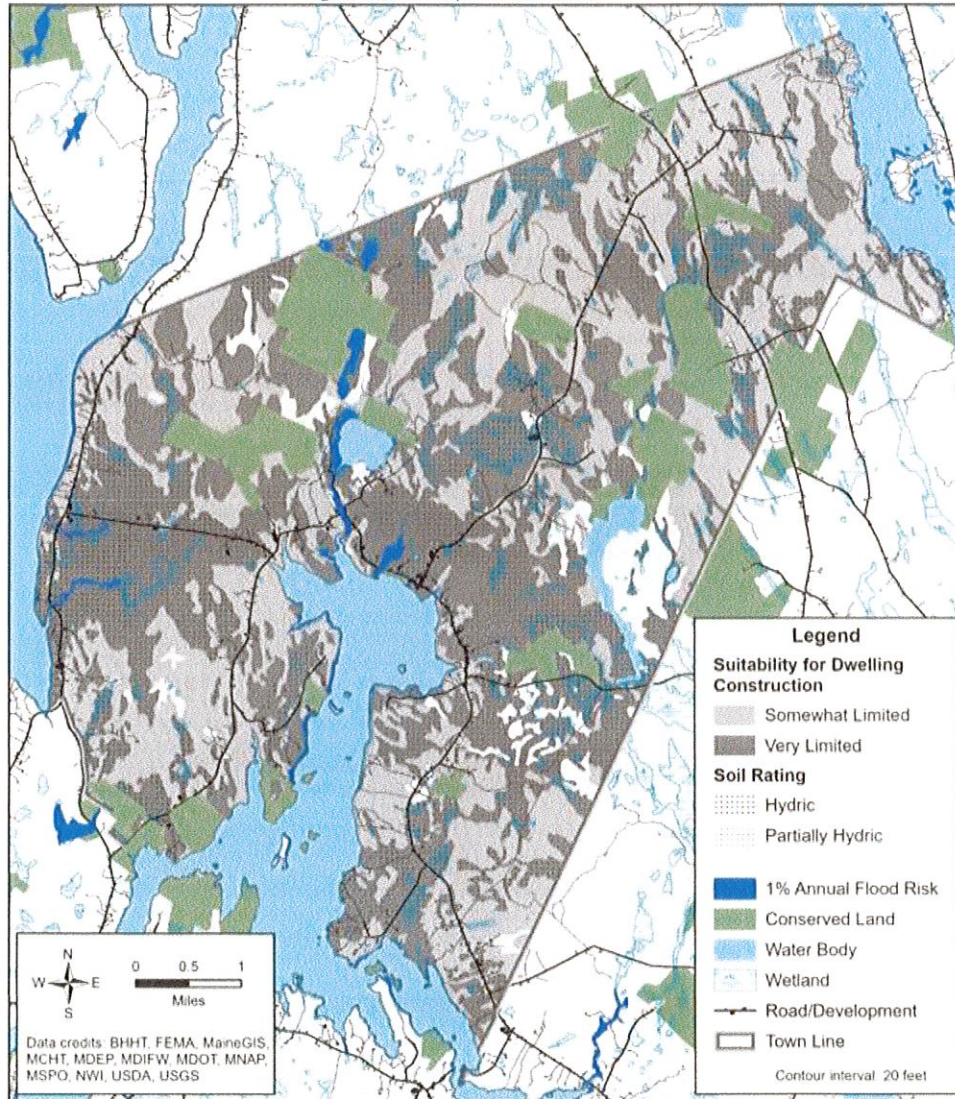
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7. Town of Penobscot Comprehensive Plan 2024

Penobscot Comprehensive Plan

2024

Figure M-2: Development Constraints



Existing Land Use

M-169

8. STATE OF MAINE SUBSURFACE WASTEWATER DISPOSAL RULE

10-144 CODE OF MAINE RULES, Chapter 241

10-144 CMR Ch. 241

SECTION 11. MISCELLANEOUS SYSTEMS

A. ENGINEERED DISPOSAL SYSTEMS

Scope: This Section governs the design and installation of engineered systems with design flows of 2,000 gpd or more or disposing of wastewater with a combined BOD5 and total suspended solids concentration greater than 1,400 mg/l (see Table 5B).

