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Chapter 1
GENERAL PROVISIONS

GENERAL PROVISIONS

ARTICLE I

Adoption of Code

[At a Special Town Meeting held on September 9, 1997, the town voted under Article 5 to enact an ordinance entitled "the Shapleigh Code" which is a codification of the entire ordinances in force.]

SHAPLEIGH CODE

Chapter 4

ANIMALS

ARTICLE I
Barking Dogs
[Adopted at referendum 3-8-2002]

§ 4-1. Barking dogs prohibited.

No person shall own, keep or harbor any dog which, by loud, frequent or habitual barking, howling or yelping, shall disturb the peace of any person or persons for more than a period of 30 consecutive minutes between the hours of 6:00 a.m. to 10:00 p.m. Between the hours of 10:00 p.m. and 6:00 a.m., no person shall own, keep or harbor any dog which, by loud, frequent or habitual barking, howling or yelping, shall disturb the peace between the hours of 10:00 p.m. and 6:00 a.m. for more than 15 consecutive minutes to be in violation of this article.

§ 4-2. Violations and penalties.

- A. Any person found in violation of this article shall receive a verbal warning for the first offense.
- B. Any person again found in violation of this article, within six months of receiving such a verbal warning, shall be issued a written warning. Following the written warning provided for above, the individual so warned shall be entitled to meet with the Board of Selectmen at a regularly scheduled meeting to discuss the basis for said warning. If the Selectmen determine that the individual was not in violation of this article, or has taken sufficient remedial measures so that such a violation should not occur again, then the Animal Control Officer shall be so informed and any subsequent violation shall be pursuant to said § 4-2B. Thereafter, any further violations will be pursuant to the following subsections of this article.
- C. Any person again found in violation of the article within six months of receiving a written warning shall be fined \$100, and a court summons shall be issued.
- D. Any person again found in violation of this article within six months of receiving a court summons and being found guilty of violation of this article shall be issued an additional court summons and fined \$150.

§ 4-3. Payment of fines.

All fines shall be payable to the Town of Shapleigh through District Court.

§ 4-4. Enforcement of statutory provisions.

The Animal Control Officer shall also be empowered to enforce all provisions of the Maine Revised Statutes Annotated Title 7, Chapters 719, 721, 723, 725.

ARTICLE II
Waterfowl
[Adopted 3-13-2004 ATM]

§ 4-5. Intent.

- A. The large number of fowl attracted by feeding and baiting in and around in Shapleigh increases the presence of harmful bacteria, which present a threat to public health and well being. Fecal matter from waterfowl contributes to the phosphate loading of water bodies thereby resulting in lessened water quality. Large numbers of waterfowl feeding, trampling and defecating cause damage to terrain and constitute a nuisance and health hazard to citizens.
- B. The purpose of this article is to control the feeding and baiting of migratory and nonmigratory waterfowl (hereinafter referred to as "fowl") in order to protect the public health and property and the water quality of lakes, ponds, rivers and streams in Shapleigh by reducing the amount of fecal matter from these fowl deposited in the water and on the adjacent shoreline and waterfront property caused in part by the feeding and baiting of these fowl by the public.

§ 4-6. Prohibition.

No person shall engage in the regular practice of feeding or baiting any migratory or nonmigratory waterfowl or fowl in or upon the water within the Shoreland zoned area in Shapleigh as identified on the Tax Maps of Shapleigh, in any manner that increases the public health risks identified in 4-75(b). This Article is not intended to prohibit the raising of domestic waterfowl as allowed by any other ordinance(s), except that domestic waterfowl must be securely contained or penned in an enclosure in an area so as to prevent fecal matter from the waterfowl entering into lakes, ponds, and streams in the Town of Shapleigh.

§ 4-7. Definitions.

The following definitions shall apply unless the context clearly indicates another meaning:

FEEDING and BAITING — The placing, exposing, depositing, distributing or scattering, directly or indirectly, of shelled corn, shucked or unshucked, wheat or other grains, breads, salt or any other feed or nutritive substances, in any manner or form, so as to lure, attract or entice fowl to, on or over any such areas where such feed items and/or materials have been placed, exposed, deposited, distributed or scattered.

WATERFOWL and FOWL — Any waterfowl of the family Anatidae (ducks and geese) either migratory, nonmigratory or resident fowl.

§ 4-8. Enforcement.

This article may be enforced by an Animal Control Officer, Code Enforcement Officer, Health Officer and/or his/her designee in the Town of Shapleigh.

§ 4-9. Violations and penalties.

Whoever violates any provisions of this article shall be fined \$100 for each offense, to be recovered, on complaint, to the use of the Town of Shapleigh. Each day in which a violation is proved shall constitute a separate and new offense under this section. If the Town is the prevailing party in any action brought to enforce this article, the Town must be awarded reasonable attorney's fees, expert witness fees and costs. Civil process of the complaint may be waived by payment of the Town of Shapleigh of the fine within seven days of the date of complaint.

Chapter 5**ASSESSMENT REVIEW, BOARD OF****GENERAL REFERENCES**

Residential growth — See Ch. 68.

§ 5-1. Establishment.

Pursuant to 30-A M.R.S.A. § 2526(6), a Board of Assessment Review is hereby established for the Town of Shapleigh, Maine.

§ 5-2. Composition; qualifications; terms; vacancies.

The Board shall consist of three members and two alternates who shall be appointed by the municipal officers and who shall be registered voters of the Town and currently serving on the Zoning Board of Appeals. No municipal officer or Assessor may be a member. Members shall serve for terms of five years or until their successors are appointed, except that, for transition purposes, initial terms shall be staggered so that as nearly an equal number of terms shall expire annually. Vacancies shall be filled within 90 days by appointment by the municipal officers for the unexpired term.

§ 5-3. Officers; meetings; quorum; procedures.

The Board shall annually elect from its membership a Chairman and a Secretary. The Chairman shall call meetings as necessary, shall preside at all meetings, and shall designate alternates to serve in place of members who are absent or disqualified. The Secretary shall maintain a record of all proceedings including all correspondence of the Board. All meetings and records shall be subject to the Maine Freedom of Access Act, 1 M.R.S.A. § 401-410, except as otherwise authorized by law. A quorum necessary to conduct business shall consist of at least two members. The Board's procedure shall be governed by 30-A M.R.S.A. § 2691(3).

§ 5-4. Powers and duties.

The Board shall hear and decide all appeals properly taken from the refusal of the municipal officers or Assessors to make such property tax abatements as are asked for. The Board may take such evidence and testimony as it deems necessary and may grant such abatements as it thinks proper. The Board's decisions may be appealed in accordance with 36 M.R.S.A. § 843.

Chapter 7

BUILDING CONSTRUCTION

GENERAL REFERENCES

Development in floodplain areas — See Ch. 29. Subdivision of land — See Ch. 89.

Residential growth — See Ch. 68.

Zoning — See Ch. 105.

ARTICLE I
Adoption of Code
[Adopted 3-10-2012 ATM by Art. 4¹]

§ 7-1. Maine Uniform Building and Energy Code adopted.

The Town of Shapleigh adopted MUBEC Maine Uniform Building and Energy Code.

1. Editor's Note: This article also superseded former Art. I, Building Code, adopted 3-19-2005 ATM by Art. 8, and Art. II, One- and Two-Family Dwelling Code, adopted 3-19-2005 ATM by Art. 7.

Chapter 13

BURNING, OPEN

GENERAL REFERENCES

Definition of waste disposal facility — See Ch. 80.

§ 13-1. Permit required.

Any outdoor burning requires a permit from the Fire Warden or Deputy Fire Warden.

§ 13-2. Violations and penalties.

Whoever violates any of the provisions of this chapter shall, on conviction, be punished by a fine not exceeding \$100.

Chapter 18

CABLE TELEVISION

§ 18-1. Purpose.

The purpose of this chapter is to provide for town regulation and use of the community antenna television system, including its construction, operation and maintenance in, along, upon, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto, in the Town of Shapleigh, including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for the maintenance and operation in the Town of Shapleigh of the community antenna television system and to provided conditions accompanying the grant of franchise.

§ 18-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CABLE TELEVISION COMPANY — Any person, firm or corporation owning, controlling, operating, managing or leasing a CATV system within the Town of Shapleigh, sometimes hereinafter referred to as the "company."

CATV SYSTEM — Any community antenna television system or facility that, in whole or part, receives directly or indirectly, over the air, and amplifies or otherwise modifies signals transmitting programs broadcast by one or more television or radio stations, or originates its own signal or signals and distributes those signals by wire or cable to subscribing members of the public who pay for such services, but such term shall not include any such

facility that serves only the residents of one or more apartment dwellings under common ownership, control or management.

TOWN — The Town of Shapleigh, Maine, organized and existing under the laws in the State of Maine and the area within its territorial limits.

§ 18-3. Franchise required.

No person, firm or corporation shall install, maintain or operate within the town or any part of its public streets or other public area any equipment or facilities for the operation of a CATV system unless a franchise authorizing the use of said public streets or areas has first been obtained pursuant to the provisions of this chapter and unless said franchise is in full force and effect.

§ 18-4. Franchise contract.

- A. The Shapleigh Board of Selectmen may contract on such terms, conditions and fees as are in the best interests of the municipality and its residents with one or more cable television companies for the operation of a CATV system throughout the town, including the granting of a franchise or franchises for the operation thereof for a period not to exceed 10 years.
- B. Applicants for a franchise shall pay a nonrefundable filing fee to the town of \$250 to defray the cost of public notice and advertising expenses relating to such application. The applications shall be filed with the Town Clerk and shall contain such information as the town may require, including but not limited to a detailed description of the service area to be served, with the areas shown on a map of the town, a projected time schedule for each service area, a general description of the applicant's proposed operations, a schedule of proposed charges, a statement detailing its business or corporate organization with a financial statement for the two previous fiscal years, an estimated ten-year financial projection of its proposed system and its proposed annual town franchise fee or the basis for same, and a statement detailing the prior operational experience of the applicant in both CATV and microwave service, including that of its officers, management and staff to be associated with the proposed operation.
- C. Said franchise contract may be revoked by the Shapleigh Board of Selectmen for good and sufficient cause after due notice to the company and a public hearing thereon, with the right to appeal to the York County Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

§ 18-5. Public hearing.

Before authorizing the issuance of any such franchise contract or contracts, the Shapleigh Board of Selectmen shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of

its qualification to operate a CATV system throughout the town and shall conduct a public hearing thereon with at least seven days' advertised notice prior to said public hearing.

§ 18-6. Performance bond and insurance coverage.

The CATV company shall provide sufficient insurance to indemnify and hold harmless the Town of Shapleigh, its agents and its employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, maintenance of the system and damages caused by components or portions thereof, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused in whole or in part by any negligent or willful act or omission of the CATV company and anyone directly or indirectly employed by it or anyone for whose acts any of them may be liable. Upon the execution of any such franchise contract, the cable television company shall file a surety company performance bond in the amount of 100% of the contract or \$200,000, whichever is greater, conditioned upon the faithful performance of said contract and full compliance with any laws, ordinances or regulations governing said franchise. Said performance bond shall be reduced to 50% of the initial contract upon the completion of the installation of said system as per said contract.

Chapter 29

FLOODPLAIN MANAGEMENT

GENERAL REFERENCES

Building construction — See Ch. 7.

Zoning — See Ch. 105.

Subdivision of land — See Ch. 89.

§ 29-1. Purpose and establishment.

- A. Certain areas of the Town of Shapleigh, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.
- B. Therefore, the Town of Shapleigh, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Chapter.

- C. It is the intent of the Town of Shapleigh, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.
- D. The Town of Shapleigh has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A M.R.S.A. §§ 3001 through 3007, 4352, and 4401 through 4407, and Title 38 M.R.S.A. § 440.
- E. The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Shapleigh having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This chapter establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the Town of Shapleigh, Maine.
- F. The areas of special flood hazard, Zones A and A1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Shapleigh, Maine, York County," dated February 5, 1985, with accompanying Flood Insurance Rate Map, dated August 5, 1985, and Flood Boundary and Floodway Map, dated August 5, 1985, which are hereby adopted by reference and declared to be a part of this chapter.

§ 29-2. Permit required for development.

Before any construction or other development (as defined in § 29-13), including the placement of manufactured homes, begins within any areas of special flood hazard established in § 29-1, a flood hazard development permit shall be obtained from the Planning Board. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Shapleigh, Maine.

§ 29-3. Application for permit.

- A. The application for a flood hazard development permit shall be submitted to the Planning Board and shall include:
 - (1) The name, address and phone number of the applicant, owner, and contractor;
 - (2) An address and a map indicating the location of the construction site;
 - (3) A site plan showing the location of existing and/or proposed development, including, but not limited to, structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
 - (4) A statement of the intended use of the structure and/or development;

- (5) A statement of the cost of the development including all materials and labor;
- (6) A statement as to the type of sewage system proposed;
- (7) Specification of dimensions of the proposed structure and/or development;
- (8) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
 - (a) Base flood at the proposed site of all new or substantially improved structures, which is determined:
 - [1] In Zone A 1-30, from data contained in the Flood Insurance Study - Town of Shapleigh, Maine, as described in § 29-1; or
 - [2] In Zone A:
 - [a] From any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to §§ 29-6K and 29-8D;
 - [b] From the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a professional land surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or
 - [c] In the absence of all other data, to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - [d] Highest and lowest grades at the site adjacent to the walls of the proposed building;
 - (b) Lowest floor, including basement; and whether or not such structures contain a basement; and
 - (c) Level, in the case of nonresidential structures only, to which the structure will be floodproofed.
- (9) A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in § 29-6;

- (10) A written certification by a professional land surveyor, registered professional engineer or architect that the base flood elevation and grade elevations shown on the application are accurate;
 - (11) The following certifications as required in § 29-6 by a registered professional engineer or architect:
 - (a) A floodproofing certificate (FEMA Form 81-65, 08/03, as amended), to verify that the floodproofing methods for any nonresidential structure will meet the floodproofing criteria of §§ 29-3A(8)(d), 29-6G; and other applicable standards in § 29-6;
 - (b) A hydraulic openings certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of § 29-6L(2)(a);
 - (c) A certified statement that bridges will meet the standards of § 29-6M.;
 - (d) A certified statement that containment walls will meet the standards of § 29-6N;
 - (12) A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development; and
 - (13) A statement of construction plans describing in detail how each applicable development standard in § 29-6 will be met.
- B. The provisions of Subsection A(8) through (11)(b) apply only to new construction and substantial improvements.

§ 29-4. Application fee; expert's fee.

- A. A nonrefundable application fee will be established per Shapleigh Zoning Chapter § 105-65A.
- B. An additional fee may be charged if the Planning Board and/or Board of Appeals need the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the Town submits a bill to the applicant. Failure to pay the bills shall constitute a violation of the chapter and be grounds for the issuance of a stop-work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

§ 29-5. Review standards for flood hazard development permit applications.

The Planning Board shall:

- A. Review all applications for the flood hazard development permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of § 29-6 Development standards, have been, or will be met:
- B. Utilize, in the review of all flood hazard development permit applications:
 - (1) The base flood and floodway data contained in the Flood Insurance Study – Town of Shapleigh, Maine as described in § 29-1;
 - (2) In special flood hazard areas where base flood elevation and floodway data are not provided, the Planning Board shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to §§ 29-3A(8)(a)[2], 29-6K and 29-8D., in order to administer § 29-6 of this chapter; and
 - (3) When the community establishes a base flood elevation in a Zone A by methods outlined in § 29-3A(8)(a)[2], the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in § 29-1 of this chapter.
- D. In the review of flood hazard development permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including, but not limited to, Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this chapter, approve the issuance of one of the following flood hazard development permits based on the type of development:
 - (1) A two-part flood hazard development permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an elevation certificate completed by a professional land surveyor, registered professional engineer or architect based on the Part I permit construction, as-built, for verifying compliance with the elevation requirements of § 29-6F, G, or H. Following review of the elevation certificate data, which

shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the flood hazard development permit. Part II shall authorize the applicant to complete the construction project; or

- (2) A flood hazard development permit for floodproofing of nonresidential structures that are new construction or substantially improved nonresidential structures that are not being elevated but that meet the floodproofing standards of § 29-6G(1)(a), (b) and (c). The application for this permit shall include a floodproofing certificate signed by a registered professional engineer or architect; or
 - (3) A flood hazard development permit for minor development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to, accessory structures as provided for in § 29-6J, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and nonstructural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
- G. Maintain, as a permanent record, copies of all flood hazard development permit applications, corresponding permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of § 29-9 of this chapter, and copies of elevation certificates, floodproofing certificates, certificates of compliance and certifications of design standards required under the provisions of §§ 29-3, 29-6 and 29-7 of this chapter.

§ 29-6. Development standards.

All developments in areas of special flood hazard shall meet the following applicable standards:

- A. All development. All development shall:
- (1) Be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (2) Use construction materials that are resistant to flood damage;
 - (3) Use construction methods and practices that will minimize flood damage; and
 - (4) Use electrical, heating, ventilation, plumbing, and air-conditioning equipment, and other service facilities that are designed and/or

located so as to prevent water from entering or accumulating within the components during flooding conditions.

- B. Water supply. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- C. Sanitary sewage systems. All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters.
- D. On-site waste disposal systems. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. Watercourse carrying capacity. All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood-carrying capacity of the watercourse.
- F. Residential. New construction or substantial improvement of any residential structure located within:
 - (1) Zone A1-30, shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 - (2) Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to §§ 29-3A(8)(a)[2], 29-5B, or 29-8D.
- G. Nonresidential. New construction or substantial improvement of any nonresidential structure located within:
 - (1) Zone A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, shall:
 - (a) Be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (c) Be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard development permit, as required by § 29-3K and shall include a record of

the elevation above mean sea level to which the structure is floodproofed.

- (2) Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to §§ 29-3A(8)(a)[2], 29-5B, or 29-8D; together with attendant utility and sanitary facilities meet the floodproofing standards of Subsection G(1).

H. Manufactured homes. New or substantially improved manufactured homes located within:

- (1) Zone A1-30 shall:

- (a) Be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
- (b) Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and
- (c) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - [1] Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (Manufactured homes less than 50 feet long require one additional tie per side.); or
 - [2] By frame ties at each corner of the home, plus five additional ties along each side at intermediate points. (Manufactured homes less than 50 feet long require four additional ties per side.)
 - [3] All components of the anchoring system described in Subsection H(1)(c)[1] and [2] shall be capable of carrying a force of 4,800 pounds.

- (2) Zone A shall:

- (a) Be elevated on a permanent foundation, as described in Subsection H(1)(b), such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to §§ 29-3A(8)(a)[2], 29-5B or 29-8D; and
- (b) Meet the anchoring requirements of Subsection H(1)(c).

- I. Recreational vehicles. Recreational vehicles located within Zones A and A1-30 shall either:
- (1) Be on the site for fewer than 180 consecutive days;
 - (2) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - (3) Be permitted in accordance with the elevation and anchoring requirements for manufactured homes in Subsection H(1).
- J. Accessory structures. Accessory structures, as defined in § 29-13, located within Zones A1-30, and A, shall be exempt from the elevation criteria required in Subsection F and G above, if all other requirements of § 29-6 and all the following requirements are met. Accessory structures shall:
- (1) Be 500 square feet or less and have a value of less than \$3,000;
 - (2) Have unfinished interiors and not be used for human habitation;
 - (3) Have hydraulic openings, as specified in Subsection L(2), in at least two different walls of the accessory structure;
 - (4) Be located outside the floodway;
 - (5) When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and
 - (6) Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the special flood hazard area.
- K. Floodways.
- (1) In Zone A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map or Flood Boundary and Floodway Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - (2) In Zones A1-30, and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Subsection

K(3) unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

- (a) Will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
- (b) Is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors, (FEMA 37/January 1995, as amended).

- (3) In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. Enclosed areas below the lowest floor. New construction or substantial improvement of any structure in Zones A1-30 and A that meets the development standards of § 29-6, including the elevation requirements of Subsection F, G, or H, and is elevated on posts, columns, piers, piles, stilts, or crawl spaces may be enclosed below the base flood elevation requirements, provided all the following criteria are met or exceeded:

- (1) Enclosed areas are not basements as defined in § 29-13;
- (2) Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either:
 - (a) Be engineered and certified by a registered professional engineer or architect; or
 - (b) Meet or exceed the following minimum criteria:
 - [1] A minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - [2] The bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and
 - [3] Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the entry and exit of floodwaters automatically without any external influence or control such as human intervention, including the use of electrical and other nonautomatic mechanical means;

- (3) The enclosed area shall not be used for human habitation; and
 - (4) The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. Bridges. New construction or substantial improvement of any bridge in Zones A1-30 and A shall be designed such that:
- (1) When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
 - (2) A registered professional engineer shall certify that:
 - (a) The structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Subsection K; and
 - (b) The foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- N. Containment walls. New construction or substantial improvement of any containment wall located within: Zones A1-30 and A shall:
- (1) Have the containment wall elevated to at least one foot above the base flood elevation;
 - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard and development permit, as required by § 29-3A(11).
- O. Wharves, piers and docks. New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30 and A, in and over water and seaward of the mean high tide if the following requirements are met:
- (1) Wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
 - (2) For commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

§ 29-7. Certificate of compliance.

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a certificate of compliance is issued by the Planning Board subject to the following provisions:

- A. For new construction or substantial improvement of any elevated structure the applicant shall submit to the Planning Board an elevation certificate completed by a professional land surveyor, registered professional engineer, or architect, for compliance with § 29-6F, G, or H.
- B. The applicant shall submit written notification to the Planning Board that the development is complete and complies with the provisions of this chapter.
- C. Within 10 working days, the Planning Board shall:
 - (1) Review the elevation certificate and the applicant's written notification; and
 - (2) Upon determination that the development conforms with the provisions of this chapter, shall issue a certificate of compliance.

§ 29-8. Review of subdivision and development proposals.

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on five or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a special flood hazard area, are to be constructed in accordance with § 29-6 of this chapter. Such requirement will be included in any deed, lease, purchase and sale

agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including, but not limited to, a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

§ 29-9. Appeals and variances.

- A. The Board of Appeals of the Town of Shapleigh may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this chapter.
- B. The Board of Appeals may grant a variance from the requirements of this chapter consistent with state law and the following criteria:
 - (1) Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (2) Variances shall be granted only upon:
 - (a) A showing of good and sufficient cause; and
 - (b) A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances; and
 - (c) A showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and
 - (d) A determination that failure to grant the variance would result in undue hardship, which in this subsection means:
 - [1] That the land in question cannot yield a reasonable return unless a variance is granted; and
 - [2] That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
 - [3] That the granting of a variance will not alter the essential character of the locality; and

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

- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- (4) Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use, provided that:
 - (a) Other criteria of §§ 29-9 and 29-6K are met; and
 - (b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (5) Variances may be issued for the repair, reconstruction, rehabilitation or restoration of historic structures upon the determination that:
 - (a) The development meets the criteria of Subsections A through D, above; and
 - (b) The proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (6) Any applicant who meets the criteria of Subsections A through E shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
 - (a) The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 - (b) Such construction below the base flood level increases risks to life and property; and
 - (c) The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

- (7) Appeal procedure for administrative and variance appeals.
- (a) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within 30 days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
 - (b) Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
 - (c) The Board of Appeals shall hold a public hearing on the appeal within 35 days of its receipt of an appeal request.
 - (d) The person filing the appeal shall have the burden of proof.
 - (e) The Board of Appeals shall decide all appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
 - (f) The Board of Appeals shall submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Planning Board to issue a flood hazard development permit, which includes any conditions to be attached to said permit.
 - (g) Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within 45 days from the date of any decision of the Board of Appeals.

§ 29-10. Enforcement; violations and penalties.

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this chapter pursuant to Title 30-A M.R.S.A. § 4452.
- B. The penalties contained in Title 30-A M.R.S.A. § 4452 shall apply to any violation of this chapter.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:
 - (1) The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 - (2) A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
 - (3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

- (4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
- (5) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

§ 29-11. Severability.

If any section or provision of this chapter is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this chapter.

§ 29-12. Conflict with other ordinances.

This chapter shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this chapter imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this chapter shall control.

§ 29-13. Word usage; definitions.

- A. Unless specifically defined below, words and phrases used in this chapter shall have the same meanings as they have at common law and to give this chapter its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.
- B. As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY STRUCTURE — A small detached structure that is incidental and subordinate to the principal structure.

ADJACENT GRADE — The natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain having a one-percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in § 29-1 of this chapter.

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year, commonly called the "100-year flood."

BASEMENT — Any area of the building having its floor subgrade (below ground level) on all sides.

BUILDING — See "structure."

CERTIFICATE OF COMPLIANCE — A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this chapter.

CODE ENFORCEMENT OFFICER — A person certified under Title 30-A M.R.S.A. § 4451 (including exceptions in Subsection 4451, Paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

ELEVATED BUILDING —

- (1) A non-basement building:
 - (a) Built, in the case of a building in Zones A1-30 or A, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or stilts; and
 - (b) Adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.
- (2) In the case of Zones A1-30 or A, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of floodwaters, as required in § 29-6L.

ELEVATION CERTIFICATE — An official form (FEMA Form 81-31, 02/06, as amended) that:

- (1) Is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and
- (2) Is required for purchasing flood insurance.

FLOOD or FLOODING —

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (a) The overflow of inland or tidal waters.
 - (b) The unusual and rapid accumulation or runoff of surface waters from any source.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or

by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection (1)(a) of this definition.

FLOOD ELEVATION STUDY — An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See "flood elevation study."

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source. (See "flooding.")

FLOODPLAIN MANAGEMENT — The operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS — Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

FLOODWAY — See "regulatory floodway."

FLOODWAY ENCROACHMENT LINES — The lines marking the limits of floodways on federal, state, and local floodplain maps.

FREEBOARD — A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HISTORIC STRUCTURE — Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior; or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

LOCALLY ESTABLISHED DATUM — For purposes of this chapter, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where mean sea level data is too far from a specific site to be practically used.

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements described in § 29-6L of this chapter.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or

other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MINOR DEVELOPMENT — All development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to, accessory structures as provided for in § 29-6J, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures, and nonstructural projects, such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

NATIONAL GEODETIC VERTICAL DATUM (NGVD) — The national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)."

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

100-YEAR FLOOD — See "base flood."

RECREATIONAL VEHICLE — A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection, not including slideouts;
- (3) Designed to be self-propelled or permanently towable by a motor vehicle; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY —

- (1) The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot; and
- (2) When not designated on the community's Flood Insurance Rate Map or Flood Boundary and Floodway Map, it is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

RIVERINE — Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

SPECIAL FLOOD HAZARD AREA — See "area of special flood hazard."

START OF CONSTRUCTION — The date the building permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — For floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure, and a variance is obtained from the community's Board of Appeals.

VARIANCE — A grant of relief by a community from the terms of a floodplain management regulation.

VIOLATION — The failure of a structure or development to comply with a community's floodplain management regulations.

§ 29-14. Repealer.

This chapter repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

Chapter 48

MARIJUANA

ARTICLE I

Retail Marijuana Establishments and Social Clubs
[Adopted 3-11-2017 ATM by Art. 4]**§ 48-1. Legislative authority.**

This article is enacted pursuant to the Marijuana Legalization Act, 7 M.R.S.A. § 2441 et seq., Municipal Home Rule Authority, Maine Constitution, Article VIII, Part 2, and 30-A M.R.S.A. § 3001.

§ 48-2. Definitions.

For the purposes of this article, retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A. § 2442.

§ 48-3. Retail marijuana establishments and social clubs prohibited.

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs, are expressly prohibited in this municipality. No person or organization shall develop or operate a business that engages in retail or wholesale sales of a retail marijuana product, as defined by 7 M.R.S.A. § 2442. Nothing in this article is intended to prohibit the lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. § 2421 et seq.

§ 48-4. Enforcement; violations and penalties.

This article shall be enforced by the municipal officers or their designee. Violation of this article shall be subject to the enforcement and penalty provisions of 30-A M.R.S.A. § 4452.

Chapter 50

MASS GATHERINGS

GENERAL REFERENCES

Glare beyond property lines — See Ch. 105, Noise — See Ch. 105, § 105-22 and Appendix § 105-25.
A.

ARTICLE I
General Provisions

§ 50-1. Title.

This chapter shall be known as and may be cited as the "Mass Gathering Ordinance of the Town of Shapleigh, Maine."

§ 50-2. Authority.

This chapter is enacted according to the authority granted in 22 M.R.S.A. § 1602 and 30-A M.R.S.A. §§ 2101, 2109 and 3001.

§ 50-3. Purpose. [Amended 3-14-1981 ATM by Art. 4]

It is recognized that a mass outdoor gathering attended by 250 or more persons, which is to be continued with such attendance for two or more hours, may create a hazard to public health and safety. Accordingly, it is deemed necessary in the interest of public welfare to regulate the conduct of such gatherings in order to protect the public health and safety.

§ 50-4. Definitions.

For the purposes of this chapter, the following terms shall have the meanings indicated:

MASS GATHERING — A group of 250 or more persons assembled together for a meeting, festival, social gathering or other similar purpose that can be anticipated to exceed two hours' duration. **[Amended 3-14-1981 ATM by Art. 4]**

MASS GATHERING AREA — Any place maintained, operated or used for a group gathering or assemblage, except an established permanent stadium, athletic field, arena, auditorium, coliseum, fairground or other similar permanent place of assembly that has sufficiently existing sanitary facilities to handle the expected gathering.

NUISANCE — As provided in Title 17-A of the Maine Revised Statutes Annotated.

OPERATOR — The person responsible for the managing of the mass gathering area. In the event that no operator exists, the owner or, in the event of his nonavailability, the lessee of the ground encompassing the mass gathering area shall be deemed to be the operator under these regulations.

PERSON — An individual, group of individuals, association, partnership or corporation, firm or company.

REFUSE — All combustible or noncombustible putrescible or nonputrescible solid or liquid wastes.

SANITARY FACILITIES — Toilet, privies, lavatories urinals, drinking fountains and service building or room provided for installation and use of these units.

SELECTMEN — The Shapleigh Board of Selectmen and its authorized representatives.

ARTICLE II
Permit Procedure

§ 50-5. Permit required. [Amended 3-14-1981 ATM by Art. 4]

No person shall sponsor, promote, sell tickets to, permit on his property or otherwise conduct a mass outdoor gathering which may, will or is intended to attract a continued attendance at such gathering of 250 or more persons for two or more hours until a permit therefor has been obtained from the Selectmen.

§ 50-6. Issuance standards; advice from other officials.

The Board of Selectmen shall issue a permit for a mass outdoor gathering unless it finds the standards in this chapter are not met. When considering the issuance of a permit, the Board of Selectmen may seek advice from the Fire Chief, Code Enforcement Officer, Health Officer and such other officials or persons as it deems necessary.

§ 50-7. Denial of permit based on standards.

The Board of Selectmen, in denying a permit, shall find that one or more of the standards set forth in this chapter have not been met.

§ 50-8. Permit procedure; fee.

- A. A permit application to hold one or more mass outdoor gatherings shall be submitted to the Town Clerk at least 20 days prior to the first outdoor gathering contemplated. The permit application shall contain the information described in Article III and shall be accompanied by a nonrefundable permit fee of \$250. The fees specified in this chapter shall be waived in regard to fairs, exhibitions and similar events held by agricultural societies and associations, Boy Scouts and Girl Scouts of America activities, military activities or to public school organizations.
- B. Within seven days after consideration of the permit application, the Board of Selectmen shall either:
 - (1) Issue a permit to the operator; or
 - (2) Deny a permit to the operator, which denial shall be in writing and shall set forth with specificity the reasons for such denial, together with a list of steps which, if followed by the operator, would result in a permit being issued.
- C. If the Board of Selectmen fails to either issue the permit or send such notice of denial, a permit shall be deemed to have been denied. A party aggrieved by the decision of the Board of Selectmen may appeal under Rule 80B, Review of Administrative Action, of the Rules of Civil Procedure.

ARTICLE III
Permit Application Details

§ 50-9. Reasonable detail required.

The permit application submitted pursuant to § 50-8 shall be in the form prescribed by the Board of Selectmen and shall show the following in reasonable detail.

§ 50-10. Access for vehicles and pedestrians.

Convenient and safe access for the ingress and egress of pedestrians and vehicular traffic shall exist, and all public roadways in the proximity of the mass outdoor gathering will be adequately staffed with traffic control personnel to ensure safety to all the public.

§ 50-11. Grounds.

- A. Each mass gathering area will be well drained and so arranged to provide sufficient space for persons assembled, vehicles, sanitary facilities and appurtenant equipment.
- B. Trees, underbrush, large rocks and other natural features will be left intact and undisturbed whenever possible, and natural vegetative cover will be retained, protected and maintained so as to facilitate drainage, prevent erosion and preserve the scientific attributes.
- C. Grounds will be maintained free from accumulations of refuse and any health and safety hazards constituting a nuisance as defined.
- D. Illumination will be provided at night to protect the safety of the persons at the assembly. The assembly area shall be adequately lighted but shall not unreasonably reflect beyond the assembly area boundaries unless adjacent properties are uninhabited.
- E. On-site parking and vehicular access.
 - (1) On-site parking space will be provided for persons arriving by vehicular means.
 - (2) Service road and parking spaces will be located so as to permit the convenient and safe movement of vehicular and pedestrian traffic and free passage of emergency vehicles. The width of the service road should not be less than the following:
 - (a) One traffic lane: 12 feet.
 - (b) Two traffic lanes: 24 feet.
 - (c) Parallel parking lanes: seven feet.
 - (3) Adequate parking space shall be provided. Adequate parking is construed to mean at the rate of at least one parking space to every

four persons, and the density shall not exceed 100 passenger cars or 30 buses per usable acre.

- F. At least 10 square feet per person shall be provided on the site for daytime assemblage, and no overnight assemblage will be permitted.

§ 50-12. Water supply.

- A. An adequate, safe supply of potable water, meeting requirements of the State Department of Human Services, Division of Health Engineering, will be provided and that common cups will not be used.
- B. Transported water will be obtained from an approved source, stored and dispensed in an approved manner. "Approved" as used in this section means in compliance with standards adopted by the State Department of Human Services, Division of Health Engineering.

§ 50-13. Sanitation.

- A. Where water is distributed under pressure and flush toilets are used, the water system will deliver water at normal operating pressure (20 pounds per square inch minimum to all fixtures at the rate of at least 30 gallons per person per day).
- B. When water is not available under pressure, and nonwater carriage toilets are used, at least three gallons of water per person per day will be provided for drinking and lavatory purposes.
- C. Where water under pressure is not available, equivalent facilities shall be provided and installed in accordance with the requirements of the Department of Human Services, Division of Health Engineering.
- D. Sanitary facilities shall be separate for males and females, set at the rate of two for each 350 persons.
- E. Urinals (men's) and Sanistands (women's) or Porta Johns may be substituted for the required number of toilets. Twenty-four inches of trough urinals in a men's room will be considered equivalent of one urinal or toilet.
- F. Required sanitary facilities will be conveniently accessible and well defined.
- G. Each toilet will have a continuous supply of toilet paper.
- H. Service buildings or rooms housing required plumbing fixtures will be constructed of easily cleanable, nonabsorbent materials. The buildings, service rooms and required plumbing fixtures located therein will be maintained in good repair and in a clean and sanitary condition.
- I. Separate service buildings or rooms containing sanitary facilities, clearly marked, will be provided for each sex, and each toilet room

will be provided with a door to ensure privacy, or the entrance will be screened so that the interior is not visible from the outside.

- J. Wastewater will be discharged in a manner consistent with the requirements of the State Department of Human Services, Division of Health Engineering.
- K. Disposal and/or treatment of any excretion or liquid waste will be in a manner consistent with the requirements of the State Department of Human Services, Division of Health Engineering.

§ 50-14. Refuse disposal.

- A. Refuse will be collected, stored and transported in such a manner so as to prevent odor, infestation of insects and/or rodents and any other nuisance condition, or conditions which are inconsistent with the health, safety and welfare of the patrons of the mass outdoor gathering or the public.
- B. Refuse containers shall be readily accessible, and one fifty-gallon refuse container or its equivalent should be provided for each 100 persons anticipated, or one sixteen-cubic-yard trash container should be provided for every 5,000 persons anticipated.
- C. The area where motor vehicles are parked should have one fifty-gallon refuse container or its equivalent for every 25 such motor vehicles or one sixteen-cubic-yard trash container for every 2,000 motor vehicles.
- D. All refuse will be collected from the assembly area at least twice for each twelve-hour period of the assembly with a minimum of two such collections per gatherings exceeding six hours, or more often if necessary, and disposed of at a lawful disposal site.
- E. The grounds and immediate surrounding property will be cleared of refuse within 24 hours following an assembly.

§ 50-15. Vermin control.

Insects, rodents and other vermin shall be controlled by proper sanitary practices, extermination or other safe and effective control methods. Where necessary, animal parasites and other disease-transmitting nuisances shall be controlled.

§ 50-16. Fire and other safety measures.

- A. Where an electrical system is installed, it will be installed and maintained in accordance with the provisions of the applicable state standards and regulations.
- B. Grounds, buildings and related facilities will be maintained and used in a manner as to prevent fire and in accordance with the applicable local fire prevention regulations.

- C. Internal and external traffic and security control will meet requirements of the applicable state and local law enforcement agencies.
- D. The Shapleigh Fire Department will be informed of the outdoor mass gathering, and adequate fire prevention equipment will be available.
- E. At least 25 law enforcement officers will be on-site to assist in crowd and traffic control.

§ 50-17. Medical.

- A. Emergency medical services will be provided under the supervision of a licensed physician; all other personnel must be licensed by the State of Maine, as either Physician Assistant, R.N. or Emergency Medical Technician.
- B. A first aid building or tent with adequate medical supplies will be available.
- C. Adequate vehicles duly licensed by the State of Maine as ambulances will be available on the site during the complete time of the mass gathering.
- D. Telephone and radio communications will be provided and kept available for emergency purposes.
- E. The operator of the mass gathering will contact area hospitals and advise them that a mass gathering will be held and the approximate number of people attending.
- F. The Chief of the Shapleigh Fire Department will determine the number of emergency medical services (EMS) personnel and ambulances needed and times.

§ 50-18. Sound.

Reasonable precautions will be taken to ensure that the sound of the assembly will not carry unreasonably beyond the boundaries of the area. The noise level at the perimeter of the site will not exceed 70 decibels on the A scale of a sound-level meter meeting specifications of the American National Standards Institute.²

2. Editor's Note: See also provisions on noise in Ch. 105, Zoning, § 105-22 and Appendix A.

ARTICLE IV
Bond and Insurance

§ 50-19. Bond.

- A. The operator, prior to the issuance of the permit, shall furnish to the Selectmen a bond of a surety company qualified to do business in this state in such an amount the Selectmen shall determine, but in no event less than \$5,000. Cash or negotiable securities of equivalent value to the amount determined by the Selectmen may be furnished in lieu of a bond. The bond or security shall guarantee compliance by the operator with the provisions of this chapter.
- B. In addition, the operator shall deposit with the Town an amount of money equal to 120% of the estimated public costs of the contemplated mass outdoor gatherings. Public costs shall be those costs incurred by the town in connection with the contemplated mass outdoor gatherings which relate to the mass outdoor gatherings and which would not be incurred by the town if such mass outdoor gatherings were not held. Promptly after the mass outdoor gathering, the public costs shall be calculated, and the deposit shall be refunded to the operator to the extent it exceeds the actual public costs. If the actual public costs exceed the amount deposited, the operator shall pay the excess to the town within 10 days after being so notified.

§ 50-20. Insurance.

The operator will carry public liability insurance in at least the following amounts:

- A. Three hundred thousand dollars bodily injury (per person).
- B. Five hundred thousand dollars bodily injury (per occurrence).
- C. One hundred thousand dollars property damage.

ARTICLE V
Penalties

§ 50-21. Violations and penalties.

Any person violating this chapter shall be punished by a civil penalty of at least \$500 but not more than \$1,000. Each violation shall be considered a separate offense, and each day a violation is allowed to exist shall be considered a separate offense.

ARTICLE VI
Severability and Effective Date

§ 50-22. Severability.

The invalidity of any provision of this chapter shall not invalidate any other part thereof.

§ 50-23. Effective date.

This chapter shall take effect immediately upon adoption of the same by the Town of Shapleigh.

Chapter 57

PLANNING BOARD

GENERAL REFERENCES

Floodplain management — See Ch. 29.

Subdivision of land — See Ch. 89.

Residential growth — See Ch. 57.

Zoning — See Ch. 105.

§ 57-1. Establishment of Planning Board.

Pursuant to Article VIII, Pt. 2, Section 1 of the Maine Constitution and 30-A M.R.S.A. § 3001, the Town of Shapleigh hereby establishes a Planning Board.

§ 57-1.1. Purpose. [Added 3-14-2009 ATM by Art. 8]

The purpose of the Planning Board is to administer the priorities of the Town of Shapleigh Zoning Ordinance, Subdivision Ordinance and Growth Ordinance in order to maintain the safe and healthful conditions and the general welfare, prevent and control water pollution, protect spawning grounds, fish, aquatic life, bird and other wildlife habitat, control building sites, placement of structures and land uses and conserve shore cover, visual as well as actual points of access to inland and coastal water and natural beauty, and to encourage the preservation of farmland.

§ 57-2. Appointments.

- A. Board members shall be appointed by the municipal officers, (henceforth known as the Board of Selectmen) and sworn by the Town Clerk or other person authorized to administer oaths.
- B. The Board shall consist of five members and two alternate members.
- C. The term of each full voting member shall be five years. The term of alternate members shall be five years.
- D. When there is a permanent vacancy of either a full or an alternate member, the Board Chairman shall notify the Board of Selectmen who shall, within 60 days of its occurrence, appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation or death of any member, or when a member ceases to be a legal resident of the Town, or when a member fails to attend four consecutive regular meetings without prior satisfactory explanation, or fails to attend at least 75% of all meetings during the preceding twelve-month period. When a vacancy occurs, the Chairman of the Board may recommend to the Board of Selectmen that the attendance provision be waived for the cause, in which case no vacancy will then exist until the Board of Selectmen disapprove the recommendation.