1. Responsibilities

- a. General: The size and/or complexity of engineered systems require that analysis, design construction, operation, and maintenance be undertaken at a level that is higher than the minimum requirements for small residential systems.
- b. Owner/operator: The owner/operator shall accurately describe the intended uses (present and future) for the system and designate to the Department a Maine professional engineer to serve as design engineer. The owner shall operate the system within the design parameters, except as provided for in Section 10(A)(3), following the designer's recommendations for inspection and maintenance, as well as any State or local regulations.
- c. Design engineer: The design engineer is responsible for defining the needs of the client, investigating the site, designing the system, overseeing construction, and recommending operation and maintenance practices at an appropriate level of professional practice. In order to ensure proper functioning of the engineered systems under expected conditions, the design engineer must consider relevant factors, including, but not by way of limitation, peak effluent levels, minimum recharge, deep frost and power failure. The design engineer is responsible for completing the HHE-220 to document and define the system design prior to construction, as well as the report results of a site investigation. The design engineer must then send the completed HHE-220 to the Department.
- d. Department of Health and Human Services: Upon receipt of the HHE-220 by the design engineer, the Department will conduct a desk review of the proposal, check for completeness of submittal (all necessary documents and signatures), review the reasonableness of data and assumptions, spot-check calculations, check for compliance with minimum requirements of this rule and this Section, and give permission to the local government to issue the necessary permits. The Department is not responsible for the accuracy of the field data, assumptions or conclusions of the designer, the suitability of the design, or its performance. The Department of Environmental Protection (DEP) may provide assistance to the Department in evaluating environmental impacts of these systems. DEP may submit comments to the Department for consideration, prior to final decision.
- e. Local government: The local government, operating through the LPI(s), may issue the necessary permit(s) after it has received permission from the Department to do so and when it is satisfied that the pre-construction conditions shown on the design are representative of the actual conditions. The local official may inspect the site in a timely

111

8. Continued

manner, in order to be able to state with reasonable assurance that the system was installed as described in the approved plans.

11(A) ENGINEERED DISPOSAL SYSTEMS (cont.)

2. Requirements For Engineered Disposal System Designs

- a. Department approval: An engineered system requires Department approval. A preliminary discussion between the Department, the design engineer and any other consultants, as appropriate, will take place, to identify any specific requirements related to the application before a final submission for review and approval is made. From the preliminary discussion through acceptance of the Engineer's statement of compliance, the design engineer will be the primary point of contact.
- b. Plan submission: The plans submitted to the Department must contain all the information requested on the Engineered System Application Form, required in Section 6, and any specific requirements identified in the preliminary discussion, in addition to meeting the requirements of this Section. A digital copy of the plans in PDF format is required for submission of the Engineering System Application Form to the Department.
- c. Definition of the facility served: The submission must define the facility to be served, the flow of the effluent (including variations in quality and quantity), and the current and projected uses of the facility. Design flows should be measured, estimated, and compared to historical (code) values, and safety factors should be used.
- d. Determination of soil and site conditions: The soil conditions must be determined by a Licensed site evaluator. The submission must show site data that represents the soil conditions under the proposed disposal field as indicated in Section 5(Q)(11) and under the down slope fill extension. The level of investigation is a function of the basic quality of the site (topography and soils) and the relative size of the system and disposal fields. Observation holes used for design purposes must be located at representative points within the proposed subsurface wastewater disposal area.
- e. Minimum number of observation holes: The number of observation holes must be sufficient to determine the soil and site characteristics beneath the entire disposal field, including the down slope fill material extensions, but must not be less than three observation holes per engineered disposal field.
- f. State of the art designs: The submission must be based on current acceptable practices as it relates to the design of systems.
- g. Contour lines: The submission must include: surficial contours, elevation of observation holes, and location of all site features within 300 feet that require consideration. Pre-development and post-development contours must be shown both in the areas to be occupied by parts of a system and for a distance of 100 feet beyond the system. The contour intervals must be no greater than two feet.
- h. Elevations: The elevation of the bottom of the disposal field(s), the original ground surface at each observation hole, and the top of the distribution pipes or proprietary disposal devices within the disposal field(s), must be established.