- E. Any member of the Board may be removed for cause by the Board of Selectmen before expiration of his/her term but only after an advertised public hearing at which the member in question has had an opportunity to refute specific charges.
- (1) If a member disagrees with the decision of removal by the Board of Selectmen, the member may request a fair hearing, in writing, within five working days of receiving a written notice of removal.
 - (2) The Board of Selectmen must schedule a fair hearing within five working days of receipt of written notice by the dissatisfied member, and a fair hearing authority must be established. The FHA shall be comprised of three members appointed by the Board of Selectmen.
 - (3) The decision made by the FHA shall be reached solely on the information presented at the hearing. The FHA must give the member a written decision of their findings within five working days of the hearing.
- F. A member of the Board of Selectmen may not be a member or alternate member of the Planning Board.

§ 57-3. Organization and rules.

- A. The annual organizational meeting shall be held on the first regular Planning Board meeting in May, and the election of officers shall be immediately thereafter. The Board shall elect a Chairman and Vice Chairman from among its full members. The candidate receiving a majority vote shall serve for one year or until his or her successor shall take office. Vacancies of officers shall immediately be filled by regular election procedures. Officers may be elected for consecutive years.
- (1) There shall be a Secretary hired by the Board of Selectmen and voted upon by the Planning Board each year. The Secretary may be a Board member, but it is not required.
 - (2) The Secretary shall be responsible for the minutes and records of the Board, agendas or regular meetings and special meetings with the Chairman, notice of the meetings and hearings, correspondence of the Board, and other duties as are normally carried out by a secretary. The Secretary shall keep a record of all resolutions, votes, transactions, correspondence, findings and conclusions of the Board. All records shall be deemed public and may be inspected during normal business hours.
- B. The Chairman shall preside at all meetings and hearings of the Planning Board. The Chairman has the authority to appoint all committees, to call work sessions, designate which alternate member shall serve in place of a regular member, and to preside over executive sessions. The Vice Chairman shall act for the Chairman in his or her absence.

- C. Alternate members may attend all meetings and participate in the proceedings but may vote only when designated by the Chairman to sit for a member.
- D. When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the Chairman, the Chairman shall designate an alternate member to sit in that member's place.
- E. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members, except the member who is being challenged.
- F. The Board may employ such staff and/or experts as provided in local ordinances or regulations within budget limitations to assist in planning matters and issues as needed. This assistance shall include the hiring of independent engineering and traffic consultants and legal counsel. Appointments shall be made by a majority vote of the entire membership. Opinions presented by the Board's legal counsel shall not be binding upon the Town of Shapleigh.
- G. Meetings shall be held on the second and fourth Tuesdays of the month at the time specified on the municipal calendar. The meetings shall be at the Town Hall or other suitable meeting place. The Chairman, or upon the request of a majority of the Board, may schedule a special meeting; provided, however, that notice thereof shall be given to each member and to representatives of the press at least 24 hours in advance and that no business may be conducted other than as specified in said notice. All meetings shall be open to the public.
- H. Meetings shall be held on the second and fourth Tuesdays of the month at the time specified on the municipal calendar. The meetings shall be at the Town Hall or other suitable meeting place. The Chairman, or upon the request of a majority of the Board, may schedule a special meeting, provided, however, that notice thereof shall be given to each member in accordance with the Maine Freedom of Access Act, and that no business may be conducted other than as specified in said notice. All meetings shall be open to the public. **[Amended 3-9-2019 ATM by Art. 5]**
- I. The Board shall adopt rules for the order of business, work sessions, hearings and include these in its bylaws. The Secretary shall keep a record of its resolutions, transactions, correspondence, findings and determinations. All records shall be deemed public and may be inspected at reasonable times.

§ 57-4. Duties and powers.

- A. The Board shall perform such duties and exercise such powers as are provided in Shapleigh municipal ordinances and the laws of the State of Maine.

- B. The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.

§ 57-5. Decisions.

1 A. Decisions by the Board shall be made within the time limits established by state law and local ordinances and regulations. The final decision on any matter before the Board shall be issued as a written order signed by the Chairman. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, and signed minutes of the meetings/hearing, shall constitute the record. All decisions shall become a part of the record and shall include a specific statement of findings and conclusions. At a minimum, the record should specifically state that the applicant has/has not met all applicable state statutory requirements, all applicable municipal ordinances, and all applicable municipal regulations, and those legal documents shall be specifically referenced.

- A. The Board, in reaching said decision, shall be guided by standards specified in the applicable statute, ordinance, or regulation as well as by community goals and policies as specified in a Comprehensive Plan, if any, and by the findings of the Board in each case.
- B. Notice of any decision, including the findings and conclusions/minutes, shall be sent by mail or hand delivered to the applicant, his representative or agent within the time limits established in the Shapleigh Zoning Ordinance and/or Shapleigh Subdivision of Land Ordinance.³
- C. Decisions of the Board, shall be immediately filed in the Town office, shall become part of the Board's permanent record and shall be made public record in compliance with the Right to Know Law.
- D. The Board may reconsider any decision at the same meeting or at a subsequent meeting within 30 days of its original decision; provided, however, that both a vote to reconsider and any action taken pursuant thereto shall occur and be completed within 30 days.
- (1) Notice of any reconsideration shall be given to all interested parties in a reasonable time in advance of the reconsideration. The Board may conduct additional hearings and receive additional evidence and testimony.
- (2) Reconsideration should be used for a record which contains significant factual errors due to fraud or mistake regarding facts upon which the decision was based or, when the Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

3. Editor's Note: See Ch. 105, Zoning and Ch. 89, Subdivision of Land.

§ 57-6. Appeals.

Appeal of the decision of the Board is governed by state and local law.

Chapter 61**PROPERTY, NUMBERING OF****GENERAL REFERENCES**

Subdivision of land — See Ch. 89.

§ 61-1. Purpose.

The purpose of this chapter is to enhance the easy and rapid location of properties for the delivery of public safety and emergency services, postal and delivery services.

§ 61-2. Authority.

This chapter is adopted pursuant to and consistent with the Municipal Home Rule Powers as provided for in Article VIII, Part 2, Section 1, of the Constitution of the State of Maine and Title 30-A M.R.S.A. § 3001.

§ 61-3. Administration.

This chapter shall be administered by the Board of Selectmen whose authority is to assign road names and numbers to all properties, both existing and proposed. The Board of Selectmen shall also be responsible for maintaining the following official records of this chapter:

- A. A Town of Shapleigh map for official use showing road names and numbers.
- B. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned numbers.
- C. An alphabetical list of all roads with property owners listed in order of their assigned numbers.

§ 61-4. Naming system.

- A. All roads that serve two or more addresses shall be named, regardless of whether the ownership is public or private. A "road" refers to any highway, road, street, avenue, lane, private way or similar paved, gravel or dirt thoroughfare. "Property" refers to any property on which a more or less permanent structure has been erected or could be placed. A road name assigned by the Board of Selectmen shall not constitute or imply acceptance of the road as a public way.

B. The following criteria shall govern the naming system:

- (1) No two roads shall be given the same or shall have similar sounding names (e.g. Beech and Peach or Pine Road and Pine Lane).
- (2) Each road shall have the same name throughout its entire length.

§ 61-5. Numbering system.

Numbers shall be assigned every 50 feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, determined by the number origin. The following criteria shall govern the numbering systems:

- A. All number origins shall begin from the designated center of Shapleigh (the major road intersection at Shapleigh Commons) or that end of the road closest to the designated center. For dead-end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end. Exceptions to this are:
 - (1) Route 109 (Emery Mills Road) numbering will progress from the Acton town line to the Springvale town line.
 - (2) Route 11 numbering will originate at the foot of Mousam Lake and continue northerly to the Newfield town line.
 - (3) Goose Pond Road numbering will be a continuation of the numbers used by the town of Acton, Maine.
 - (4) The Mann Road numbering will originate in North Shapleigh Village at the Portland Street intersection, progressing across Route 11 and continuing to the Newfield town line.
- B. The number assigned to each structure shall be that of the numbered interval falling closest to the front door. If the front door cannot be seen from the main road, the number shall be that of the interval falling closest to the driveway of said structure.
- C. Every structure with more than one principal use or occupancy shall have a separate number for each use or occupancy (i.e. duplexes will have two separate numbers; apartments will have one road number with an apartment number, such as 235 Shapleigh Street, Apt. 2).

§ 61-6. Compliance.

All owners of structures shall, within 90 days of being notified in writing by the Selectmen's office, display and maintain in a conspicuous place the assigned numbers in the following manner:

- A. Numbers on the residence or structure. Where the residence or structure is within 50 feet of and visible from the edge of the road, the assigned number shall be clearly visible from the road and be

displayed in the vicinity of the front door or entryway of the residence or structure.

- B. Number at the street line. Where the residence or structure is greater than 50 feet or not visible from the edge of the road, the assigned number shall be visible from the road, displayed on a post, fence, wall, mail box or on some structure at the property line adjacent to the walk or access drive to the residence or structure.
- C. Size and color of numbers. Numbers shall be a minimum of three inches tall and a minimum of 2 1/2 inches wide and be of a contrasting color from the background material so that the numbers may be easily distinguishable.
- D. Every person whose duty is to display the assigned number shall remove any different number which might be mistaken for, or confused with, the number assigned in conformance with this chapter.
- E. Interior location. All residents and other occupants are requested to post the assigned number and road name adjacent to their telephone for emergency reference.

§ 61-7. New construction and subdivisions.

All new construction and subdivision shall be named and numbered in accordance with the provisions of this chapter and as follows:

- A. New construction. Whenever any residence or other structure is constructed or developed, it shall be the duty of the owner to procure an assigned number. This shall be done at the time of the issuance of the building permit.
- B. New subdivisions. Any prospective subdivider shall show a proposed road name and lot numbering system as part of the preapplication submission to the Planning Board. Approval by the Planning Board, after consultation with the Board of Selectmen, shall constitute the assignment of road names and numbers to the lots in the subdivision. On the final plan showing proposed roads, the applicant shall mark on the plan lines or dots in the center of the streets every 50 feet to aid in assignment of numbers to structures subsequently constructed.⁴

§ 61-8. Effective date.

This chapter shall become effective upon approval at the Shapleigh Town Meeting on Wednesday, August 28, 1996.

4. Editor's Note: See Ch. 89, Subdivision of Land, § 89-28.

§ 61-9. Conclusion.

With cooperation of all its residents, Shapleigh will soon possess the capability of providing rapid response emergency services. The result will be evident in enhancing safety and preserving life.

Chapter 68**RESIDENTIAL GROWTH****GENERAL REFERENCES**

Subdivision of land — See Ch. 89.

Zoning — See Ch. 105.

§ 68-1. Title.

This chapter shall be known as the "Residential Growth Ordinance of the Town of Shapleigh, Maine" and will be referred to herein as the chapter."

§ 68-2. Legal authority.

This chapter is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and Title 30, M.R.S.A. § 1917.

§ 68-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DWELLING UNIT — A room or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include manufactured dwelling units but shall not include trailers or recreational vehicles.

FAMILY — One or more persons occupying a premise and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house or hotel. Such unit shall not exceed five persons not related by blood or marriage.

GROWTH PERMIT — A permit to create a new dwelling, issued by the Shapleigh Planning Board after ascertaining that the proposed dwelling would meet all of the relevant requirements of this chapter.

MANUFACTURED HOUSING UNIT — Structures, transportable in one or two sections, which are constructed in a manufacturing facility and are transported to a building site and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

§ 68-4. Purpose.

- A. To maintain the predominately rural character of the town.
- B. To provide for the local housing needs of Shapleigh's existing residents, while accommodating Shapleigh's fair share of population growth in York County and in the immediate subregion.
- C. To ensure fairness in the allocation of growth permits.
- D. To ensure that the growth permit issuance system does not unduly increase construction costs by preventing builders from erecting a moderate number of houses at the same time.
- E. To ensure that the growth permit issuance system is not abused by individuals who would obtain growth permits when they are otherwise (perhaps financially) not able to commence construction within several months.
- F. To allow growth of the residential population of the town at a rate which would not impose an undue burden upon the provision of community services (including education, fire protection, road maintenance, waste disposal, health services and welfare) and which would be compatible with the orderly and gradual expansion of said services.
 - (1) During the most current review of the tax base for 2018, the education system accounts for 66.75% of the cost to taxpayers. The figure calculated per child per year for 2016-2017 in RSU No. 57 is \$12,675.42. Although the number of children enrolled in the school system is not expected to rise dramatically in the next several years, the cost to Shapleigh taxpayers continues to have a slight increase each year. The most recent figures of cost increase to taxpayers for the school year 2016-2017 is 4.63%. The percent of the total cost of RSU No. 57 that Shapleigh taxpayers currently pay is 15.69%. With this figure, it is apparent that any household with even one child would be an impact since there are not enough property taxes derived from the average house to generate enough money to pay for one child's education. Therefore, the growth ordinance system must calculate growth in such a way as to assure the town can fund education at the current levels and those of the future.
- G. To guide Shapleigh's expansion so that the annual increase in population and dwelling units shall not exceed the average rate of population and housing growth which occurred within the subregion. During this time period, 2010 thru 2018, there is no census data but the number of single-family dwellings permitted in the Town has steadily increased from three in 2010, to 16 in 2018. With the current projected need for housing, the maximum annual number of growth permits should remain unchanged at 34 dwelling units.
- H. To guide Shapleigh's expansion so that the increases in education costs are predictable and manageable.

§ 68-5. Existing structures.

- A. This chapter shall not apply to the repair, replacement, reconstruction or alteration of any existing building structure as long as no additional dwelling units are created by such construction.
- B. Seasonal conversions are additional dwelling units.

§ 68-6. General requirements.

All new dwelling units within the Town of Shapleigh, whether permanent or seasonal, shall be in conformity with the provisions of this chapter and the Zoning Ordinance.⁵ No new dwelling unit shall be constructed which fails to meet the requirements of this chapter and the Zoning Ordinance.

§ 68-7. Administration.

The procedure for applicants shall be as follows:

- A. The Planning Board shall administer the growth permit selection system as described in § 68-8 below in the case of all growth permit applications.
- B. The Code Enforcement Officer shall ensure that all of the endorsements on the growth permit application form have been completed before issuing any building permit.
- C. Every growth permit shall be displayed with the building permit in a conspicuous place on the premises under construction, and shall not be removed until all work covered by the permit has been approved.

§ 68-8. Growth permit selection system.

- A. There will be a \$200 nonrefundable application fee for each growth permit application submitted.
- B. No more than two applications may be submitted per individual, corporation or any other legal entity per month.
- C. No more than two growth permits shall be issued to any one individual, corporation or any other legal entity in one month.
- D. A maximum number of 34 dwelling units shall be granted growth permits in each calendar year, plus two additional growth permits that shall be for affordable housing constructed by Habitat for Humanity.
- E. A notarized copy of a signed sales contract, or other evidence acceptable to the Planning Board, shall be required.
- F. Applications may be submitted, beginning in August 2005, in person, or by certified mail on each day the Town office is normally open. Growth

5. Editor's Note: See Ch. 105, Zoning.

permits will be issued as received at the first Planning Board meeting in January of each year. Applications will be reviewed at each Planning Board meeting thereafter until all permits have been issued for the calendar year. Applications not issued after the yearly quota has been filled and before the new administrative year begins shall be added to a waiting list.

- G. Applications placed on the waiting list will be reviewed according to the date received on the first-come, first-served basis. Applicants who are on the waiting list will be notified December 1 that they have 30 days in which to tell the Planning Board whether or not they wish to remain on the waiting list for the following year. If they do not notify the Planning Board by January 1 of the following year stating they wish to remain on the list, they will be removed from the list.
- H. All applicants that wish to remain on the waiting list must mail a nonrefundable \$50 administration fee for the next calendar year. It must be received by January 1. If the administration fee is not received by January 1 the application will be removed from the waiting list.

§ 68-9. Appeals.

Appeals procedure for this chapter shall be the same as specified in § 105-72 of the Town of Shapleigh Zoning Ordinance, as revised.

§ 68-10. Expiry of permits.

Growth permits selected and issued in accordance with this chapter shall expire after 90 days, unless a building permit has been issued. This time period may be extended by the Code Enforcement Officer if issuance of a building permit is delayed due to a technical problem.

§ 68-11. Nontransferability of permits.

Growth permits shall be site-specific, and shall be valid for construction only on the lot specified on the application. However, said permits shall be transferable to new owners of the lot, should the property change hands. If a permit is transferred, the date of issuance remains unchanged.

§ 68-12. Conflict with other ordinances.

This chapter shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit or provision of law and the Zoning Ordinance. Where this chapter imposes a greater restriction upon the use of land, buildings or structures, the provisions of this chapter shall prevail.

§ 68-13. Validity and severability.

Should any section or provision of this chapter be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this chapter.

§ 68-14. Effective date.

The effective date of this chapter is the date of adoption by Town vote.

§ 68-15. Review procedure.

The ordinance shall be reviewed every three years by a committee comprised of the Board of Selectmen, the Planning Board and the Code Enforcement Officer.

§ 68-16. Amendment procedure.

A. An amendment to this chapter may be initiated by:

- (1) The Planning Board, provided a majority of the Board has so voted;
- (2) Request of the municipal officers to the Planning Board; or
- (3) Written petition of a number of voters equal to at least 10% of the number of votes cast in the municipality at the last gubernatorial election.

B. An amendment to this chapter may be adopted by:

- (1) A majority vote of registered voters present and voting if the proposed amendment is recommended by the Planning Board; or
- (2) A majority vote of registered voters present and voting if the proposed amendment is not recommended by the Planning Board.

§ 68-17. Violations.

- A. A violation of this chapter shall be deemed to exist when any person, firm or corporation engages in any construction activity directly related to the erection or placement of a dwelling unit upon any land within the Town of Shapleigh without having first obtained a growth permit from the Planning Board.
- B. If a dwelling has been constructed or placed without a growth permit, it shall also be deemed a violation for any person, firm or corporation to sell, lease, rent or convey such dwelling, or for any person or family to occupy such dwelling until such permit has been duly issued.

§ 68-18. Penalties.

- A. Any person, firm or corporation being the owner or having control or use of any residential building constructed in violation of any of the

provisions of this chapter, shall be guilty of a misdemeanor, and on conviction shall be fined not less than \$50 for each day such a violation (construction activity) continues after notification by the Town or its agents.

- B. If a dwelling unit has been constructed contrary to the provisions of this chapter and then sold, leased, rented or conveyed for the residential use, the vendor, lessor, landlord or conveyor shall be guilty of a misdemeanor, and on conviction shall be fined not less than \$5,000.
- C. If a dwelling unit has been constructed contrary to the provisions of this chapter and is then occupied by the builder or his family, for residential use, the builder shall be guilty of a misdemeanor, and on conviction shall be fined not less than \$5,000.

Chapter 75

SEWERS

GENERAL REFERENCES

Subdivision of land — See Ch. 89.

ARTICLE I

**Private Sewage Disposal Systems
[Adopted 3-14-1964 ATM by Art. 41]****§ 75-1. Purpose.**

The purpose of this article is to promote the health, safety, convenience and welfare of the inhabitants of the Town of Shapleigh by providing for the location and construction of septic tanks and private sewage disposal systems with a view to the maintaining of pollution-free lakes, ponds, rivers, streams and similar watercourses.

§ 75-2. Location. [Amended 3-10-1973 ATM by Art. 42]

No septic tank or other system of private sewage disposal shall be located nearer than 100 feet to any well or spring used as a water supply for domestic purposes or any lake or other body of water used as a source of public supply, except a septic tank or any other tank or similar receptacle directly receiving sewage for the purpose of pumping it to a suitable disposal system located over 100 feet from such water supplies; nor shall any such septic tank or other system of private sewage disposal be placed nearer than 100 feet to the normal high-water mark of any lake, pond, river, stream or similar watercourse unless the effluent therefrom is to be pumped at least 100 feet away from such waters in the same manner as indicated above.

§ 75-3. Permit required.

- A. No person, firm or corporation shall install, erect, construct, build or locate or in any manner cause to be installed, erected, constructed, built or located any septic tank or private sewage disposal system without first obtaining from the Plumbing Inspector for the Town of Shapleigh a written permit approving the manner of construction and the proposed location of said septic tank or private sewage disposal system and its compliance with this article and with the State of Maine State Plumbing Code.
- B. The Plumbing Inspector may charge a reasonable fee for said permit.
[Amended 3-10-1973 ATM by Art. 42]

§ 75-4. Order to remedy violation; failure to comply.

- A. Any person, firm or corporation which installs erects, constructs, builds or locates or in any manner causes to be installed, erected, constructed, built or located any septic tank or private sewage disposal system and said system fails to comply with the provisions of this article or with the State of Maine State Plumbing Code shall upon service of an order as provided in Subsection A(1) and (2) below remedy the condition or location of said system which is in violation of this article or the State of Maine State Plumbing Code within 10 days of the service of said order.

- (1) Such order shall be addressed to the owner of the premises, setting forth the date, the fact of noncompliance with this article or the State of Maine State Plumbing Code and shall contain a notice to remedy the violating condition or location within 10 days. The order shall be signed by the Plumbing Inspector and may be served in the same manner as in Court process.
 - (2) A return of service indicating the method used and the person served shall be made by the party serving the notice and filed with the Town Clerk.
- B. In the event the condition or location which fails to comply with this article or the State of Maine State Plumbing Code is not remedied within the ten-day period, the Plumbing Inspector or his agents may enter the premises and cause the condition and/or the location to be remedied. Any expenses incurred by the municipality in the correction of such condition or location may be recovered from the owner by civil action.

§ 75-5. Violations and penalties. [Added 3-10-1973 ATM by Art. 42]

Each person, firm or corporation who shall violate a provision of this article or who fails to comply therewith or with any of the requirements contained therein, or who shall install or permit to be installed any septic disposal system in the Town of Shapleigh without first having obtained a permit therefor, shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this article is committed or continued, and upon conviction of such violation each such person shall be punished within the limits and as provided by the laws of the State of Maine.

§ 75-5

SOLID WASTE

§ 75-5

Chapter 80

SOLID WASTE

GENERAL REFERENCES

Subdivision of land — See Ch. 89.

**Definition of junkyard — See Ch. 105,
§ 105-15.**

ARTICLE I
Transfer Station
[Adopted 6-14-1969 STM by Art. 3]

§ 80-1. Purpose.

The purpose of this article is to provide for the maintenance of the facilities for residents, taxpayers and summer residents for disposal of refuse taken from the premises located within the boundaries of the Town of Shapleigh.

§ 80-2. Fence and gate. [Amended 3-12-1983 ATM by Art. 5]

A fence and gate will be erected at the entrance to the transfer station. The gate will be locked when the transfer station is closed.

§ 80-3. Hours. [Amended 3-12-1983 ATM by Art. 5]

Dumping hours will be set, controlled and posted by the Board of Selectmen. Dumping at any other time is a violation of this chapter.

§ 80-4. Use of firearms. [Amended 3-12-1983 ATM by Art. 5]

The use of firearms is prohibited at the transfer station.

§ 80-5. Attendant.

An attendant will be on duty, when deemed necessary, and will be in charge of all dumping operations. Collecting and picking of material from the transfer station is restricted to the attendant only.

§ 80-6. Prohibited materials.

The following materials are not to be disposed of in the transfer station:

- A. Automobiles.
- B. Large tree trunks and stumps.
- C. Waste oils.
- D. Domestic animals.

§ 80-7. Violations and penalties. [Amended 3-12-1983 ATM by Art. 5]

Any violation of this article shall be punishable by a fine of \$100.

ARTICLE II
Flow Control
[Adopted 8-4-1987 STM by Art. 3]

§ 80-8. Title.

This article shall be known as the "Town of Shapleigh, Maine, Solid Waste Flow Control Ordinance."

§ 80-9. Enabling legislation.

This article is enacted pursuant to the authority granted in 30-A M.R.S.A. §§ 3001, 3351 and 3352 and 38 M.R.S.A. § 1304-B.

§ 80-10. Findings and purpose.

- A. The municipality has a statutory obligation to provide a solid waste disposal facility for domestic and commercial waste generated within the municipality and is authorized to provide such a facility for industrial waste and sewage treatment plant sludge, pursuant to 38 M.R.S.A. § 1305, Subsection 1. Municipal solid waste contains valuable recoverable resources, including energy, which, if recovered, reduce the cost of solid waste disposal. Because energy recovery technology is complex, most energy recovery facilities have high capital costs and long payback periods. To remain cost-effective and operate efficiently during their useful lives, energy recovery facilities require a guaranteed steady supply of waste during their entire useful life. Consequently, a municipality that wants to utilize an energy recovery facility for processing municipal solid wastes generally must agree to provide the facility with a steady supply of solid waste for a relatively long period.
- B. The municipality must exercise its legal authority to control the collection, transportation and disposal of solid waste generated within its borders to ensure delivery of a steady supply of waste to the energy recovery facility designated herein. The municipality finds that use of an energy recovery facility to process acceptable solid waste is an environmentally sound and economically viable solution to the solid waste disposal problem and thereby protects the public health, welfare and safety of the citizens of the municipality.

§ 80-11. Definitions and word usage.

- A. All terms not specifically defined herein shall have their ordinary meaning; words used in the present tense include the future, and the plural includes the singular.
- B. Definitions. As used in this article, the following terms shall have the meanings indicated:

ACCEPTABLE WASTE — All solid wastes of the type presently accepted at the landfill used by the municipality, including all ordinary household, municipal, institutional, commercial and industrial wastes, with the following exceptions:

- (1) Demolition or construction debris from building and roadway projects or locations.
- (2) Liquid wastes or sludges, including tannery sludge.
- (3) Abandoned or junk vehicles.
- (4) Hazardous waste; that is, waste with inherent properties that make it dangerous to manage by ordinary means, including but not limited to chemicals, explosives, pathological wastes, radioactive wastes, toxic wastes and other wastes defined as hazardous by the State of Maine or the Resource Conservation and Recovery Act of 1976, as amended, or other federal, state or local laws, regulations, orders or other action promulgated or taken with respect thereto.
- (5) Dead animals or portions thereof.
- (6) Water treatment residues.
- (7) Tree stumps.
- (8) Waste oil.
- (9) Discarded white goods, including but not limited to freezers, stoves, refrigerators and washing machines.

COLLECTION FACILITY — A building or container in which acceptable waste is deposited for transshipment to the energy recovery facility.

DISPOSAL FACILITY — The facility(ies) designated by the municipality as the storage and/or disposal site(s) for unacceptable wastes.

ENERGY RECOVERY FACILITY — The facility designated herein which processes and recovers energy and/or useful materials from acceptable waste generated in the municipality.

MUNICIPALITY — The Town of Shapleigh, Maine.

UNACCEPTABLE WASTE — All solid waste not designated as acceptable waste if not generated by an industrial source.

§ 80-12. Designation of energy recovery facility.

In accordance with the provisions of 38 M.S.R.A. § 1304-B, the municipality hereby designates the Maine Energy Recovery Company facility located in Biddeford, Maine as its energy recovery facility for the purposes cited in § 80-10 of this article.

§ 80-13. Deposit of acceptable and unacceptable waste in appropriate facilities.

The accumulation, collection, transportation and disposal of acceptable waste and unacceptable waste generated within the municipality shall be regulated in the following manner:

- A. All acceptable waste generated within the municipality shall be deposited at a collection facility or directly at the energy recovery facility.
- B. All unacceptable waste generated within the municipality shall be deposited at a disposal facility.

§ 80-14. Exempted waste.

The following categories of waste shall be exempted from regulation by this article:

- A. Materials from manufacturing, processing or packaging operations which are segregated from solid waste and salvaged for alternate use or reuse by the generator or sold to third parties.
- B. Glass, metal or other noncombustible materials which are separated from acceptable waste by the generator as part of a recycling program approved by municipal officers.
- C. Cardboard, paper or other combustible materials which are separated from acceptable waste by the generator as part of a recycling program approved by the municipal officers, provided that any such recycling program shall not reduce the BTU content of acceptable waste below the BTU level acceptable to the energy recovery facility.

§ 80-15. Administration.

This article shall be administered by the municipal officers. Their powers and duties are as follows:

- A. To adopt reasonable rules and regulations as needed to enforce this article.
- B. To consider all license applications and to grant or deny each application within 30 days after receipt of a completed application at the municipal offices or within such other time as the municipal officers and the applicant shall agree is reasonable.
- C. To review any alleged violation of this article and to impose appropriate penalties therefor after notice and hearing as required by this article.
- D. To institute necessary proceedings, either legal or equitable, to enforce this article.

§ 80-16. Licensing.

- A. No person, firm or corporation shall accumulate, collect, store, transport or dispose of acceptable waste or unacceptable waste generated within the municipality without obtaining a license from the municipal officers, except that a person, firm or corporation that accumulates, collects, stores, transports or disposes of less than one ton per month of its own waste shall not be required by this section to obtain such a license.
- B. Any person, firm or corporation required by this article to obtain a license shall make application to the municipal officers, providing the information required. Each application shall be accompanied by a nonrefundable application fee of \$100.
- C. The application shall contain all information required by the municipal officers, including but not limited to a description of the activity(ies) engaged in, e.g., collection, transport or disposal of acceptable and/or unacceptable waste, type(s) and amount of waste handled in each service area, a description of the facility(ies) operated and used and an equipment inventory, including for vehicles a description of the make, model and year of each vehicle used for the collection or transportation of solid waste, which information shall be revised annually upon license renewal. If the municipal officers determine that the application is incomplete, they shall notify the applicant, in writing, of the specific information necessary to complete it. The municipal officers shall be informed immediately of any changes in or additions to equipment, including vehicles.
- D. Licenses shall not be transferable. In the event of an emergency or vehicle breakdown, a licensee shall be issued a special license for a satisfactory replacement vehicle, upon furnishing of all information required for a licensed vehicle.
- E. All licenses shall expire one year from the date of issue unless otherwise stated on the license or revoked or suspended sooner in accordance with the provisions of this article.
- F. The annual license fee shall be \$25 for each vehicle licensed or \$25 for each applicant licensed for activities not involving the transport of solid waste. License fees shall be prorated based upon the number of months for which the license is issued. License fees shall not be refunded in the event that a license is suspended or revoked.
- G. In the event the municipal officers deny a license application, they shall notify the applicant, in writing, and shall state the reasons for the denial. The applicant may request a public hearing in accordance with the procedures in § 80-18.

§ 80-17. License suspension or revocation.

Any license issued may be suspended or revoked by order of the municipal officers after benefit of a hearing in accordance with the procedures in § 80-18, for the following causes:

- A. Violation of this article.
- B. Violation of any provision of any state or local law, ordinance, code or regulation which relates directly to the provisions of this article.
- C. Violation of any license condition(s).
- D. Falsehoods, misrepresentations or omissions in the license application.

§ 80-18. Hearings.

- A. Anyone denied a license or whose license is suspended or revoked pursuant to § 80-17 shall be entitled to a hearing before the municipal officers, if such request is made in writing within five days of the denial, supervision or revocation.
- B. Such hearings shall be held within 30 days after receipt of the written request for a hearing.
- C. The licensee or applicant shall be notified, in writing, as to the time and place of the hearing at least 10 days prior to the hearing date. The applicant or licensee has the right to be represented by counsel, to offer evidence and to cross-examine witnesses.
- D. A determination shall be made by the municipal officers within 10 days after the conclusion of the hearing, and notice of the decision shall be served upon the applicant or licensee by registered mail, return receipt requested.
- E. The municipal officers' final determination relative to the denial or suspension or revocation of a license and the period of suspension or revocation shall take effect as provided in the notice, but no later than 10 days after the date notice of such final determination has been mailed by registered mail, return receipt requested, to the applicant and shall be conclusive. Notice of the final determination shall set forth the reasons for the denial, suspension or revocation and the effective dates thereof, together with a statement that such decision may be appealed as provided in this article.
- F. Any controversy or claim arising out of or relating to the municipal officers' determination shall be directly reviewable by Superior Court pursuant to the Maine Rules of Civil Procedure, Rule 80B.

§ 80-19. Enforcement.

- A. All provisions of this article are enforceable by duly authorized police officers and the municipal officers.

- B. Any person who violates any provision of this article is subject to arrest and, if convicted, to punishment as provided in § 80-20.
- C. Whenever the municipal officers determine that there has been a violation by virtue of noncompliance, they shall give notice of such violation to the person(s) responsible by personal service or by registered mail, return receipt requested.
 - (1) The citation shall include a statement of reasons and shall allow reasonable time for performance of any act it requires.
 - (2) The citation may contain an outline of remedial action which, if taken, will effect compliance.
 - (3) The citation shall state that unless corrections are made within the allotted time, the violator is subject to prosecution and/or to license revocation or suspension pursuant to the provisions of this article.

§ 80-20. Violations and penalties.

- A. Criminal penalties. Any person who violates this article shall be guilty of a Class E crime for each violation.
- B. Civil penalties. Any person, firm or corporation who violates this article shall be subject to a civil penalty, payable to the municipality, of not more than \$100 for each violation. Each day of violation shall be considered a separate violation. Such person, firm or corporation shall also be liable for court costs and reasonable attorney fees incurred by the municipality.

§ 80-21. Variances.

The municipal officers may, on written application, grant a variance from a specific provision of this article in a specific case subject to appropriate conditions where such variance is in harmony with the general purpose and intent of this article and the agreement between the municipality and the energy recovery facility.

§ 80-22. Conflict and severability.

- A. The provisions of this article shall supersede all other local laws, ordinances, resolutions, rules or regulations contrary thereto or in conflict therewith.
- B. The provisions of this article shall be severable, and if any phrase, clause, sentence or provision, or the application thereof to any person or circumstance, shall be held invalid, the reminder of this article and the application thereof shall not be affected thereby.

§ 80-23. Amendment.

This article may be amended in the same manner as any other ordinance of the municipality, subject to the contractual obligations outlined in the contract between the municipality and the energy recovery facility.

§ 80-24. Effective date.

This article shall become effective on the date that the energy recovery facility begins commercial operations, provided that the municipality provides notice of commencement in the manner required for publication of ordinances. Any person, firm or corporation required to obtain a license hereunder shall have 60 days from the date of adoption of this article to secure such license, which shall become effective on the date specified therein.

ARTICLE III
Waste Disposal Facilities
[Adopted 3-12-1988 ATM by Art. 68]

§ 80-25. Purposes.

The purpose of this article is to:

- A. Provide the Town of Shapleigh with a means of overseeing the activities of waste disposal facilities to ensure that they comply with regulations the town deems essential to protect the health, safety and welfare of its residents, pursuant to 30-A M.R.S.A. § 3001.
- B. Protect surface and groundwater resources of the Town of Shapleigh from contaminants which can reasonably be expected to accompany the activities of waste disposal facilities and thereby to preserve the quantity and quality of this resource for present and future use.

§ 80-26. Definitions.

As used in this article, the following terms shall have the meanings indicated:

DISPOSAL — The discharge, deposit, injection, dumping, leaking, spilling, incineration or placing of any solid waste in or on any land or water.

HAZARDOUS WASTE — As defined in 38 M.R.S.A. § 1303-C(15), means a waste substance or material, in any physical state, designated as hazardous by the Board of Environmental Protection under 38 M.R.S.A. § 1319O. It does not include wastes resulting from normal household or agricultural activities.

SOLID WASTE — Useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including but not limited to rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but excepting fill material which consists solely of soil and rock.

SPECIAL WASTE — Any waste emanating from sources other than typical domestic and commercial establishments that is not readily compatible within a waste facility at which it may be handled. A waste is considered special when it exists in such an unusual quantity or such a chemical or physical state, or any combination thereof, as to disrupt or impair effective waste management or threaten public health, human safety or surrounding natural resources when it is to be handled at a waste facility that is not appropriately located, designed or operated to receive such waste.

WASTE — This term shall include hazardous waste, solid waste, special waste, sludge and septage.

WASTE DISPOSAL FACILITY — Any land area, structure, location, equipment or combination thereof used for the disposal of waste. A land area or structure does not become a waste disposal facility solely because:

- A. It is used by its owner for disposing of septage from his residence;
- B. It is used by an individual homeowner or lessee to open-burn leaves, brush, dead wood and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted pursuant to 12 M.R.S.A. § 9301; or
- C. It is used by its residential occupant to burn highly combustible domestic household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted pursuant to 12 M.R.S.A. § 9301.

§ 80-27. Licensing.

- A. No person, firm or corporation shall construct or operate a waste disposal facility within the municipality without obtaining a license from the town. Therefore, the disposal of any solid waste, hazardous waste, special waste, septage or sludge (hereafter referred to as "waste") is strictly prohibited except at the site of waste disposal facilities which have secured all necessary state and local license(s) and permit(s).
- B. Said license shall not be transferable without prior written approval of the Planning Board where the purpose and consequence of the transfer is to transfer any of the obligations of the developer as incorporated in the license. Such approval shall be granted only if the applicant or transferee demonstrates to the Planning Board that the transferee has the technical capacity and financial ability to comply with conditions of the license and the proposals, plans and supporting documents contained in the application for license.
- C. The license shall be posted on the premises.
- D. All licenses shall expire three years from the date of issue unless otherwise stated on the license or revoked or suspended sooner in accordance with the provisions of this article. It shall be the responsibility of the licensee to reapply for license renewal in a timely manner. A licensee applying for license renewal may continue to operate the waste facility while the application is pending, provided that said licensee applied for license renewal in a timely manner.
- E. All owners of waste disposal facilities which are currently in operation shall apply for a license within 90 days of the effective date of this article.

§ 80-28. Applications.

- A. The applicant shall have the burden of proof that the facility is in compliance with the requirements of this article.
- B. An application for a new license shall be submitted to the Planning Board, including the following information:

- (1) The name and address of the applicant, the names and addresses of any persons or entities associated with the applicant for the purpose of waste disposal; the names and addresses of any waste disposal facilities with which the applicant has had previous experience.
 - (2) A complete copy of the application submitted to the Maine Department of Environmental Protection under the requirements of the Site Location of Development Rules (Chapter 372 et seq.) or DEP's Solid Waste Management Rules (Chapter 400 et seq.). This copy shall include all submissions required under Chapter 372 et seq. of the Site Location of Development Rules and Chapter 400 of the Solid Waste Management Rules.
 - (3) If not included in Subsection B(1), a description of methods to control leachate generation and movement.
 - (4) If not included in Subsection B(1), plans for final closure of the facility and post-closure maintenance of the site, including information on the timing of closure, cover materials to be used, frequency of maintenance following closure and methods to control methane generation and movement.
 - (5) Plans for an alternate water supply to replace private wells which could be affected by the disposal facility, including proof of the availability of an alternative source of supply and estimates of the cost to develop this alternate supply (as outlined in § 80-32B).
 - (6) General characterization of wastes proposed for disposal; estimate of the proportions of different types of waste proposed for disposal; compatibility of different wastes with each other; compatibility of wastes with the liner.
- C. The Board shall, within 10 days of receiving a license application, notify the applicant whether the application is complete. If the application is determined to be incomplete, the Board shall notify the applicant, in writing, of the specific information necessary to complete it. In reviewing applications determined to be complete, the Board may require additional relevant information which is necessary to determine whether the proposed facility fulfills the purpose of the ordinance and its specific standards of review, as listed in § 80-29B.
- D. An application for a new license shall be accompanied by a fee of 2% of the estimated construction cost of the waste disposal facility. Construction cost, defined as the cost to design, engineer and construct the waste disposal facility, including all on- and off-site improvements, shall be estimated by the design engineer and approved by the Board or its agent. Such fee shall be used by the Board to hire the engineering, geological, planning or other expertise necessary to assist in proposal review. Any accumulated interest on the fee may also be used by the Board for such purposes. The unexpended balance on the account shall be returned to the applicant after a final decision on the application

is rendered. If the Board and the applicant mutually agree upon the qualifications and acceptability of all technical experts employed in the design of the facility, the Board may waive all or part of this requirement, provided that the public health, safety and welfare are protected and the objectives of these regulations are met. An application for a license for an existing facility or for a facility which will not involve construction shall be accompanied by a fee of 2% of the fair market value of the land and facility, or \$1,000, whichever is greater.

- E. An application to renew a license shall be submitted to the Board accompanied by a fee of \$500 payable to the town, a written report on the facility operation since the previous license was issued which demonstrates the facility's continuing compliance with this chapter and all groundwater monitoring results from the previous license period.

§ 80-29. Procedures.

- A. A hearing shall be held by the Planning Board within 90 days of the receipt of a complete application for a new license or 30 days for a license renewal. When considering an application for a new license, the Board may extend this period to no more than 180 days if more time is necessary to conduct a thorough review of the application. At the hearing, the Planning Board shall receive evidence on the location and operation of the proposed facility, including but not limited to location and design, volume of traffic generated, condition of screening, proximity of residences to the site, proximity of drinking water wells, adequacy of methods to control leachate generation and movement, adequacy of methods to control methane generation and movement, compatibility of liner and wastes and other factors relevant to the proposed facility and its operation.
- B. Within 30 days of the hearing, the Planning Board shall issue a license only if, based on clear evidence, it makes the following written findings:
 - (1) The proposed facility meets the specific requirements set forth in this article.
 - (2) Adequate provision has been made for the containment and treatment of leachate and the prevention of ground or surface water contamination.
 - (3) Wastes proposed for disposal are compatible with each other and with the liner.
 - (4) The proposed use will provide adequate access for emergency vehicles to the site and buildings on the site.
 - (5) The provisions for buffers and on-site landscaping adequately protect neighboring properties from detrimental features of the facility which cannot be avoided by reasonable modification.

- (6) The proposed use will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare or other causes which cannot be avoided by reasonable modification of the plan.
 - (7) The provisions for vehicular circulation on the site and onto adjacent streets will not create safety hazards.
 - (8) The design of the site will not result in significant flood hazards or flood damage and is in conformance with applicable flood hazard protection requirements.⁶
 - (9) Adequate provision has been made to control erosion and sedimentation.
 - (10) Adequate provision has been made to control stormwater runoff or other drainage problems on the site.
 - (11) Adequate provision has been made for the transportation, storage and disposal of hazardous materials as defined by state law.
 - (12) The proposed facility will not have an adverse impact on significant scenic vistas, significant wildlife habitat or significant wetlands as identified in the Comprehensive Plan.
- C. The Board shall issue a written report stating its findings of fact, its decision, the reasons for its decision and, if a license is issued, any conditions attached to the license. Upon consideration of the factors listed above, the Board may attach such reasonably necessary conditions to a license as it finds necessary to fulfill the purposes of this article.
- D. Licenses are subject to the condition that the applicant secure and comply with all applicable federal, state and local licenses and permits prior to and during construction and operation of the waste disposal facility.

§ 80-30. Performance standards.

- A. The facility shall comply with all operational and performance standards included in the Maine Department of Environmental Protection's Solid Waste Management Rules (Chapter 400 et seq.)
- B. The facility shall provide a landscaped buffer strip to visually screen the use. Where no natural vegetation can be maintained due to varying site conditions, the landscaping may consist of fences, walls, tree planting, hedges or combinations thereof. The buffering shall be sufficient to minimize the impacts of any kind of potential use, such as loading and unloading operations, outdoor storage areas, waste collection and

6. Editor's Note: See Ch. 29, Floodplain Management.

disposal areas. The buffer areas shall be maintained and vegetation replaced to ensure continuous year-round screening.

- C. Access to the disposal site shall be strictly controlled, and all access roads to public or private ways shall be secured when the facility is not open for operation to ensure that unauthorized or unsupervised dumping does not occur.
- D. The operator shall continuously supervise the unloading of refuse to ensure that only permitted wastes are handled at the facility. The operator shall maintain a record of every vehicle which brings waste to the facility, including the following information:
 - (1) Name of driver.
 - (2) Name of person, firm or corporation which owns the vehicle.
 - (3) License plate of vehicle.
 - (4) Type/characterization of waste.
 - (5) Source and origin of waste.

§ 80-31. Closure plans.

- A. All solid waste disposal facilities applying for a license shall submit a closure plan with the application. The plan shall be approved by the Maine Department of Environmental Protection and must meet the soil conservation standards of the Soil and Water Conservation District and shall include, as a minimum, all requirements specified in DEP's Solid Waste Management Rules.
- B. The owner shall be responsible for compliance with the closure plan and continued maintenance of the site following the facility's closure.

§ 80-32. Performance guaranties.

- A. The Planning Board may, as a condition of the license, establish any reasonable requirements to ensure that the owner has the ongoing technical ability to meet state air and water pollution control standards, such as:
 - (1) Requiring the owner to employ a capable engineer or other professional who is sufficiently knowledgeable and experienced in the disciplines necessary to ensure that state air and water pollution control standards are met.
 - (2) Requiring a training program for the appropriate personnel to ensure proper installation, operation and maintenance of pollution control equipment, and proper operation of the facility.
 - (3) Requiring provision for an independent consultant to conduct on-site inspections during construction, at the developer's expense,

to ensure proper execution of plans as approved, including any conditions imposed by the Board. If an independent consultant is required by the Board, the developer shall establish an account, in an amount to be determined by the Board, to provide for the hiring of engineering, geological or other expertise to monitor and inspect construction of the facility. The unexpended balance on the account shall be returned to the applicant. As an alternative, the Board and the applicant may agree upon who the applicant will use for technical resources.

B. The owner must submit with his application proof of adequate provision for accidental occurrences during the active life of the facility and for a reasonable period following closure. This provision can consist of either liability insurance or establishment of a trust fund, which shall be equivalent in coverage or dollar amount to the cost of installing or a extending a public water supply to serve the area susceptible to contamination by landfill leachate and meeting the requirements listed in Subsection B(1) and (2) of this section. A certified geologist shall identify and map the area susceptible to contamination by the waste disposal facility based on local groundwater flow patterns, directions of flow, volume of water present and other relevant factors. Geologists and engineers shall estimate the cost of providing this area with a public water supply.

(1) Liability insurance shall provide coverage equivalent in amount to the cost of providing a public water supply as set forth in this Subsection B. This coverage shall meet the following criteria:

- (a) Coverage must be provided for sudden and accidental occurrences during active life and for a reasonable period following closure.
- (b) Coverage must be provided for nonsudden and accidental occurrences during active life and for a reasonable period following closure.
- (c) If a liability insurance policy is written as a "claims made" policy, an endorsement must provide for a discovery period of at least 12 months beyond the date of expiration or cancellation of the policy. The endorsement must also provide that the underwriter will notify the public in the following manner: At least 60 days, but no more than 90 days, prior to the date upon which the policy will expire or be canceled, give written notification to all owners of property abutting the facility and to the chief elected official of the town, that insurance for the facility will expire or be canceled, give date of expiration or cancellation, and that claims against the insured must be filed within 12 months from the date of expiration or cancellation, specifying where and how claims can be filed.

(2) A trust fund shall meet the following criteria:

- (a) The total cost to provide a public water supply for the susceptible area shall be divided by the total estimated volume handled by the facility over its lifetime to determine a per-unit-of-volume contingency fee. The owner shall deposit monthly into the trust fund the per-unit-of-volume fee multiplied by the total volume received during the previous month.
 - (b) The trust fund shall be administered jointly by the owner and the town.
 - (c) The trust shall be handled by a trust company which manages no less than \$200,000,000 worth of funds. Funds in the account shall be invested in SEC-approved securities only, using the "prudent man" standard of investment. Real estate investments are prohibited. Accumulated interest shall be reinvested in the fund.
 - (d) The cost of installing an alternate water supply shall be reevaluated annually and the per-unit-of-volume contingency fee adjusted accordingly as a condition of the license renewal.
- C. For all facilities proposing on-site disposal of more than 25 tons of waste, the owner shall establish a closure/post-closure trust fund adequate in terms and amount to assure closing of the site at the end of its useful life in accordance with all state and federal requirements and maintenance of the site subsequent to its closure. The total amount of the trust fund shall be based upon a registered professional engineer's estimate, approved by the Board or its agent, of closure costs and post-closure maintenance costs. The owner or operator shall pay into this fund according to the following requirements:
 - (1) The total estimated closure cost and an endowment sufficient in amount to generate in interest the annual post-closure maintenance cost, plus a 10% contingency, shall be divided by the total estimated volume handled by the facility over its lifetime to determine a per-unit-of-volume closure fee. The owner/operator shall deposit monthly into the trust fund an amount equal to the per-unit-of-volume closure fee multiplied by the volume deposited in the landfill during the previous month. Estimated closure and post-closure maintenance costs and total landfill capacity shall be reassessed annually and adjusted to reflect current conditions as a condition of license renewal.
 - (2) The trust fund shall be administered jointly by the town or an agent approved by the town and the owner.
 - (3) The trust shall be handled by a trust company which manages no less than \$200,000,000 worth of funds. Funds in the account shall be invested in SEC-approved securities only, using the "prudent man" standard of investment. Real estate investments are prohibited.

- D. The requirements of this § 80-32 may be waived if the Board makes written findings that alternative performance guaranties proposed by the applicant are adequate, appropriate and fulfill the purposes of this article.

§ 80-33. Right of entry.

- A. Any duly authorized representative or agent of the town may, upon presentation of appropriate credentials, at any reasonable time, enter and inspect the facility, obtain samples of any waste, inspect and copy records, reports, information or test results relating to the disposal of solid waste, take photographs, or other actions necessary to ensure compliance with the license.
- B. An agent or representative of the town shall be permitted to independently sample monitoring wells installed around the landfill.

§ 80-34. Enforcement.

- A. All provisions of this article are enforceable by duly authorized police officers, the Code Enforcement Officer, the municipal officers or their agents.
- B. Any person who violates any provision of this article is subject to fines, arrest and, if convicted, to punishment as provided in § 80-36.

§ 80-35. Revocation of license.

- A. Any license issued herein may be suspended or revoked, subsequent to notification procedures listed in Subsection B of this section, by order of the Police, Code Enforcement Officer or municipal officers for the following causes:
- (1) Violation of this article.
 - (2) Violation of any provision of any state or local law, ordinance, code or regulation which relates directly to the provisions of this article.
 - (3) Violation of any license conditions.
 - (4) Falsehoods, misrepresentations or omissions in the license application.
 - (5) Failure to construct or operate the facility in accordance with the plans.
 - (6) Failure to meet air and water pollution control standards.
- B. Whenever the municipal officers or Code Enforcement Officer determine that there has been a violation by virtue of one of the conditions listed in Subsection A(1) through (6), they shall give written notice of such violation to the person, firm or corporation responsible.

- (1) The citation shall include a description of the violation and shall allow reasonable time for remedial action.
 - (2) The citation may contain an outline of remedial action which, if taken, will effect compliance.
 - (3) The citation shall state that unless corrections are made within the allotted time, the violator is subject to prosecution and/or license suspension or revocation pursuant to the provisions of this article.
- C. If the violator does not meet the terms of the citation, the municipal officers, Code Enforcement Officer or police shall notify the license holder, in writing, of the suspension or revocation of the license.
- D. The person, firm or corporation whose license has been revoked/suspended is entitled to appeal to Superior Court.

§ 80-36. Violations and penalties.

- A. Civil penalties. Any person, firm or corporation violating any of the provisions of this article or any conditions of the license shall, upon conviction, be punished by a minimum fine of \$500 and a maximum fine of \$2,500 for a first offense. Subsequent violations shall be punished by a minimum fine of \$1,000 and a maximum of \$25,000. Each day such violation exists shall constitute a separate offense.
- B. Reasonable attorney's fees and court costs incurred by the town in prosecuting a violation shall be awarded by the town if the town is the prevailing party.

§ 80-37. Severability.

The provisions of this article shall be severable, and if any portion of it shall be held invalid, the remainder of this article and its application thereof shall not be affected.

§ 80-38. Conflicts.

If any provision of this article conflicts with any provisions in another municipal ordinance or state statute, the stricter provision shall apply.

§ 80-39. Appeals.

An aggrieved party may appeal any decision under these regulations to Superior Court.

Chapter 85

STREETS AND SIDEWALKS

GENERAL REFERENCES

**Street design standards — See Ch. 89,
§ 89-36.**

ARTICLE I

Street Specifications**[Adopted 3-11-1972 ATM by Arts. 31 and 32]****§ 85-1. Existing roads; acceptance by town.**

- A. Any existing so-called private road henceforth to be eligible for plowing and sanding by the town shall be brought to a thirty-two-foot right-of-way and 16 feet of hard surface between the shoulders. Said road must be of sufficient gravelled base to support year-around traffic.
- B. The above conditions shall be financed by other than town funds.
- C. When the proposed road has met these specifications, it may be presented to the townspeople for acceptance as a town way.

§ 85-2. New roads.

Any newly constructed road shall have a fifty-foot right-of-way and 18 feet of hard surface between the shoulders.

Chapter 89
SUBDIVISION OF LAND

GENERAL REFERENCES

Building construction — See Ch. 7.

Floodplain management — See Ch. 29.

Residential growth — See Ch. 68.

Private sewage disposal systems — See Ch. 75, Art. I.

Zoning — See Ch. 105.

ARTICLE I

Purpose**§ 89-1. Purposes enumerated.**

The purposes of these regulations are to:

- A. Assure the comfort, convenience, safety, health and welfare of the people of the Town of Shapleigh.
- B. Protect the environment.
- C. Promote the development of an economically sound and stable community.

§ 89-2. Criteria; findings of fact.

To this end, in approving subdivisions within the Town of Shapleigh, Maine, the Planning Board shall consider the following criteria and, before granting approval, shall make findings of fact that the provisions of these regulations have been met and that the proposed subdivision will meet the guidelines of 30-A M.R.S.A. § 4404:

- A. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
 - (1) The elevation of the land above sea level and its relation to the floodplains.
 - (2) The nature of soils and subsoils and their ability to adequately support waste disposal.
 - (3) The slope of the land and its effect on effluents.
 - (4) The availability of streams for disposal of effluents.
 - (5) The applicable state and local health and water resource rules and regulations.
- B. Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.
- C. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.
- D. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
- E. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

- F. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.
- G. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized.
- H. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- I. Conformity with local ordinances and plans. The proposed subdivision conforms with this chapter, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.
- J. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section.
- K. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, Subchapter I, Article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
 - (1) When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.
 - (2) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.
 - (3) The frontage and setback provisions of this subsection do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, Chapter 3, Subchapter I, Article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of M.R.S.A. § 4401, Subsection 1, on September 23, 1983.
- L. Groundwater. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

- M. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant, indication shall be made as to whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the one-hundred-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation.
- N. Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.
- O. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, Section 480-B, Subsection 9.
- P. Stormwater. The proposed subdivision will provide for adequate stormwater management.
- Q. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, Section 480-B, none of the lots created within the subdivision have a lot-depth-to-shore-frontage ratio greater than 5 to 1.
- R. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

ARTICLE II
Authority and Administration

§ 89-3. Authority.

These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4403.

§ 89-4. Title.

These standards shall be known and may be cited as the "Subdivision Regulations of the Town of Shapleigh, Maine."

§ 89-5. Administration.

- A. The Planning Board of the Town of Shapleigh, hereinafter called the Board, shall administer these standards.
- B. The provisions of these standards shall pertain to all land proposed for subdivision, as defined in 30-A M.R.S.A. § 4401, within the boundaries of the Town of Shapleigh.

ARTICLE III
Definitions

§ 89-6. Terms defined.

In general, words and terms used in these regulations shall have their customary dictionary meanings. More specifically, certain words and terms used herein are defined as follows:

CLUSTER SUBDIVISION — A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space owned in common by lot/unit owners, the Town or a land conservation organization. Clustering shall not be used to increase the overall net residential density of the development.

CODE ENFORCEMENT OFFICER — A person appointed by the municipal officers to administer and enforce this chapter. Reference to the Code Enforcement Officer shall be construed to include Building Inspector, Plumbing Inspector, Electrical Inspector and the like, when applicable.

COMMON OPEN SPACE — Land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements typically used for maintenance and operation of the open space, such as for outdoor recreation. **[Added 3-19-2005 ATM by Art. 18]**

COMPLETE APPLICATION — An application shall be considered complete upon submission of the required fee and all information required by these regulations for a final plan, or by a vote by the Board to waive the submission of required information. The Board shall issue a receipt to the applicant upon its determination that an application is complete.

COMPREHENSIVE PLAN OR POLICY STATEMENT — Any part or element of the overall plan or policy for development of the municipality as defined in 30-A M.R.S.A. § 4326.

CONTIGUOUS LOTS — Lots which adjoin at any line or point, or are separated at any point by a body of water less than 15 feet wide.

DEVELOPED AREA — Any area on which a site improvement or change is made, including buildings, landscaping, parking areas and streets.

DRIVEWAY — A vehicular accessway serving two dwelling units or less.

DWELLING UNIT — Any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units. **[Amended 3-10-1990 ATM by Art. 26]**

ENGINEER — The Municipal Engineer or consulting engineer licensed by the State of Maine.

FINAL PLAN — The final drawings on which the applicant's plan of subdivision is presented to the Board for approval and which, if approved, may be recorded at the Registry of Deeds.

HIGH-INTENSITY SOIL SURVEY — A soil survey conducted by a certified soil scientist, meeting the standards of the National Cooperative Soil Survey, which identifies soil types down to 1/10 acre or less at a scale equivalent to the subdivision plan submitted. The mapping units shall be the soil series. Single soil test pits and their evaluation shall not be considered to constitute high-intensity soil surveys.

INDUSTRIAL PARK OR DEVELOPMENT — A subdivision in an area zoned exclusively for industrial uses, or a subdivision planned for industrial uses and developed and managed as a unit, usually with provision for common services for the users.

NET RESIDENTIAL ACREAGE — The total acreage available for the subdivision, and shown on the proposed subdivision plan, minus the area for streets or access and the areas which are unsuitable for development as outlined in § 89-26.

NET RESIDENTIAL DENSITY — The average number of dwelling units per net residential acre.

NORMAL HIGH-WATER ELEVATION OF INLAND WATERS — That line on the shores of banks on nontidal waters which is apparent because of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups: water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes and marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups: upland grasses, aster, lady slipper, wintergreen, partridge berry, sassaparilla, pines, cedars, oaks, ashes, alders, elms and maples). In places where the shore or bank is of such character that the high-water mark cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks), the normal high-water elevation shall be estimated from places where it can be determined by the above method.

OFFICIAL MAP — The map adopted by the municipality showing the location of public property, ways used in common by more than two owners of abutting property and approved subdivisions; and any amendments thereto adopted by the municipality or additional thereto resulting from the approval of subdivision plans by the Planning Board and the subsequent filing for record of such approved plans.

OFFICIAL SUBMITTAL DATE — The date upon which the Board issues a receipt indicating a complete application has been submitted.

ONE-HUNDRED-YEAR FLOOD — The highest level of flood that, on the average, is likely to occur once every 100 years (that has a one-percent chance of occurring in any year).⁷

PERSON — Includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

PLANNED UNIT DEVELOPMENT (PUD) — A development controlled by a single developer for a mix of residential, commercial and industrial uses. A PUD is undertaken in a manner that treats the developed area in its entirety to promote the best use of land, including the creation of open space, a reduction in the length of road and utility systems and the retention of the natural characteristics of the land.

PLANNING BOARD — The Planning Board of the Town of Shapleigh, created under 30-A M.R.S.A. § 4324.

PLANNING BOARD REPRESENTATIVE OR AGENT — The Code Enforcement Officer, the Municipal Engineer or an individual appointed by the Board.

PRELIMINARY SUBDIVISION PLAN — The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Board for its consideration.

RECORDING PLAN — A copy of the final plan which is recorded at the Registry of Deeds and which need not show information not relevant to the transfer of an interest in the property, such as sewer and water line locations and sizes, culverts and building lines.

RESUBDIVISION — The division of an existing subdivision or any change in the plan for an approved subdivision which affects the lot lines, including land transactions by the subdivider not indicated on the approved plan.

SOLAR ENERGY COLLECTOR — A device, or combination of devices, structure or part of a device or structure that transforms direct solar energy into thermal, chemical or electrical energy and that contributes to a building's energy supply.

SOLAR ENERGY SYSTEM — A complete design or assembly consisting of a solar energy collector, an energy storage facility (when used) and components for the distribution of transformed energy.

STREET — Public and private ways such as alleys, avenues, boulevards, highways, roads and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way.

STREET CLASSIFICATION —

- A. ARTERIAL STREET — A major thoroughfare which serves as a major traffic way for travel between municipalities and through the municipality.
- B. COLLECTOR STREET — A street servicing at least 15 lots or dwelling units, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.

- C. INDUSTRIAL OR COMMERCIAL STREET — Streets servicing industrial or commercial uses.
- D. MINOR STREET — A street servicing fewer than 15 lots or dwelling units.
- E. PRIVATE RIGHT-OF-WAY — A vehicular accessway serving no more than two dwelling units.

SUBDIVISION — As set forth in 30-A M.R.S.A. § 4401. Lots of 40 or more acres shall be counted as lots.**[Amended 3-10-1990 ATM by Art. 26]**

SUBDIVISION, MAJOR — Any subdivision containing more than four lots or dwelling units, or any subdivision containing a proposed street.

SUBDIVISION, MINOR — Any subdivision containing not more than four lots or dwelling units, and in which no street is proposed to be constructed.

TRACT OR PARCEL OF LAND — All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.**[Amended 3-10-1990 ATM by Art. 26]**

ARTICLE IV
Administrative Procedure

§ 89-7. Purpose.

The purpose of this Article IV and Articles V through VIII is to establish an orderly, equitable and expeditious procedure for reviewing subdivisions.

§ 89-8. Agenda.

In order to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare an agenda for each regularly scheduled meeting. Applicants shall request to be placed on the Board's agenda at least one week in advance of a regularly scheduled meeting by contacting the Chairman. Applicants who attend a meeting but who are not on the Board's agenda may be heard, but only after all agenda items have been completed, and then only if a majority of the Board so votes.

ARTICLE V
Preapplication

§ 89-9. Procedure.

The preapplication procedure is as follows:

- A. Applicant presentation and submission of sketch plans.
- B. Question-and-answer period. Board makes specific suggestions to be incorporated by the applicant into subsequent submissions.
- C. Scheduling of on-site inspection.

§ 89-10. Submission. [Amended 3-11-2006 ATM by Art. 89]

The preapplication sketch plan shall show, in simple sketch form, a proposed layout of streets, lots and other features in relation to existing conditions. The sketch plan, which may be a freehand pencilled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It is recommended that the sketch plan be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The sketch plan shall be accompanied by a copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision, unless the proposed subdivision is less than 10 acres in size. All major subdivisions as defined herein shall comply with § 89-32 of the Subdivision Regulations and § 105-45 of the Zoning Ordinance.

§ 89-11. Contour interval and on-site inspection.

Within 30 days, the Board shall determine and inform the applicant, in writing, of the required contour interval on the preliminary plan, or final plan in the case of a minor subdivision, and hold an on-site inspection of the property.

§ 89-12. Rights not vested.

The submittal or review of the preapplication sketch plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1, M.R.S.A. § 302.

ARTICLE VI
Minor Subdivisions

§ 89-13. Compliance with major subdivision requirements.

The Board may require, where it deems it necessary for the protection of public health, safety and welfare, that a minor subdivision comply with all or any of the submission requirements for a major subdivision.

§ 89-14. Procedure.

- A. Within six months after the on-site inspection by the Board, the subdivider shall mail a copy of the application for approval of the final plan to each Board member, including alternate members and the Code Enforcement Officer at least seven days prior to a scheduled meeting of the Board. Failure to do so shall require resubmission of the sketch plan to the Board. The final plan shall approximate the layout shown on the sketch plan, plus any recommendations made by the Board. **[Amended 3-9-2019 ATM by Art. 4]**
- B. Upon submission of the application for minor subdivision, the applicant shall submit a nonrefundable application fee of \$200, payable by check to the Town of Shapleigh. **[Amended 3-13-2004 ATM]**
 - (1) Upon submission of the final subdivision plan, the applicant shall submit a nonrefundable fee of \$50 per lot, payable by check to the Town of Shapleigh.
- C. Upon receipt of an application for final plan approval of a minor subdivision, the Board shall notify all owners of abutting property and the Clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and a general description of the project. **[Added 3-10-1990 ATM by Art. 27]**
- D. If any portion of the subdivision crosses municipal boundaries, the reviewing authorities from each municipality shall meet jointly to discuss that application. **[Added 3-10-1990 ATM by Art. 27]**
- E. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the final plan.
- F. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt from the subdivider. The Board shall determine whether to hold a public hearing on the final plan application.
- G. If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of receipt of a complete application and shall publish notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing.

- H. Within 30 days of a public hearing, or within 60 days of receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the subdivider, the Board shall make findings of fact on the application, and approve, approve with conditions or deny the final plan. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.

§ 89-15. Submissions.

- A. The final submission plan for a minor subdivision shall consist of two reproducible, stable-based transparent originals, both to be recorded at the Registry of Deeds within 90 days of final approval by the Board. One of the above registered copies shall be returned to the Planning Board within 90 days of final approval, and three copies of one or more maps or drawings drawn to a scale of not more than 100 feet to the inch. Plans for subdivisions containing more than 75 acres may be drawn at a scale of not more than 200 feet to the inch, provided that all necessary detail can easily be read. Plans shall be no larger than 24 inches by 36 inches in size and shall have a margin of two inches outside of the border lines on the left side for binding and one-inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. In addition, one copy of the final plan, reduced to a size of 8 1/2 inches by 11 inches, and all accompanying information shall be mailed to each Board member, including alternate members and the Code Enforcement Officer, no less than seven days prior to the meeting. **[Amended 3-9-2002 ATM by Art. 16; 3-8-2003 ATM by Art. 13; 3-9-2019 ATM by Art. 4]**
- B. The application for approval of a minor subdivision shall include the following information:
- (1) Proposed name of the subdivision, or identifying title, and the name of the municipality in which it is located, plus the Assessor's Map and lot numbers.
 - (2) A field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument set or found at each lot corner.
 - (3) A copy of the deed from which the survey was based. A copy of all deed restrictions, easements, rights-of-way or other encumbrances currently affecting the property.
 - (4) A copy of any deed restrictions intended to cover all or part of the lots in the subdivision.
 - (5) Indication of the type of sewage disposal to be used in the subdivision.

- (a) When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the sewer district stating the district has the capacity to collect and treat the wastewater shall be provided.
- (b) When sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses prepared by a licensed site evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.⁸
- (6) Indication of the type of water supply systems to be used in the subdivision. When water is to be supplied by public water supply, a written statement from the servicing water district shall be submitted indicating there is adequate supply and pressure for the subdivision and approving the plans for extensions where necessary. Where the district's supply line is to be extended, a written statement from the Fire Chief, stating approval of the location of fire hydrants, if any, shall be submitted.
- (7) The date the plan was prepared, North point, graphic map scale, names and addresses of the record owner, subdivider and individual or company who prepared the plan, and the names of adjoining property owners.
- (8) A copy of the portion of the county soil survey covering the subdivision.
- (9) Contour lines at the interval specified by the Planning Board, showing elevations in relation to mean sea level.
- (10) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the one-hundred-year flood elevation shall be delineated on the plan.

8. Editor's Note: See Ch. 75, Sewers, Art. I, Private Sewage Disposal Systems.

ARTICLE VII
Preliminary Plan for Major Subdivision

§ 89-16. Procedure.

- A. Within six months after the on-site inspection by the Board, the subdivider shall mail a copy of the application for approval of the final plan to each Board member, including alternate members and the Code Enforcement Officer at least seven days prior to a scheduled meeting of the Board. Failure to do so shall require resubmission of the sketch plan to the Board. The final plan shall approximate the layout shown on the sketch plan, plus any recommendations made by the Board. **[Amended 3-9-2019 ATM by Art. 4]**
- B. All applications for preliminary plan approval for a major subdivision shall be accompanied by a nonrefundable application fee of \$50 per lot or dwelling unit, payable by check to the Town of Shapleigh. In addition, the applicant may pay a fee of \$50 per lot or dwelling unit to be deposited in a special account designated for that subdivision application, to be used by the Planning Board for hiring independent consulting services to review the application. If the balance in this special account shall be drawn down by 75%, the Board shall notify the applicant, and require that an additional \$10 per lot or dwelling unit be deposited by the applicant. The Board shall continue to notify the applicant and require an additional \$10 per lot or dwelling unit to be deposited as necessary whenever the balance of the account is drawn down by 75% of the original deposit. Any balance in the account remaining after a final decision on the subdivision application by the Board shall be returned to the applicant. If a public hearing is deemed necessary by the Board, an additional fee may be required to cover the costs of advertising and postal notification.
- C. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the preliminary plan.
- D. Upon receipt of an application for preliminary plan approval of a major subdivision, the Board shall notify all owners of abutting property and the Clerk and reviewing authority of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and a general description of the project. **[Amended 3-10-1990 ATM by Art. 28]**
- E. If any portion of the subdivision crosses municipal boundaries, the reviewing authorities from each municipality shall meet jointly to discuss the application. **[Added 3-10-1990 ATM by Art. 28]**
- F. Within 30 days of receipt of a preliminary plan application form and fee, the Board shall notify the applicant, in writing, whether or not the application is complete, and what, if any, additional submissions are required for a complete application.

- G. The Board shall determine whether to hold a public hearing on the preliminary plan application. If the Board decides to hold a public hearing, it shall hold the hearing within 30 days of receipt of a complete application, and shall publish notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing.
- H. The Board shall, within 30 days of a public hearing, or within 60 days of receipt of a complete application, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the subdivider, make findings of fact on the application and approve, approve with conditions or deny the preliminary plan. The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial.
- I. When granting approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:
 - (1) The specific changes which it will require in the final plan.
 - (2) The character and extent of the required improvements for which waivers may have been requested and which, in the Board's opinion, may be waived without jeopardy to the public health, safety and general welfare.
 - (3) The amount of all performance guaranties which it will require as prerequisite to the approval of the final plan.
- J. Approval of a preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the final plan, the Board may require additional changes as a result of the further study of the subdivision or as a result of new information received.

§ 89-17. Submissions.

- A. Location map. The preliminary plan shall be accompanied by a location map adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the municipality. The location map shall show:
 - (1) Existing subdivisions in the proximity of the proposed subdivision.
 - (2) Locations and names of existing and proposed streets.
 - (3) Boundaries and designations of zoning districts.⁹

- (4) An outline of the proposed subdivision and any remaining portion of the owner's property if the preliminary plan submitted covers only a portion of the owner's entire contiguous holding.
- B. Preliminary plan. The preliminary plan shall be submitted in three copies of one or more maps or drawings which may be printed or reproduced on paper, with all dimensions shown in feet or decimals of a foot. The preliminary plan shall be drawn to a scale of not more than 100 feet to the inch. The Board may allow plans for subdivisions containing more than 75 acres to be drawn at a scale of not more than 200 feet to the inch, provided that all necessary detail can easily be read. In addition, one copy of the plan(s), reduced to a size of 8 1/2 inches by 11 inches, and all accompanying information shall be mailed to each Board member, including alternate members and the Code Enforcement Officer, no less than seven days prior to the meeting. The following information shall either be shown on the preliminary plan or accompany the application for preliminary approval: **[Amended 3-9-2019 ATM by Art. 4]**
- (1) Proposed name of the subdivision and the name of the municipality in which it is located, plus the Tax Assessor's Map and lot numbers.
 - (2) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument set or found at each lot corner.
 - (3) A copy of the deed from which the survey was based; a copy of all covenants or deed restrictions, easements, rights-of-way or other encumbrances currently affecting the property.
 - (4) A copy of any covenants or deed restrictions intended to cover all or part of the lots in the subdivision.
 - (5) Contour lines at the interval specified by the Planning Board, showing elevations in relation to mean sea level.
 - (6) The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses, vegetative cover type and other essential existing physical features. The location of any trees larger than 24 inches in diameter at breast height shall be shown on the plan.
 - (7) Indication of the type of sewage disposal to be used in the subdivision.
 - (a) When sewage disposal is to be accomplished by connection to the public sewer, a letter from the sewer district indicating

there is adequate capacity within the district's system to transport and treat the sewage shall be submitted.

- (b) When sewage disposal is to be accomplished by subsurface sewage disposal systems, test pit analyses prepared by a licensed site evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.¹⁰
- (8) Indication of the type of water supply system(s) to be used in the subdivision. When water is to be supplied by public water supply, a letter from the servicing water district shall be submitted indicating there is adequate supply and pressure for the subdivision.
- (9) The date the plan was prepared, magnetic North point, graphic map scale, names and addresses of the record owner, subdivider and individual or company who prepared the plan.
- (10) The names and addresses of owners of record of adjacent property, including any property directly across an existing public street from the subdivision.
- (11) The location of any zoning boundaries affecting the subdivision.
- (12) The location and size of existing and proposed sewers, water mains, culverts and drainageways on or adjacent to the property to be subdivided.
- (13) The location, names and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
- (14) The width and location of any streets or public improvements shown upon the Official Map and the Comprehensive Plan, if any, within the subdivision.
- (15) The proposed lot lines with approximate dimensions and lot areas.
- (16) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
- (17) The location of any open space to be preserved and an indication of its improvement and management.
- (18) A soil erosion and sedimentation control plan endorsed by the county soil and water conservation district.
- (19) A plan for the disposal of surface drainage waters, prepared by a registered professional engineer.
- (20) A copy of that portion of the county soil survey covering the subdivision. When the medium-intensity soil survey shows soils

10. Editor's Note: See Ch. 75, Sewers, Art. I, Private Sewage Disposal Systems.

which are generally unsuitable for the uses proposed, the Board may require the submittal of a report by a registered soil scientist indicating the suitability of soil conditions for those uses.

- (21) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the one-hundred-year flood elevation shall be delineated on the plan.¹¹

11. Editor's Note: See also Ch. 29, Floodplain Management.

ARTICLE VIII
Final Plan for Major Subdivision

§ 89-18. Procedure.

- A. The subdivider shall, within six months after the approval of the preliminary plan, file with the Board an application for approval of the final plan. If the application for the final plan is not submitted within six months after preliminary plan approval, the Board may refuse without prejudice to act on the final plan and require resubmission of the preliminary plan. The final plan shall approximate the layout shown on the preliminary plan, plus any recommendations made by the Board.
- B. All applications for final plan approval for major subdivision shall be accompanied by a nonrefundable application fee of \$200 per lot or dwelling unit payable by check to the municipality. If a public hearing is deemed necessary by the Board, an additional fee may be required to cover the costs of advertising and postal notification. **[Amended 3-13-2004 ATM]**
- C. The subdivider, or his duly authorized representative, shall attend the meeting of the Board to discuss the final plan.
- D. Upon determination that a complete application has been submitted for review, the Board shall issue a dated receipt to the subdivider. The Board shall determine whether to hold a public hearing on the final plan application.
- E. Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where appropriate:
 - (1) Maine Department of Environmental Protection under 38 M.R.S.A. § 480-A et seq. and 38 M.R.S.A. § 481 et seq. or if a wastewater discharge license is needed.
 - (2) The servicing water utility, if an existing public water service is to be used.
 - (3) Maine Department of Human Services, if the subdivider proposes to provide a central water supply system.
 - (4) The servicing sewer district, if an existing public sewage disposal system will to be used.
 - (5) Maine Department of Human Services, if a centralized or shared subsurface sewage disposal system(s) is to be utilized.
- F. A public hearing may be held by the Planning Board within 30 days after the issuance of a receipt for the submittal of an incomplete application. This hearing shall be advertised in a newspaper of local circulation at least two times, the date of the first publication to be at least seven days before the hearing, and the notice of the hearing shall be posted in at least three prominent places at least seven days

prior to the hearing. When a subdivision is located within 500 feet of a municipal boundary, and a public hearing is to be held, the Planning Board shall notify the Clerk and the Planning Board of the adjacent municipality involved, at least seven days prior to the hearing.

- G. The Planning Board shall notify the Road Commissioner, School Superintendent, Police Chief and Fire Chief of the proposed subdivision, the number of dwelling units proposed, the length of roadways and the size and construction characteristics of any multifamily, commercial or industrial buildings. The Planning Board shall request that these officials comment upon the adequacy of their department's existing capital facilities to service the proposed subdivision.
- H. Before the Board grants approval of the final plan, the subdivider shall meet the performance guaranty requirements contained in Article XII.
- I. If the subdivision is located in more than one municipality, the Board shall have a joint meeting with the Planning Board of the adjacent municipality to discuss the Plan.
- J. The Board, within 30 days from the public hearing or within 60 days of receiving a complete application, if no hearing is held, shall make findings of fact, and conclusions relative to the standards contained in 30-A M.R.S.A. § 4404 and in these regulations. If the Board finds that all standards of the statute and these regulations have been met, it shall approve the final plan. If the Board finds that any of the standards of the statute and these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

§ 89-19. Submissions.

- A. The final plan shall consist of one or more maps or drawings drawn to a scale of not more than 100 feet to the inch. Plans for subdivisions containing more than 75 acres may be drawn at a scale of not more than 200 feet to the inch. Plans shall be no larger than 24 inches by 36 inches in size, and shall have a margin of two inches outside of the border line on the left side of the binding and a one-inch margin outside the border along the remaining sides. Space shall be reserved thereon for endorsement by the Board. Two reproducible, stable based transparent originals, one to be recorded at the Registry of Deeds, the other to be filed at the municipal offices, and three copies of the plan shall be submitted. In addition, one copy of the final plan, reduced to a size of 8 1/2 inches by 11 inches, and all accompanying information shall be mailed to each Board member, including alternate members and the Code Enforcement Officer, no less than seven days prior to the meeting. **[Amended 3-13-2015 ATM by Art. 4; 3-9-2019 ATM by Art. 4]**

- B. The application for approval of the final plan shall include the following information:
- (1) Proposed name of the subdivision and the name of the municipality in which it is located, plus the Assessor's Map and lot numbers.
 - (2) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by monuments. The plan shall indicate the type of monument set or found at each lot corner.
 - (3) The number of acres within the proposed subdivision, location of property lines, existing buildings, watercourses and other essential existing physical features.
 - (4) Indication of the type of sewage disposal to be used in the subdivision. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the sewer district indicating the district has reviewed and approved the sewerage design shall be submitted.
 - (5) Indication of the type of water supply system(s) to be used in the subdivision.
 - (a) When water is to be supplied by public water supply, a written statement from the servicing water district shall be submitted indicating the district has reviewed and approved the water system design. A written statement shall be submitted from the Fire Chief approving all hydrant locations or other fire protection measures deemed necessary.
 - (b) When water is to be supplied by private wells, evidence of adequate groundwater supply and quality shall be submitted by a written statement from either a well driller or a hydrogeologist familiar with the area.
 - (6) The date the plan was prepared, magnetic and true North point, graphic map scale, names and addresses of the record owner, subdivider and individual or company who prepared the plan.
 - (7) The location of any zoning boundaries affecting the subdivision.
 - (8) The location and size of existing and proposed sewers, water mains, culverts and drainageways on or adjacent to the property to be subdivided.
 - (9) The location, names and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to

reference points previously established. The length of all straight lines, the deflection angles, radii, length of curves and central angles of curves, tangent distances and tangent bearings for each street shall be included.

- (10) The width and location of any streets or public improvements shown upon the Official Map and the Comprehensive Plan, if any, within the subdivision.
- (11) All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers of cession to the municipality of all public open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the Municipal Officers are satisfied with the legal sufficiency of the written offer of cession shall be included.
- (12) A list of construction items with cost estimated that will be completed by the developer prior to the sale of lots.
 - (a) A separate list of construction and maintenance items, with both capital and annual operating cost estimates, that must be financed by the municipality, or quasi-municipal districts. These lists shall include but not be limited to:
 - [1] Schools, including busing.
 - [2] Street maintenance and snow removal.
 - [3] Police and fire protection.
 - [4] Solid waste disposal.
 - [5] Recreation facilities.
 - [6] Stormwater drainage.
 - [7] Wastewater treatment.
 - [8] Water supply.
 - (b) The developer shall provide an estimate of the net increase in taxable assessed valuation at the completion of the construction of the subdivision.
- (13) If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the one-hundred-year flood elevation shall be delineated on the plan.¹²

§ 89-20. Final approval and filing.

12. Editor's Note: See Ch. 29, Floodplain Management.

- A. No plan shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plan.
- B. Upon findings of fact and determination that all standards in 30-A M.R.S.A. § 4404 and these regulations have been met and upon voting to approve the subdivision, the Board shall sign the final plan(s). The Board shall specify, in writing, its findings of fact and reasons for any conditions or denial. There shall be a total of four copies of the final plan presented to the Board for signature, two of which shall be reproducible, stable-based transparent originals. The signed plan(s) shall be recorded at the Registry of Deeds within 90 days of the date upon which the plan is approved and signed by the Board and three copies, one being a transparent stable-based transparent original, returned to the Town Hall within those 90 days or the plan shall become null and void. One registered copy of the signed plan shall be returned to the Planning Board and become part of its permanent records. One copy of the registered signed plan shall be forwarded to the Tax Assessor. One copy of the registered signed plans shall be forwarded to the Code Enforcement Officer. The fourth remains at the York County Registry of Deeds. **[Amended 3-8-2003 ATM by Art. 13]**
- C. At the time the Board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to ensure the orderly development of the plan. If any municipal or quasi-municipal department head notified of the proposed subdivision informs the Board that their department or district does not have adequate capital facilities to service the subdivision, the Board shall require the plan to be divided into two or more sections subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision. If the superintendent of schools indicates that there is less than 20% excess classroom capacity existing in the school(s) which will serve the subdivision, considering previously approved but not built subdivisions, the Board shall require the plan to be divided into sections to prevent classroom overcrowding.
- D. No changes, erasures, modifications or revisions shall be made in any final plan after approval has been given by the Planning Board and endorsed in writing on the plan, unless the revised final plan is first submitted and the Board approves any modifications, except in accordance with § 89-21C. The Board shall make findings that the revised plan meets the standards of 30-A M.R.S.A. § 4404 and these regulations. In the event that a plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.
- E. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement or other open space shown on such plan. When a park, playground or other recreation area shall have been shown

on the plan to be dedicated to the municipality, approval of the plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such dedicated area.

- F. Failure to commence substantial construction of the subdivision within five years of the date of approval and signing of the plan shall render the plan null and void. Upon determining that a subdivision's approval has expired under this subsection, the Board shall have a notice placed in the Registry of Deeds to that effect.

ARTICLE IX
Enforcement

§ 89-21. Inspection of required improvements.

- A. At least five days prior to commencing each major phase of construction of required improvements, the subdivider or builder shall notify the Code Enforcement Officer, in writing, of the time when he proposes to commence construction of such improvements, so that the municipal officers can cause inspection to be made to assure that all municipal specifications and requirements shall be met during the construction of required improvements and to assure the satisfactory completion of improvements and utilities required by the Board.
- B. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, he shall so report, in writing, to the municipal officers, Planning Board and the subdivider or builder. The municipal officers shall take any steps necessary to preserve the municipality's rights.
- C. If at any time before or during the construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the inspecting official is authorized to approve minor modifications due to unforeseen circumstances, such as encountering hidden outcrops of bedrock, natural springs, etc. The inspecting official shall issue any approval under this section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Town. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the subdivider shall obtain permission to modify the plans from the Board.
- D. At the close of each summer construction season, the Town shall, at the expense of the subdivider, have the site inspected by a qualified individual. By December 1 of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether stormwater and erosion control measures (both temporary and permanent) are in place, are properly installed and appear adequate to do the job they were designed for. The report shall also include a discussion and recommendations on any problems which were encountered.
- E. Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a registered land surveyor, stating that all monumentation shown on the plan has been installed.
- F. Upon completion of street construction and prior to a vote by the municipal officers to submit a proposed Town way to a Town meeting, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the municipal officers at

the expense of the applicant, certifying that the proposed Town way meets or exceeds the design and construction requirements of these regulations. If there are any underground utilities, the servicing utility shall certify, in writing, that they have been installed in a manner acceptable to the utility.