8. Continued

10-144 CMR Ch. 241

11(A) ENGINEERED DISPOSAL SYSTEMS (cont.)

- i. Localized mounding analysis: The submission must include an analysis of the proposed system design and site hydraulics to determine that there will be an adequate vertical separation between the bottom of the disposal field and any mounded water table. This analysis must include all calculations, justification of methodology and assumptions, and other supporting data and documentation. Any additional vertical separation distance needed to offset mounding effects and maintain compliance with Table 5F must be stated in the mounding analysis report.
- j. Site transmission analysis: The submission must include an analysis of the proposed system design and site hydraulics to determine that the native soil and/or fill material will have sufficient capacity to prevent wastewater from surfacing down gradient of the disposal field. This standard does not include normal discharges of groundwater to springs, major or minor watercourses, or other surface waters and wetlands located at or beyond setback distances established in Sections 8 and 9, or lesser setbacks approved by variance, even if these discharges may contain some amount of treated wastewater. Nothing in this paragraph may be interpreted to limit the scope or enforcement of 38 MRS § 413, or other applicable statutes.
- k. Operations and Maintenance Manual: The submission must include an operations and maintenance manual for the owner with written recommendations for the operation and maintenance of the system, including inspection schedules, pumping schedules, and record keeping procedures. Manufacturer's operations and maintenance manuals for devices and/or equipment may be included in this exhibit but must not be a substitute for the exhibit.
- l. Pertinent laws, etc.: The submission must include evidence of compliance with all pertinent laws, ordinances, and regulations.
- m. Signatures: The submission and plans must bear the seal of a professional engineer licensed in Maine and the soil logs should bear the signature of a site evaluator licensed in Maine.
- n. System: The proposed system must be sized in compliance with Sections 5 and 7. It must meet the minimum setback distances in Tables 8B or 9A as appropriate.
- o. Grades: Existing and finished grade within the area of engineered disposal fields, their shoulders and fill material extensions using relative elevations, referenced to a permanent system elevation reference point, must be provided;
- p. Reserve area for first-time systems: A reserve area with suitable soil conditions must be delineated on the plan and reserved for the possible expansion or replacement of the proposed engineered system.
- q. Pump dose volume: For engineered systems the pump-on and pump-off switches must be set at appropriate levels to provide a dose volume as required by the manufacturer. The pump-off switch must be set 6 inches above the pump intake. The pump-on switch must be set at a distance "d", in inches above the pump-off switch, which is calculated by means of Equation 11A.

11(A) ENGINEERED DISPOSAL SYSTEMS (cont.)

113

8. Continued

10-144 CMR Ch. 241

Equation 11A

$D = [1.6][V_d + V_{ap} + V_{pd}] / [A]$ where:

D is the inches above the pump-off switch;

V_d is the required dose volume, in gallons, determined as prescribed in Section 7(Q)(4).

V_{ap} is the internal volume of all distribution pipes and connector piping that will drain back into the dosing tank at the end of a dosing cycle, in gallons;

V_{pd} is the volume displacement, in gallons, of the pump and controls; and

A is the internal horizontal area of the dosing tank, in square feet.

- r. Site location map: The submission must include a copy of the relevant section of the USGS 7.5-minute topographic map, if available, or 15-minute topographic map showing the location of the proposed engineered disposal system. The map must also indicate locations of any public and private water supply wells within 300 feet of the system and a demonstration of right, title or interest to the property in question.
 - s. Other information: The Department may request additional information from the applicant through the design engineer. If the applicant fails to provide any additional information requested by the Department within 180 days of the request, the application will automatically be denied.
3. Installation and Inspection
- a. Engineered system permit issuance: The LPI shall not issue a permit for an engineered system without first receiving a letter of approval from the Department.
 - b. Construction inspections: The LPI must inspect engineered disposal systems in accordance with Section 12(I). In addition, the property owner shall retain the design engineer to inspect the construction of the system. The inspection must be sufficient for the engineer to determine that the system was installed as designed.
 - c. Engineer's statement of compliance: The design engineer shall submit a written statement that the system was installed in compliance with this rule and permit conditions to the LPI, the owner and the Department. Any changes from the approved drawings and specifications must be noted.