- G. The subdivider or builder shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the municipality.

§ 89-22. Violations and penalties.

- A. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Board in accordance with these regulations.
- B. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Registry of Deeds.
- C. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in an approved subdivision which is not shown on the final plan as a separate lot.
- D. Any person, firm, corporation or other legal entity who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by these regulations shall be punished by a fine of not less than \$100 and not more than \$2,500 for each such conveyance, offering or agreement. The municipality may institute proceedings to enjoin the violation of these regulations, and may collect attorneys' fees and court costs if it is the prevailing party.
- E. No public utility, water district, sanitary district or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.
- F. Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots or construction of buildings which require a final plan approved as provided in these regulations and recorded in the Registry of Deeds.
- G. No lot in a subdivision may be sold, leased or otherwise conveyed before the street upon which the lot fronts is completed in accordance with these regulations up to and including the entire frontage of the lot. No unit in a multifamily development shall be occupied before the street upon which the unit is accessed is completed in accordance with these regulations.

ARTICLE X
General Standards

§ 89-23. Findings; burden of proof.

In reviewing applications for a subdivision, the Board shall consider the following general standards and make findings that each has been met prior to the approval of a final plan. In all instances the burden of proof shall be upon the applicant.

§ 89-24. Conformance with comprehensive plan.

All proposed subdivisions shall be in conformity with the Comprehensive Plan or policy statement of the municipality and with the provisions of all pertinent state and local codes and ordinances.

§ 89-25. Retention of open spaces and natural or historic features.

- A. In any subdivision larger than 35 acres, or more than 20 lots or dwelling units, the developer shall provide up to 10% of his total area as open space. In any subdivision 35 acres or less, or containing 20 lots or dwelling units or less, the Board may request the developer to provide up to 10% of his total area as open space. The developer may instead make a payment in lieu of dedication into a municipal land acquisition fund.
- B. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended. A site intended to be used for active recreation purposes, such as a playground or a play field, should be relatively level and dry, have a total frontage on one or more streets of at least 200 feet, and have no major dimensions of less than 200 feet. Sites selected primarily for scenic or passive recreation purposes shall have such access as the Board may deem suitable, and no less than 25 feet of road frontage. The configuration of such sites shall be deemed adequate by the Board with regard to scenic attributes to be preserved, together with sufficient areas for trails, lookouts, etc., where necessary and appropriate.
- C. Reserved land acceptable to the Board and subdivider may be dedicated to the municipality as a condition of approval.
- D. Land reservation shall be calculated on a basis of 1,300 square feet per dwelling unit proposed, or three acres per 100 dwelling units. Where land is not suitable or is insufficient in amount, a payment in lieu of dedication shall be calculated at the market value of land at the time of the subdivision, as determined by the Municipal Tax Assessor, and deposited into a municipal land acquisition or improvement fund.
- E. The Board may require that the development plans include a landscape plan that will show the preservation of any existing trees larger than 24 inches in diameter at breast height, the replacement of trees and

vegetation, graded contours and streams and the preservation of scenic, historic or environmentally significant areas. Cutting of trees on the northerly borders of lots should be avoided as far as possible, to retain a natural wind buffer.

§ 89-26. Land not suitable for development.

The following lands shall not be included in the calculations of lot area for the purpose of meeting the requirements of the Minimum Lot Size Law:¹³

- A. Land which is situated below the normal high-water mark of any water body.
- B. Land which is located within the one-hundred-year-frequency floodplain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the subdivider shows proof through the submittal of materials prepared by a registered land Surveyor which show that the property in question lies at least two feet above the one-hundred-year flood level. The elevation of filled or made land shall not be considered.
- C. Land which is part of a right-of-way or easement, including utility easements.
- D. Land which has a water table within 10 inches of the surface for at least three months of the year as identified by the County Soil Survey. The Board may use such lands in the lot area calculations if municipal sewage collection and treatment is provided and if the lot(s) are to be deed-restricted to prohibit buildings with basements or require basement floor elevations one foot above the seasonal water table.
- E. Land that has been created by filling or draining a pond or wetland.

§ 89-27. Blocks.

Where street lengths exceed 1,000 feet between intersections with other streets, the Board may require a utility/pedestrian easement, at least 20 feet in width, to provide for underground utility crossings and/or a pedestrian pathway of at least five feet in width constructed in accordance with design standards in § 89-36M. Maintenance obligations of the easement shall be included in the written description of the easement.

§ 89-28. Lots.

- A. All lots shall meet the minimum requirements of Chapter 105, Zoning, for the zoning district in which they are located. The lot configuration should be designed to maximize the use of solar energy on building sites with suitable orientation.¹⁴

13.Editor's Note: See 12 M.R.S.A. § 4807 et seq.

14.Editor's Note: See § 105-53.

- B. Lot configuration and area shall be designed to provide for adequate off-street parking and service facilities based upon the type of development contemplated. Wherever possible, parking areas shall be laid out to coincide with building locations to maximize solar energy gain.
- C. Lots with multiple frontages shall be avoided wherever possible. When lots do have frontage on two or more roads, the plan and deed restrictions shall indicate vehicular access shall be located only on the less-traveled way.
- D. Wherever possible, side lot lines shall be perpendicular to the street.
- E. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future resubdivision. Where public utilities could be extended to the subdivision in the foreseeable future, the subdivision shall be designed to accommodate the extensions of utilities.
- F. If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water or road to meet the minimum lot size.
- G. Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited. The ratio of lot length to width shall not be more than 3 to 1.
- H. Lots shall be numbered in such a manner as to facilitate mail delivery. Even numbers shall be assigned to lots on one side of the street, and odd numbers on the opposite side. Where the proposed subdivision contains the extension of an existing street or street approved by the Board, but not yet constructed, the lot numbers shall correspond with the existing lot numbers. The lot numbering shall be reviewed by the Postmaster and his comments considered by the Board.¹⁵

§ 89-29. Utilities.

- A. Utilities shall be installed underground except as otherwise approved by the Board.
- B. Underground utilities shall be installed prior to the installation of the final gravel base of the road.
- C. The size, type and location of streetlights, electric and gas lines, telephone and other utilities shall be shown on the plan and approved by the Board.

15. Editor's Note: See Ch. 61, Property, Numbering of.

§ 89-30. Required improvements.

The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of these regulations:

A. Monuments.

- (1) Stone monuments shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections.
- (2) Stone monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135° or less.
- (3) Stone monuments shall be a minimum of four inches square at the top and four feet in length, and set in the ground at final grade level. After they are set, drill holes, 112 inches deep, shall locate the point or points described above.
- (4) All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points, shall be marked by suitable monumentation.

B. Water supply.

- (1) When a subdivision is to be served by a public water system, the complete supply system, including fire hydrants, shall be installed at the expense of the subdivider.
 - (a) The subdivider shall provide a written statement from the servicing water company or district that adequate water for both domestic and fire-fighting purposes can be provided without placing an undue burden on the source, treatment facilities or distribution system involved. The subdivider shall be responsible for paying the costs of system improvements necessary to serve the subdivision.
 - (b) The size and location of mains, gate valves, hydrants and service connections shall be reviewed and approved, in writing, by the servicing water company or district and the Fire Chief.
- (2) When the location of a subdivision does not allow for a financially reasonable connection to a public water supply system, the Planning Board may allow the use of individual wells or a private community water system.
 - (a) Dug wells shall be permitted only if it is demonstrated to be not economically feasible to develop other groundwater sources and shall be constructed so as to prevent infiltration of surface water into the well. Unless otherwise permitted by the Board,

the subdivider shall prohibit dug wells by deed restrictions and a note on the plan.

- (b) If a central water supply system is provided by the subdivider, the location and protection of the source and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
- (c) The subdivider shall construct ponds and dry hydrants to provide for adequate water storage for fire-fighting purposes. An easement shall be granted to the municipality granting access to the dry hydrants where necessary. Fire ponds and dry hydrants must meet the specifications of the Shapleigh Fire Department. **[Amended 3-13-2004 ATM]**

C. Sewage disposal.

(1) Public system.

- (a) A sanitary sewer system shall be installed at the expense of the subdivider when there is a public sanitary sewer line located within 1,000 feet of the proposed subdivision at its nearest point. The sewer district shall certify that providing service to the proposed subdivision is within the capacity of the system's collection and treatment system.
- (b) The sewer district shall review and approve, in writing, the construction drawings for the sewage system.

(2) Private systems.¹⁶

- (a) The developer shall submit evidence of soil suitability for subsurface sewage disposal prepared by a Maine licensed site evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules. In addition, on lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.
- (b) In no instance shall a disposal area be permitted on soils or on a lot which requires a new system variance from the Subsurface Wastewater Disposal Rules.

D. Surface drainage.

- (1) Where a subdivision is traversed by a stream, river or surface water drainageway, or where the Board feels that surface water runoff to be created by the subdivision should be controlled, there

16. Editor's Note: See Ch. 75, Sewers, Art. I, Private Sewage Disposal Systems.

shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over other properties. This stormwater management system shall be designed by a Registered Professional Engineer.

- (2) Drainage easements for existing watercourses or proposed drainageways shall be provided and indicated on the plan at least 30 feet wide, conforming substantially with the lines of existing natural drainage.
- (3) The developer shall provide a statement from the designing engineer that the proposed subdivision will not create erosion, drainage or runoff problems either in the subdivision or in other properties. Where the peak runoff from the subdivision onto other properties is increased either in volume or duration, easements from the abutting property owners, allowing such additional discharge, shall be obtained.
- (4) A stormwater drainage plan, showing ditching, culverts, storm drains, easements and other proposed improvements, meeting the standards of § 89-38, shall be submitted.

§ 89-31. Land features.

- A. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas and building excavations.
- B. Except for normal thinning, landscaping and cutting trees to provide access to direct sunlight, existing vegetation shall be left intact to prevent soil erosion. The Board shall require a developer to take measures to correct and prevent soil erosion in the proposed subdivision.
- C. To prevent soil erosion of shoreline areas, tree cutting in a strip paralleling the shoreline of a waterbody and extending 100 feet inland from all points along the normal high-water mark shall be limited in accordance with the following:
 - (1) No more than 30% of the length of the strip shall be clear-cut to the depth of the strip.
 - (2) Cutting of this 30% shall not create a clear-cut opening greater than 30 feet wide.
 - (3) In the remaining 70% length of the strip, no trees larger than four inches diameter at breast height shall be cut, and sufficient cover to preserve natural beauty and control erosion shall remain.

§ 89-32. Cluster developments.¹⁷ [Amended 3-11-2006 ATM by Art. 7]

A. Purpose.

- (1) The purpose of these provisions is:
 - (a) To allow for new concepts of housing development, including developments for manufactured housing units, where maximum variations of design may be allowed.
 - (b) To protect natural resources, including but not limited to agricultural soils, unfragmented forest, undisturbed wetlands and vernal pools, and aquifers.
 - (c) To reduce new housing costs by reducing the costs of roads and other improvements.
- (2) Nevertheless, the net residential density shall be no greater in cluster developments than is permitted in the district in which the development is proposed.

B. Subdivision procedure.

- (1) The Planning Board shall require the lots of all major subdivisions to be reduced in size in return for open space, unless the Planning Board rules that clustering is not feasible due to topography, soils, or other immutable features of the property. The subdivision application shall be accompanied by:
 - (a) Written costs of infrastructure improvements.
 - (b) A written statement describing the natural features that will be preserved by the cluster approach, including prime agricultural soils, if any.
 - (c) A written statement comparing the financial impacts of the subdivision, with and without cluster, on the municipality and school district.
- (2) Within 45 days of receiving a complete subdivision application the Planning Board shall determine if the subdivision must be clustered.

C. Basic requirements.

- (1) All cluster developments shall meet all requirements for a residential subdivision.
- (2) The minimum area of land in a cluster development shall be 10 acres, except where there is public water and public sewer.
- (3) The plan shall indicate the location of all proposed roads, structures, parking areas, footpaths and common open space.

- (4) Where a cluster development abuts a waterbody, a portion of the shoreline, as well as reasonable access to it, shall be part of the common land.
- (5) In no case shall shore frontage be reduced below the minimum shore frontage normally required in the district.
- (6) Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes and natural drainage areas, in accordance with an overall plan for site development and landscaping.
- (7) All common land for recreational or conservation purposes shall be owned jointly or in common by the owners of the building lots, by a trust or association which has as its principal purpose the conservation or preservation of land in essentially its natural condition, or by the municipality.
- (8) Further subdivision of common land or its use for other than noncommercial recreation or conservation, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to noncommercial recreational or conservation uses may be erected on the common land.
- (9) All dwelling units in a cluster development may be connected to a central water system, at no expense to the municipality. In cluster developments with individual lot sizes of 20,000 square feet or less, all dwelling units shall be connected to a common water supply and distribution system.
- (10) All structures with required plumbing in a cluster development shall be connected: to a public sanitary sewer system, if available; to a central collection and treatment system in accordance with sanitary provisions of this chapter, and at no expense to the Town; or to individual or shared subsurface waste disposal systems that meet Maine Plumbing Code standards. In cluster developments with individual lot sizes of 20,000 square feet or less, all dwelling units shall be connected to a public sewer system or to a central collection and treatment system.
- (11) Any lot abutting an accepted public road shall have a frontage and area no less than that normally required in the district. On proposed roads for the cluster development, lot area and road frontage may be reduced, provided that:
 - (a) All lots except those abutting a circular turnaround shall have a minimum frontage of 75 feet. The frontage of lots abutting a circular turnaround may be reduced to 50 feet, provided that the minimum lot width at the face of the building shall be 75 feet.

- (12) No building shall be constructed on soil types classified by the Soil Survey of York County Maine as being poorly or very poorly drained.
- (13) The maximum net residential density (i.e., the number of dwellings per acre, excluding roads) allowable in cluster developments shall be calculated on the basis described in the table below. For example, in developments where sewer service is not being provided, all of the "well-drained" and "moderately well-drained" land may be included in the density calculations, plus half of the "poorly drained" land.

**Land Which May Be Included as "Suitable Land" When
Calculating Net Residential Density**

Excessively Drained, Well- Drained, and Moderately Well- Drained¹	Poorly Drained and Somewhat Poorly Drained	Very Poorly Drained	Slopes Greater Than 33%	Borrow Pits
On public sewer:				
100%	75%	40%	50%	67%
Not on public sewer:				
100%	50%	—	—	33%

Notes:

¹Soil classification by the United States Soil Conservation Service. All "poorly drained" and "very poorly drained" soils are unsuitable for on-site sewage disposal, under the Maine State Plumbing Code.

- (14) In order to determine the maximum number of dwelling units permitted on a tract of land, the total acreage allowed to be included in net density calculations (according to the table) less the land needed for the roads (including shoulders and drainage ditches) shall be divided by the minimum lot size required in the district. The extent of soil types in the six categories listed in the table shall be certified by a registered soil scientist licensed in the State of Maine on a high-intensity soil survey map.

§ 89-33. Dedication and maintenance of common open space and services.

- A. All common land shall be owned jointly or in common by the owners of the dwelling units by means of a homeowners' association, by an association which has as its principal purpose the conservation or

preservation of land in essentially its natural condition, or by the municipality.

- B. Further subdivision of the common land or its use for other than noncommercial recreation or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to noncommercial recreational or conservation uses may be erected on the common land.
- C. The common open space shall be shown on the final plan with appropriate notation on the plan to indicate that:
 - (1) It shall not be used for future building lots; and
 - (2) A part or all of the common open space may be dedicated for acceptance by the municipality.
- D. If any or all of the common open space and services are to be reserved for use by the residents, the bylaws of the proposed homeowners' association shall specify maintenance responsibilities and shall be submitted to the Board prior to final plan approval.
- E. Covenants for mandatory membership in the homeowners' association setting forth the owners' rights, interests and privileges in the association and the common property shall be reviewed by the Board and included in the deed for each lot or dwelling.
- F. The homeowners' association shall have the responsibility of maintaining the common property.
- G. The association shall levy annual charges against all owners of dwelling units to defray the expenses connected with the maintenance of common property and tax assessments.
- H. The developer or subdivider shall maintain control of the common property and be responsible for its maintenance until development sufficient to support the association has taken place.

§ 89-34. Construction in flood hazard areas.

When any part of a subdivision is located in a special flood hazard area as identified by the Federal Emergency Management Agency, the plan shall indicate that all principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation. Such a restriction shall be included in the deed to any lot which is included or partially included in the flood hazard area.¹⁸

18. Editor's Note: See Ch. 29, Floodplain Management.

ARTICLE XI

Street and Storm Drainage Design and Construction Standards**§ 89-35. General requirements.**

- A. The Board shall not approve any subdivision plan unless proposed street and stormwater management systems are designed in accordance with any local ordinance or the specifications contained in these regulations. Approval of the final plan by the Board shall not be deemed to constitute or be evidence of acceptance by the municipality of any street or easement.
- B. Subdividers shall submit to the Board, as part of the final plan, detailed construction drawings showing a plan view, profile and typical cross-section of the proposed streets. The plans shall include the following information:
 - (1) Date, scale and magnetic or true North point.
 - (2) Intersections of the proposed street with existing streets.
 - (3) Roadway and right-of-way limits, including edge of pavement, edge of shoulder, sidewalks and curbs.
 - (4) Kind, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainageways.
 - (5) Complete curve data for all horizontal and vertical curves.
 - (6) Turning radii at all intersections.
 - (7) Centerline gradients.
 - (8) Locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity, telephone, lighting and cable television.
- C. Upon receipt of plans for a proposed public street, the Board shall forward one copy to the municipal officers, the Road Commissioner and the Municipal Engineer for review and comment. Plans for streets which are not proposed to be accepted by the municipality shall be sent to the Municipal Engineer for review and comment.

§ 89-36. Street design standards.

- A. These design standards shall be met by all streets within subdivisions and shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts and other appurtenances.
- B. Streets shall be designed to discourage through traffic within a residential subdivision.

- C. Wherever existing or other proposed streets, topography and public safety permit, streets shall run in east-west directions to maximize access for solar energy utilization. The character, extent, width and grade of all streets shall be considered in their relation to existing or planned streets.
- D. Reserve strips controlling access to streets shall be prohibited except where their control is definitely placed in the municipality.
- E. Adjacent to areas zoned and designed for commercial use, or where a change of zoning to a zone which permits commercial uses is contemplated by the municipality, the street right-of-way and/or pavement width shall be increased on each side by half of the amount necessary to bring the road into conformance with the standards for commercial streets in these regulations.
- F. Where a subdivision borders an existing narrow street (not meeting the width requirements of the standards for streets in these regulations), or when the Comprehensive Plan indicates plans for realignment or widening of a road that would require use of some of the land in the subdivision, the plan shall indicate reserved areas for widening or realigning the road marked "Reserved for Road Realignment (Widening) Purposes." Land reserved for such purposes may not be included in computing lot area or setback requirements of Chapter 105, Zoning. When such widening or realignment is indicated on the Official Map, the reserve area shall not be included in any lot but shall be reserved to be deeded to the municipality or state.
- G. Where a major subdivision abuts or contains an existing or proposed arterial street, no residential lot may have vehicular access directly on to the arterial street. This requirement shall be noted on the plan and in the deeds of any lot with frontage on the arterial street.
- H. Any subdivision containing 15 dwelling units or more shall have at least two street connections with existing public streets, streets shown on an Official Map or streets on an approved subdivision plan for which performance guaranties have been filed and accepted. Any street serving 15 dwelling units or more shall have at least two street connections leading to existing public streets, streets shown on an Official Map or streets on an approved subdivision plan for which performance guaranties have been filed and accepted.
- I. The following design standards apply according to street classification:
[Amended 3-9-2019 ATM by Art. 4]

Description	Type of Street			Private Right- of- Way	Industrial/ Commercial
	Arterial	Collector	Minor		
Minimum right-of-way width (feet)	80	50	50	50	80
Minimum pavement width (feet)	44	24	20	12 ¹	44
Sidewalk width (feet)	5	5	5	N/A	8
Minimum grade	.5%	.5%	.5%	N/A	5%
Maximum grade	5%	6%	6%	10%	5
Minimum centerline radius (feet)	800	230	150	N/A	800
Minimum tangent between curves of reverse alignment (feet)	300	200	100	N/A	300
Roadway crown (inches)	1/4/ft.	1/4/ft.	1/4/ft.	N/A	1/4/ft.
Minimum angle of street intersections	90°	90°	90°	90°	90°
Maximum grade within 75 feet of intersection	2%	2%	2%	N/A	2%
Minimum curb at intersection (feet)	30	20	15	N/A	30
Minimum right-of-way radii at intersections (feet)	20	10	10	10	20
Minimum width of shoulders, each side (feet)	3	3	3	3	9

Note: ¹Pavement requirement for a private right-of-way in a minor subdivision may be at the Board's discretion.

- J. The center line of the roadway shall be the center line of the right-of-way.

K. Dead-end streets. In addition to the design standards above, dead-end streets shall be constructed to provide a cul-de-sac turnaround with the following requirements for radii: Property line 65 feet; outer edge of pavement 50 feet. The Board may require the reservation of a twenty-foot easement in line with the street to provide continuation of pedestrian traffic or utilities to the next street. The Board may also require the reservation of a fifty-foot easement in line with the street to provide continuation of the road where future subdivision is possible.

L. Grades, intersections and sight distances.

- (1) Grades of all streets shall conform in general to the terrain, so that cut and fill are minimized while maintaining the grade standards above.
- (2) All changes in grade shall be connected by vertical curves to provide for the minimum sight distances below.
- (3) New street intersections or driveway curb cuts.

(a) Where new street intersections or driveway curb cuts are proposed, sight distances, as measured along the road onto which traffic will be turning, shall be based upon the posted speed limit and conform to the table below:

Posted speed limit (mph)	25	30	35	40	45	50	55
Sight distance (feet)	250	300	350	400	450	500	550

- (b) Where necessary, corner lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.
- (4) Cross (four-cornered) street intersections shall be avoided insofar as possible, except as shown on the Comprehensive Plan or at other important traffic intersections. A minimum distance of 200 feet shall be maintained between center lines of side streets.

M. Sidewalks. Sidewalks shall be installed within all subdivisions within the urban compact area. Where installed, sidewalks shall meet these minimum requirements:

- (1) Bituminous sidewalks.
 - (a) The gravel aggregate subbase course shall be no less than 12 inches thick.
 - (b) The crushed aggregate base course shall be no less than two inches thick.
 - (c) The hot bituminous pavement surface course shall be no less than two inches after compaction.

(2) Portland cement concrete sidewalks.

(a) The sand base shall be no less than six inches thick.

(b) The Portland cement concrete shall be reinforced with six-inch square, Number 10 wire mesh and shall be no less than four inches thick.

N. Where installed, curbing shall be granite or bituminous concrete and shall be installed on a thoroughly compacted gravel base of six inches minimum thickness, except that bituminous curbing shall be installed on the base course of the pavement. The specified pavement width above shall be measured between the curbs.

§ 89-37. Street construction standards.

A. Minimum thickness of material after compaction shall be as follows:

Street	Type of Street				
	Minimum Requirements				
	Arterial	Collector	Minor	Private Right- of- Way	Industrial/ Commercial
Aggregate subbase course (inches) (maximum sized stone 4 inches)	18	18	18	12	18
Crushed aggregate base course (inches)	4	3	3	3	4
Hot bituminous pavement (inches)					
Total thickness	3 1/4	2 1/2	2 1/2		3
Surface course	1 1/2	3/4	3/4		1 1/4
Base course	1 3/4	1 3/4	1 3/4		1 3/4

B. Preparation.

(1) Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at fifty-foot intervals.

(2) Before grading is started, the entire right-of-way shall be cleared of all stumps, roots, brush and other objectionable material. All ledge, large boulders and tree stumps shall be removed from the right-of-way.

(3) All organic materials shall be removed to a depth of two feet below the subgrade of the roadway. Rocks and boulders shall also be

removed to a depth of two feet, or a depth meeting the Road Commissioner's approval, below the subgrade of the roadway. On soils which have been identified by the Town Engineer as not suitable for roadways, the subsoil shall be removed from the street site to a depth of two feet below the subgrade and replaced with material meeting the specifications for gravel aggregate subbase below.

- (4) Side slopes shall be no steeper than a slope of three feet horizontal to one foot vertical, and shall be graded, limed, fertilized and seeded according to the specifications of the erosion and sedimentation control plan.
- (5) All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the right-of-way prior to paving.

C. Bases and pavement.

(1) Bases.

(a) Aggregate subbase course.

- [1] The aggregate subbase course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three-inch square mesh sieve shall meet the following grading requirements:

Sieve Designation	Percentage by Weight Passing Square Mesh Sieves
1/4-inch	25% to 70%
No. 40	0% to 30%
No. 200	0% to 7%

- [2] Aggregate for the subbase shall contain no particles of rock exceeding four inches in any dimension.

(b) Aggregate base course.

- [1] The aggregate base course shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three-inch square mesh sieve shall meet the following grading requirements:

Sieve Designation	Percentage by Weight Passing Square Mesh Sieves
1/2-inch	45% to 70%
1/4-inch	30% to 55%
No. 40	0% to 20%
No. 200	0% to 5%

[2] Aggregate for the base shall contain no particles of rock exceeding four inches in any dimension.

- (2) Pavement joints. Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.
- (3) Curbs and gutters.
 - (a) Street curbs and gutters shall be installed as required by the Board.
 - (b) Curbs shall be vertical except when sloped curbs are specifically allowed by the Board.
- (4) Pavements.
 - (a) Minimum standards for the base layer of pavement shall be the M.D.O.T. specifications for plant mix grade B with an aggregate size no more than one inch maximum.
 - (b) Minimum standards for the surface layer of pavement shall meet the M.D.O.T. specifications for plant mix grade C with an aggregate size no more than 3/4 inch maximum.

§ 89-38. Stormwater management design standards.

- A. Adequate provision shall be made for disposal of all stormwater generated within the subdivision and any drained groundwater through a management system of swales, culverts, underdrain and storm drains. The stormwater management system shall be designed to conduct stormwater flows to existing watercourses or storm drains.
 - (1) All components of the stormwater management system shall be designed to meet the criteria of a twenty-five-year storm based on rainfall data for Portland, Maine.
 - (2) The minimum pipe size for any storm drainage pipe shall be 12 inches. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. Pipe shall be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay or organic matter, reaching a minimum of six

inches below the bottom of the pipe extending to six inches above the top of the pipe.

- (3) Catch basins shall be installed where necessary and located at the curbline.
 - (4) Outlets shall be stabilized against soil erosion by stone riprap or other suitable materials to reduce stormwater velocity.
- B. The stormwater management system shall be designed to accommodate upstream drainage, taking into account existing conditions and approved or planned developments not yet built and shall include a surplus design capacity factor of 25% for potential increases in upstream runoff.
- C. Downstream drainage requirements shall be studied to determine the effect of the proposed subdivision. The storm drainage shall not overload existing or future planned storm drainage systems downstream from the subdivision. The subdivider shall be responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.
- D. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements shall be provided to the Town allowing maintenance and improvement of the system.
- E. Where soils require a subsurface drainage system, the drains shall be installed and maintained separately from the stormwater drainage system.

§ 89-39. Storm drainage construction standards.

A. Materials.

- (1) Reinforced concrete pipe. Reinforced concrete pipe shall meet the requirements of ASTM Designation C-76 (AASHTO M 170). Pipe classes shall be required to meet the soil and traffic loads with a safety factor of 1.2 on the .01 inch crack strength with a Class B bedding. Joints shall be of the rubber gasket type meeting ASTM Designation C 443-70, or of an approved preformed plastic jointing material such as Ramnek. Perforated concrete pipe shall conform to the requirements of AASHTO M 175 for the appropriate diameters.
- (2) Asbestos-cement pipe. Asbestos-cement pipe shall meet the requirements of ASTM Designation C-428 (AASHTO M 189). Pipe classes shall be required to meet the soil and traffic loads with a safety factor of 1.5 on the crushing strength. Joints shall be of the rubber gasket type meeting ASTM Designation D-1869-63, or of an approved preformed plastic sleeve type.

- (3) Corrugated metal pipe. Corrugated metal pipe shall be bituminous coated meeting the requirements of AASHTO Designation M 190 Type C for iron or steel pipe or AASHTO Designation M 196 for aluminum alloy pipe for sectional dimensions and type of bituminous coating. Pipe gauge shall be as required to meet the soil and traffic loads with a deflection of not more than 5%.
 - (4) ABS pipe. ABS (Acrylonitrile-butadiene-styrene) composite pipe and fittings shall conform to the requirements of AASHTO M 264 and AASHTO M 265. Perforated pipe shall conform to the requirements of AASHTO M 36, Type III.
 - (5) Corrugated plastic pipe. Corrugated plastic pipe shall conform to the requirements of AASHTO M-252.
 - (6) Manholes. Manholes shall be of precast concrete truncated cone section construction meeting the requirements of ASTM Designation C 478 or precast concrete manhole block construction meeting the requirements of ASTM Designation C 139, radial type. Bases may be cast in place 3,000 pounds per square inch, twenty-eight-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps shall be set in a full mortar bed and with tops shall conform to the requirements of AASHTO M 103 for carbon steel castings, AASHTO M 105, Class 30 for gray iron castings or AASHTO M 183 (ASTM A 283, Grade B or better) for structural steel.
 - (7) Catch basins. Catch basins shall be of precast concrete truncated cone section construction meeting the requirements of ASTM Designation C 478 or precast concrete manhole block construction meeting the requirements of ASTM Designation C 139, radial type. Castings shall be square cast iron sized for the particular inlet condition with the gratings perpendicular to the curbline. Bases may be cast in place 3,000 pounds per square inch (psi) twenty-eight-day strength concrete or may be of precast concrete, placed on a compacted foundation of uniform density. Metal frames and traps shall be set in a full mortar bed and with tops shall conform to the requirements of AASHTO M 103 for carbon steel castings, AASHTO M 105, Class 30 for gray iron castings or AASHTO M 183 (ASTM A 283, Grade B or better) for structural steel.
- B. Drain inlet alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained, in writing, from the Board, after consultation with the Municipal Engineer.
 - C. Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of four-hundred-foot intervals.
 - D. Upon completion, each catch basin or manhole shall be cleaned of all accumulation of silt, debris or foreign matter and shall be kept clean until final acceptance.

§ 89-40. Additional improvements and requirements.

- A. Erosion control. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction and cleanup stages.
- B. Cleanup. Following street construction, the developer or contractor shall conduct a thorough cleanup of stumps and other debris from the entire street right-of-way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the plan and be suitably covered with fill and topsoil, limed, fertilized and seeded.
- C. Street names, signs and lighting. Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality and shall be subject to the approval of the Board.¹⁹ No street name shall be the common given name of a person. The developer shall reimburse the municipality for the costs of installing street name, traffic safety and control signs. Streetlighting shall be installed as approved by the Board.

§ 89-41. Certification of construction.

Upon completion of street construction and prior to a vote by the municipal officers to submit a proposed public way to the legislative body, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the municipal officers at the expense of the applicant, certifying that the proposed way meets or exceeds the design and construction requirements of these regulations. As-built plans shall be submitted to the municipal officers.

19. Editor's Note: See Ch. 61, Property, Numbering of, § 61-4, Naming system.

ARTICLE XII
Performance Guaranties

§ 89-42. Types of guaranties.

- A. With submittal of the application for final plan approval, the subdivider shall provide one of the following performance guaranties for an amount adequate to cover the total construction costs of all required improvements, taking into account the time span of the construction schedule and the inflation rate for construction costs:
- (1) Either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account;
 - (2) A performance bond payable to the Town issued by a surety company, approved by the municipal officers;
 - (3) An irrevocable letter of credit (see Appendix B for example) from a financial institution establishing funding for the construction of the subdivision, from which the Town may draw if construction is inadequate, approved by the municipal officers; or
 - (4) An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.
- B. The conditions and amount of the performance guaranty shall be determined by the Board with the advice of the Town Engineer, Road Commissioner, municipal officers and/or Town Attorney.

§ 89-43. Contents of guaranty.

The performance guaranty shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guaranty to the developer and a date after which the developer will be in default and the Town shall have access to the funds to finish construction.

§ 89-44. Escrow account.

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account or the purchase of a certificate of deposit. For any account opened by the subdivider, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the subdivider unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the subdivider and the amount withdrawn to complete the required improvements.

§ 89-45. Performance bond.

A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the subdivider and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought.

§ 89-46. Letter of credit.

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan.

§ 89-47. Conditional agreement.

- A. The Board, at its discretion, may provide for the subdivider to enter into a binding agreement with the municipality in lieu of the other financial performance guaranties. Such an agreement shall provide for approval of the final plan on the condition that up to four lots may be sold or built upon until either:
- (1) It is certified by the Board, or its agent, that all of the required improvements have been installed in accordance with these regulations and the regulations of the appropriate utilities; or
 - (2) A performance guaranty, acceptable to the municipality, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed.
- B. Notice of the the agreement and any conditions shall be on the final plan which is recorded at the Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guaranties contained in § 89-49.

§ 89-48. Phasing of development.

The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guaranty. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

§ 89-49. Release of guaranty.

Prior to the release of any part of the performance guaranty, the Board shall determine to its satisfaction, in part upon the report of the Town Engineer and whatever other agencies and departments may be involved, that the proposed improvements meet or exceed the design and construction

requirements for that portion of the improvements for which the release is requested.

§ 89-50. Default.

If, upon inspection, the Town Engineer finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he shall so report, in writing, to the Code Enforcement Officer, the municipal officers, the Board and the subdivider or builder. The municipal officers shall take any steps necessary to preserve the Town's rights.

§ 89-51. Private roads.

Where the subdivision streets are to remain private roads, the following words shall appear on the recorded plan.

"All roads in this subdivision shall remain private roads to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town."

§ 89-52. Improvements guaranteed.

Performance guaranties shall be tendered for all improvements required by § 89-30 of these regulations, as well as any other improvements required by the Board.

ARTICLE XIII

Waivers**§ 89-53. Waiver of submission requirements or standards.**

Where the Board makes written findings of fact that there are special circumstances of a particular lot proposed to be subdivided, it may waive portions of the submission requirements or the standards, unless otherwise indicated in the regulations, to permit a more practical and economical development, provided that the public health, safety and welfare are protected, and provided that the waivers do not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, Chapter 105, Zoning, or these regulations.

§ 89-54. Waiver of required improvements.

Where the Board makes written findings of fact that, due to special circumstances of a particular lot proposed to be subdivided, the provision of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions.

§ 89-55. Conditions.

In granting waivers to any of these regulations in accordance with §§ 89-53 and 89-54, the Board shall require such conditions as will assure the objectives of these regulations are met.

ARTICLE XIV

Appeals

§ 89-56. Appeal to County Court.

An aggrieved party may appeal any decision of the Board under these regulations to York County Superior Court.

Chapter 99

WATER

GENERAL REFERENCES

Residential growth — See Ch. 68.

Subdivision of land — See Ch. 89.

Sewers — See Ch. 75.

Zoning — See Ch. 105.

ARTICLE I
Groundwater Extraction
[Adopted 3-14-2009 by Art. II]

§ 99-1. Title.

This article shall be known and cited as the "Large-Scale Groundwater Extraction Ordinance of the Town of Shapleigh, Maine."

§ 99-2. Purpose.

The intent and purposes of this article are as follows:

- A. To protect the short-term and long-term quality and quantity of groundwater, spring water and freshwater resources within aquifers and the recharge areas for these water bodies and related surface waters, including, but not limited to, lakes, ponds, wetlands, rivers and streams as may be located wholly or partially within the Town of Shapleigh;
- B. To ensure that any proposed large-scale water extraction activities are subject to appropriate review and approval by the Town of Shapleigh and the State of Maine;
- C. To establish a regulatory framework for the oversight and management of groundwater resources and groundwater extraction activities and to develop management practices governing groundwater extraction activities which will ensure the ongoing sustainability and quality and avoid interruption of supply or degradation in the quality of groundwater resources within the Town of Shapleigh;
- D. To protect the general health, safety and well-being of all persons dependent upon aquifers and groundwater resources located in the Town of Shapleigh;
- E. To ensure that groundwater extraction activities do not adversely impact or impair plant or wildlife communities or the viability of wetlands, meadow areas or forested areas dependent on groundwater resources;
- F. To ensure the ongoing stability and to safeguard the environmental health of surface land proximate to and within groundwater extraction areas and to conserve topsoil and to promote conditions safeguarding agricultural and silvicultural activities as may be dependent on water resources;
- G. To protect private and public property proximate to and within groundwater extraction areas by regulating the structures, facilities, uses and activities associated with groundwater extraction so that there is no undue adverse impact to new and existing roadways due to extraction, processing, loading or transport of water resources;

- H. To minimize, limit and require mitigation and buffering of noise, vibration, dust, other adverse effects or pollution associated with groundwater extraction activities, including regulation of equipment and vehicles used in groundwater extraction, processing, loading or transport of groundwater resources; and
- I. To provide policies promoting fair use of and equitable access to groundwater resources and supplies.

§ 99-3. Statutory authority.

This article is adopted and enacted pursuant to the following authority:

- A. Title 38 M.R.S.A. § 401 et seq.
- B. Maine Constitution, Article VIII, and Title 30-A M.R.S.A. § 2101 et seq. (Municipal home rule);
- C. Title 30-A M.R.S.A. §§ 3001 through 3006 (Ordinance power);
- D. Title 30-A M.R.S.A. § 4311 (Growth management); and
- E. Title 22 M.R.S.A. § 2611 et seq. (Drinking water regulations).

§ 99-4. Definitions.

In this article, the words and phrases listed below have the following meanings unless a contrary meaning is required by the context or is specifically prescribed. Terms related to groundwater extraction that are not listed below shall be defined in accordance to the following order: as defined by State of Maine Statutes; in accordance with their generally accepted technical meaning within the applicable scientific disciplines; and their common dictionary definition.

AQUIFER — An underground body of water and earth, sand, gravel, or rock that contains sufficient saturated permeable geologic material to hold, conduct and yield significant quantities of groundwater to wells and springs. The term "aquifer" as used in this article includes all areas specifically mapped or identified on the current maps issued by the Maine Geological Survey as the colored map series identified as Significant Sand and Gravel Aquifer Maps.

DROUGHT — A period of abnormally dry weather that is sufficiently prolonged to cause serious hydrologic imbalance in the affected area. It is possible to index the severity of a drought by an impact grading system. One such system, the Palmer Index, uses a zero for normal conditions, a plus scale of 1 to 4 to measure or index the degrees of wetness of a region, and a minus scale of -1 to -4 to index the degree of dryness of a region. In the fall of 2008, the State of Maine is 14 inches above normal in the year-to-date precipitation. The Palmer Drought Index for Maine in the Fall of 2008 is + 4 (extremely moist).

EXTRACTION POINT or EXTRACTION FACILITY — The physical location where groundwater is extracted from the ground by the use or development of springs, wells, pumps, piping apparatus, catchments, weirs or other extractive devices, methods or technologies.

GROUNDWATER — Underground water resources located at or below the water table and within the pore space of unconsolidated sediments or in fractures in bedrock.

LARGE-SCALE WATER EXTRACTION ACTIVITIES — Extraction of 5,000 or more gallons of groundwater from a single or multiple extraction points located within the Town of Shapleigh within any twenty-four-hour period by any individual, business association or entity, consortium or association of related individuals or related business entities.

WATER BODIES or SURFACE WATERS — Lakes, ponds, rivers, streams, wetlands, and similar surficial water bodies.

WATER EXTRACTION ACTIVITIES — The withdrawal, removal, diversion, taking or collection of groundwater by any means from aquifers, springs, wells or other groundwater resources through the use of wells, pumps, piping apparatus, catchments, weirs or other extractive devices, methods or technologies.

WATERSHED or DRAINAGE BASIN — The area of land in which all precipitation (rainfall, snow melt, etc.) drains towards a single location or area and water body or watercourse. Ridges of higher ground generally form the boundaries between watersheds. At the linear boundaries of a drainage basin, precipitation falling on one side flows towards the low point of one drainage basin while precipitation falling on the other side of the boundary flows towards the single location or area and water body or watercourse of the adjacent drainage basin.

WATER TABLE — The level of the surface of groundwater or the water saturated zone within the underground substrate. The location of a water table is revealed by the level at which water stands in a well open along its length and which penetrates into adjacent groundwater resources.

ZONE OF CONTRIBUTION — The area of an aquifer that is capable of contributing groundwater to a well or other extraction point under the most severe pumping and limited recharge conditions that can be realistically anticipated, (i.e., 180 days of pumping at the maximum approved yield rate with no recharge of the groundwater resources from precipitation). A zone of contribution is bounded by groundwater divides which are evidenced by the pumping of the well and/or by the contact zones of supplying aquifers with adjacent low-permeable geologic materials such as glacial till or bedrock. Depending on local geologic and hydrologic conditions, surface water bodies, such as rivers, streams, wetlands, ponds or lakes, may act as recharge boundaries and define a zone of contribution. In all cases, a zone of contribution will extend upgradient within the related aquifer areas to the point of intersection of the aquifer with prevailing site-specific hydrogeologic boundaries such as a groundwater divide, a contact zone

with low-permeable geologic materials, such as glacial till or bedrock, or a recharge boundary which may be demarcated by a surface water body.

ZONE OF INFLUENCE — The area surrounding a pumping well within which there are or will be physical changes in the water table due to groundwater relocation, extraction or withdrawal or the interruption of groundwater recharge conditions.

§ 99-5. Permits required; exceptions; applications.

- A. General. The following provisions are intended to ensure the ongoing sustainability and quality of water supplies and the avoidance of any interruption or degradation of water quality and quantity in groundwater resources to members of the general public within the Town of Shapleigh, and to protect the health, safety and well-being of all persons dependent upon aquifers and groundwater resources located in the Town of Shapleigh.
- B. Permit required. Any person seeking to develop or engage in large-scale water extraction activities must first apply for and obtain a conditional use permit issued by the Planning Board of the Town of Shapleigh.
- C. Water extraction activities not requiring a permit. The following water extraction activities and uses do not require a conditional use permit:
 - (1) Water extraction for use in agricultural activities and use on farmlands, agricultural or on silvicultural lands for such purposes in the immediate vicinity of an extraction point developed for such activities and use;
 - (2) Water extraction for use as drinking and domestic water by private residences located within the Town of Shapleigh;
 - (3) Water extraction for use by public facilities, such as schools, wastewater treatment facilities, public water utilities, public athletic fields or similar facilities or uses located within the Town of Shapleigh;
 - (4) Water extraction used to support public safety or fire suppression; or
 - (5) Existing water extraction used to support ongoing residential, commercial and industrial activities within the Town of Shapleigh to the limit of the historic level of water use existing as of the date of the adoption of this article.
- D. Application for permit.
 - (1) Applications for conditional use permits shall be subject to the provisions set forth in the Town of Shapleigh Zoning Ordinances. Chapter 105, and the following additional application and performance standards. Application forms and instructions for

completion of a conditional use permit are available in the Shapleigh Town office.

- (2) Additional application and performance standards.
 - (a) Written application required. Applications for a permit from the Planning Board to conduct large-scale groundwater extraction activities shall be in writing and accompanied by detailed site plans and project descriptions prepared by a qualified and licensed State of Maine geologist, hydrogeologist or engineer.
 - (b) Right, title and interest. Applicants must submit with an application adequate evidence of the applicant's right, title and interest in and to the property or properties on which any water extraction activity is proposed. Applicants may show sufficient right, title and interest by providing a copy of a deed duly recorded in the York County Registry of Deeds or a copy of the lease, option, contract or other instrument establishing their right, title and interest. In all cases, such instruments must be provided in their entirety and must be submitted with the application. References to purchase price and specific business sensitive financing terms may be redacted from the documentation provided.
 - (c) Extraction methods and quantity. Applications shall include a detailed statement describing the extraction methods proposed and the total maximum quantity of water to be extracted within any twenty-four-hour period from the aggregate of all extraction points as operated by and proposed to be operated by the same individual/entity, or consortium/association of individuals or entities. The description and submissions shall include a detailed summary and maps describing and showing the locations of all existing and proposed points of extraction and the proposed and existing methods of extraction, the depth of the extraction methods and a summary description of the characteristics and type of aquifer resource.
 - (d) Water use. Applications shall include detailed description of the proposed uses for which the water is to be extracted, including a description of the facilities for the use, processing, transport, storage, bottling, sales or other similar activities associated with the proposed water extraction activity.
 - (e) Water transport. Applications shall include a description detailing the means of transportation, transportation vehicles and the proposed number of daily trips of the water transportation vehicles on specific routes within Shapleigh to and from the extraction site and/or water pipeline terminus from which water transport vehicles will be loaded, transferred

or discharged. The Planning Board may require a traffic study to be completed by a qualified, registered traffic or transportation engineer, retained by the Town of Shapleigh, and paid for by the applicant.

- (f) Related applications and documents. Applications shall include copies of all related applications, exhibits and reports for such extraction project filed with any other municipal authority or any agency or department of the State of Maine or United States government, including, but not limited to, as required under 22 M.R.S.A. § 2660 et seq. (transport of water for commercial purposes) or under applicable Maine Department of Health and Human Services rules and regulations. Related applications and documents filed after the date of the application but before any permit is issued by the Planning Board shall be submitted to the Board within 10 days of filing such related applications and documents.
- (g) Hydrogeologic investigation. Applications shall include a written report addressed to the Shapleigh Planning Board, procured by and paid for by the applicant, of a hydrogeological investigation. The investigation report must be prepared, signed and sealed by a Maine certified hydrogeologist, geologist or engineer. The report shall be based on a hydrogeological investigation of sufficient detail to provide, but not be limited to, the following information:
 - [1] Watershed map: a topographic map of the proposed entire watershed, both upgradient and downgradient of the proposed water extraction point(s). Topographic contours shall be shown on the map at intervals of 20 feet or less.
 - [2] Aquifer maps: two maps of the aquifer showing the location of the spring(s), well(s), or excavation(s) from which water is currently extracted and proposed to be extracted and all wetlands and surface water bodies located within 2,000 feet of the extraction point(s). The applicant shall undertake all reasonable measures to obtain data for the aquifer maps from land not owned, leased, or to be leased by the applicant, but the applicant is not required to include such data from land areas whose owners do not allow access. The maps shall be at a scale of 100 feet or less to an inch and include topographic contours at an interval of 20 feet or less. The two maps shall show the following information respectively:
 - [a] Map 1: water table contours and their range under ambient conditions as determined over at least a two-year period prior to any water extraction;

- [b] Map 2: water table contours under actual pumping conditions at completion of a five-day constant rate pumping test at a rate at or above that proposed for operation;
 - [c] The maps shall be based on water table elevation measurements from monitoring wells and surface water bodies in the vicinity of the extraction site(s), and must include surface water elevations for more distant locations;
 - [d] Graphs and charts of precipitation and flow of water in related springs, streams, brooks, or rivers and water table elevation over the two-year period prior to any water extraction shall be provided as well as an explanation of the significance of the data; and
 - [e] Graphs and charts of precipitation and flow of water in related springs, streams, brooks, or rivers, and water table elevations shall also be provided for the period of the pumping test and 10 days afterward.
- [3] Geologic cross sections: at least two geologic cross sections showing geologic structure and stratigraphy, groundwater and surface water elevations for two aquifer maps required in Subsection D(2)(g)[2] above. The locations of these cross sections shall be indicated on the aquifer maps.
 - [4] Zones of contribution and zones of influence: a map showing and narrative describing the long-term zone of contribution and zone of influence of each extraction point(s) based on maximum proposed extraction rates, and a quantitative water budget analysis that includes analysis of precipitation inputs, evaporation losses, surface water runoff, infiltration rates of precipitation into groundwater, analysis of discharge-recharge relationships between surface water and groundwater and the relationship of such factors to the soil types in the drainage basin. Such maps shall also provide identification of owned and leased land areas and indicate the current owner's or lessee's name.
 - [5] Aquifer characteristics: a narrative explaining the ability and capacity of the aquifer or other groundwater resource to provide the quantity of water desired to be extracted by the applicant based on the geologic conditions and relevant properties of the site and hydrogeologic conditions (e.g., hydraulic conductivity and transmissivity). Such explanation shall address, but not be limited to, the following issues:

- [a] Rates of groundwater drawdown and recharge;
 - [b] Sustainable groundwater extraction rates;
 - [c] Details regarding the location of aquifer boundaries;
 - [d] Details regarding the location of recharge areas;
 - [e] A review of possible changes in the zone of contribution and zone of influence over time and predicted impacts on the groundwater resources impacted; and
 - [f] Prediction of the effects of long-term water extraction on the water table and the impacts on any and all nearby water bodies, including, but not limited to, springs, lakes, ponds, rivers, streams, wetland areas, Town wells, and private wells or other existing extraction locations within the zone of contribution.
- [6] Chemical/biological characteristics: a narrative explaining the chemical and biological characteristics of the aquifer or other groundwater resource and a baseline chemical analysis or fingerprint of the water resource characteristics, studied for one year on a monthly basis.
- [7] Water quality issues: a narrative analyzing the possible effects or impacts on the aquifer or other groundwater resources from disturbances of existing water extraction activities causing potential groundwater chemistry or elements and/or minerals, such as, but not limited to, iron, manganese, arsenic, or uranium, and reviewing any health hazards or water quality issues raised by such disturbances or other impacts as measured or otherwise ascertained of the specific conductance, turbidity, clarity, odor or taste associated with current groundwater conditions.
- [8] Site plan. A detailed site plan depicting the following:
- [a] Site dimensions: the limits (outside perimeter) of the aquifer or other water source cited in the application, and the bounds of the land of the applicant.
 - [b] Nearby water bodies: the location of all water bodies within 500 feet of the outside perimeter of the aquifer or other water resource.
 - [c] Existing road network: the existing network of public or private roads leading to or by the extraction point(s).

- [d] Proposed new roads: any proposed new roads or driveways to be constructed for access to and egress from the extraction point(s), and the point(s) of intersection of such proposed roads or driveways with existing roads.
 - [e] Utility lines: any existing or proposed utility lines proposed for use in the groundwater extraction activities.
 - [f] Monitoring and test wells: the location and type proposed or required of monitoring and test wells.
 - [g] Extraction points: the location of all existing and proposed extraction point(s), including, without limitation, all associated existing and proposed well heads, pumping facilities, monitoring or test wells, buildings, and/or sheds, utility lines, fencing, access roads or driveways, with related elevation, and contour line information.
 - [h] Water pipeline: the location of all existing and proposed pipes, pipelines, aqueducts or similar that are intended to facilitate transport of extracted water from extraction point(s) to all intended end users.
 - [i] Other information related to the review of groundwater extraction activities: all other relevant and material information bearing on the proposed large-scale water extraction activities, the omission of which would tend to hinder the ability of the reviewing authority, affected land owners or the public from developing a full understanding of the scope and impact of the proposal, or as may be required by the Planning Board.
 - [j] Other required information: all other information the Shapleigh Zoning Ordinance requires with a conditional use permit application.
- E. Traffic impact analysis (if required by Planning Board): a traffic impact analysis prepared, signed and sealed by a State of Maine certified engineer with experience in traffic engineering. The analysis shall include the following:
- (1) Routes to be used;
 - (2) Access conditions at site;
 - (3) Types and weights of water transport vehicles expected;
 - (4) The expected daily water transport vehicle trips;

- (5) Peak-hour volumes;
 - (6) Pre- and post-directional distribution of hourly and daily traffic volumes and level of service for the affected roads/streets and intersections;
 - (7) Assessment of the load capability and volume capacity of the roads/streets to be used;
 - (8) Effect upon the level of service of the roads/streets giving access to the site and the neighboring streets that may be affected; and
 - (9) Recommended improvements to assure an adequate level of service on the affected streets and to mitigate the physical degradation of roads sooner than the anticipated life span.
- F. Conditions of permit. No application for large-scale water extraction activities shall be issued until and unless the Planning Board affirmatively finds that each of the following performance standards has been or will be met and that all other Shapleigh Zoning Ordinance requirements are met. The burden of proof is solely on the applicant.
- (1) Technical expertise and financial capability. The applicant must demonstrate to the reviewing authority that it possesses the technical expertise and financial resources to provide continuing adherence and capacity to meet these performance standards.
 - (2) Sustainability of aquifer characteristics. The quantity of groundwater proposed to be extracted will not cause undue adverse impact to the groundwater flow patterns relating to the aquifer or its recharge areas, related springs or other groundwater resources within the Town of Shapleigh.
 - (3) Sustainability of aquifer production. The quantity of groundwater proposed to be extracted will not adversely affect the long-term sustainability of the aquifer, groundwater resource recharge areas, or other groundwater resources, during periods of drought or due to reasonably anticipated changes in the recharge capacity of the affected groundwater resources.
 - (4) Sustainability of surface water characteristics. The quantity of groundwater to be extracted will not adversely impact, significantly diminish, or alter the characteristics of any surface waters within the Town of Shapleigh, including during periods of drought.
 - (5) Land subsidence. The quantity of water to be extracted will not cause any ground subsidence on the parcel on which groundwater extraction is taking place or in the vicinity of the parcel on which groundwater extraction activities are proposed.
 - (6) Sustainability of water quality. The proposed extraction will not create a health risk or create adverse impacts, such as drinking water turbidity, reduced clarity, or new odors within existing

groundwater resources from the disturbance of existing geologic materials within the aquifer, or from any other cause related to the proposed groundwater extraction activity.

- (7) Monitoring system and schedule. The applicant must, in conjunction with the Town, establish an ongoing monitoring system which documents extraction and recharge data and water quality characteristics within the zone of contribution. The data is to be reported in writing to the Shapleigh Board of Selectmen on at least a monthly basis. If an aquifer location allows, at least 25% of monitoring locations shall be at private wells located within the zone of contribution, provided the applicant is able to obtain landowner permission for such testing. In the event there are not enough private wells to attain the twenty-five-percent threshold of wells to be monitored, the Planning Board may request the applicant to provide additional monitoring stations on adjacent public or state lands under which the aquifer or groundwater resource is located. The information to be gathered at each testing/monitoring well on water quality parameters shall include, at minimum, the following data:

- (a) Water level;
- (b) Turbidity;
- (c) Temperature;
- (d) pH;
- (e) Conductivity;
- (f) Alkalinity;
- (g) Dissolved oxygen;
- (h) Aroma;
- (i) Total coliform;
- (j) Chlorophyll-a;
- (k) Total organic carbon;
- (l) Volatile organic compounds (VOCs);
- (m) Phosphorus;
- (n) Sodium;
- (o) Calcium;
- (p) Arsenic;
- (q) Iron;

- (r) Manganese;
 - (s) Sulfur;
 - (t) Lead;
 - (u) Copper; and
 - (v) Other parameters deemed appropriate by the Planning Board.
- (8) Sustainability of preexisting domestic use of groundwater. The applicant assumes and shall be individually responsible for any and all liability for the loss, interruption, degradation or interference with the preexisting use or beneficial domestic use of groundwater enjoyed by any person caused by the applicant's participation in large-scale water extraction activities. For the purposes of this section "beneficial domestic use," "groundwater" and "preexisting use" shall be as defined by 38 M.R.S.A. § 404, Paragraph 1A through 1C and liability of applicant shall be for compensatory damages in accordance with 38 M.R.S.A. § 404.
- (9) Surety. See Subsection H(1) below.
- (10) Road use restrictions. Additional vehicular demand on existing Town roads or public easements occasioned by the operation of the extraction facility(ies) will not exceed the capacity of those roads, or cause the premature failure, aging or diminished utility of those roads as determined by the Town Road Commissioner, and/or State of Maine Department of Transportation.
- (11) Pipeline use. If extraction facility(ies) will be served by pipes, pipelines, aqueducts or similar devices, such installations will be sited and constructed in a manner which shall not unduly interrupt the public use of any existing roadway, the public's access to any public facility, great pond, and access to private property; or pose the risk of damage to any property along or through which installation traverses as a result of any failure or malfunction which might cause ponding, erosion, run-off, or similar conditions.
- (12) Habitat preservation: the applicant has complied with the requirements of 38 M.R.S.A. § 480-D, Paragraph 3, Harm to habitats and fisheries.
- G. Independent expert assistance. If the Planning Board reasonably determines it requires independent expert assistance to assist in its review of the application, or in evaluating the substance of the application or in developing appropriate conditions of approval, it may engage the service of a technical expert to assist the Board. The applicant shall pay to the Town, in advance of the scheduling of any public hearing, a sum equal to the estimated cost of the independent expert. The failure to make payment shall excuse the reviewing

authority from scheduling any further review of the application by the Planning Board until such payment is made in full.

H. Surety and terms of permit.

- (1) Surety. No permit shall be issued without a surety bond or an equivalent and appropriate security, including anticipated inflation, as determined by the Planning Board in consultation with the Town Attorney to secure performance of the activities permitted to an applicant seeking to engage in groundwater extraction activities and to ensure compliance with such conditions as the Planning Board may impose in connection with such authority. The bond or surety shall be in an amount recommended by the Board of Selectmen and approved by the Planning Board.
- (2) Time limit and extensions of permits. Permits shall be issued for a period not to exceed three years, but may be renewed subject to the same criteria contained herein.
 - (a) With respect to an application for a permit renewal, after notice and hearing as referred to in § 105-73D of the Shapleigh Zoning Ordinance, a renewal permit for another three-year period shall be issued, provided:
 - [1] There is no increase in the permit holder's extraction activities in terms of the quantity of water to be extracted; and
 - [2] There is no change in the location or configuration of the extraction facility; and
 - [3] There has been no material failure by the permit holder to comply with any conditions of the expiring permit; and
 - [4] There has been no material failure by the permit holder to meet the performance standards applicable to the expiring permit; and
 - [5] There is no significant, credible evidence that the permit holder's continuing operations would be unable to meet the performance standards of the ordinance during any renewal period.
 - (b) Any application for a renewal permit must be filed with the reviewing authority not less than 90 days prior to the expiration of the existing permit.
- (3) Discontinuance of permit. The permit holder is required to inform the Town of Shapleigh if and when extraction points are going to be nonfunctional for extended periods of time. If an existing or permitted large-scale water extraction activity is discontinued for more than one year, such activity shall require application for a new or amended permit. Existing water extraction activities in

operation before the date this article is adopted may continue such operations for three years from such date. At the expiration of the three-year period, any such water extraction activities shall require the water extractor(s) to file for and receive a permit according to the application procedures, terms and performance standards of this article. In addition, after notice and hearing, the conditional use permit for large-scale water extraction activities may be discontinued by the Planning Board in consultation with the Town Attorney during the three-year term of the permit for significant violations and/or variations of the conditions of permit described in this document.

- (4) Independent monitoring. The applicant shall pay the Town of Shapleigh for on-going independent monitoring of extraction operations.

§ 99-6. When effective.

This article shall become effective immediately upon its adoption and enactment by vote of the legislative body of the Town of Shapleigh at a duly called Town Meeting.

ARTICLE II
Water Rights
[Adopted 2-28-2009 STM]

§ 99-7. Name.

The name of this article shall be the "Shapleigh Water Rights and Local Self-Government Ordinance."

§ 99-8. Preamble and purpose.

- A. We the People of the Town of Shapleigh declare that water is essential for life, liberty, and the pursuit of happiness, both for people and for the ecological systems, which give life to all species.
- B. We the People of the Town of Shapleigh declare that we have the duty to safeguard the water both on and beneath the Earth's surface, and in the process, safeguard the rights of people within the community of Shapleigh, and the rights of the ecosystems of which Shapleigh is a part.
- C. We the People of Shapleigh declare that all of our water is held in the public trust as a common resource to be used for the benefit of Shapleigh residents and of the natural ecosystems of which they are a part. We believe that the corporatization of water supplies in this community, placing the control of water in the hands of a corporate few, rather than the community, would constitute tyranny and usurpation; and that we are therefore duty bound, under the Maine Constitution, to oppose such tyranny and usurpation. That same duty requires us to recognize that two centuries' worth of governmental conferral of constitutional powers upon corporations has deprived people of the authority to govern their own communities, and requires us to take affirmative steps to remedy that usurpation of governing power.

§ 99-9. Authority.

This article is adopted and enacted pursuant to the inherent, unalienable, and fundamental right of the citizens of the Town of Shapleigh to self-government and under the authority recognized as belonging to the people of the Town by all relevant state and federal laws, including, but not limited to the following:

- A. Article 1, § 2, of the Maine Constitution, which declares that "all power is inherent in the people; all free governments are founded in their authority and instituted for their benefit, [and that] they have therefore an unalienable and indefeasible right to institute government and to alter, reform, or totally change the same, when their safety and happiness require it."

- B. Section 3001 of Title 30-A of the Maine Revised Statutes, which grants municipalities all powers necessary to protect the health, safety, and welfare of the residents of the Town of Shapleigh.
- C. The Declaration of Independence, which declares that governments are instituted to secure people's rights, and that government derives its just powers from the consent of the governed.
- D. The General Comment of the United Nations Covenant on Economic, Social, and Cultural Rights, which declares that "the human right to drinking water is fundamental to life and health. Sufficient and safe drinking water is a precondition to the realization of human rights."

§ 99-10. Withdrawal of water by corporations prohibited.

No corporation shall engage in water withdrawals in the Town of Shapleigh. The term "corporation" means any corporation organized under the laws of any state of the United States or any country, or any limited partnership, limited-liability partnership, business trust, or limited-liability company organized under the laws of any state of the United States or any country. The term "engage" shall include, but not be limited to, the physical extraction of water, and the buying and/or selling of water extracted within the Town of Shapleigh.

§ 99-11. Corporations not deemed "persons."

No corporation doing business within the Town of Shapleigh shall be recognized as a "person" under the United States or Maine Constitutions, or laws of the United States or Maine, nor shall the corporation be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions found within the Maine Constitution, within the Town of Shapleigh.

§ 99-12. Rights.

All residents of the Town of Shapleigh possess a fundamental and unalienable right to access, use, consume, and preserve water drawn from the sustainable natural water cycles that provide water necessary to sustain life within the Town. Natural communities and ecosystems possess unalienable and fundamental rights to exist, flourish, and naturally evolve within the Town of Shapleigh. Ecosystems shall include, but not be limited to, wetlands, streams, rivers, aquifers, and other water systems.

§ 99-13. Exceptions.

The people of the Town of Shapleigh hereby allow the following exceptions to the statement of law contained within § 99-10 of this article:

- A. Municipal authorities established under the laws of the State of Maine engaged in water withdrawals providing water only to residential and commercial users within the Town of Shapleigh.

- B. Nonprofit educational and charitable corporations organized under state nonprofit corporation law, qualified under § 501(c)(3) of the federal Tax Code, which do not sell water withdrawn within the Town of Shapleigh outside of the Town of Shapleigh.
- C. Utility corporations operating under valid and express contractual provisions in agreements entered into between the Town of Shapleigh and those utility corporations, for the provision of service within the Town of Shapleigh.
- D. Corporations operating under valid and express contractual provisions in agreements entered into between persons in the Town of Shapleigh and those corporations, when the withdrawn water is used solely for on-site residential, household, agricultural, or commercial use within the Town of Shapleigh, provided that such commercial use does not involve the withdrawal of water for sale outside of the Town of Shapleigh, or involve the purchase of water withdrawn from the Town of Shapleigh for sale outside of the Town.

§ 99-14. Enforcement.

Any corporation planning to engage in water withdrawals within the Town of Shapleigh must notify the Town of such activity at least 60 days prior to engaging in water withdrawals. Such notification shall contain a claim to one of the exemptions listed in § 99-13 of this article. Any violation of this article shall be considered a criminal summary offense, and will subject the directors of the noncompliant corporation to joint and several liability with the corporation itself. The Board of Selectmen of the Town of Shapleigh authorizes the maximum allowable monetary fine under the Maine Revised Statutes for the violation of this article. Each act of water withdrawal and each day that water is withdrawn shall be considered a separate violation of this article. The Board of Selectmen of the Town of Shapleigh may also file an action in equity in any court of competent jurisdiction to abate any violation defined in § 99-10 of this article. If the Selectmen of the Town of Shapleigh fail to bring an action to enforce this article, or fail to diligently pursue ongoing litigation aimed at the enforcement of this article, any resident of the Town has standing in front of the court for enforcement.

§ 99-15. Extent of corporate liability.

Any person acting under the authority of a permit issued by the Department of Environmental Protection, any corporation operating under a state charter or certificate of authority to do business, or any director, officer, owner, or manager of a corporation operating under a state charter or certificate of authority to do business, who deprives any Town resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this article, the Maine Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation to satisfy that liability, including, without limitation,

expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Shapleigh for restoration of those natural communities and ecosystems.

§ 99-16. Environmental protection.

It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the rights of natural communities and ecosystems to exist and flourish, or to cause damage to those natural communities and ecosystems. The Town of Shapleigh, along with any resident of the Town, shall have standing to seek declaratory, injunctive, compensatory, and punitive relief for damages caused to natural communities and ecosystems within the Town, regardless of the relation of those natural communities and ecosystems to Town residents or the Town itself. Town residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

§ 99-17. Civil rights enforcement.

Any Town resident shall have standing and authority to bring an action under this article's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and Town residents, as recognized by this article.

§ 99-18. Town action against preemption.

The foundation for the making and adoption of this article is the people's fundamental and unalienable right to govern themselves, and thereby secure rights to life, liberty, property, and the pursuit of happiness. Any attempts to use county, state, or federal levels of government, judicial, legislative, or executive, to preempt, amend, alter, or overturn this article or parts of this article, or to intimidate the people of the Town of Shapleigh or their elected officials, shall require the Board of Selectmen to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and unalienable right to self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this article or other levels of government used to intimidate the people of Shapleigh or their elected officials.

§ 99-19. Strict liability for actions in neighboring municipalities affecting Town.

Persons using corporations to engage in water withdrawal in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of Shapleigh from those activities, and for all

harms caused to ecosystems and natural communities within the Town of Shapleigh.

§ 99-20. Liability for actions affecting water rights.

No permit, license, privilege or charter issued by any state or federal regulatory agency, commission or board to any person or any corporation operating under a state charter, or any director, officer, owner, or manager of a corporation operating under a state charter, which would violate the provisions of this article or deprive any Shapleigh resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this article, the Maine Constitution, the United States Constitution, or other laws, shall be deemed valid within the Town of Shapleigh. Additionally, any employee, agent or representative of any state or federal regulatory agency, commission or board who issues a permit, license, privilege or charter to any person or any corporation operating under a state charter, or any director, officer, owner, or manager of a corporation operating under a state charter, which would violate the provisions of this article or deprive any resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this article, the Maine Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Town of Shapleigh for restoration of those natural communities and ecosystems.

§ 99-21. Future lost profits.

Within the Town of Shapleigh, corporate claims to "future lost profits" shall not be considered property interests under the law, and thus, shall not be recoverable by corporations seeking those damages.

§ 99-22. Prohibition on Selectboard challenge.

The Selectboard of the Town of Shapleigh or any other agent or agency of the Town shall be prohibited from taking any action to annul, amend, or overturn this article, unless such action is approved by a prior Town Meeting at which 2/3 of the residents of the Town attending the Town Meeting approve such action.

Chapter 105

ZONING

GENERAL REFERENCES

Building construction — See Ch. 7.

Residential growth — See Ch. 68.

Open burning — See Ch. 13.

Subdivision of land — See Ch. 89.

Floodplain management — See Ch. 29.

ARTICLE I
General Provisions

§ 105-1. Title.

This chapter shall be known and be cited as the "Zoning Ordinance of the Town of Shapleigh, Maine," and will be referred to herein as "this chapter."

§ 105-2. Purpose.

- A. The purpose of this chapter is to further the maintenance of the safe and healthful conditions and the general welfare, prevent and control water pollution, protect spawning grounds, fish, aquatic life, bird and other wildlife habitat, control building sites, placement of structures and land uses and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty, and to encourage the preservation of farmland.
- B. This chapter does not grant any property rights; it does not authorize any person to trespass, infringe upon or injure the property of another; it does not excuse any person of necessity of complying with other applicable laws and regulation.

§ 105-3. Basic requirements.

- A. All buildings or structures hereinafter erected, reconstructed, altered, enlarged or moved, all new building lots, and all uses of premises in the Town of Shapleigh shall be in conformity with the provisions of this chapter. **[Amended 3-17-2001 ATM by Art. 13]**
- B. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which each building, structure, land or water area is located.
- C. Permits must be obtained from the Code Enforcement Officer prior to commencing any activity controlled by this chapter and shall include the erection of signs and the movement in or out of Town of manufactured housing units.
- D. Where a principal building is in existence on the effective date of adoption or amendment of this chapter, no lot containing such structure shall be created which does not meet the dimensional requirements of this chapter, and which does not contain at least 80,000 square feet of land (excluding wetland within the Resource Protection District). See also the Table of Dimensional Requirements in § 105-18.

§ 105-4. Nonconformance.

- A. Purposes. It is the intent of this chapter to disfavor nonconformities and to encourage their elimination. However, acknowledging their resilience to traditional zoning techniques designed to secure their elimination, it is also the intent of this chapter to treat them realistically

by allowing certain improvements. Therefore, nonconformities may continue subject to the following conditions.

- B. Definitions. As use in this chapter, the following terms shall have the meanings indicated:

NONCONFORMING LOTS OF RECORDS — A single lot of record which, at the effective date of adoption or amendment of this chapter, does not meet the frontage, width or depth requirements of the district in which it is located.

NONCONFORMING STRUCTURE — A structure that does not meet any one or more of the following dimensional requirements: setbacks, height, yard and lot coverage. It is allowed solely because it was in lawful existence at the time this chapter or subsequent amendments took effect.

NONCONFORMING USE — Use of premises that is not permitted to locate in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this chapter or subsequent amendment took effect.

- C. Nonconforming uses.

- (1) Continuance. The use of land, building or structure, lawful at the time of adoption or subsequent amendment of this chapter, may continue although such use does not conform to the provisions of this chapter.
- (2) Resumption prohibited. A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one-year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure, provided that the structure has been used or maintained for residential purposes during the preceding five-year period. **[Amended 6-30-2009 STM]**
- (3) Discontinuance. A nonconforming use which is discontinued for a period of one year may not be resumed. The uses of the land, building or structure shall thereafter conform to the provisions of this chapter.
- (4) Change of use. An existing nonconforming use may be changed to another nonconforming use, provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Subsection D. **[Amended 6-30-2009 STM]**

- (5) Expansion. A nonconforming use, including a nonconforming open use of land, shall not be extended or expanded in area or function, unless the following conditions are met:
- (a) A nonconforming use may not be extended within a building or another structure to any portion of the floor area that was not occupied by such use on the effective date of this chapter (or on the effective date of a subsequent amendment hereto that causes such use to become nonconforming); provided, however, that a nonconforming use may be extended throughout any part of such building or structure that was lawfully and manifestly designed or arranged for such use on such effective date.
 - (b) A nonconforming use may not be extended to any building or other structure or land area other than the one(s) occupied by such use on the effective date of this chapter (or on the effective date of a subsequent amendment hereto that causes such use to become nonconforming), except when the use of the building or structure is changed from a nonconforming to a conforming use, or when a garage is added to a single residential dwelling in a resource protection zone, provided that all the dimensional requirements and filling requirements are met.
- (6) Earth removal. In the case of earth removal operations, the removal of earth may not be extended as a nonconforming use beyond the setback lines required in this chapter of the specific lot or parcel of land upon which such use has become nonconforming without securing a variance from the Board of Appeals. Adjacent parcels in the same or different ownership shall not be eligible for exemption under the nonconforming use provisions unless earth removal operations have been in progress prior to the enactment of these provisions.

D. Nonconforming structures.

- (1) Expansions. All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 105-18. A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure and is in accordance with Subsection D(1)(a) and (b) below. **[Amended 3-12-1988 ATM by Art. 64; 3-9-1991 ATM by Art. 53; 3-14-1992 ATM by Art. 20; 3-13-1999 ATM by Art. 65; 6-30-2009 STM; 3-12-2016 ATM, Art. 3]**
- (a) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or

upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

- (b) Notwithstanding Subsection D(1)(a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited in Subsection D(1):

[1] The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

- (c) All other legally existing, nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Subsection D(1) or (1)(a), above:

[1] For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

[2] For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any

portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Subsection D(1)(b)[1] or (c)[1], above.

- [3] In addition to the limitations in Subsection D(1)(c)[1] and [2], for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Subsection D(1)(b)[1] or (c)[1], above.
- (d) An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.
- (e) If proposed addition or expansion of a nonconforming structure cannot meet the dimensional requirements of this chapter, a variance shall be applied for in accordance with the procedures set forth in this chapter.
- (2) Patios, steps, decks. The addition of an open patio with no structures elevated above the ground level shall constitute the expansion of a nonconforming structure. The addition of steps shall not constitute the expansion of a nonconforming structure. But the addition of a deck does constitute the expansion of a nonconforming structure and must be in compliance with Subsection D(1). **[Amended 3-14-1992 ATM by Art. 20; 3-13-1999 ATM by Art. 65]**
- (3) Foundations. **[Amended 3-9-1991 ATM by Art. 53; 3-13-1999 ATM by Art. 65; 6-30-2009 STM]**

- (a) Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and the new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Subsection D(7), Relocation, below.²⁰
- (4) Resumption. Discontinuance of the use of a legally existing nonconforming structure shall not constitute abandonment of the structure. Conforming use of the structure may be resumed at any time.
- (5) Removal, reconstruction or replacement. **[Amended 3-9-1985 ATM by Art. 7; 3-14-1992 ATM by Art. 20]**
 - (a) Any nonconforming structure which is removed or damaged or destroyed, regardless of the cause, by more than 50% of its Town-assessed value before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within one year of the date of said damage, destruction or removal and provided that such reconstruction or replacement must be in compliance with all water body, tributary stream or wetland setback requirements to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this chapter. In no case shall the structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback, it shall not be any larger than the original structure, except as allowed pursuant to Subsection D(1) above, as determined by the nonconforming footprint of the reconstructed or replaced structure at its new location. If the total amount of footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replaced in accordance with Subsection D(7)(b) below. **[Amended 3-13-1999 ATM by Art. 65; 6-30-2009 STM; 3-12-2011 ATM by Art. 9; 3-12-2016 ATM, Art. 3]**
 - (b) Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the Town-assessed value, or which is decaying, damaged or destroyed by 50% or less of the Town-assessed value of the structure,

20. Editor's Note: Former Subsection D(3)(b), regarding what constitutes expansion of a structure, and which immediately followed this subsection, was repealed 3-12-2016 ATM by Art. 3.

excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such decay, damage or destruction or removal. **[Amended 6-30-2009 STM]**

- (c) In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the Planning Board shall consider, in addition to the criteria in Subsection D(7) below, the physical condition and type of foundation present, if any.
- (6) Parking or loading space. A building or structure which is nonconforming as to the requirements for off-street parking space shall not be enlarged or altered to create additional dwelling units, or seats, as in the case of commercial, industrial, business or institutional or recreational buildings, or accommodations, unless off-street parking is provided for such addition, enlargement or alteration of the original buildings or structure, sufficient to satisfy the requirements of this chapter. A building which is nonconforming as to the requirements for off-street loading space shall not be enlarged or added to unless off-street spaces are provided sufficient to satisfy the requirements of this chapter for both the addition or enlargement and the original building or structure.
- (7) Relocation. **[Added 3-14-1992 ATM by Art. 20]**
 - (a) A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming.
 - (b) In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with § 105-51.3. In

addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows: **[Amended 6-30-2009 STM; 3-12-2016 ATM, Art. 3]**

[1] Trees, woody vegetation and ground cover.

[a] Trees removed in order to relocate a structure must be replanted with at least one native tree, six feet in height, measured from the base of the trunk to the top of the tree, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Trees shall be planted greater than five feet from the side lots lines, and shall create a well-distributed stand of trees. These replanted trees shall be flagged with fluorescent tape no less than 18 inches in length which shall not be removed except by the Code Enforcement Officer upon inspection. **[Amended 3-9-2013 ATM by Art. 4; 3-10-2018 ATM by Art. 3; 3-9-2019 ATM by Art. 3]**

[b] Other woody and herbaceous vegetation, and ground cover, that is removed or destroyed in order to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

[2] Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

(c) All approved plans shall require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.

(8) Change of use of a nonconforming structure. **[Added 6-30-2009 STM²¹]**

(a) The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no

21. Editor's Note: This amendment also replaced former Subsection D(8), Disability access, added 3-14-1992 ATM by Art. 20, as amended.

greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

- (b) In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and functionally water-dependent uses.

E. Nonconforming lots of record. **[Amended 3-10-1984 ATM by Art. 5]**

- (1) Vacant lots. A nonconforming lot of record as of the effective date of this chapter or amendment thereto may be built upon, provided that such lot shall be in separate ownership and not contiguous with any other lot in the same ownership, and that all the provisions of this chapter, except lot area, lot width and shore frontage, can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained only by action of the Board of Appeals. **[Amended 6-30-2009 STM]**
- (2) Built lots. A nonconforming lot of record that was built upon prior to the enactment or subsequent amendment of this chapter is subject to the following restrictions. The structure(s) may be repaired, maintained or improved and may be enlarged, reconstructed or replaced in conformity with all the dimensional requirements of this chapter except lot area, lot width or lot frontage and in conformity with the requirements of Subsection D of this section. If the proposed enlargement of the structures cannot meet the dimensional requirements of this chapter, a variance shall be applied for in accordance with the procedures set forth in this chapter.
- (3) Contiguous built lots. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption or amendment of this chapter, if all or part of the lots do not meet the dimensional requirements of this chapter and if a principal use exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. §§ 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with. **[Amended 6-30-2009 STM]**
- (4) Contiguous vacant lots. **[Amended 6-30-2009 STM]**
 - (a) If two or more vacant, contiguous lots or parcels are in single or joint ownership of record at the time of adoption or

amendment of this chapter and if these lots do not individually meet the dimensional requirements of this chapter or subsequent amendment, the lots shall be combined to the extent necessary to meet the dimensional standards, except in situations where the contiguous lots front on different streets, or except where rights have been vested as described in Subsection E(5) below.

- (b) This provision shall not apply to two or more contiguous lots, at least one of which is nonconforming, owned by the same person or persons on the effective date of this chapter and recorded in the Registry of Deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and:

- [1] Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

- [2] Any lots that do not meet the frontage and lot size requirements of Subsection E(3) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

- (5) Vested rights. Nonconforming use rights cannot arise by the mere filing of a notice of intent to build, an application for required building permits or an application for the required state permits and approvals. Such rights arise only when actual construction of roads, utilities or buildings has begun. Such construction must be legal at the time it is commenced and must be in possession of and in compliance with all validly issued permits, both state and local.

- F. Transfer of ownership. Ownership of lots and structures which remain lawful but become nonconforming by the adoption or amendment of this chapter may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this chapter.
- G. Restoration or replacement. Nothing in this chapter shall prevent any building or any part of a building or structure declared unsafe by the Code Enforcement Officer from being strengthened or restored to a safe condition. Similarly, conforming structures containing nonconforming uses may be rebuilt or replaced if destroyed by fire, flood or other casualty, provided that reconstruction or replacement is started within 12 months of the original destruction. **[Amended 3-9-1985 ATM by Art. 7; 3-14-1992 ATM by Art. 20]**
- H. Maintenance. Nothing in this chapter precludes the normal upkeep and maintenance of nonconforming uses and structures; repairs, renovations or modernizations which do not involve expansion of the nonconforming use or structure; and such other changes in a

nonconforming use or structure as federal, state or local building and safety codes may require.

- I. Pending applications for building permits. Nothing in this chapter shall require any change in plans, construction, size or designated use for any building, structure or part thereof for which application for a building permit has been made or a building permit has been issued or upon which construction commenced prior to the adoption or amendment of this chapter, provided that construction shall start within 60 days after the issuance of such permit.
- J. Expiry of permits. Permits issued under this chapter shall expire after 90 days, unless a building permit is issued. This time period may be extended by the Code Enforcement Officer if issuance of a building permit is delayed due to a technical problem. **[Added 3-10-2012 ATM by Art. 3]**

§ 105-5. Severability.

Should any section or provision of this chapter be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this chapter.

§ 105-6. Conflict with other ordinances. [Amended 6-30-2009 STM]

Whenever a provision of this chapter conflicts with or is inconsistent with another provision of the chapter or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

§ 105-7. Amendments; public hearing; notification. [Amended 3-13-1999 ATM by Art. 65]

- A. This chapter may be amended by a majority vote of the governing body, regardless of whether or not the proposed amendment is recommended by the Planning Board.
- B. The Planning Board shall hold a public hearing at least 30 days prior to the meeting of the governing body. Notice of public hearing shall be posted and be published in accordance with the following provisions:
 - (1) The notice must be posted in the municipal office and the usual Town Warrant posting locations at least 13 days before the public hearing.
 - (2) The notice must be published at least two times in a newspaper of general circulation in the municipality. The date of the first publication must be at least 13 days before the hearing, and the date of the second publication must be at least seven days before the hearing. The notice must be written in plain English, understandable by the average citizen.

- (3) Notice must be given in accordance with the following when an amendment has been proposed that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.
 - (a) The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment.
 - (b) For each parcel within the municipality that is in or abutting the area affected by the proposed amendment, the notice must be mailed by first-class mail at least 13 days before the public hearing to the last known address of the person to whom each parcel is assessed. The municipal officers shall prepare and file with the Municipal Clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. Notice is not required under this subsection for the adoption of a new zoning ordinance adopted to implement a comprehensive plan or for amendments required by the shoreland zoning laws contained in Title 38 M.R.S.A. § 435 et seq.
- C. Copies of amendments to shoreland zoning provision of this chapter, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within 45 days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five-day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

§ 105-8. Repetitive petitions.

No proposed change in this chapter which has been unfavorably acted upon by the governing body shall be considered on its merits by the governing body within two years after the date of such unfavorable action unless adoption of the proposed change is recommended by unanimous vote of the Planning Board.

§ 105-9. Effective date. [Amended 3-13-1999 ATM by Art. 65; 6-30-2009 STM]

- A. Effective date of chapter and chapter amendments. The effective date of this chapter is March 12, 1983. Except as provided in § 105-7C, amendments shall be effective upon adoption.

- B. Repeal of municipal timber harvesting regulation. The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A. § 438-B(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A. § 438-B(5), the following provisions of this chapter are repealed:²²
- (1) Section 105-17, Land uses, timber harvesting (Shoreland District, Resource Protection District, Stream Protection District)
 - (2) Section 105-50 in its entirety; and
 - (3) Section 105-15, Definitions, the definitions of: "forest management activities"; "forest stand"; "harvest area"; "land management road"; "residual basal area"; "skid road or skid trail."