B. EXPERIMENTAL SYSTEMS

- 1. General. A permit for an experimental system is contingent upon the establishment of a monitoring program by which system performance can be demonstrated. At a minimum, all experimental systems must be capable of operating at the same degree of efficacy and reliability

114

9. Maine Municipal Association Manual for Local Planning Boards: A Legal Perspective (Feb. 2017 Revised Edition)

Han. Cty., Jan. 19, 1984). Another risk is that if a subcommittee of the board comprised of three or more members is asked to develop tentative findings and conclusions, the subcommittee members may not realize that they must comply with the notice requirements of the Maine Freedom of Access Act (1 M.R.S.A. § 406). *Lewiston Daily Sun v. City of Auburn*, 455 A.2d 335 (Me. 1988). They also run the risk that someone may try to introduce new information which was not presented at the full board meeting and to which the applicant and other parties may not have had an opportunity to respond, thereby depriving the applicant and those parties of their right to due process under the Constitution. *Mutton Hill Estates, Inc. v. Inhabitants of the Town of Oakland*, 468 A.2d 989 (Me. 1983). Whatever procedure is used by the board to prepare and approve findings and conclusions, it is crucial to their validity that the board carefully review them to make sure that each review standard and subpart of each standard is addressed and that the board clearly adopts all of the findings and conclusions as part of its own decision. *Chapel Road Associates, supra*.

- **Conditions of Approval.** A planning board has inherent authority to attach conditions to its approval of an application. See generally, *In Re: Belgrade Shores, Inc.*, 371 A.2d 413 (Me. 1977). Any conditions imposed by the board on its approval must be reasonable and must be directly related to the standards of review governing the proposal. *Kittery Water District v. Town of York*, 489 A.2d 1091 (Me. 1985); *Boutet v. Planning Board of the City of Saco*, 253 A.2d 53 (Me. 1969). There must be a “nexus” and “rough proportionality” between a condition of approval and the impact of the proposed development. *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013). A conditional approval “which has the practical effect of a denial...must be treated as a denial.” *Warwick Development Co., Inc. v. City of Portland*, CV-89-206 (Me. Super. Ct., Cum. Cty, Jan. 12, 1990). Any conditions which the board wants to impose on the applicant’s project must be clearly stated in its decision and on the face of any plan to be recorded to ensure their enforceability. *City of Portland v. Grace Baptist Church*, 552 A.2d 533 (Me. 1988); *Hamilton v. Town of Cumberland*, 590 A.2d 532 (Me. 1991); *McBrearty v. Town of Greenville*, AP-99-8 (Me. Super. Ct., Piscat. Cty., June 14, 2000). (See Appendix 3 for sample language.) If it is the municipality’s intention to render a permit void if the permit holder fails to comply with conditions of approval within a certain time frame, this should be stated clearly in the ordinance. *Nightingale v. Inhabitants of City of Rockland*, CV-91-174 (Me. Super. Ct., Knox Cty., July 1, 1994).

If the board finds that the application could be approved if certain conditions were met, then it must determine what kinds of conditions are needed based on the evidence presented in the record and what kinds the ordinance/statute allows the board to impose. *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223 (Me. 1983); *Chandler v. Town of Pittsfield*, 496 A.2d 1058 (Me. 1985). Before granting approval with certain

10. Town of Penobscot Land Use Regulations

Town of Penobscot, ME – Land Use Regulations

Section 12.