22. Editor's Note: Said provisions were repealed and removed, at the direction of the Town, upon the statutorily established date of 1-1-2013.

ARTICLE II
Establishment of Districts

**§ 105-10. Zoning districts. [Amended 3-9-1991 ATM by Art. 53;
3-13-1999 ATM by Art. 65]**

To implement the provisions of this chapter, the Town of Shapleigh is hereby divided into the following districts:

- A. Resource Protection District. The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems or scenic and natural values. This district shall include those lands in the Shapleigh Town Forest shown on the Official Map as in the Resource Protection District, all lands in the Vernon Walker Wildlife Refuge and, to the extent shown on the Official Map, those portions of the Shoreland Zone which are:
- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006. For the purposes of this subsection, "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river, during the period of normal high water. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river. **[Amended 6-30-2009 STM]**
 - (2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the one-hundred-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Shapleigh Flood Insurance Rate Maps, August 5, 1985.
 - (3) Areas of two or more contiguous acres with sustained slopes of 20% or greater.
 - (4) Areas of two or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of an inland wetland, as defined, and which are not superficially connected to a water body during the period of normal high water. **[Amended 6-30-2009 STM]**
 - (5) Land areas along rivers subject to severe bank erosion, undercutting or river bed movement.

- B. Shoreland District. The Shoreland District is the land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond, wetland or river that is not in the Resource Protection District.
- C. Stream Protection District. The Stream Protection District includes all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas in the Resource Protection or Shoreland Districts. Where a stream and its associated shoreland area is located within those districts, that land area shall be regulated under the terms of those districts.
- D. General Purpose District: all land within the Town not included in any other district.
- E. Floodplain District. The Floodplain District boundaries shall be those which are designated as the one-hundred-year floodplain district designated as Zones A, A1-A30, on the Shapleigh Flood Insurance Rate Map (FIRM), dated August 5, 1985, on file with the Town Clerk, Planning Board and Code Enforcement Officer. These maps, as well as the Shapleigh Flood Insurance Study, are incorporated by reference.

§ 105-11. Location of districts. [Amended 3-13-1999 ATM by Art. 65; 3-17-2001 ATM by Art. 16]

The General Purpose District, the Resource Protection District, the Stream Protection District and the Shoreland District are located and bounded as shown on the Official Zoning Map, entitled "Zoning Map of Shapleigh, Maine," dated 2000, signed by and on file with the Town Clerk. The Floodplain District is located and bounded as shown on the Shapleigh Flood Insurance Rate Map (FIRM), dated August 5, 1985. Copies of the maps are available for review in the office of the Code Enforcement Officer.

§ 105-12. Uncertainty of boundary location.

Where uncertainty exists with respect to the boundaries of the various districts as shown on the Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the center lines of streets, highways or alleys shall be construed as following such center lines.
- B. Boundaries indicated as approximately following well-established lot lines shall be construed as following such lot lines.
- C. Boundaries indicated as approximately following municipal limits shall be construed as following such municipal limits.
- D. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of natural change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the center line of

streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines.

- E. Boundaries indicated as being parallel to or extensions of features indicated in Subsections A through D above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- F. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by Subsections A through E above, the Board of Appeals shall interpret the district boundaries.
- G. The location of the Resource Protection, Shoreland and Stream Protection Districts on the Official Zoning Map are merely approximate indications of their location. The exact location of their boundaries must be determined by measurement of the appropriate distance from the normal high-water line of the protected water body or the upland edge of the wetland. **[Amended 3-13-1999 ATM by Art. 65²³]**

§ 105-13. Division of lots by district boundaries. [Amended 3-13-1999 ATM by Art. 65]

- A. Where a zoning district boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this chapter, the regulations applicable to the less-restricted portion of the lot may be extended, except when the more-restricted portion lies in the Shoreland District, the Resource Protection District or the Stream Protection District, not more than 50 feet into the more-restricted portion of the lot subject to the provisions of Subsection B below.
- B. Extension of use shall be considered a conditional use, subject to approval of the Planning Board and in accordance with the criteria set forth in § 105-73G, Standards applicable to conditional uses.

23. Editor's Note: This article also repealed former Subsections H, I and J, which immediately followed and included verbal descriptions of the zoning districts. For said descriptions, see § 105-10.

ARTICLE III

Construction of Language and Definitions**§ 105-14. Construction of language.**

- A. In this chapter, certain terms or words shall be interpreted as follows:
- (1) The present tense includes the future tense.
 - (2) The singular number includes the plural, and the plural includes the singular.
 - (3) The word "shall" is mandatory, and the word "may" is permissive.
 - (4) The word "used" or "occupied" includes the words "intended," "designed" or "arranged to be used or occupied."
 - (5) The word "building" includes the word "structure."
 - (6) The word "dwelling" includes the word "residence."
 - (7) The word "lot" includes the word "plot" or "parcel."
- B. In case of any difference of the word meaning or implication between the text of this chapter and any map or illustration, the text shall control.
- C. Terms not defined shall have the customary dictionary meaning.

§ 105-15. Definitions.

In this chapter, the following terms shall have the following meanings, unless a contrary meaning is required by the context or is specifically prescribed:

ABUTTING PROPERTY — Any lot which is physically contiguous with the subject lot, even if only at a point, such that the extension of the side lot lines of the subject lot would touch or enclose the abutting property.**[Added 3-19-2005 ATM by Art. 18]**

ACCESSORY STRUCTURE OR USE — A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.**[Amended 3-9-1991 ATM by Art. 53]**

ADULT BUSINESS — Any business in any use category, a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying, or otherwise dealing in materials or devices of any kind which appeal to prurient interest and which depict or describe specified sexual activities.**[Added 3-13-2004 ATM]**

AGRICULTURE — The production, keeping or maintenance, for sale or lease, of plants or animals, including, but not limited to: forages and sod

crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting activities.**[Added 3-12-1988 ATM by Art. 65; amended 6-30-2009 STM; 3-12-2016 ATM, Art. 3]**

ALTERATION — Any change, addition or modification in construction, or any change in structural members of a building, such as bearing walls, columns, beams or girders.

AMUSEMENT ARCADE — Any premises containing three or more pinball machines, video games or similar amusements.

ANIMAL BREEDING OR CARE — The keeping or raising of animals, including fowl, for any commercial use.**[Amended 3-9-2002 ATM by Art. 17]**

ANIMAL, DOMESTICATED — Any animal tamed and kept as a pet or raised for commercial use, i.e., dairy cows.**[Added 3-11-1989 ATM by Art. 63]**

ANIMAL, PET — Any animal raised tame and kept for enjoyment, including but not limited to birds, cats, dogs and hamsters.**[Added 3-11-1989 ATM by Art. 63]**

ANIMAL, WILD — Any animal born free or in the wild, including but not limited to birds, fish, deer, etc.**[Added 3-11-1989 ATM by Art. 63]**

ANTENNA — An apparatus designed for telephonic, radio or television or similar communications through the sending and/or receiving of electromagnetic waves.**[Added 3-13-1999 ATM by Art. 67]**

APPROVED — Any item or work which is accepted as correct, true, serviceable or usable by inspection or ordinance.

AUTO SERVICE STATION — A place where gasoline or any other automobile engine fuel (stored only in underground tanks), kerosene or motor oil and lubricants or grease (for operation of motor vehicles) are retailed directly to the public on the premises, including the sale of minor accessories and the servicing and minor repair of automobiles, not including storage of unlicensed vehicles and not including body, frame or fender straightening and repair.

AUTO REPAIR GARAGE — A place where, with or without the attendant sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision services, such as body, frame or fender straightening and repair, overall painting and undercoating of automobiles.

AUTOMOBILE GRAVEYARD — A yard, field or other area used as a place of storage for three or more unserviceable, discarded, worn-out or junked motor vehicles.²⁴

24. Editor's Note: The definition of "basement," which immediately followed this definition, was repealed 3-13-1999 ATM by Art. 65.

BACK LOT — A lot without preexisting street frontage.**[Amended 3-9-2002 ATM by Art. 17]**

BASAL AREA — The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.**[Added 6-30-2009 STM]**

BASEMENT — Any portion of a structure with a floor-to-ceiling height of six feet or more and having more than 50% of its volume below the existing ground level.**[Added 6-30-2009 STM]**

BILLBOARD — A sign, structure or surface larger than 32 square feet, which is available for advertising purposes for goods, services, or attractions rendered off the premises, excluding directional signs.**[Added 3-14-1992 ATM by Art. 21; amended 3-9-2019 ATM by Art. 3]**

BOAT LAUNCHING FACILITY — A facility designed primarily for the launching and landing of watercraft and which may include an access ramp, docking area and parking spaces for vehicles and trailers.**[Amended 3-9-1991 ATM by Art. 53]**

BOATHOUSE — A nonresidential structure designed for the purpose of protecting or storing boats for noncommercial purposes.

BUILDER — A person or business engaged in the construction, repair, remodeling or placement of any structure, fence or sign.**[Added 3-11-1989 ATM by Art. 63]**

BUILDING — A structure for the support, shelter or enclosure of persons, animals, goods or property of any kind.

BUILDING HEIGHT — The vertical distance between the highest point of the roof and the lowest ground grade adjoining the building.**[Amended 3-13-2015 ATM by Art. 5]**

BUREAU OF FORESTRY — State of Maine Department of Agriculture, Conservation and Forestry, Bureau of Forestry.**[Added 6-30-2009 STM; amended 3-12-2016 ATM, Art. 3]**

CAMPGROUND — Any area or tract of land to accommodate two or more parties in temporary living quarters, including but not limited to tents, recreational vehicles or other shelters, and for which a fee is charged.**[Amended 3-9-1991 ATM by Art. 53]**

CANOPY — The more or less continuous cover formed by tree crowns in a wooded area.**[Added 6-30-2009 STM]**

CARPORT — An open structure with a roof but no walls for the covered parking of automobiles and other vehicles.²⁵**[Added 3-11-1989 ATM by Art. 63]**

CHANNEL — A natural or artificial watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is water flowing within the limits of the defined channel.

25. Editor's Note: The definition of "cellar," which immediately followed this definition, was repealed 3-13-1999 ATM by Art. 65.

CHILD DAY-CARE CENTER — A private establishment providing day care for 13 or more persons, which charges for their care and holds all legally required licenses and approvals.**[Added 3-19-2005 ATM by Art. 18]**

CHILD DAY-CARE HOME — A private home providing day care for up to 12 persons, which charges for their care and which holds all legally required licenses and approval. A day-care home may also include part-time care of up to 12 persons. "Part-time" in this use shall mean four hours or less per day, per person.**[Added 3-19-2005 ATM by Art. 18]**

CLUSTER SUBDIVISION — A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space owned in common by lot/unit owners, the Town or land conservation organization. Cluster subdivision shall not be used to increase the overall net residential density of the development.²⁶**[Amended 3-19-2005 ATM by Art. 18]**

CODE ENFORCEMENT OFFICER — A person appointed by the municipal officers to administer and enforce this chapter. Reference to the Code Enforcement Officer shall be construed to include the Building Inspector, Plumbing Inspector, Electrical Inspector and the like, where applicable.

COLLOCATE — To locate more than one telecommunications facility or use on a tower.**[Added 3-13-1999 ATM by Art. 67]**

COMMERCIAL — Pertaining to a business but not to residences, clubs, nonprofit organizations and governmental entities.

COMMERICAL USE — The use of lands, buildings or structures, other than a home occupation defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental or residential buildings and/or dwelling units.**[Amended 3-9-1991 ATM by Art. 53]**

CONDITIONAL USE — A use permitted only after review and approval by the Planning Board. A conditional use is a use that would not be appropriate without restriction but which, if controlled under the provisions of this chapter, would promote the purposes of this chapter. Such use may be permitted if specific provision for such conditional use is made in this chapter.

CONDITIONAL USE PERMIT — A permit issued by the Planning Board for a conditional use. A conditional use permit may be issued only after the applicant has followed the procedures of this chapter.

CONFORMING USE — A use of buildings, structures or land which complies with all applicable provisions of this chapter.

CONSTRUCTED — Includes built, erected, altered, moved upon, reconstructed or any physical operations on the premises which are required for construction. Excavation, fill, drainage and the like shall be considered a part of construction.

26. Editor's Note: See Ch. 89, Subdivision of Land, § 89-32.

CONTRACTOR — A person or business working for themselves or another upon a written agreement to construct, repair, remodel, demolish or move any structure, fence or sign.**[Added 3-11-1989 ATM by Art. 63]**

- A. GENERAL CONTRACTOR — A person or business working under a written agreement which hires others to perform the construction, repair, remodeling, placement or destruction of any structure, fence or sign.
- B. SUBCONTRACTOR — A person or business hired by a general contractor to construct, repair, remodel, demolish or move any structure, fence or sign.

CROSS-SECTIONAL AREA — The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight-line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.**[Added 6-30-2009 STM]**

DBH — The diameter of a standing tree measured 4.5 feet from ground level.**[Added 6-30-2009 STM]**

DECK — An open structure which is built above ground level and attached to a dwelling or any other structure projecting outward from the principal building.**[Added 3-11-1989 ATM by Art. 63]**

DECK, FREESTANDING — An open structure constructed above ground level and not attached to any other structure.**[Added 3-11-1989 ATM by Art. 63]**

DEVELOPMENT — A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.**[Added 6-30-2009 STM]**

DISRUPTION OF SHORELINE INTEGRITY — The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section and, in the case of flowing waters, a profile and character altered from natural conditions.**[Added 6-30-2009 STM]**

DISTRICT — A specified portion of the municipality, delineated on the Official Zoning Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this chapter.

DRIVEWAYS — See §§ 105-60 and 105-60.1.**[Added 6-30-2009 STM; amended 3-12-2011 ATM by Art. 7]**

DWELLING — A fixed structure containing one or more dwelling units.

DWELLING, TWO-FAMILY — A single building containing two dwelling units, with a separate entrance for each. May also be referred to as a "duplex."**[Added 3-9-2019 ATM by Art. 3]**

DWELLING UNITS — A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. The term shall include manufactured housing units but shall not include trailers or recreational vehicles.**[Amended 3-10-2018 ATM by Art. 7]**

EARTH — Topsoil, sand, gravel, clay, peat, rock or other minerals.

ESSENTIAL SERVICES — The construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cable, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.**[Amended 3-9-1991 ATM by Art. 53]**

EUTROPHICATION — The process of nutrient enrichment of water bodies.

EXCAVATION — Any removal of earth or earth material from its original position.

EXPANSION OF A STRUCTURE — An increase of the footprint, floor area, or volume of a structure, including all extensions, such as but not limited to attached decks, garages, porches and greenhouses.**[Added 3-9-1991 ATM by Art. 53; amended 3-12-2016 ATM, Art. 3]**

EXPANSION OF USE — The addition of weeks or months to a use's operating season; additional hours of operation; or the use of more footprint of a structure or ground area devoted to a particular use.**[Added 3-9-1991 ATM by Art. 53; amended 3-12-2016 ATM, Art. 3]**

FAMILY — One or more persons occupying a premises and living as a single housekeeping unit, as distinguished from a group occupying a boardinghouse, lodging house or hotel.

FILLING — Depositing or dumping any matter on or into the ground or water.

FLEA MARKET — The sale of goods by individuals who rent tables and/or display space, but not including garage sales.

FLOOD — A temporary rise in stream flow or tidal surge that results in water overtopping its banks and inundating adjacent areas.

FLOODPLAIN — Boundaries designated as the one-hundred-year floodplain as Zones A, A1-A30 on the Shapleigh Flood Insurance Rate Map (FIRM) dated August 5, 1985, on file with the Town Clerk, Planning Board and Code Enforcement Officer.**[Amended 3-8-1986 ATM by Art. 5]**

FLOODPROOFING — A combination of structural provisions, changes or adjustments to properties subject to flooding, primarily to reduce or eliminate flood damages to properties, water and sanitary facilities, structures and contents of the building.

FLOODWAY — The channel of a stream and those portions of the floodplain adjoining the channel that are required to carry and discharge the floodwater or flood flows of any river or stream.

FLOOR AREA — The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.**[Added 3-9-1991 ATM by Art. 53; amended 3-12-2016 ATM, Art. 3]**

FLOOR AREA, GROSS — The sum, in square feet, of the floor areas of all roofed portions of a building, as measured from the interior faces of the exterior walls.

FOOTPRINT — The entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.**[Added 3-12-2016 ATM, Art. 3]**

FORESTED WETLAND — A freshwater wetland dominated by woody vegetation that is six meters tall (approximately 20 feet) or taller.²⁷**[Added 3-12-1988 ATM by Art. 65; amended 6-30-2009 STM]**

FOUNDATION — The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls or other base consisting of concrete, block, brick or similar material.²⁸**[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

FRONTAGE, STREET — The horizontal distance between the intersections of the side lot lines with the front lot line.

FUNCTIONALLY WATER-DEPENDENT USES — Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, inland waters and which cannot be located away from these waters. The uses include but are not limited to commercial and recreational fishing and boating facilities, fish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and boat-building facilities, marinas, navigation aides, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water, and uses which primarily provide general public access to water. Recreational boat storage buildings are not

27. **Editor's Note:** The former definitions of "forest management activities," added 3-9-1991 ATM by Art. 53, and "forest stand," added 6-30-2009 STM, which immediately and respectively followed this definition, were repealed upon the statutorily established date of 1-1-2013; see § 105-9B.

28. **Editor's Note:** The former definition of "freshwater wetland," added 3-9-1991 ATM by Art. 53, which immediately followed this definition, was repealed 3-13-1999 ATM by Art. 65. See definition of "wetland." The former definition of "frontage, shore," which immediately followed, was repealed 3-12-2016 ATM by Art. 3.

considered to be a functionally water-dependent use.**[Added 3-9-1991 ATM by Art. 53; amended 3-12-2016 ATM, Art. 3]**

GARAGE SALE — The sale of assorted items, usually secondhand, from noncommercial premises, sometimes also known as "yard sales," "porch sales," "barn sales" and "cellar sales," etc.

GARAGE SALE BUSINESS — The sale of assorted items, usually secondhand, from noncommercial premises, which occurs more frequently than on a three-day occasion, or more than three weekends, or on more than five consecutive weekdays of any calendar year. This term applies also to the following types of sales when they exceed the above-described frequencies: yard sales, porch sales, barn sales, tag sales, cellar sales, etc.

GRADE — In relation to buildings, the average of the finished ground level at the center of all walls of a building.

GREAT POND — Any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres, except, for the purposes of this chapter, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner. In Shapleigh, "great pond" shall be considered to mean Goose Pond, Granny Kent Pond, Mousam Lake, Pine Springs Lake (Shy Beaver Pond), Poverty Pond, Shapleigh Pond and Square Pond.**[Added 3-9-1991 ATM by Art. 53; amended 3-13-1999 ATM by Art. 65]**

GREAT POND CLASSIFIED GPA — Any great pond classified GPA; pursuant to M.R.S.A. Title 38, Article 4-A, § 465-A. This classification includes some but not all impoundments of rivers that are defined as great ponds.**[Added 3-9-1991 ATM by Art. 53]**

GROUND COVER — Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.²⁹**[Added 6-30-2009 STM]**

HAZARDOUS MATERIAL — A product or waste or combination of substances that, because of quantity, concentration, or physical, chemical, or infectious characteristics, poses a substantial present or potential hazard to human health, safety, or welfare and the natural environment. This term applies to any materials or substances designated as hazardous by the United States Environmental Protection Agency and/or the Maine Department of Environmental Protection.**[Added 3-19-2005 ATM by Art. 18]**

HAZARD TREE — A tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include

29. Editor's Note: The former definition of "harvest area," added 6-30-2009 STM, which immediately followed this definition, was repealed upon the statutorily established date of 1-1-2013; see § 105-9B.

meteorological anomalies, such as, but not limited to hurricanes; hurricane-force winds; tornadoes; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk of bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.**[Added 3-12-2016 ATM, Art. 3]**

HEAD SHOP — A business which offers for sale or use any drug paraphernalia as defined by state law in 17-A M.R.S.A. § 1111-A.

HEIGHT OF A STRUCTURE — The vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.**[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

HEIGHT OF A TOWER — The vertical distance between the mean original grade at the downhill side of the tower and the highest point on the tower, even if said highest point is an antenna.³⁰**[Added 3-13-1999 ATM by Art. 67]**

HIGH-WATER LINE OR ELEVATION — That line that distinguishes between predominantly aquatic and predominantly terrestrial land that is apparent from visible marking, changes in the character of soils due to prolonged action of the water or changes in vegetation. In the case of wetlands adjacent to rivers, streams, brooks, or ponds, the normal high-water line is the upland edge of the wetland and not the edge of the open water.**[Added 3-19-2005 ATM by Art. 18]**

HOME OCCUPATION — An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; carried on by a member of the family residing in the dwelling unit; clearly incidental and secondary to the use of the dwelling unit for residential purposes. This shall not be interpreted to include telecommuting.**[Amended 3-9-2019 ATM by Art. 3]**

INDIVIDUAL PRIVATE CAMPSITE — An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas, fireplaces or tent platforms.**[Added 3-9-1991 ATM by Art. 53]**

INDUSTRIAL — The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.³¹**[Added 3-9-1991 ATM by Art. 53]**

30. Editor's Note: The definition of "high-water elevation, normal," which immediately followed this definition, was repealed 3-13-1999 ATM by Art. 65.

31. Editor's Note: The definition of "inland wetland," added 3-12-1988 ATM by Art. 65, which immediately followed this definition, was repealed 3-13-1999 ATM by Art. 65.

INSTITUTIONAL — A nonprofit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.**[Added 6-30-2009 STM]**

JUNKYARD — A yard, field or other area used as a place of storage for:

- A. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture.
- B. Discarded, scrap or junk lumber.
- C. Old scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material.
- D. Garbage dumps, waste dumps and sanitary fills.

LAGOON — An artificial enlargement of a water body, primarily by means of dredging and excavation.³²

LICENSED FORESTER — A forester licensed under 32 M.R.S.A. Chapter 76.**[Added 6-30-2009 STM]**

LOT — A parcel of land in single ownership, described on a deed, plot or similar legal document.

LOT AREA — The area of land enclosed within the boundary line of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.**[Amended 3-9-1991 ATM by Art. 53]**

LOT, CORNER — A lot with at least two contiguous sides, each abutting upon a street.

LOT COVERAGE — The percentage of the plot or lot covered by all buildings.

LOT, INTERIOR — Any lot other than a corner lot.

LOT LINES — A line which forms a boundary of a property dividing one lot from another, or from a street or waterbody or other public space. The lines bounding a lot are defined below:**[Amended 3-9-2019 ATM by Art. 3]**

- A. FRONT LOT LINE — On an interior lot, the line separating the lot from the street; on a corner or through lot, the line separating the lot from either street.
- B. REAR LOT LINE — The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than 10 feet long, lying farthest from the front lot line. On a corner lot, the rear

32. Editor's Note: The former definition of "land management road," added 6-30-2009 STM, which immediately followed this definition, was repealed upon the statutorily established date of 1-1-2013; see § 105-9B.

lot line shall be opposite the front lot line of least dimension. In some circumstances, a lot may not have a rear lot line.

C. SIDE LOT LINE — Any lot line other than the front lot line or a rear lot line.

LOT OF RECORD — A parcel of land, the dimensions of which are shown on a document or map on file with the County Register of Deeds or in common use by Town or county officials.

LOT, SHOREFRONT — Any lot abutting a water body.

LOT, THROUGH — Any interior lot having frontages on two more or less parallel streets, or between a street and a water body, or between two water bodies, as distinguished from a corner lot. All sides of through lots adjacent to streets shall be considered frontage, and front yards shall be provided as required.

LOT WIDTH — The horizontal distance between the side lot lines, measured parallel to the road, at the point where the principal structure is proposed.

MANUFACTURED HOUSING UNITS — Structures, transportable in one or two sections, which were constructed in a manufacturing facility and are transported to a building site and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air-conditioning and electrical systems contained therein.³³**[Added 3-10-1990 ATM by Art. 29]**

MARIJUANA — As defined in State Administrative Rules (10-144, CMR Ch. 122), § 1.17, "Marijuana."**[Added 3-9-2019 ATM by Art. 3]**

MARINA — A shorefront commercial facility with provisions for one or more of the following: boat storage, boat docking and launching or the sale of supplies and services for watercraft and their equipment and accessories, bait and tackle shops and marine fuel service facilities.**[Amended 6-30-2009 STM]**

MEDICAL MARIJUANA — Marijuana that is acquired, possessed, cultivated, manufactured, used, delivered, transferred or transported to treat or alleviate a qualifying patient's medical condition.**[Added 3-9-2019 ATM by Art. 3]**

MEDICAL MARIJUANA CAREGIVER — A person, licensed hospice provider or licensed nursing facility that is designated by a qualifying patient to assist the qualifying patient with the medical use of marijuana in accordance with state law. A person who is a medical marijuana caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.**[Added 3-9-2019 ATM by Art. 3]**

MEDICAL MARIJUANA HOME PRODUCTION — Cultivating, processing and/or storing of medical marijuana by a qualifying patient at their own residence or a medical marijuana caregiver at their own primary year-round

33. Editor's Note: The definition of "mobile home, trailer, house trailer," amended 3-10-1984 ATM by Art. 5 and 8-31-1985 STM by Art. 4, was deleted 3-10-1990 ATM by Art. 29.

residence for use by a qualifying patient. This use shall be considered an accessory use.**[Added 3-9-2019 ATM by Art. 3]**

MINERAL EXPLORATION — Hand sampling, test boring or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.**[Added 3-9-1991 ATM by Art. 53]**

MINERAL EXTRACTION — Any operation within any twelve-month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock peat or other like material from its natural location and transports the product removed away from the extraction site.**[Added 3-9-1991 ATM by Art. 53]**

MINIMUM LOT WIDTH — The closest distance between the side lot lines of a lot. When only two lot lines extend into the Shoreland Zone, both lot lines shall be considered to be side lot lines.**[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

MOBILE HOME PARK — A parcel of land under unified ownership designed and/or used to accommodate three or more manufactured housing units.**[Amended 3-10-1990 ATM by Art. 29]**

MOBILE HOME PARK LOT — The area of land on which an individual home is situated within a manufactured housing unit park and which is reserved for use by the occupants of that home.**[Added 3-10-1990 ATM by Art. 29]**

MULTI-UNIT RESIDENTIAL — A residential structure containing three or more residential dwelling units.**[Added 3-9-1991 ATM by Art. 53]**

NATIVE — Indigenous to the local forest.**[Added 6-30-2009 STM]**

NET RESIDENTIAL ACREAGE — The gross acreage available for development, excluding the area for streets or access and the area which is unusable for development.

NET RESIDENTIAL DENSITY — The number of dwelling units per net residential acre.

NONCONFORMING CONDITION — A nonconforming lot, structure or use which is allowed solely because it was in lawful existence at the time this chapter or subsequent amendment took effect.**[Added 6-30-2009 STM]**

NONCONFORMING LOT — A single lot of record which, at the effective date of adoption or amendment of this chapter, does not meet the area, frontage or width requirements of the district in which it is located.**[Added 3-9-1991 ATM by Art. 53]**

NONCONFORMING STRUCTURE OR USE — A building, structure, use of land or portion thereof existing at the effective date of adoption or amendment of this chapter which does not conform to all applicable provisions of this chapter.**[Amended 3-12-2016 ATM, Art. 3]**

NONNATIVE INVASIVE SPECIES OF VEGETATION — Species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry

as being invasive in Maine ecosystems and not native to Maine ecosystems.**[Added 3-12-2016 ATM, Art. 3]**

NORMAL HIGH-WATER LINE (NON-TIDAL WATERS) — That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support nonforested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high water are considered part of the river or great pond.**[Amended 6-30-2009 STM]**

NOTICE OF VIOLATION — Written instructions or information given by the Code Enforcement Officer to any person engaged in performing, or causing to be performed, any work or use which is contrary to this chapter.**[Added 3-11-1989 ATM by Art. 63]**

OCCUPANCY — The use of any structure or land, including but not limited to residing there or conducting a business there.**[Added 3-11-1989 ATM by Art. 63]**

OPEN SPACE USE — A use not involving a structure, earthmoving activity or the removal or destruction of vegetative cover, spawning grounds or fish, aquatic life, bird and other wildlife habitat.

OUTLET STREAM — Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.**[Added 3-12-2016 ATM, Art. 3]**

OWNER — The person or business having legal ownership of a place or firm or any real property.**[Added 3-11-1989 ATM by Art. 63]**

OWNER BUILDER — An individual who engages in the construction of his own dwelling or auxiliary structures.

PARKING SPACE — A minimum area of 200 square feet, exclusive of drives, aisles or entrances, fully accessible for the storage or parking of vehicles.

PATIO — A slab or flat surface which is open and has no attachments projecting above normal ground level.**[Added 3-11-1989 ATM by Art. 63]**

PERSON — An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.**[Added 3-9-1991 ATM by Art. 53]**

PIERS AND DOCKS — Structures, either permanent or floating, providing access from the shore to the point offshore. Piers and docks shall require a conditional use permit from the Planning Board if they extend more than 20 feet from the bank of any lake or pond (or 10 feet from the bank of any river or stream); or if they have any permanent parts located between the banks of any stream or below the high-water elevation of any lake or pond;

or if they are constructed as part of any commercial use; or if they require dredging, filling or cutting any banks or shoreland.

PLANNED UNIT DEVELOPMENT — Land under unified management, planned and developed as a whole according to comprehensive and detailed plans, including streets, utilities, lots or building sites, site plans and design principles for all buildings to be located, constructed, used and related to each other, and for other uses and improvements on the land. Development may be a single operation or a programmed series of operations, including all lands and buildings, with provision for operation and maintenance of such area of improvements and facilities necessary for common use by the occupants of the development.

PLANNING BOARD PERMIT — A permit issued after Planning Board review to ensure that the proposed use conforms with the land use standard specified in Article V of this chapter.**[Added 3-10-1984 ATM by Art. 5]**

POND — A small body of water used for farm, fire, fish or recreational activity.**[Added 3-14-1992 ATM by Art. 21]**

PREMISES — One or more lots which are in the same ownership and are contiguous or separated only by a road or a water body, including all buildings, structures and improvements.

PRINCIPAL STRUCTURE — The structure in which the primary use of the lot is conducted.**[Amended 3-12-2016 ATM, Art. 3]**

PRINCIPAL USE — The primary use to which the premises are devoted and the main purpose for which the premises exists.

PRIVATE WAY — A category of road not owned or maintained by the Town of Shapleigh or the State of Maine which provides frontage to a lot or lots.**[Added 3-19-2005 ATM by Art. 18]**

PUBLIC FACILITY — Any facility, including but not limited to buildings, property, recreation areas and roads, which is owned, leased or otherwise operated or funded by a governmental body or public entity.**[Added 3-9-1991 ATM by Art. 53]**

PUBLIC ROAD — A roadway used by the general public, whether or not the same has been laid out as a Town way.

PUBLIC UTILITY — Any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public.³⁴

RECREATIONAL VEHICLE — A vehicle or vehicular attachment designed for temporary sleeping or living quarters for one or more persons, which is not a dwelling and which may include a pickup camper, travel trailer, tent trailer, motor home, and must be roadworthy.**[Added 3-10-1984 ATM by Art. 5]**

34. Editor's Note: The definition of "recent floodplain soils," which immediately followed this definition, was repealed 3-13-1999 ATM by Art. 65.

REGIONAL FLOOD — The maximum known flood on a water body, either the one-hundred-year frequency flood, where calculated, or the flood of record.

REPAIR — The act of normal maintenance of a structure or its parts, and the replacement of its parts as a result of damage.**[Added 3-11-1989 ATM by Art. 63; amended 3-12-2016 ATM, Art. 3]**

REPLACEMENT — The act of installing the same or similar item, fixture or structure as was in place before.**[Added 3-11-1989 ATM by Art. 63]**

REPLACEMENT SYSTEM — A system intended to replace an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure.**[Added 3-9-1991 ATM by Art. 53]**

REQUIRED — An item or act or test that must be provided, installed, performed or given in compliance with this chapter.**[Added 3-11-1989 ATM by Art. 63]**

RESIDENTIAL DWELLING UNIT — A room or group of rooms designed and equipped exclusively for use as permanent, seasonal or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include manufactured housing units and rental units that contain cooking, sleeping and toilet facilities regardless of the time period rented. Recreational vehicles are not residential dwelling units.³⁵**[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

RESIDUAL STAND — A stand of trees remaining in the forest following timber harvesting and related activities.**[Added 6-30-2009 STM]**

RIPRAP — Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.**[Added 3-9-1991 ATM by Art. 53]**

RIVER — Any free-flowing body of water from that point at which it provides drainage for a watershed of 25 miles to its mouth. In Shapleigh, "river" shall be considered to mean the Mousam River from the outlet of Mousam Lake and the Little Ossipee downstream of Davis Brook.**[Added 3-12-1988 ATM by Art. 65; amended 3-13-1999 ATM by Art. 65]**

ROAD — A route or track consisting of a bed of exposed mineral soil, gravel, asphalt or other surfacing material constructed for the repeated passage of motorized vehicles, excluding a driveway as defined.**[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

SAPLING — A tree species that is less than two inches in diameter at 4.5 feet above ground level.**[Added 3-12-2016 ATM, Art. 3]**

SEEDLING — A young tree species that is less than 4.5 feet in height above ground level.**[Added 3-12-2016 ATM, Art. 3]**

35. Editor's Note: The former definition of "residual basal area," added 6-30-2009 STM, which immediately followed this definition, was repealed upon the statutorily established date of 1-1-2013; see § 105-9B.

SETBACK — The nearest horizontal distance from a lot line to the nearest part of a structure, road, parking space or other regulated object or area.**[Amended 3-9-1991 ATM by Art. 53]**

SETBACK FROM WATER — The nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.**[Amended 3-9-1991 ATM by Art. 53; 6-30-2009 ATM]**

SHORE FRONTAGE — The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lots lines with the shoreline.**[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

SHORELAND ZONE — The land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.**[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

SHORELINE — The normal high-water line, or upland edge of a freshwater wetland.**[Added 6-30-2009 STM]**

SIGN — A name, identification, description, display or illustration which is affixed to, painted or represented, directly or indirectly, upon a building, structure, parcel or lot and which relates to an object, product or place, activity or person, institution, organization or business on the premises.

SITE-BUILT HOUSING — A dwelling unit constructed from individual members or materials which are transported to the site in order to be assembled in the exact location where the unit is intended to remain as a permanent residence. Site-built housing may include multifamily housing as well as single-family homes and duplexes. It does not include manufactured housing units.³⁶

SLASH — The residue, e.g., treetops and branches, left on the ground after a timber harvest.**[Added 6-30-2009 STM]**

SLUDGE — Any free-flowing semisolid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effect, but does not include industrial discharges which are point sources subject to permits under Section 402 or of the Federal Water Pollution Control Act, as amended (86 Stat. 880).**[Added 3-12-1988 ATM by Art. 65]**

SOLAR ENERGY SYSTEM — A complete design or assembly consisting of a solar energy collector, an energy storage facility (where used) and components for a distribution of transformed energy (to the extent they cannot be used jointly with a conventional energy system). Passive solar

36. Editor's Note: The former definition of "skid road or skid trail," added 3-12-1988 ATM by Art. 65, as amended, which immediately followed this definition, was repealed upon the statutorily established date of 1-1-2013; see § 105-9B.

energy systems are included in this definition, but not to the extent that they fulfill other functions such as structural and recreational.

STOP-WORK ORDER — A written notice from the Code Enforcement Officer or inspector to stop all work because of a violation of this chapter, said notice to be posted at the location of the violation and not removed until the violation has been fully corrected.**[Added 3-11-1989 ATM by Art. 63; 3-12-2016 ATM, Art. 3]**

STORM-DAMANGED TREE — A tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as a result of a storm event.**[Added 3-12-2016 ATM, Art. 3]**

STREAM — A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the Shoreland Zone of another water body or wetland. When a stream meets the Shoreland Zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.**[Added 3-9-1991 ATM by Art. 53; amended 3-13-1999 ATM by Art. 65; 3-12-2016 ATM, Art. 3]**

STRUCTURE — Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind, or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface wastewater disposal systems as defined in Title 30-A, Section 4201, Subsection 5; geothermal heat exchange wells as defined in Title 32, Section 4700-E, Subsection 3-C; or wells or water wells as defined in Title 32, Section 4700-E, Subsection 8.**[Amended 3-9-1991 ATM by Art. 53; 6-30-2009 ATM; 3-12-2016 ATM, Art. 3]**

SUBDIVISION — A division of a tract or parcel of land into three or more lots within any five-year period, whether accomplished by sale, lease, development, building or otherwise, except when the division is accomplished by inheritance, order of court or gift of a relative, unless the intent of subdivision gift is to avoid the objective of these standards.

SUBSTANTIAL START — Completion of 30% of a permitted structure or use measured as a percentage of estimated total cost.**[Added 3-9-1991 ATM by Art. 53]**

SUBSURFACE SEWAGE DISPOSAL SYSTEM — Any system designed to dispose of waste or wastewater on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered 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 M.R.S.A. § 414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.**[Added 6-30-2009 STM]**

SUSTAINED SLOPE — A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.**[Added 3-9-1991 ATM by Art. 53]**

SWIMMING POOL — An in-ground or aboveground structure built for swimming.

TELECOMMUNICATIONS FACILITY — Any structure, antenna, tower or other device which provides radio-television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common-carrier wireless exchange access services, and personal communication service (PCS) or pager services. Preexisting towers/antennas shall be exempt from this definition.**[Added 3-13-1999 ATM by Art. 67]**

TIMBER HARVESTING — The cutting and removal of timber for the primary purpose of selling or processing forest products. Timber harvesting does not include the cutting or removal of vegetation within the Shoreland Zone when associated with other land use activities. The cutting or removal of trees in the Shoreland Zone on a lot that has less than two acres within the Shoreland Zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to § 105-51, Clearing or removal of vegetation for activities other than timber harvesting.**[Added 3-12-1988 ATM by Art. 65; amended 6-30-2009 STM; 3-12-2016ATM, Art. 3]**

TIMBER HARVESTING AND RELATED ACTIVITIES — Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.**[Added 6-30-2009 STM]**

TOWER — Any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and similar structures.**[Added 3-13-1999 ATM by Art. 67]**

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 utility trailer, horse trailer or snowmobile trailer.

TREE — A woody perennial plant with a well-defined trunk(s) at least two inches in diameter at 4.5 feet above the ground, with a more or less definite crown, and reaching a height of at least 10 feet at maturity.**[Added 3-12-2016 ATM, Art. 3]**

TRIBUTARY STREAM — A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term "stream" as defined elsewhere in this chapter, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland.**[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

TWO-FAMILY DWELLING — Any building that contains two dwelling units used, intended, or designed to be built or occupied for living purposes.**[Added 3-10-2018 ATM by Art. 7]**

UPLAND EDGE OF A WETLAND — The boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six meters (approximately 20 feet) tall or taller.**[Added 3-12-1988 ATM by Art. 65; amended 6-30-2009 STM; 3-12-2016 ATM, Art. 3]**

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.

UTILITY BUILDING — Any structure constructed or placed for storage of vehicles, tools, recreational equipment etc., but not to be used as a dwelling or residence or as a structure to house the overflow of guests or family members who cannot be accommodated within a residence.**[Added 3-11-1989 ATM by Art. 63]**

VARIANCE — A relaxation of the terms of this chapter 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 chapter 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 or unique circumstances applying to the property.

VEGETATION — All live trees, shrubs, and other plants, including without limitation trees, both over and under four inches in diameter, measured at 4 1/2 feet above ground level.**[Added 3-9-1991 ATM by Art. 53]**

VOLUME OF A STRUCTURE — The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.**[Added 3-9-1991 ATM by Art. 53]**

WATER BODY — Any great pond, river or stream.**[Added 3-13-1999 ATM by Art. 65]**

WATER CROSSING — Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under,

through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.**[Added 6-30-2009 STM]**

WETLAND[Added 3-13-1999 ATM by Art. 65] —

- A. Freshwater or inland swamps, marshes, bogs and similar areas, other than forested wetlands, which are:
- (1) Of 10 or more contiguous acres, or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that, in a natural state, the combined surface area is in excess of 10 acres; and
 - (2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.
- B. Freshwater or inland wetlands may contain small stream channels or inclusion of lands that do not conform to the criteria of this definition.³⁷

WINDFIRM — The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.**[Added 6-30-2009 STM]**

WOODY VEGETATION — Live trees or woody, nonherbaceous shrubs.**[Added 6-30-2009 STM]**

YARD, FRONT — The area of land between the front 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.

YARD, SIDE — The area of land between the side lot line and the nearest part of the principal building.

37.Editor's Note: The definition of "wetlands associated with great ponds and rivers," added 3-19-1991 ATM by Art. 53, formerly followed this definition, but did not appear with the revisions to this chapter adopted at the 6-30-2009 STM.

ARTICLE IV

Land Use and District Requirements**§ 105-16. Purposes.**

- A. Resource Protection District. In the interest of wise land use, public health, convenience, safety and welfare, the regulations of this district are intended to guide the use of areas of land with extended periods of high water tables:
- (1) To further the maintenance of safe and healthful conditions and the general welfare, and to protect spawning grounds and other wildlife habitat.
 - (2) To avoid pollution of wetlands which feed into brooks, streams, lakes, ponds and rivers.
 - (3) To protect, preserve and maintain the water table and water recharge areas within the Town so as to preserve present and potential water supplies for the public health and safety of the Town.
 - (4) To prevent the destruction of natural wetlands which provide flood protection and stormwater storage, recharge of groundwater supply and augmentation of stream flow during dry periods.
 - (5) To prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of inharmonious use of wetlands.
 - (6) To encourage those uses that can be appropriately and safely located in wetland areas.
 - (7) To protect presently existing natural wetland and wildlife habitat.
 - (8) To protect the stormwater capacity of freshwater wetlands to minimize flooding downstream.
- B. Shoreland District. The regulations of this district are intended to accomplish the following purposes:
- (1) To control building sites in shoreland areas which are already densely developed, to prevent further undue encroachment upon water bodies.
 - (2) To control the use and development of undeveloped shoreland areas and to provide maximum protection to the land and water resources so that:
 - (a) The processes of eutrophication, sedimentation and pollution, leading to the ultimate degradation or destruction of the water body, will be eliminated or delayed as long as possible.

- (b) The process of accelerated nutrient enrichment of water bodies, which almost always accompanies shoreland development, will be kept at a minimum.
 - (c) Water bodies, particularly those with public access, will be maintained in a condition fit for the present and future use and enjoyment of the public.
- (3) To provide minimum standards, as a stopgap measure, until such time as research establishes precisely the susceptibility of various water bodies to degradation, and the exact nature of the effect of shoreland development on that degradation process.
- (4) To enhance the enjoyment and use of water bodies through the protection of fish and aquatic life from destruction that results from advanced stages of man-induced eutrophication.
- (5) To minimize expenditures of public moneys for flood control projects.
- (6) To minimize rescue and relief efforts undertaken at the expense of the general public.
- (7) To minimize flood damage to public facilities such as water mains, sewer lines, streets and bridges.
- C. Stream Protection District. The regulations of this district are intended to accomplish the following purposes: **[Amended 3-9-1991 ATM by Art. 53]**
 - (1) To control building sites in shoreland areas which are, at the time of this chapter amendment, unbuilt upon or relatively unbuilt upon, in order that the state-mandated requirements for shoreland zoning may be implemented.
 - (2) To accomplish the other purposes stated in Subsection B.
- D. General Purpose District. The regulations of this district are intended to accomplish the following purposes: to allow a maximum diversity of uses while protecting farmland, the public health and safety, environmental quality and economic well-being of the Town, by imposing minimum controls on those uses which, by virtue of their external effects (waste discharge, noise, glare, fumes, smoke, dust, odors or auto, truck or rail traffic), could otherwise create nuisances or unsafe or unhealthy conditions.
- E. Floodplain District.
 - (1) The regulations of this district are intended to accomplish the following purposes:
 - (a) To provide that lands in the Town of Shapleigh subject to seasonal and periodic flooding as described hereinafter shall

not be used for residence or other purposes in such a manner as to endanger the health, safety or welfare of the occupants thereof, of the public generally, or so as to burden the public with costs resulting from unwise individual choices of land use.

- (b) To assure the continuation of the natural flow pattern of the watercourse(s) within the Town, in order to provide adequate and safe floodwater storage capacity to protect persons and property against the hazards of flood inundation.
- (2) The Floodplain District shall be considered as overlying other districts. Any uses permitted in the portions of the districts so overlaid shall be permitted, subject to all the provisions of this section.

§ 105-17. Land uses. [Amended 3-10-1984 ATM by Art. 5; 3-9-1991 ATM by Art. 53; 3-14-1992 ATM by Art. 22; 10-22-1994 STM by Art. 3; 3-13-1999 ATM by Art. 64; 3-13-1999 ATM by Art. 65; 3-13-1999 ATM by Art. 67; 3-17-2001 ATM by Art. 18; 3-9-2002 ATM by Art. 18; 3-13-2004 ATM; 3-11-2006 ATM by Art. 8; 6-30-2009 STM; 3-13-2010 ATM by Art. 4; 3-11-2017 ATM by Art. 5; 3-10-2018 ATM by Art. 4; 3-9-2019 ATM by Art. 3]

Land uses permitted in each district in conformance with the performance standards of Article V, are shown in the following table:

KEY:

NO	=	Not permitted
YES	=	Permitted
NA	=	Not applicable
CEO	=	Allowed with permit issued by Code Enforcement Officer
LPI	=	Allowed with permit issued by Local Plumbing Inspector
CU	=	Permitted after Planning Board review to ensure that the proposed use conforms with the land use standards specified in Article V of this chapter. (Planning Board review is required for approval of conditional use permits. See §§ 105-71 through 105-73.)
RP	=	Resource Protection District
SD	=	Shoreland District
GP	=	General Purpose District
FD	=	Floodplain District
SP	=	Stream Protection District

LAND USES	RP	SD	GP	FD	SP
RURAL					
Open space	YES	YES	YES	YES	YES

§ 105-17	SHAPLEIGH CODE					§ 105-17
LAND USES	RP	SD	GP	FD	SP	
Timber harvesting	See § 105-9B	See § 105-9B	YES	YES	See § 105-9B	
Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO	YES	CEO	CEO	
Agriculture, commercial gardening ⁵	CU	CU	YES	YES	CU	
Campgrounds	NO	NO	CU	CU	NO	
Individual private campsites	CEO	CEO	CEO	CEO	CEO	
Earth removal, dredging, filling ²	NO	CU	CU/CEO	CU	CU	
Mineral exploration or extraction	CU	CU	CU	CU	NO	
Commercial outdoor recreation, excluding campgrounds	NO	CU	CU	CU	CU	
Nonintensive recreational uses not requiring structure, such as hunting, fishing and hiking	YES	YES	YES	YES	YES	
Public and private recreational areas involving minimal structural development	CU	CU	CEO	CU	CU	
Motorized vehicular traffic on existing roads and trails	YES	YES	YES	YES	YES	
Seasonal sale of produce and plants raised:						
Off the premises ⁵	NO	CU	CU	CU	CU	
On the premises ⁵	NO	CU	YES	CU	CU	
Nurseries	NO	NO	CU	CU	NO	
Commercial animal breeding or care and commercial kennels	NO	NO	CU	NO	NO	
RESIDENTIAL	RP	SD	GP	FD	SP	
Single-family dwelling	NO	CEO ³	CEO ³	CU	CEO ^{1,3}	

LAND USES	RP	SD	GP	FD	SP
Seasonal camps and cottages	NO	CEO	CEO	CU	CEO ¹
Conversions of seasonal residences to year-round	NO	LPI	LPI	LPI	LPI
Two-family dwelling	NO	CU	CEO	CU	CU ¹
Multifamily dwelling	NO	NO	CU	CU	CU ¹
Cluster (planned unit) development	NO	CU	CU	CU	CU ¹
Mobile home parks	NO	NO	CU	NO	NO
Manufactured housing units not in parks	NO	CEO	CEO	CEO	CU ¹
COMMERCIAL					
Home occupations	NO	CU	CU	CU	CU
Garage sales	NO	YES	YES	YES	YES
Garage sale business	NO	CU	CU	CU	CU
Commercial or industrial facilities	NO	NO	CU	CU	NO
Commercial or industrial areas requiring a shorefront location (e.g., marinas, boat yards, bath houses, fisheries)	NO	CU	NO	CU	CU ¹
Gas stations, motor vehicle sales or repair, car washes	NO	NO	CU	NO	NO
Eating establishments	NO	NO	CU	CU	NO
Premises selling alcoholic beverages	NO	NO	CU	NO	NO
Amusement arcades	NO	CU	CU	CU	NO
Head shops	NO	NO	NO	NO	NO
Flea markets	NO	CU	CU	CU	NO
Automobile graveyards and junkyards operated in accordance with state law	NO	NO	CU	NO	NO
Waste processing or disposal facilities other than sanitary landfills	NO	NO	CU	NO	NO
Telecommunications facility	NO	NO	CU	NO	NO

LAND USES	RP	SD	GP	FD	SP
Adult entertainment	NO	NO	CU	NO	NO
Retail marijuana establishments and retail marijuana social clubs ⁴	NO	NO	NO	NO	NO
PUBLIC, SEMIPUBLIC, INSTITUTIONAL					
Church, parish house or other religious building	NO	CU	CU	CU	CU ¹
Municipal offices, library, museum	NO	NO	CU	CU	CU ¹
Town garage, fire station	NO	NO	CU	CU	NO
Utility buildings or structures	NO	CU	CU	CU	CU ¹
Under 120 square feet	NO	CEO	CEO	CEO	CEO ¹
Schools (public or private)	NO	NO	CU	NO	NO
Nursery schools	NO	CU	CU	NO	NO
Facilities for scientific or nature interpretation purposes	NO	CU	CU	NO	CU ¹
Cemeteries	NO	NO	CU	NO	NO
OTHER	RP	SD	GP	FD	SP
Piers and docks requiring permits (see definitions)	NO	CU	NA	CU	CU
Boathouses	NO	CU	CU	CU	NO
Creation of back lot [refer to § 105-19B(3) ³⁸]	NO	CU	CU	NO	NO
Signs:					
Commercial	NO	CEO	CEO	NO	CEO
Noncommercial	NO	CEO	CEO	CEO	CEO
Uses or structures accessory to:					
Permitted uses	CEO	CEO	CEO	CEO	CEO ¹
Permitted structures	CEO	CEO	CEO	CEO	CEO ¹

38. Editor's Note: Section 105-19B(3), as amended, was repealed 3-17-2001 ATM by Art. 13.

LAND USES	RP	SD	GP	FD	SP
Conditional uses	CU	CU	CU	CU	CU ¹
Uses similar to:					
Permitted uses	CEO	CEO	CEO	CEO	CEO
Conditional uses	CU	CU	CU	CU	CU
Ponds	CU	CU	CU	CU	CU

NOTES:

¹ Provided that a variance from the setback requirement is obtained from the Board of Appeals.

² See also § 105-39.

³ Additional detached dwelling units in excess of one on a single lot shall require review and approval by the Planning Board. A site plan certified by a registered land surveyor, licensed in the State of Maine, showing all existing and proposed structures, and other pertinent information relating to the possible division of land, shall be submitted to the Planning Board. The Planning Board shall determine that the property and all structures can meet the current zoning and setback requirements if the property were to be divided.

⁴ See details in Ch. 48, Marijuana, Art. I.

⁵ Marijuana is neither considered an agricultural crop nor commercial gardening. Marijuana is not considered a seasonal produce or plant. Conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. § 558-C requires a conditional use permit.

§ 105-18. Dimensional requirements. [Amended 3-12-1988 ATM by Art. 64; 3-9-1991 ATM by Art. 53; 3-13-1999 ATM by Art. 65; 3-17-2001 ATM by Art. 19; 6-30-2009 STM; 3-13-2010 ATM by Art. 5; 3-10-2018 ATM by Art. 5]

Dimensional requirements shall be in accordance with the following table:

Commercial and Industrial Dimensional Requirements (A)

Land Uses	Resource Protection District	Shoreland Protection District	General Purpose District	Floodplain District	Stream Protection District
Minimum land area per principal building	N/A ¹	80,000	80,000	²	80,000
Minimum street frontage per principal building (feet)	N/A	200(B)	200(B)		200(B)

Commercial and Industrial Dimensional Requirements (A)

Land Uses	Resource Protection District	Shoreland District	General Purpose District	Floodplain District	Stream Protection District
Minimum shore frontage (feet) per principal building	200(C)	200(C)	200(C)		200(C)
Minimum yard dimensions for each principal structure: ³					
Front setback from right-of-way (feet)	N/A	50(D, F)	50(D, F)	²	50(D, F)
Front setback from road center line (feet)	N/A	75(D, F)	75(D, F)	²	75(D, F)
Side setback (feet)	N/A	10(E, F)	25(E, F)	²	25(E, F)
Rear setback (feet)	N/A	20	30	²	30
Shoreland setback (feet)	250(G, H)	100(G, H)	—	²	75(G, H)
Tributary stream	75	75			75
Maximum lot coverage (by structure)	N/A	10%	20%	²	10%
Maximum building height (feet)	—	35(H)	35(H)	²	35(H)

NOTES:

¹ No portion of any lot created after the effective date of adoption of this chapter and lying within the Resource Protection District may be used to meet the dimensional requirements.

² Dimensional requirements in the underlying zoning district shall apply. However, no construction or filling shall be allowed unless the applicant can demonstrate that the specific property is not in fact either subject to flooding or unsuitable for the proposed use because of hydrological/topographical conditions. Land within the Floodplain District may be used to meet the area and yard requirements, provided that the portion in this district which is so used does not exceed 30% of the minimum land area required per dwelling unit.

³ Yard dimensions for accessory structures may be found in § 105-35 of this chapter.

Residential Dimensional Requirements (A)

Land Uses	Resource Protection District	Shoreland Protection District	General Purpose District	Floodplain Protection District	Stream Protection District
Minimum land area per dwelling unit or principal building (square feet)	N/A ¹	80,000	80,000	²	80,000
Minimum street frontage per dwelling unit or principal building (feet)	N/A	200(B)	200(B)		200(B)
Minimum shore frontage per dwelling unit or principal building (feet)	200(C)	200(C)	200(C)		200(C)
Minimum yard dimensions per dwelling unit or principal building:					
Front setback from right-of-way (feet)	N/A	50(D, F)	50(D, F)	²	50(D, F)
Front setback from road center line (feet)	N/A	75(D, F)	75(D, F)	²	75(D, F)
Side setback (feet)	N/A	10(E, F)	25(E, F)	²	25(E, F)
Rear setback (feet)	N/A	20	30	²	30
Shoreland setback (feet)	100(G, H)	100(G, H)	—	²	75(G, H)
Tributary stream	75	75			75
Maximum lot coverage (by structure)	N/A	10%	20%	²	10%
Maximum building height (feet)	—	35(H)	35(H)	²	35(H)

NOTES:

¹ No portion of any lot created after the effective date of adoption of this chapter and lying within the Resource Protection District may be used to meet the dimensional requirements.

² Dimensional requirements in the underlying zoning district shall apply. However, no construction or filling shall be allowed unless the applicant can demonstrate that the specific property is not in fact either subject to flooding or unsuitable for the proposed use because of hydrological/topographical conditions. Land within the Floodplain District may be used to meet the area and yard requirements, provided that the portion in this district which is so used does not exceed 30% of the minimum land area required per dwelling unit.

³ Yard dimensions for accessory structures may be found in § 105-35 of this chapter.

⁴ For more than one dwelling unit per building see § 105-42.

IMPORTANT: See also notes to this table in § 105-19.

§ 105-19. Notes to Table on Dimensional Requirements.

A. Each lot on which is located a principal structure or use, unless in compliance with § 105-40.2 or 105.42 of this chapter, shall meet all the dimensional standards set forth in § 105-18. Dimensional requirements for two and multifamily dwellings are set forth in § 105-42 of this chapter. Dimensional requirements for a residence and a nonresidential use on one conforming lot are set forth in § 105-40.2. **[Amended 3-17-2001 ATM by Art. 15; 6-30-2009 STM; 3-10-2018 ATM by Art. 5]**

(1) Flag lots and other odd-shaped lots in which narrow strips are joined to other parcels in order to meet the minimum lot size requirements are prohibited. The ratio of lot length to width shall not be more than 4 to 1. **[Added 3-9-2013 ATM by Art. 7]**

B. Street frontage. The minimum street frontage requirements shall be subject to the following additional considerations:

(1) A new building lot abutting a public road or abutting a privately maintained road meeting the Town's road construction standards shall have a minimum road frontage of 200 feet.

(2) Lots of record existing at the time of ordinance amendment may be built upon, provided that they meet the requirements of § 105-4E(1). **[Amended 3-10-1984 ATM by Art. 5]**

(3) (Reserved)³⁹

39. Editor's Note: Former Subsection B(3), regarding back lots, as amended, was repealed 3-17-2001 ATM by Art. 13.

- (4) ⁴⁰New building lots located at the end of a cul-de-sac may be designed so that they have 50 feet of street frontage, so long as the width is 200 feet at the location where the principal building is constructed.
- C. Shore frontage. A lot abutting a lake, pond, river, stream or wetland shall have a minimum shore frontage as specified in the table in § 105-18, measured in a straight line between the points of intersection of the side lot lines with the shoreline at the normal high-water line or upland edge. **[Amended 3-13-1999 ATM by Art. 65]**
- D. Front yards. Whichever of the two methods for determining front yard setbacks (specified in the table in § 105-18) yields the greater distance shall apply. When a lot fronts on the shore and on a road or right-of-way, both the shoreland setback of 100 feet and the front setback as defined in § 105-18 shall be met, or a variance must be obtained. If a legally existing structure which does not meet the required front yard standard is located on the property, any new structure may be set back the same distance from the right-of-way as the existing structure, so long as all other performance and dimensional standards of this chapter are met. **[Amended 3-12-1988 ATM by Art. 64; 3-9-1991 ATM by Art. 53; 3-13-1999 ATM by Art. 63]**
- E. Side yards. The combined width of both side yards shall be at least 30 feet in the Shoreland District.
- F. Corner lot setbacks and visibility. Corner lot yards abutting roads shall have a minimum depth of 50 feet from each right-of-way or 75 feet from each center line, whichever distance is greater. All corner lots shall be kept free from visual obstructions for a distance of 25 feet measured along the intersecting street lines.
- G. Shoreline setback. This setback is from the normal high-water mark of any lake or river in the Shoreland District. Setback from the wetlands over 10 acres in size shall be 130 feet. **[Amended 3-12-1988 ATM by Art. 64]**
- H. Building height. No building shall exceed 2 1/2 stories or 35 feet in height, as measured between the lowest ground grade adjoining the building and the highest point of the structure. Exception: In public, semipublic, institutional and agricultural buildings, a height not to exceed 40 feet is allowed in the General Purpose District only, and must be in compliance with NFPA 101. Features of building and structures, such as chimneys, towers, ventilators and spires, may exceed 35 feet in height but shall be set back from the nearest lot line a distance not less than the height of such feature or structure, unless a greater setback is required by other provisions of this chapter. **[Amended 6-30-2009 STM; 11-2-2010 by referendum; 3-13-2015 ATM by Art. 5]**

40. Editor's Note: Original Subsection B4 was deleted 3-10-1984 ATM by Art. 5.

ARTICLE V

Basic Performance Standards**§ 105-20. Applicability of standards; prohibited uses.**

- A. These standards shall apply to all new or expanded uses of land and buildings which are listed as permitted or conditional uses in Article IV of this chapter.
- B. Prohibited uses include all uses which would be obnoxious or injurious because of odor, dust, smoke, refuse matter, fumes, noise, vibration or waste material, or which would be dangerous to the health and safety of the community or which would disturb or annoy the community, notwithstanding any other provision of this chapter and applicable state and federal laws and regulations.
- C. Plans for the effective control and/or elimination of the same shall be presented to the Planning Board for approval. When the effects of a use are uncertain, the Code Enforcement Officer, after prior notification to and at the expense of the applicant, shall employ such independent recognized consultant as necessary to ensure compliance with all requirements of this Code specifically related to the public health, safety and welfare and the abatement of nuisances. The estimated costs of such studies shall be deposited with the Town Clerk prior to their undertaking.

§ 105-21. Traffic.

- A. The proposed development shall provide for safe access to and from public and private roads. Safe access shall be assured by locating an adequate number of access points, with respect to sight distances, intersections, schools and other traffic generators. Curb cuts shall be limited to the minimum width necessary for safe entering and exiting. The proposed development shall not have an unreasonable negative impact on the Town road system and shall assure safe interior circulation within its site by separating pedestrian and vehicular traffic and providing adequate parking and loading areas. All exit driveways shall be designed according to the following standards of safe sight distance:

Posted Speed Limit	Site Distances	
	Recommended	Minimum
(miles per hour)	(feet)	(feet)
25	250	175
30	300	210
35	350	245
40	400	280
45	450	315

Posted Speed Limit	Site Distances	
	Recommended	Minimum
(miles per hour)	(feet)	(feet)
50	500	350
55	550	385

- B. This section shall not be used as the sole criterion for rejecting an application, unless all possible entrances/exits are deemed to be unsafe due to poor sight distances.

§ 105-22. Noise.

- A. Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume. (Please refer to the table below.) The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this chapter shall be established by the time period and type of land use listed below. Sound pressure levels shall be measured on a sound-level meter at all major lot lines of the proposed site, at a height of at least four feet above the ground surface. (Please see Appendix A at the end of this chapter for an explanation of these noise levels.)

Sound Pressure Level Limit	
Time Period	dB(A)
7:00 a.m. to 10:00 p.m.	60
10:00 p.m. to 7:00 a.m.	45

- (1) The levels specified may be exceeded by 10 dB(A) for a single period, no longer than 15 minutes in any one day.
 - (2) Noise shall be measured by a sound-level meter meeting the standards of the American National Standards Institute (ANSI 4-1961), American Standards Specification for General Purpose Sound Level Meters. The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with the ANSI SI. 2-1962, American Standard Method for the Physical Measurements of Sound.
- B. No person shall engage in, cause or permit any person to be engaged in very loud construction activities on a site abutting any residential use between the hours of 10:00 p.m. of one day and 7:00 a.m. of the following day. Construction activities shall be subject to the maximum permissible sound levels specified for industrial uses for the periods within which construction is to be completed pursuant to any applicable building permit. The following uses and activities shall be exempt from the sound pressure level regulations:

- (1) Home maintenance activities, for example, mowing lawns, cutting one's own firewood, etc.
 - (2) Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m.
 - (3) The noises of safety signals, warning devices and emergency pressure-relief valves or any other emergency activity.
 - (4) Traffic noise on existing public roads, railways or airports.
- C. In addition to the Code Enforcement Officer, the York County Sheriff's Department shall be authorized to enforce these noise standards, because many violations could occur after normal working hours.

§ 105-23. Dust, fumes, vapors and gases.

Emission of dust, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation or property, or which could soil or stain persons or property at any point beyond the lot line of the commercial or industrial establishment creating that emission, shall be prohibited. All such activities shall also comply with applicable federal and state regulations.

§ 105-24. Odors.

No land use or establishment shall be permitted to produce offensive or harmful odors perceptible beyond its lot lines, either at ground or habitable elevation.

§ 105-25. Glare.

No land use or establishment shall be permitted to produce a strong dazzling light or reflection of that light beyond its own lot lines into neighboring properties, or onto any Town way so as to impair the vision of the driver of any vehicle upon that Town way. All such activities shall also comply with the applicable federal and state regulations.

§ 105-26. Stormwater runoff. [Amended 6-30-2009 STM]

- A. Surface water runoff shall be minimized and shall be detained on-site if possible and practicable. If it is not possible to detain water on-site, downstream improvements to the channel may be required of the developer to prevent flooding caused by this project. The natural state of watercourses, swales, berms, terraces, wooded areas and floodways or rights-of-way shall be maintained as nearly as possible. The design period is the fifty-year storm (the largest storm which would be likely to occur during a fifty-year period).
- B. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

§ 105-27. Erosion control. [Amended 3-13-2004 ATM]

Erosion of soil and sedimentation shall be minimized by employing the following "best management" practices:

- A. Stripping of vegetation, soil removal and regrading or other development shall be accomplished in such a way as to minimize erosion.
- B. The duration of exposure of the disturbed area shall be kept to a practical minimum.
- C. Any exposed ground area shall be temporarily or permanently stabilized within one week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases, permanent stabilization shall occur within nine months of the initial date of exposure. In addition: **[Amended 6-30-2009 STM]**
 - (1) Where mulch hay is used, it shall be applied at a rate of at least one bale per 500 square feet and shall be maintained until a catch of vegetation is established.
 - (2) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (3) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- D. Permanent (final) vegetation and mechanical erosion control measures shall be installed as soon as practicable after construction ends.
- E. Until a disturbed area is stabilized, sediment in water runoff shall be trapped by the use of debris basins, sediment basins, silt traps or other acceptable methods as determined by the Planning Board.
- F. The top of a cut or the bottom of a fill section shall not be closer than 10 feet to an adjoining property, unless otherwise specified by the Planning Board. Extraction operations (sandpits, etc.) shall not be permitted within 100 feet of any property line, except as provided for in this chapter.
- G. During grading operations, methods of dust control shall be employed, wherever practicable.

§ 105-28. Setbacks and screening.

Exposed storage areas, exposed machinery installation, sand and gravel extraction operations and areas used for storage or collection of discarded automobiles, auto parts, metal or any other articles of salvage or refuse shall have sufficient setbacks and screening to provide a visual buffer sufficient to minimize their adverse impact on other land uses within the development area and surrounding properties (a dense evergreen hedge,

six feet or more in height). All such plantings shall be maintained as an effective visual screen; plants which die shall be replaced within one growing season. Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and be maintained in good condition.

§ 105-29. Explosive materials. [Amended 3-8-2003 ATM by Art. 14]

- A. All propane gas tanks shall comply with NFPA 58, Liquefied Petroleum Gas Code, 2001 Edition.
- B. All other highly flammable or explosive liquids, solids or gases shall be stored in bulk above ground, unless they are located in anchored tanks at least 75 feet from any lot line, Town way or interior roadway, or 40 feet from a lot line for underground tanks; plus all relevant federal state regulations shall also be met.

§ 105-30. Water quality.

All outdoor storage facilities for fuel, chemicals, chemical or industrial wastes and potentially harmful raw materials shall be completely enclosed by an impervious pavement and shall be completely enclosed by an impervious dike which shall be high enough to contain the total volume of liquid kept within the storage area, plus the rain falling into this storage area during a fifty-year storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Storage tanks for home heating oil and vehicle fuel, not exceeding two five-hundred-fifty-gallon vessels, may be exempted from this requirement, in situations where neither a high seasonal water table (within 15 inches of the surface) nor rapidly permeable sandy soils are involved.

§ 105-31. Preservation of landscape; landscaping of parking and outdoor storage areas. [Amended 3-13-2015 ATM by Art. 3]

- A. The landscape shall be preserved in its natural state, insofar as practical as determined by the PB, by minimizing natural vegetation removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas. Parking lots shall be landscaped to prevent erosion and stormwater runoff onto neighboring properties and streets. An effective visual screen of native vegetation, including evergreens, shall be established and maintained between the parking or storage area and any abutting residential property. The PB may require additional trees planted in and around large parking lots.
- B. All parking or outdoor storage areas shall be separated from any public road by a landscaped buffer strip at least 15 feet wide. The PB may require that within the buffer strip a visual screen of plantings be established and maintained.

§ 105-32. Relation of proposed building to environment.

Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed buildings. The achievement of such relationship may include the enclosure of space in conjunction with other existing buildings or other proposed buildings and the creation of focal points with respect to avenues of approach, terrain features or other buildings. In areas with high concentration of historic properties, the Board may require new construction to utilize exterior building materials which harmonize with surrounding properties, and to be designed so as not to be architecturally incompatible in terms of scale, height, window size and roof pitch.

§ 105-33. Refuse disposal.

The applicant shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The Board shall consider the impact of particular industrial or chemical wastes or by-products upon the Town's disposal method and/or disposal area (in terms of volume, flammability or toxicity) and may require the applicant to dispose of such wastes elsewhere, in conformance with all the applicable state and federal regulations. The Board may require the applicant to specify the amount and exact nature of all industrial or chemical wastes to be generated by the proposed operation.

§ 105-34. Access control on Routes 109 and 11.

Land lying on Routes 109 and 11 may be divided into lots, but all vehicular movements to and from the highway shall be via a common driveway or entranceway serving adjacent lots or premises. All lots of record existing at the time of the ordinance amendment shall be allowed direct access to Routes 109 and 11, provided that minimum safe sight-distance standards can be met.

ARTICLE VI

Performance Standards for Specific Activities**§ 105-35. Accessory buildings.**

No garage or other accessory building shall be located in a required front yard. When located to the rear of the main building, an accessory building shall be set back at least 10 feet from the side or rear lots lines, provided that all accessory buildings shall be set back from the normal high-water elevation of a water body, in compliance with the table in § 105-18.

§ 105-36. Boathouses. [Amended 6-30-2009 STM]

Boathouses may be located within a shore lot, but shall be set back from the normal high-water elevation of a lake, pond, river or a stream in compliance with the table in § 105-18. Furthermore, there shall not exceed one boathouse on the premises for each shore lot; a boathouse shall not exceed a height of 15 feet; shall not exceed 250 square feet in horizontal area covered; and shall be at least 15 feet from any side lot line. All distances shall be measured horizontally.

§ 105-37. Campgrounds.

Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:

- A. Recreational vehicle and tenting areas shall contain approved water-carried sewage facilities and shall meet the following criteria:
 - (1) Each recreation vehicle, tent or shelter site shall contain a minimum of 5,000 square feet, not including roads and driveways.
 - (2) A minimum of 200 square feet of off-street parking plus maneuvering space shall be provided for each recreational vehicle, tent or shelter site.
 - (3) Each recreational vehicle, tent or shelter site shall be provided with a picnic table and trash receptacle.
- B. Wilderness recreational areas without water-carried facilities shall contain a minimum of 20,000 square feet, not including roads and driveways, for each recreational vehicle, tent or shelter site.
- C. The area intended for placement of the recreational vehicle, tent or shelter and utility and service building shall be set back a minimum of 15 feet from the exterior lot lines of the camping area and 100 feet from the normal high-water line of a great pond and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams or the upland edge of a wetland. **[Amended 3-13-1999 ATM by Art. 65; 6-30-2009 STM]**

- D. No manufactured housing unit shall be allowed to be installed within a campground, except as may be owned and used by the campground operator as his residence or office.
- E. A campground may not be established on less than five acres of land.
- F. Minimum frontage along the shoreline shall be 100 feet, horizontal distance, for any campsite. **[Amended 3-13-1999 ATM by Art. 65; 6-30-2009 STM]**
- G. Vehicular access shall be provided onto a hard-surfaced road adequate for the volume and type of traffic likely to be generated.
- H. A soil erosion and sedimentation control plan meeting the standards of the York County Soil and Water Conservation District or the Maine Soil and Water Conservation Commission shall be submitted. Unpaved parking areas shall not exceed five-percent grade, in order to avoid undue erosion.
- I. A campground shall provide water and sewerage systems, sanitary stations and convenience facilities in accordance with the regulations of the State Plumbing Code and the State of Maine Department of Human Services. In no case shall less than one toilet, lavatory and shower be provided for each sex for every 10 camping and tent sites.
- J. Recreational vehicles shall be parked in spaces so that:
 - (1) There shall be a minimum of 25 feet between vehicles.
 - (2) There shall be a minimum of 45 feet between all recreational vehicles and tents, and all public rights-of-way located inside the boundaries of the trailer park or campground.
 - (3) No camping unit or structure shall be located less than 200 feet from any residence (except residences belonging to the campground owners).
- K. No camping unit shall be stored or exhibited for sale for commercial purposes within the park.
- L. Each campsite shall be provided with an area for refuse storage. Within a maximum of 150 feet from each campsite, there shall be a container capable of storing the amount of refuse that the camping area for which it was designed could generate in one week. The park management shall dispose of refuse from said containers by transporting the refuse in a closed truck or in enclosed containers or bags to an approved disposal area at least once a week.
- M. Fire extinguishers capable of dealing with both electrical and wood fires shall be kept in all service buildings. A suitable ingress and egress shall be provided so that every campground may be readily serviced in emergency situations. Twenty-four-hour emergency communication service (e.g., telephones) shall be provided.

- N. The management of campgrounds shall be responsible for operating their premises in accordance with all Town codes and ordinances and all state laws and regulations. The maintenance of all open space areas, roads and utilities in a park shall be the responsibility of park management. In addition to data on soils, slopes and drainage, a vegetation map showing the following items may be required:
- (1) The major type of vegetation should be identified and described as to age, height, openness or density and pattern, either natural or reforested.
 - (2) New planting should be selected to provide screening and shelter, to tolerate existing and proposed site conditions and to blend compatibly with existing natural vegetation.
 - (3) All vegetative clearing should avoid creating straight-line edges between open land and surviving stands.
 - (4) Areas of activity and/or traffic should be sited to avoid wildlife areas, such as thickets for birds and small mammals, or deer yards and trails.
- O. Facilities shall be planned in accordance with the basic principles outlined below and shall be shown on the proposed plan which is submitted for review and approval:
- (1) A logical sequence of entry and circulation should be created: entrance, administration and storage, parking, campsites, toilets and laundry and playing fields or shoreline.
 - (2) Campsites should be clustered in groups according to intensity of use (low density, medium density, etc.) and also related to common support service areas (laundries, play areas, etc.) serving a number of campsite clusters. The purpose is to minimize road length, increase accessibility and preserve open space.
 - (3) Footpaths and roads should follow "desire lines" of pedestrian and vehicular movements between campsites and all jointly used facilities. Parking areas may be grassed, reinforced with open concrete blocks.
- P. Campsites shall be laid out or screened in such a manner that none shall be within view from public roads, existing residences or approved subdivision lots. Any combination of evergreen planting, landscaped earthen berms or solid fencing may be used to achieve this screening standard, when campsites would otherwise be visible from the location described above.

§ 105-38. Individual private campsites not associated with campgrounds. [Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]

Individual private campsites not associated with campgrounds are allowed, provided that the following conditions are met:

- A. One campsite per lot existing on the effective date of this chapter, or 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted.
- B. When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite, separately. **[Added 3-12-2016 ATM, Art. 3⁴¹]**
- C. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams or the upland edge of a wetland.
- D. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- E. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 1,000 square feet.
- F. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, a written authorization from the receiving facility or landowner is required.
- G. When a recreational vehicle, tent or similar shelter is placed on-site for more than 120 days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules, unless served by public sewage facilities.

§ 105-39. Earth removal and filling for activities other than mineral exploration and extraction. [Amended 3-10-1984 ATM by Art. 5; 3-13-1999 ATM by Art. 63; 3-17-2001 ATM by Art. 13; 3-9-2002 ATM

41. Editor's Note: This article also provided for the redesignation of former Subsections B through F as Subsections C through G, respectively.

by Art. 20; 3-19-2005 ATM by Art. 18; 6-30-2009 STM; 3-12-2011 ATM by Art. 4; 3-12-2016 ATM, Art. 3]

- A. General. The following provisions shall apply to filling, grading, lagooning, dredging, excavation, processing and storage of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling, grading, lagooning, dredging and other earthmoving activity which would result in erosion, sedimentation or impairment of water quality, of fish and aquatic life are prohibited.
- B. Earthmoving not requiring a conditional use permit. The following earthmoving activity shall be allowed without a permit:
 - (1) The removal and filling of less than 10 cubic yards of material from or on any lot in any one year, except within the Resource Protection District, the Floodplain District or the Shoreland District.
 - (2) The removal or filling of material incidental to construction, alteration or repair of a building, or in the grading and landscaping incidental thereto.
 - (3) The removal and filling or transfer of material incidental to construction, alteration or repair of a public road or essential services.
 - (4) Removal and fill or transfer of material for the repair of an existing private way in the General Purpose District.
- C. Earthmoving in the General Purpose District. Movement of material in excess of 10 but not more than 50 yards is permitted. Movement of materials from 50 cubic yards to 150 cubic yards requires the approval of the Code Enforcement Officer. Movement of materials in excess of 150 cubic yards requires the approval of the Planning Board. In either case, all relevant performance standards below shall be observed, including binding agreements to guarantee proper reclamation of the site after operations cease.
- D. Earthmoving in Shoreland District. Any filling, dredging or excavation of land above or below the normal high watermark, except earthmoving of less than 10 cubic yards which shall require a permit from the CEO (except as provided above) to ensure proper erosion and sedimentation, shall require a conditional use permit from the Planning Board.
 - (1) When an excavation contractor will perform an activity that requires or results in more than one cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices at the site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and

sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices or erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment.

- E. Earthmoving in Resource Protection and Floodplain Districts. Filling shall be prohibited in these two districts, but excavation or dredging may be permitted within the Floodplain District in accordance with the performance standards of this chapter, after review and approval as a conditional use by the Planning Board.
- F. Application for permit. Application for a permit from the Planning Board for excavation, processing and storage of soil, loam, gravel, rock and other mineral deposits shall be accompanied by a plan which shall show:
 - (1) The name and current address of the property involved.
 - (2) The location and the boundaries of the lot or lots for which the permit is requested.
 - (3) The location of all proposed access roads and temporary structures, and the sight distances from all entrances and exits.
 - (4) The proposed provisions for drainage and erosion control, including drainage calculations.
 - (5) Other information necessary to indicate the physical characteristics of the proposed operation, including existing topography and the proposed horizontal and vertical limits of the excavation or filling and proposed reclamation measures (grading, loaming, seeding, mulching, planting, etc.)
- G. Conditions of permit. The Planning Board may issue a permit, provided that the following conditions shall be met:
 - (1) The smallest amount of bare ground shall be exposed for the shortest time feasible. The Planning Board shall set a specific date after which bare ground shall not be exposed.
 - (2) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation. The Planning Board shall set a specific date by which permanent ground cover shall be planted.
 - (3) Diversions, silting basins, terraces and other methods to trap sediment shall be used.

- (4) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board.
 - (5) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
 - (6) Fill shall not restrict a floodway, channel or natural drainageway.
 - (7) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.
 - (8) Where activities carried out under this article require the removal of existing ground cover, revegetation should be carried out.
 - (9) (Reserved)
 - (10) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal.
 - (11) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of abutters' properties occurs.
 - (12) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions.
 - (13) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefor.
- H. Optional conditions of permit. The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the municipality, which may include those relating to:
- (1) Methods of removal or processing.
 - (2) Days and hours of operation.
 - (3) Type and location of temporary structures.
 - (4) Routes for transporting material.

- (5) Area and depth of excavations.
 - (6) Provision of temporary or permanent drainage.
 - (7) Disposition of stumps, brush and boulders.
 - (8) Cleaning, repair and/or resurfacing of streets used in removal activity which has been adversely affected by said activity.
 - (9) The need for written approval of soil and erosion and sedimentation plan by a State of Maine licensed civil engineer selected by the applicant for the Planning Board.
- I. Surety and terms of permit.
- (1) No permit shall be issued without a surety bond or other equivalent security to ensure compliance with such conditions as the Planning Board may impose. The bond or surety shall be in an amount recommended by the Code Enforcement Officer and approved by the Planning Board, as sufficient to guarantee conformity with the conditions of approval, taking inflation into account.
 - (2) No permit shall be issued for a period to exceed three years, although such permits may be renewed for additional periods in the same manner.
- J. Existing operations. Any operation involving the excavation, processing or storage of soil, earth, loam, sand, gravel, rock or other mineral deposits in lawful operation at the time this chapter became effective (March 12, 1983) may operate for a period of three years from the effective date. Discontinuance of any existing operation for a period of more than one year shall require application for a new permit. Continuance of any existing operation for more than three years shall require a permit from the Planning Board.

§ 105-40. Home occupations. [Amended 3-9-2019 ATM by Art. 3]

- A. Home occupations shall be carried on wholly within the principal building or within a building or other structure accessory to it.
- B. Not more than one employee other than the home's occupants may work on-site at any time, and one additional on-site parking space shall be provided if there is such an employee.
- C. There shall be no exterior display, no exterior sign (except as permitted by the provision of this chapter), no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
- D. Additional workers cannot gather even briefly on the property.
- E. No nuisance, heavy traffic, waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation shall be generated.

- F. When off-street parking must be expanded, screening from adjacent lots (for example, a dense screen of evergreens) may be required.
- G. Home occupations are allowed on nonconforming lots of record and within legally existing nonconforming structures providing all applicable performance standards in the ordinance, including those in § 105-73G are met.

§ 105-40.1. Child day care. [Added 3-19-2005 ATM by Art. 20]

- A. A child day-care home or center may be conducted as a conditional use.
- B. A child day-care home shall be allowed in a single-family dwelling located on a residential lot that meets the minimum lot size requirement, providing care for up to 12 children, which charges for their care and which holds all legally required licenses and approvals by the Town of Shapleigh and the State of Maine.
 - (1) A child day-care home may also include part-time care. "Part-time" in this use shall mean four hours per day, per child.
 - (2) The parking area shall be large enough to accommodate the two spaces required for the dwelling unit, as well as two additional spaces minimum.
- C. Day-care centers.
 - (1) A child day-care center is a private establishment providing day care for 13 or more children, which charges for their care and holds all legally required licenses and approvals by the Town of Shapleigh and the State of Maine.
 - (2) The parking area shall be large enough to accommodate one parking space per full-time employee, as well as one parking space for every four persons attending the day-care center at any one time.
- D. Outside play areas shall be buffered from adjoining uses, including neighboring properties, and the parking area(s), by appropriate fencing or plantings.
- E. All outside play equipment shall meet the required front, side, and rear setback requirements.

§ 105-40.2. One nonresidential use on single-family residential lot. [Added 3-10-2018 ATM by Art. 6]

One use, other than a home occupation or a child day care, may be located on a singlefamily residential lot that conforms to all ordinance dimensional standards in effect at the time the owner applies for the use, providing a CU permit or CEO permit if required by § 105-17 is secured for the use, and providing there is only one single-family residence on the lot.

§ 105-41. Manufactured housing units and manufactured housing unit parks. [Amended 8-31-1985 STM by Art. 4; 3-10-1990 ATM by Art. 29]

- A. Permit requirements. No person, firm or corporation shall locate a manufactured housing unit in the Town of Shapleigh or move a manufactured housing unit from one lot to another without a permit from the Code Enforcement Officer of the Town of Shapleigh. The permit shall be issued only after written application has been submitted with proof that the manufactured housing unit meets the requirements of this chapter.
- B. Manufactured housing unit standard requirements.
- (1) Units shall be built according to the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Chapter 70, or comply with the safety standards in Appendix B of this chapter.⁴²
 - (2) Units shall have a pitched, shingled roof with a pitch of two or more vertical units for every 12 horizontal units of measurement and covered with asphalt or fiberglass composition shingles or other material, excluding corrugated metal roofing material.
 - (3) Units shall have a residential-type siding, i.e., clapboard siding in wood, vinyl or aluminum, shingles or shakes or wood board and batten.
 - (4) Units shall have a permanent foundation, i.e., a full, poured concrete or masonry foundation; a poured concrete frost wall or a mortared masonry frost wall, with or without a concrete floor; a reinforced, floating concrete pad which may require an engineer's certification if it is to be placed on soil with high frost susceptibility; or any foundation which is permitted for other types of single-family dwellings.
- C. Nonconforming manufactured housing units. Manufactured housing units which do not meet the requirements of Subsection B(1) through (4) which were lawfully established prior to the effective date of this chapter amendment shall be considered nonconforming structures and may continue and may be repaired, improved or expanded.
- D. Manufactured housing units not in a manufactured housing unit park. Manufactured housing units not in manufactured housing unit parks shall meet all of the requirements of this chapter for site-built housing, as defined herein.
- E. Mobile home parks. Except as stipulated below, manufactured housing unit parks shall meet all the requirements for a residential subdivision and shall conform to all applicable state laws and local ordinances or

42. Editor's Note: Appendix B is located at the end of this chapter.

regulations. Where the provisions of this section conflict with specific provisions of Chapter 89, Subdivision of Land, the provisions of this section shall prevail. Mobile home park lots must be designated on the manufactured housing unit park plan.