A. CREATION OF ADMINISTRATING BODIES AND AGENTS

1. Code Enforcement Officer
A Code Enforcement Officer shall be appointed by the Municipal, Officers.
2. Board of Appeals
There is hereby created the Board of Appeals of the Town of Penobscot pursuant to the provisions of M.R.S.A. Title 30, Section 2411

B. PERMITS

1. Permits Required
After the effective date of this Ordinance no person shall engage in any use of land requiring a permit in the district in which it would occur, or expand or change an existing non-conforming use, or renew a discontinued non-conforming use without first obtaining a permit.
2. Permit Application
Applications for permits shall be submitted in writing. The Code Enforcement Officer or Planning Board may require the submission of whatever information, is necessary to determine conformance with the provisions of this Ordinance.
3. Plumbing Permit Required Prior to Building Permit
No building permit shall be issued for any structure or use involving the construction, installation or alteration of plumbing facilities unless a permit for such facilities has been secured by the applicant or his authorized agent, according to the requirements of this Ordinance.
4. Approval of Permits
Permits shall not be denied if the proposed use is found to be in conformance with the provisions of this Ordinance. All permits shall either be approved or denied within 60 days of receipt of a completed application, including all information requested.
5. Permits Issued by Code Enforcement Officer
The Code Enforcement Officer shall approve or deny those applications on which he is empowered to act as shown in Section 5. Approval shall be granted only if the proposed use is in conformance with the provisions of this Ordinance.
6. Permits Issued by Planning Board
The Planning Board shall approve or deny those applications on which it is empowered to act as stated in this Ordinance. The Planning Board may, after the submission of a complete application including all information requested, grant a permit if it makes a positive finding based on the information presented to it that, except as specifically exempted in this Ordinance, the proposed use:
 - a. Will not result in unsafe or unhealthful conditions;
 - b. Will not result in erosion or sedimentation;
 - c. Will not result in water pollution;
 - d. Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
 - e. Will conserve shoreland vegetation;
 - f. Will conserve visual points of access to waters as viewed from public facilities;
 - g. Will conserve actual points of public access to waters;
 - h. Will conserve natural beauty;
 - i. Will avoid problems associated with flood plan development and use;
 - j. Is in conformance with the provisions of Section 6, Land Use Standard
7. Conditions

10. Continued

Town of Penobscot, ME – Land Use Regulations

Permits granted under this Section may be made subject to reasonable conditions to ensure conformity with the purposes and provisions of this Ordinance.

8. Fees for permits to be established by board of selectmen.

C. APPEALS AND VARIANCES

1. Variances

A copy of all variances granted by the Board of Appeals shall be submitted to the State Planning Office. The Board of Appeals may, upon written application of the affected landowner, grant a variance from the strict application of the Ordinance under the following conditions:

- a. The strict application of the terms of this Ordinance would result in undue hardship to the applicant;
- b. The hardship is not the result of action taken by the applicant or a prior owner; and
- c. The Board of Appeals, based on clear and convincing evidence presented to it, makes a finding that the proposed use would meet the provisions of Section 12-B, subsection 6, paragraphs a-i.

A variance is authorized only for lot area, lot coverage by structures, and setbacks. A variance shall not be granted to permit a use or structure otherwise prohibited.

2. Appeals to Board of Appeals

The Board of Appeals may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board or Code Enforcement Officer in the administration of this Ordinance. Such hearings shall be held in accordance with State laws. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board or Code Enforcement Officer only upon a finding that the decision is clearly contrary to specific provisions of this Ordinance.

3. Appeal to Superior Court

An appeal may be taken within thirty days after any decision is rendered by the Board of Appeals, by any party to Superior Court in accordance with State law.

D. ENFORCEMENT

1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

2. Code Enforcement Officer

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.

3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.

4. Fines

11. Maine Municipal Association Manual for Local Planning Boards: A Legal Perspective (Feb. 2017 Revised Edition)

Making the Decision

Checklist for Reviewing Evidence

Before the board decides whether to approve or deny the application, it should ask itself the following questions:

- a. Does the board still believe that it has authority to make a decision on the application under the ordinance or statute?
- b. What does the ordinance/statute require the applicant to prove?
- c. Does the ordinance/statute prohibit or limit the type of use being proposed?
- d. What factors must the board consider under the ordinance/statute in deciding whether to approve the application?
- e. Has the applicant met his or her burden of proof, i.e., has the applicant presented all the evidence which the board needs to determine whether the project will comply with every applicable requirement of the ordinance/statute? Is it outweighed by conflicting evidence? Is it credible? Is that evidence substantial? Is it relevant to the ordinance requirements?
- f. To what extent does the ordinance/statute authorize the board to impose conditions on its approval?

Basis for the Board's Decision

- **General Rule.** Once the board has determined the scope of its authority and the applicant's burden of proof, it must determine whether there is sufficient evidence in the record to support a decision to approve the application by comparing the information in the record to the requirements of the ordinance/statute. The board should not base its decision on the amount of public opposition or support displayed for the project. Nor should its decision be based on the members' general opinion that the project would be "good" or "bad" for the community. Its decision must be based solely on whether the applicant has met his or her burden of proof and complied with the provisions of the statute/ordinance. *Bruk v. Town of Georgetown*, 436 A.2d 894 (Me. 1981); *Jordan v. City of Ellsworth*, 2003 ME 82, 828 A.2d 768; *Davis v. SBA Towers II, LLC*, 2009 ME 82, 979 A.2d 86. If the board does not believe that the applicant's project meets each of the requirements of the ordinance/statute based on the evidence in the record, the board should deny the application. *Grant's Farm Associates, Inc. v. Town of Kittery*, 554 A.2d 799 (Me. 1989). Where a proposed project complies with all of the relevant ordinance requirements, the board must approve the application. *WLH Management Corporation v. Town of Kittery*, 639 A.2d 108 (Me. 1994). At least one court has expressly warned board members that they must not "abdicate (their) responsibility, ignore the ordinance and approve an application regardless of whether it meets the conditions of the ordinance or not" and that board members who are "philosophically

12. Town of Penobscot - Land Use Regulations

Town of Penobscot, ME – Land Use Regulations

Subdivision: The division of a tract or parcel of land into 3 or more lots for the purpose, immediate or future, of lease, sale, development or building, whether this division is accomplished by plotting of the land or by sale of the land by metes and bounds. The term subdivision shall include the subdivision of land for non-residential purposes, mobile home parks and the re-subdivision of land.

Trailer, Utility: A vehicle without motive power, designed to be towed by a passenger automobile but not designed for human occupancy and which may include a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

Use: The purpose for which land or a structure is arranged, designed, or intended, or for which land or a structure is or may be occupied.

Variance: A relaxation of the terms of this Ordinance where such variance would not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary or undue hardship. A financial hardship shall not constitute grounds for granting a variance. The crucial points of variance are undue hardship and unique circumstances applying to the property. A variance is not justified unless both elements are present in the case.

As used in this Ordinance, a variance is authorized only for height, area, and size of structures or size of yards or open spaces. Establishment or expansion otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in adjoining zoning districts.

Yard: The area of land on a lot not occupied by the principal building.

Yard, Front: The area of land between the front lot line and the nearest part of the principal building.

Yard, Side: The area of land between the side lot line and the nearest part of the Principal building.

Yard, Rear: The area of land between the rear lot line and the nearest part of the principal building.

Terms not defined herein shall have the customary dictionary meaning. As used in this Ordinance, the following definitions shall apply:

Water Related Terms

A. Pond

Any inland body of water which has a surface area in excess of 10 acres, except where such body of water is man-made and in addition is completely surrounded by land held primarily as waterfowl and fish breeding areas or for hunting and fishing.

B. River

Any free flowing body of water from that point at which it provides drainage for a water shed of 25 square miles to its mouth.

C. Normal High Water Mark of Coastal Waters

13. Rowe v. City of South Portland, 730 A.2d 673 (1999), 1999 ME 81

[¶ 6] The issues in this case are complicated by the fact that the building was substantially completed at the time the error was discovered. We apply, however, the same requirements and analysis to post-construction cases. See *Pepperman v. Town of Rangeley*, [659 A.2d 280](#) (Me.1995) (upheld denial of variance for applicant who built a lean-to that violated a setback requirement on the ground that applicant failed to meet the reasonable return prong). Failure to yield a "reasonable return" means "the practical loss of all beneficial use of the land." *Twigg v. Town of Kennebunk*, [662 A.2d 914](#), 918 (Me.1995) (citation omitted). We have often stated that reasonable return does not mean maximum return. See *id.* at 919.