- (1) Notwithstanding the dimensional requirements table in § 105-18 of this chapter, lots in a manufactured housing unit park shall meet the following lot area and lot width requirements:
 - (a) Lots served by public sewer:
 - [1] Minimum lot area: 6,500 square feet.
 - [2] Minimum lot width: 50 feet.
 - (b) Lots served by individual subsurface wastewater disposal systems:
 - [1] Minimum lot area: 20,000 square feet.
 - [2] Minimum lot width: 100 feet.
 - (c) Lots served by central subsurface wastewater disposal system approved by the Maine Department of Human Services:
 - [1] Minimum lot area: 12,000 square feet.
 - [2] Minimum lot width: 75 feet.
 - (d) The overall density of any park served by any subsurface wastewater disposal system shall not exceed one dwelling unit per 20,000 square feet of total park area.
 - (e) Lots located within any shoreland zoning district shall meet the lot area, lot width and shore frontage requirements for that district.
- (2) Unit setback requirements.
 - (a) On lots 10,000 square feet in area or larger, structures shall not be located less than 15 feet from any boundary lines of an individual lot. On lots less than 10,000 square feet in area, structures shall not be located less than 10 feet from any boundary lines of an individual lot.
 - (b) On lots which abut a public way either within the park or adjacent to the park, or on lots which are located within a Shoreland District, structures shall meet the front setback and setback from high-water mark requirements in the dimensional requirements table in § 105-18 of this chapter.
- (3) Buffering. If a park is proposed with a residential density at least twice the density of adjacent development in existence, or at least twice the density permitted in the zoning district in which the park

is located if the neighboring land is undeveloped, the park shall be designed with a continuous landscaped area not less than 50 feet in width which shall contain no structures or streets. The first 20 feet of the buffer strip, as measured from the exterior boundaries of the park, shall contain evergreen shrubs, trees, fences, walls or any combination which forms an effective visual barrier to be located on all exterior lot lines of the park, except that the driveways shall be kept open to provide visibility for vehicles entering and leaving the park.

- (4) Open space requirement. An area no less than 10% of the total area of those lots with a lot area of 10,000 square feet or less shall be reserved as open space. The area reserved as open space shall be suitable to be used for recreational purposes or used by the residents of the park for storage. Generally, the reserved open space shall have slopes less than 5%, shall not be located on poorly or very poorly drained soils and shall be accessible directly from roads within the park. The Planning Board may waive the requirement for open space when the park is located within 1/2 mile of a publicly owned recreation area.
- (5) Road design, circulation and traffic impacts.
 - (a) Streets within a park shall be designed by a professional engineer registered in the State of Maine.
 - (b) Streets which the applicant proposes to be dedicated as public ways shall be designed and constructed in accordance with the standard for streets in Chapter 89, Subdivision of Land.
 - (c) Streets which the applicant proposes to remain private ways shall meet the following minimum geometric design standards:
 - [1] Minimum right-of-way width: 23 feet.
 - [2] Minimum width of traveled way: 20 feet.
 - (d) Any manufactured housing unit park expected to generate average daily traffic of 200 trips per day or more shall have at least two street connections with existing public streets. Any street within a park with an average daily traffic of 200 trips per day or more shall have at least two street connections leading to existing public streets, other streets within the park or other streets shown on an approved subdivision plan.
 - (e) No individual lot within a park shall have direct vehicular access onto an existing public street.
 - (f) The intersection of any street within a park and an existing public street shall meet the following standards:
 - [1] The desired angle of intersection shall be 90°; minimum angle of intersection shall be 75°.

- [2] Maximum permissible grade within 75 feet of the intersection shall be 2%.
 - [3] A minimum sight distance of 10 feet for every mile per hour of posted speed limit on the existing road shall be provided. Sight distance shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2 feet above the pavement and the height of the object 4 1/4 feet.
 - [4] The center line of any street within a park intersecting an existing public street shall be no less than 125 feet from the center line of any other street intersecting that public street.
- (g) The application shall contain an estimate of the average daily traffic projected to be generated by the park. Estimates of traffic generation shall be based on the Trip Generation Manual, published by the Institution of Transportation Engineers. If the park is projected to generate more than 400 vehicle trips per day, the application shall also include a traffic impact analysis, by a State of Maine registered professional engineer with experience in transportation engineering.
- (6) Groundwater impacts.
- (a) Accompanying the application for approval of any manufactured housing unit park which is not served by public sewer shall be analysis of the impacts of the proposed manufactured housing unit park on groundwater quality. The hydrogeologic assessment shall be prepared by a State of Maine certified geologist or registered professional engineer experienced in hydrogeology and shall contain at least the following information:
 - [1] A map showing the basic soil types.
 - [2] The depth to the water table at representative points throughout the manufactured housing unit park.
 - [3] Drainage conditions throughout the manufactured housing unit park.
 - [4] Data on existing groundwater quality, either from test wells in the manufactured housing unit park or from existing wells on neighboring properties.
 - [5] An analysis and evaluation of the effect of the manufactured housing unit park on groundwater resources. The evaluation shall, at a minimum, include a projection of past development nitrate-nitrogen concentrations at any wells within the manufactured

housing unit park, at the manufactured housing unit park boundaries and a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance. For manufactured housing unit parks within the watershed of a lake, projections of the development's impact on groundwater phosphate concentrations shall also be provided.

- [6] A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the manufactured housing unit park and within 200 feet of the manufactured housing unit park boundaries.

(b) Standards for acceptable groundwater impacts.

- [1] Projections of groundwater quality shall be based on the assumptions of drought conditions (assuming 60% of annual average precipitation).
 - [2] No manufactured housing unit park shall increase any contaminant concentration in the groundwater to more than 1/2 of the Primary Drinking Water Standards. No manufactured housing unit park shall increase any contaminant concentration in the groundwater to more than the Secondary Drinking Water Standards.
 - [3] If groundwater contains contaminants in excess of the Primary Standards, and the manufactured housing unit park is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.
 - [4] If groundwater contains contaminants in excess of Secondary Standards, the manufactured housing unit park shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.
- (7) Subsurface wastewater disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the plan.
 - (8) No development or subdivision which is approved under this section as a manufactured housing unit park may be converted to another use without the approval of the Planning Board, and meeting the appropriate lot size, lot width, setback and other requirements. The plan to be recorded at the York County Registry of Deeds and filed with the municipality shall include the following restrictions as well as any other notes or conditions of approval:

- (a) The land within the park shall remain in a unified ownership, and the fee to lots or portions of the lots shall not be transferred.
 - (b) No dwelling unit other than a manufactured housing unit shall be located within the park.
- F. Exclusions. The provisions of this chapter shall not apply to manufactured housing units which:
 - (1) Were located in the Town of Shapleigh prior to the effective date of this chapter. However, upon replacement or transfer to another location, all of the provisions of this chapter shall become applicable.
 - (2) Are used as travel or sport trailers, and are not occupied as dwellings, and are located in the Town of Shapleigh for storage purposes only.

§ 105-42. Multifamily dwelling units.

- A. Two-family dwelling unit. A lot with one two-family unit shall meet all the dimensional requirements of a lot with a single-family dwelling unit, providing the lot and structure dimensions conform to ordinance standards in effect at the time the two-family dwelling unit is proposed.
[Amended 3-10-2018 ATM by Art. 6]
- B. Multifamily dwelling units. Multifamily (three or more) dwelling units shall meet all of the following criteria:
 - (1) Lot area and shoreline frontage shall be equal to that required for the equivalent number of single-family dwelling units.
 - (2) The minimum road frontage shall be 400 feet.
 - (3) Lots for a multifamily dwelling unit shall meet all the other dimensional requirements for a single-family dwelling.
 - (4) No building shall contain more than four dwelling units.
 - (5) All multifamily dwellings shall be connected to a central water system, at no expense to the municipality.
 - (6) Smoke detectors shall be installed in all multifamily dwelling units, and the fire control sprinkler system shall be installed in any structure containing four dwelling units.
 - (7) All multifamily dwelling units shall be connected to a public sewer system, if available, or to a central collection and treatment system in accordance with the sanitary provisions of this chapter.⁴³
 - (8) No parking spaces shall be located within required setback areas.

43. Editor's Note: See § 105-46.

§ 105-43. Off-street parking and loading.

- A. Basic requirements. In any district where permitted, no use of premises shall be authorized or extended, and no building or structure shall be authorized or constructed or enlarged, unless there is provided for such extension, construction or enlargement, off-street automobile parking within 300 feet of the principal building, structure or use of the premises, in accordance with the following schedule of parking requirements. An area of 200 square feet appropriate for the parking of an automobile, exclusive of maneuvering space, shall be considered as one off-street parking space. No required parking space shall, for the purposes of this chapter, serve more than one area. No off-street parking facility shall have more than two entrances and exits on the same street, and no entrance or exit shall exceed 26 feet in width. The Planning Board has the option upon clear showing of necessity by the applicant, to increase the maximum width, not to exceed 32 feet. Parking areas with more than two parking spaces shall be so arranged that the vehicles can be turned around within such areas and are prevented from backing into the street. **[Amended 3-12-2011 ATM by Art. 8]**
- B. Schedule of minimum off-street parking requirements.
- (1) Off-street parking spaces shall be provided as follows:
 - (a) Two spaces per dwelling unit.
 - (b) One space for each sleeping room in a tourist home, boarding or lodging house, motel or hotel.
 - (c) One space for each tent or recreational vehicle site in a campground.
 - (d) One space for each two beds in a hospital or sanitarium.
 - (e) One space for each four beds for other institutions devoted to the board, care or treatment of persons.
 - (f) One space for each 150 square feet or fraction thereof of floor area of any retail, wholesale or service establishment or office or professional building.
 - (g) One space for each three seats, permanent or otherwise, for patron use for restaurants and other places serving food or beverage and for theaters, auditoriums and other places of amusement or assembly.
 - (h) One space for each person employed or anticipated to be employed on the largest shift for all types of commercial, industrial or other permitted uses.
 - (2) Adequate spaces shall be provided to accommodate customers, patrons and employees at automobile service stations, drive-in

establishments, open-air retail businesses and amusements and other permitted uses not specifically enumerated.

- C. Off-street loading. In any district where permitted or allowed, commercial or industrial uses shall provide, as necessary, off-street loading facilities located entirely on the same lot as the building or use to be served so that trucks, trailers and containers shall not be located for loading, unloading or storage upon a public way.
- D. Landscaping. Required parking and loading spaces for residential uses, where not enclosed within a building, may need to be effectively screened from view by a continuous landscaped area not less than eight feet in width containing evergreen shrubs, trees, fences, walls, berms or any combination thereof forming a visual barrier not less than six feet in height along exterior lot lines adjoining all residential properties, except that driveways shall be kept open to provide visibility for vehicles entering and leaving. **[Amended 3-9-2019 ATM by Art. 3]**
- E. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. **[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**
- F. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and, where feasible, to retain all runoff on-site. **[Added 3-9-1991 ATM by Art. 53; amended 6-30-2009 STM]**

§ 105-44. (Reserved)⁴⁴

§ 105-45. Cluster developments. [Amended 3-8-2003 ATM by Art. 14; 3-19-2005 ATM by Art. 18; 3-11-2006 ATM by Art. 8]

A. Purpose.

(1) The purpose of these provisions is:

- (a) To allow for new concepts of housing development, including developments for manufactured housing units, where maximum variations of design may be allowed.
- (b) To protect natural resources, including but not limited to agricultural soils, unfragmented forest, undisturbed wetlands and vernal pools, and aquifers.
- (c) To reduce new housing costs by reducing the costs of roads and other improvements.

44. Editor's Note: Former § 105-44, Piers, docks and other shoreland construction, as amended, was repealed 3-9-2013 ATM by Art. 6.

- (2) Nevertheless, the net residential density shall be no greater in cluster developments than is permitted in the district in which the development is proposed.

B. Basic requirements.

- (1) All cluster developments shall meet all requirements for a residential subdivision.
- (2) The minimum area of land in a cluster development shall be 10 acres, except where there is public water and public sewer.
- (3) The plan shall indicate the location of all proposed roads, structures, parking areas, footpaths and common open space.
- (4) Where a cluster development abuts a water body, a portion of the shoreline, as well as reasonable access to it, shall be part of the common land.
- (5) In no case shall shore frontage be reduced below the minimum shore frontage normally required in the district.
- (6) Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes and natural drainage areas, in accordance with an overall plan for site development and landscaping.
- (7) All common land for recreational or conservation purposes shall be owned jointly or in common by the owners of the building lots, by a trust or association which has as its principal purpose the conservation or preservation of land in essentially its natural condition, or by the municipality.
- (8) Further subdivision of common land or its use for other than noncommercial recreation or conservation, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to noncommercial recreational or conservation uses may be erected on the common land.
- (9) All dwelling units in a cluster development may be connected to a central water system, at no expense to the municipality. In cluster developments with individual lot sizes of 20,000 square feet or less, all dwelling units shall be connected to a common water supply and distribution system.
- (10) All structures with required plumbing in a cluster development shall be connected: to a public sanitary sewer system, if available; to a central collection and treatment system in accordance with sanitary provisions of this chapter, and at no expense to the Town; or to individual or shared subsurface waste disposal systems that meet Maine Plumbing Code standards. In cluster developments with individual lot sizes of 20,000 square feet or less, all dwelling

units shall be connected to a public sewer system or to a central collection and treatment system.

- (11) Any lot abutting an accepted public road shall have a frontage and area no less than that normally required in the district. On proposed roads for the cluster development, lot area and road frontage may be reduced, provided that:
- (a) All lots except those abutting a circular turnaround shall have a minimum frontage of 75 feet. The frontage of lots abutting a circular turnaround may be reduced to 50 feet, provided that the minimum lot width at the face of the building shall be 75 feet.
- (12) No building shall be constructed on soil types classified by the Soil Survey of York County Maine as being poorly or very poorly drained.
- (13) The maximum net residential density (i.e., the number of dwellings per acre, excluding roads) allowable in cluster developments shall be calculated on the basis described in the table below. For example, in the developments where sewer service is not being provided, all of the "well-drained" and "moderately well-drained" land may be included in the density calculations, plus half of the "poorly drained" land.

**Land Which May be Included as "Suitable Land" When
Calculating Net Residential Density**

Excessively Drained, Well- Drained, and Moderately Well- Drained¹	Poorly Drained and Somewhat Poorly Drained	Very Poorly Drained	Slopes Greater Than 33%	Borrow Pits
On public sewer: 100%	75%	40%	50%	67%
Not on public sewer: 100%	50%	—	—	33%

Notes:

¹ Soil classification by the United States Soil Conservation Service. All "poorly drained" and "very poorly drained" soils are unsuitable for on-site sewage disposal, under the Maine State Plumbing Code.

- (14) In order to determine the maximum number of dwelling units permitted on a tract of land, the total acreage allowed to be included in net density calculations (according to the table) less the land needed for the roads (including shoulders and drainage ditches) shall be divided by the minimum lot size required in the

district. The extent of soil types in the six categories listed in the table shall be certified by a registered soil scientist licensed in the State of Maine on a high-intensity soil survey map.

§ 105-46. Sanitary provisions.

To promote health, safety and general welfare, and to protect ground- and surface waters and public and private water supplies from contamination or nutrient enrichment, the following provisions shall be applicable to the installation of sanitary waste disposal facilities in all districts:

- A. Connection to public facilities. All plumbing shall be connected to public collection and treatment facilities when such facilities are available.
- B. Private sewage disposal. Private sewage disposal shall meet all minimum requirements set forth by the current edition of the State of Maine Plumbing Code and Regulations existing at the time of such installation. Regardless of the date of installation, no system shall be allowed to malfunction, and the Plumbing Inspector shall take all immediate and necessary measures under the State Plumbing Code to correct malfunctioning systems.
- C. Other systems. Other systems of sanitary waste disposal may be permitted in all districts as a conditional use only after approval by the Planning Board. Alternative systems shall be presented by the Planning Board on a plan prepared by a registered engineer and shall be subject to review and approval by the Maine Department of Environmental Protection and/or the Maine Department of Human Services.
- D. Setbacks. In all districts, the minimum setback for underground sewage disposal facilities from the ordinary high-water elevation of a water body shall at least be equal to that of the principal building. In no case shall the setback from any shoreline be less than 100 horizontal feet. Where daily sewerage flow exceeds 2,000 gallons, minimum setbacks shall be 300 feet from any shoreline. Setbacks from shoreline and water supplies for all subsurface sewage disposal facilities shall not be reduced by variance.
- E. ⁴⁵Wastewater systems in the Shoreland District; use of fertilizers.
[Added 10-22-1994 STM by Art. 5; amended 6-30-2009 STM]
 - (1) All subsurface wastewater disposal systems that are in the Shoreland Zoning District and within 100 feet of the shoreline shall comply with the present Maine state plumbing laws effective January 1, 1998.
 - (2) Clearing or removal of woody vegetation necessary to site for a new system, and any associated fill extensions, shall not extend closer

45. Editor's Note: Former Subsection E, Registration required within the shoreland district, added 10-22-1994 STM by Art. 4, was repealed 6-30-2009 STM.

than 75 feet, horizontal distance, to the normal high-water line of a water body or the upland edge of a wetland.

- (3) A holding tank is not allowed for a first-time residential use in the Shoreland Zone.
- (4) The use of fertilizers shall be banned within 100 feet of the shoreline.

§ 105-47. Signs and billboards.

A. General. Billboards are prohibited in the Town of Shapleigh in all zones. The following provisions shall apply to signs in all districts where permitted:

- (1) Freestanding signs with conditional use permit. **[Amended 3-12-1994 ATM by Art. 41; 3-13-2004 ATM; 3-19-2005 ATM by Art. 18; 3-14-2009 ATM by Art. 4]**
 - (a) With an approved conditional use permit, two freestanding signs shall be permitted per lot. The freestanding signs may not exceed 32 square feet in area. The freestanding sign may be double-sided with equal and parallel sides which would be counted as a single sign, each face having no more than 32 square feet in area. **[Amended 3-9-2013 ATM by Art. 8]**
 - (b) With one additional conditional use permit allowed per lot, one additional thirty-two-square-foot freestanding sign shall be permitted. The total of all freestanding signs per lot shall not exceed 96 square feet.
 - (c) In the Shoreland Zone, the total area may not exceed 32 square feet in the aggregate, and may not exceed 16 square feet individually.
 - (d) The above allotted signage may be placed on the building in lieu of freestanding signs. **[Added 3-9-2013 ATM by Art. 8]**
- (2) There shall be one sign attached to the building allowed per approved conditional use, each sign not to exceed 24 square feet in area. **[Added 3-13-2004 ATM; amended 3-19-2005 ATM by Art. 18; 3-14-2009 ATM by Art. 4]**
 - (a) Signs in the Shoreland Zone and Stream Protection Districts relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six square feet in area and shall not exceed two signs per premises. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- (3) Home occupations may display a single sign not over eight square feet in area with their name on it, with information about goods or services rendered on the premises or with information concerning

the sale, rental or lease of the premises. **[Amended 3-12-1994 ATM by Art. 41; 3-17-2001 ATM by Art. 14; 3-13-2004 ATM; 3-8-2008 ATM by Art. 4]**

- (4) Signs shall be placed at least 10 feet from any side lot line and shall be placed so as not to obstruct the view of traffic.
 - (5) The maximum height for any freestanding sign shall be 20 feet. **[Amended 3-12-1994 ATM by Art. 41; 3-14-2009 ATM by Art. 4]**
 - (6) Signs shall not be mounted to extend above the roofline unless mounted on a parapet wall which extends above the roofline. **[Amended 3-12-1994 ATM by Art. 41]**
 - (7) Steady white light shall be required on signs to be illuminated. Plastic signs which are internally lit shall be allowed with either a white or dark background. When plastic signs are to be externally illuminated, they may be any color. **[Amended 3-14-2009 ATM by Art. 4]**
 - (8) Flashing, moving or animated signs shall be prohibited.
 - (9) Strings of light bulbs, pennants, propellers, etc. shall not be permitted, except as a part of a holiday celebration.
 - (10) Freestanding signs shall be required to be attached to permanent posts to be hung vertically above the ground. So-called "A-frame" signs shall be prohibited.
 - (11) Signs advertising defunct businesses or premises shall be removed by the property owner within three months after the advertised activity ceases.
 - (12) Mobile signs, such as those mounted on a movable chassis (with or without wheels) may be displayed for up to 15 days at a time, and no more than two times in any twelve-month period.
 - (13) Signs shall be maintained in good condition at all times.
 - (14) ⁴⁶One temporary sign, attached to the building or freestanding, may be erected to announce a new business or a relocated business, provided such sign shall be limited to eight square feet and be removed within 30 days from the time of issuance. A permit is required for a temporary business sign. **[Added 3-13-2004 ATM]**
- B. Exceptions. For the purposes of this section the term "sign" shall not include:

46. Editor's Note: Former Subsection A(14), regarding off-premises signs, was repealed 3-17-2001 ATM by Art. 14.

- (1) Signs erected for public safety and welfare or pursuant to any governmental function.
- (2) Directional signs solely indicating entrance and exit placed at driveway locations, containing no advertising material and where the display area does not exceed three square feet or extend higher than seven feet above ground level.
- (3) Signs relating to trespassing and hunting, not exceeding two square feet in area.
- (4) Other signs, including memorial tablets, public notices, flats and insignia except when displayed in connection with a commercial promotion. **[Added 3-17-2001 ATM by Art. 14]**
- (5) Religious symbols or insignia, house numbers, political signs, signs on vending machines or newspaper racks and signs within or on a public structure or facility which are not directed at persons outside or off the premises. **[Added 3-17-2001 ATM by Art. 14]**

C. Nonconforming signs.

- (1) Continuance. A nonconforming sign, lawfully existing at the time of adoption or amendment of this chapter, may continue although such sign does not conform to the provisions of this section.
- (2) Maintenance. Any lawfully existing sign may be maintained, repaired or repainted, but shall not be enlarged, except in conformance with the provisions of this section.
- (3) Replacement. Any new sign replacing a nonconforming sign shall conform to the provisions of this section, and the nonconforming sign shall not thereafter be displayed. **[Amended 3-8-2003 ATM by Art. 14]**

§ 105-48. Swimming pools.

No person or firm shall begin construction of or erect a swimming pool without first obtaining a building permit. The Code Enforcement Officer shall issue a building permit only after satisfying himself from plans or specifications presented by the applicant that the proposed swimming pool will conform to the following requirements. This section shall not apply to farm ponds, fire ponds or to wading pools.

- A. Pools to be kept enclosed. Every in-ground swimming pool shall be enclosed by a fence or wall at least four feet in height and constructed so as to exclude children, which shall have no openings larger than four inches in the least dimension. Any building or related structure may be included in a part of the required enclosure. Any inaccessible banking of earth or any body of water shall be considered a part of the enclosure. All gates and doors opening through the enclosure shall be equipped with a self-closing latching device for keeping the gate

or door securely latched at all times when not in use. Latches shall be installed so that doors may be unlatched from the outside only by reaching over the fence to an inside latch. Any swimming pool constructed or erected prior to the effective date of this amendment shall meet the requirements of this section within 12 months after this amendment is adopted. Any pool constructed above ground level shall have a gate (in lieu of a fence) which is a minimum of four feet in height. It is the intent of this section to provide for personal safety.

- B. Setback requirements. No in-ground swimming pool shall be constructed closer than 10 feet to the side or rear lot line, nor closer to the front line of any lot than would be permitted for buildings or other structures by other provisions of this chapter. All mechanical equipment for the purposes of filtering, heating, pumping, cleaning, filling, draining or any other maintenance-related activity shall not be located closer to a property line than the minimum yard dimensions of the zoning district in which the pool is located.
- C. Electrical service. All electrical service to the pool and equipment shall be protected by a ground-fault circuit interrupter.

§ 105-49. Agriculture. [Amended 3-9-1991 ATM by Art. 53; 6-30-2009 STM]

- A. All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the former Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. §§ 4201 through 4209). **[Amended 3-12-2016 ATM, Art. 3]**
- B. Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within 75 feet, horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the Shoreland Zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater.
- C. Where soil is tilled, an untilled filter strip of natural vegetation shall be retained between the filled ground and the normal high-water elevation of the surface water areas protected by these districts. The average width of this strip shall vary according to the average slope of the land as follows:

Average Slope of Land Between Tilled Land and Normal High-Water Elevation (percent)	Width of Strip Between Tilled Land and Normal High-Water Elevation (feet along surface of the ground)
0 to 4	50
5 to 9	70
10 to 14	90
15 and over	110

- D. Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area within the Shoreland Zone shall require a conservation plan to be filed with the Planning Board. Nonconformance with the provisions of said plan shall be considered to be a violation of this chapter. Note: Assistance in preparing a conservation plan may be available through the local Soil and Water Conservation District office.
- E. Agricultural practices shall be conducted to minimize soil erosion, sedimentation, contamination and nutrient enrichments of ground- and surface waters.
- F. Agricultural practices not in conformance with these standards may be allowed by conditional use permit.
- G. There shall be no new tilling of soil within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within 75 feet, horizontal distance, from other water bodies; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this chapter and not in conformance with this provision may be maintained.
- H. Newly established livestock grazing areas shall not be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within 75 feet, horizontal distance, of other water bodies; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities and which is not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a conservation plan that has been filed with the Planning Board in the Shoreland Zone. **[Amended 3-12-2016 ATM, Art. 3]**

§ 105-50. (Reserved)⁴⁷

§ 105-51. Clearing or removal of vegetation for activities other than timber harvesting. [Amended 3-12-1988 ATM by Art. 70; 3-3-1991]

⁴⁷Editor's Note: Former § 105-50, Timber harvesting, as amended, was repealed upon the statutorily established date of 1-1-2013; see § 105-9B.

ATM by Art. 53; 3-13-1993 ATM by Art. 64; 3-13-1999 ATM by Art. 65; 6-30-2009 STM]

A. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees as described in § 105-51.1. Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district. **[Amended 3-12-2016 ATM, Art. 3]**

B. Buffer strips of vegetation.

(1) Except in areas as described in Subsection A, above, within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA, or a river flowing to a great pond classified GPA, or within a strip extending 75 feet, horizontal distance, from any other water body, tributary stream or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows: **[Amended 3-12-2016 ATM, Art. 3]**

(a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline, provided that a cleared line of sight to the water through the buffer strip is not created.

(b) Selective cutting of trees within the buffer strip is allowed, provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this section, a "well-distributed stand of trees" adjacent to a great pond classified GPA, or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 12 or more in any twenty-five-foot-by-twenty-five-foot square (625 square feet) area as determined by the following rating system:

**Diameter of Tree at 4 1/2 Feet Above
Ground Level**

(inches)	Points
2 to 4	1
Greater than 4 to 12	2
Greater than 12	4

[1] Adjacent to other water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is defined as

maintaining a minimum rating score of eight per twenty-five-foot-by-twenty-five-foot square area.

[2] The following shall govern in applying this point system:

[a] Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this chapter;

[b] Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this chapter;

[c] Where conditions permit, no more than 50% of the points on any twenty-five-foot-by-twenty-five-foot square area may consist of trees greater than 12 inches in diameter.

[3] For the purposes of Subsection B(1)(b), "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least three saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot-by-twenty-five-foot square area. If three saplings do not exist, no woody stems less than two inches in diameter can be removed until three saplings have been recruited into the plot.

[4] Notwithstanding the above provisions, no more than 40% of the total volume of trees four inches or more in diameter, measured at 4 1/2 feet above ground level, may be removed in any ten-year period.

(c) In order to protect water quality and wildlife habitat, existing vegetation under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Subsection B(1) and B(1)(a) above.

(d) Pruning of tree branches on the bottom 1/3 of the tree is allowed.

(e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with § 105-51.1 unless existing new tree growth is present.

(f) When trees are required to be replanted for the purpose of maintaining a point system, they must be a minimum of six feet

in height, measured from the base of the trunk to the top of the tree. **[Added 3-9-2013 ATM by Art. 5]**

- (g) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within or outside the shoreline buffer, must comply with the requirements of Subsection B(1).
- (2) The provisions contained in Subsection B(1) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.
- C. At distances greater than 100 feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high-water line of any other water body, tributary stream or the upland edge of a wetland, there shall be allowed on any lot, in any ten-year period, selective cutting of not more than 40% of the volume of trees four inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area. In no event shall cleared openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate 25% of the lot area within the Shoreland Zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the Shoreland Zone, including the buffer area. **[Amended 3-12-2016 ATM, Art. 3]**
- D. Legally existing nonconforming cleared openings may be maintained but shall not be enlarged, except as allowed by this chapter.
- E. Fields and other cleared openings which have reverted to primarily shrubs, trees or other woody vegetation shall be regulated under the provisions of § 105-51.

§ 105-51.1. Hazard trees, storm-damaged trees, and dead tree removal. [Added 3-12-2016 ATM, Art. 3⁴⁸]

- A. Hazard trees in the Shoreland Zone may be removed with a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - (1) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than 250 square feet, replacement with native tree species is required, unless there

48. Editor's Note: This article also provided for the renumbering of former § 105-51.1 as § 105-51.4.

is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two inches in diameter, measured at 4.5 feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least six feet in height above ground level and no less than two inches in diameter. Stumps may not be removed.

- (2) Outside of the shoreline buffer, when the removal of hazard trees exceeds 40% of the volume of trees four inches or more in diameter, measured at 4.5 feet above ground level in any ten-year period, and/or results in cleared openings exceeding 25% of the lot area within the Shoreland Zone, or 10,000 square feet, whichever is greater, replacement with native trees species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two inches in diameter, measured at 4.5 feet above ground level. If new growth is not present, then replacement trees shall consist of native species and be at least six feet in height above ground level and no less than two inches in diameter.
 - (3) The removal of standing dead trees, resulting from natural causes, is permissible, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision, dead trees are those trees that contain no foliage during the growing season.
 - (4) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the Shoreland Zone.
 - (5) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed.
- B. Storm-damaged trees in the Shoreland Zone may be removed with a permit after consultation with the Code Enforcement Officer if the following requirements are met:
- (1) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than 250 square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - (a) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - (b) Stumps from the storm-damaged trees may not be removed;

- (c) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom 1/3 of the tree; and
 - (d) If, after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every 80 square feet of lost canopy.
- (2) Outside of the shoreline buffer, if the removal of storm-damaged trees exceeds 40% of the volume of trees four inches or more in diameter, measured at 4.5 feet above the ground level in any ten-year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the Shoreland Zone or 10,000 square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

§ 105-51.2. Exemptions to clearing and vegetation removal requirements. [Added 3-12-2016 ATM, Art. 3]

The following activities are exempt from the clearing and vegetation removal standards set forth in § 105-51, provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- A. The removal of vegetation that occurs at least once every two years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two years, reverts back to primarily woody vegetation, the requirements of § 105-51 apply;
- B. The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of § 105-18 are not applicable;
- C. The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
- D. The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of § 105-49 are complied with;
- E. The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects, provided that the removal of vegetation is necessary for remediation activities to clean up contamination on a site in a general development district, that is part of a state or federal brownfields program or a voluntary response action program pursuant to 38 M.R.S.A. § 343-E, and that is located along a river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A. § 465-A.

- F. The removal of nonnative invasive vegetation species, provided the following minimum requirements are met:
- (1) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least 25 feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
 - (2) Removal of vegetation within 25 feet, horizontal distance, from the shoreline occurs via hand tools; and
 - (3) If applicable clearing and vegetation removal standards are exceeded due to the removal of nonnative invasive species vegetation, the area shall be revegetated with native species to achieve compliance.
- G. The removal of vegetation associated with emergency response activities conducted by the State of Maine Department of Environmental Protection, the United State Environmental Protection Agency, and their agents.

§ 105-51.3. Revegetation requirements. [Added 3-12-2016 ATM, Art. 3]

When revegetation is required in response to violations of the vegetation standards set forth in § 105-51, to address the removal of nonnative invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements:

- A. The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is, to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- B. Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the preexisting vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the preexisting vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed.
- C. If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed

before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.

- D. Revegetation activities must meet the following requirements for trees and saplings:
- (1) All trees and saplings removed must be replaced with native noninvasive species;
 - (2) Replacement vegetation must at a minimum consist of saplings;
 - (3) If more than six trees or saplings are planted, then at least three different species shall be used;
 - (4) No one species shall make up 50% or more of the number of trees and saplings planted;
 - (5) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or saplings must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - (6) A survival rate of at least 80% of planted trees or saplings is required for a minimum five-year period.
- E. Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three feet in height:
- (1) All woody vegetation and vegetation under three feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three feet in height as applicable;
 - (2) Woody vegetation and vegetation under three feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (3) If more than three woody vegetation plants are to be planted, then at least three different species shall be planted;
 - (4) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - (5) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five years.
- F. Revegetation activities must meet the following requirements for ground vegetation and ground cover:
- (1) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety

sufficient to prevent erosion and provide for effective infiltration of stormwater;

- (2) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four-inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
- (3) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for a minimum of five years.

§ 105-51.4. Soils. [Added 6-30-2009 STM]

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine certified soil scientists, Maine registered professional engineers, Maine state certified geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum groundwater elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

§ 105-52. Water quality protection.

No activity shall locate, store, discharge or permit the discharge of any treated untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that they run off, seep, percolate or wash into surface or groundwaters so as to contaminate, pollute or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste or unsightliness or are harmful to human, animal or aquatic life.

§ 105-53. Floodplain activities.

- A. Conditional use permit applications for proposed activities within the Floodplain District shall be subject to the following procedures and provisions, in addition to the other requirements specified elsewhere in this chapter:

- (1) Filling shall be prohibited, as it reduces the flood storage capacity of the floodplain, thereby exacerbating flooding conditions downstream.
 - (2) All nonresidential structures shall be elevated on columns or piers so that the lowest floor is at least one foot above the elevation of predicted floodwater levels.
 - (3) No new residential structures and no septic system shall be permitted to be constructed within this district.
 - (4) The Shapleigh Conservation Commissions shall be requested by the Planning Board to submit its comments and recommendations.
- B. The above requirements shall be waived by the Planning Board if the applicant presents convincing evidence from a Maine registered civil engineer, certifying that the proposed structures will not be located on land subject to the one-hundred-year flood and that the soil beneath the proposed structure is not unsuitable for the proposed use due to its hydrological, topographical or other characteristics.
- C. Existing structures within the Floodplain District shall not be permitted to be modified in any way which would increase its flood damage potential or which would increase the degree of obstruction to the flow of floodwaters.
- D. Anchoring of mobile homes. **[Added 8-31-1985 STM by Art. 5]**
- (1) Mobile homes must be anchored to resist flotation, collapse or lateral movement by:
 - (a) Over-the-top ties anchored to the ground at the four corners of the manufactured housing unit, plus two additional ties per side at intermediate points. (Manufactured homes less than 50 feet long require one additional tie per side.)
 - (b) Frame ties at each corner of the home, plus five additional ties along each side at intermediate points. (Manufactured homes less than 50 feet long require four additional ties per side.)
 - (2) All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
 - (3) Any additions to the manufactured housing unit must be similarly anchored.
- E. In the floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply: All encroachments, including fill, new construction, substantial improvements to existing structures and other development, are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase

in flood levels during the occurrence of the one-hundred-year flood.
[Added 3-8-1986 ATM by Art. 5]

§ 105-54. Solar considerations.

A. Solar energy systems.

- (1) When solar energy systems are proposed, which are not attached to a house, they shall be set back 10 feet from the side and rear lot lines and 25 feet from the right-of-way line (or 50 feet from the center line) of a road, whichever distance is greater.
- (2) In the Shoreland Districts, solar energy systems shall be set back 75 feet from the normal high-water elevation, unless the applicant can show the Board of Appeals that a reduction in the setback would reduce the need for timber harvesting or vegetative cutting, in which case the setback can be reduced to no less than 30 feet from normal high-water elevation. Solar systems located less than 75 feet from the normal high-water line must be located in legally existing cleared areas, such as lawns. **[Amended 6-30-2009 STM]**
- (3) Timber harvesting and vegetative cutting standards in the Shoreland District shall not be varied by the Board of Appeals unless the applicant can show that additional clearing is necessary to obtain solar access, in which case the Board shall attach appropriate conditions to preserve adequate vegetative cover. In no event shall the Board of Appeals allow vegetation removal within the required shoreline setback area if such removal does not conform with the standards in § 105-51. **[Amended 6-30-2009 STM]**
- (4) Solar energy systems in the Shoreland District shall be subject to design approval by the Planning Board to ensure the systems are visually compatible with adjacent land uses.
- (5) Lot coverage requirements of this chapter shall not apply to solar energy systems.

B. Residential developments.

- (1) Within clustered subdivision, manufactured housing unit parks and multifamily developments, dwelling units shall be oriented, wherever possible, to maximize the use of direct sunlight for solar energy systems. When proposed buildings are located near each other, shadow projections shall be examined to ensure that solar access to any building is not blocked or substantially reduced.
- (2) Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, natural drainage areas and access to direct sunlight in accordance with the overall plan for site development. When proposed buildings are located near each

other, shadow projections shall be examined to ensure that solar access to any building is not blocked or substantially reduced.

§ 105-55. Structures in Resource Protection District.

Structures accessory to permitted or conditional uses may be allowed only upon granting of a conditional use permit by the Planning Board in accordance with the provisions of Article VII, upon a finding of the Planning Board that:

- A. The proposed structure is related and necessary to a permitted or conditional use.
- B. The proposed structure will involve:
 - (1) No danger to public health and safety.
 - (2) No significant degradation of air and water quality.
 - (3) No alterations of wetlands.
 - (4) No significant increase in erosion or sedimentation.
 - (5) No significant interference with the natural, scenic and historic value of those areas designated by federal, state or municipal agencies and approved for inclusion within this district.

§ 105-56. Animal breeding or care.

The keeping or raising of animals, including fowl, for any commercial purpose, may be conducted as a conditional use, subject to the below standards:

- A. All pens, stables, barns, coops or other building shelters for animals shall be set back no less than 150 feet from any lot line.
- B. Animal breeding or care, as defined in this chapter, shall be permitted only on lots with five acres or more of land area (the area of water bodies or wetlands may be included).
- C. No manure shall be stored within 100 feet, horizontal distance, of the normal high-water line of any water body, watercourse, tributary stream or freshwater wetlands or wells used to supply water for human consumption. **[Amended 6-30-2009 STM]**
- D. The landowner shall fence in any area in which his animals are allowed to roam with a fence of a type and height adequate to contain his livestock.
- E. Any kennels or "runs" shall be constructed of masonry or a similar material to provide for cleanliness, ease of maintenance and noise control.

§ 105-57. Garage sale businesses.

Garage sale businesses, as defined in Article III of this chapter, may be conducted as a conditional use, subject to the below standards:

- A. Adequate off-street parking shall be provided in such a manner that the visibility of drivers along the public roads is not reduced.
- B. A maximum of two signs, each not exceeding three square feet in area, may be erected on the operator's property.
- C. All display tables shall be cleared and removed to a location not visible from the road at the end of each business day.
- D. All relevant provisions of this chapter must be complied with.

§ 105-58. Recreational vehicles. [Added 3-10-1984 ATM by Art. 5]

Recreational vehicles, as defined in Article III, shall not be occupied as a dwelling in excess of 90 consecutive days or in excess of 120 days in any calendar year.

§ 105-59. Roads, driveways and water crossings. [Added 3-12-1988 ATM by Art. 69; amended 3-9-1991 ATM by Art. 53; 3-13-1999 ATM by Art. 65; 6-30-2009 STM]

- A. The following roads and/or driveways and water crossing requirements shall apply Townwide. Additional requirements for roads, driveways and water crossings located within the Shoreland Zone are found in Subsections C and D.
- B. The following requirements shall apply to construction and maintenance of roads other than skid roads:
 - (1) All cut or fill banks and areas of exposed mineral soil outside the roadbed within 100 feet, horizontal distance, of a flowing or standing body of water shall be revegetated or otherwise stabilized so as to prevent erosion and sedimentation of water bodies.
 - (2) Road and driveway banks shall have a slope no steeper than a slope of two horizontal to one vertical.
 - (3) Drainage ditches shall be provided so as to effectively control water entering and leaving the road area. Such drainage ditches will be property stabilized so that the potential for unreasonable erosion does not exist.
 - (4) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads, driveways and their associated drainage ditches shall be located, constructed and maintained so as to provide an unscarified filter strip, of at least the width indicated below, between the exposed mineral soil of the road or driveway and the normal high-

water mark of a surface water body. This requirement shall not apply to road approaches to water crossings.

Average Slope of Land Between Exposed Mineral Soil and Normal High-Water Mark (percent)	Width of Strip Between Exposed Mineral Soil and Normal High-Water Mark (feet along surface of ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

- (5) Drainage ditches for roads and driveways approaching a water crossing shall be designed, constructed and maintained to empty into an unscarified filter strip of at least the width indicated on the table set forth in Subsection B(4) above between the outflow point of the ditch and the normal high-water mark of the water. Where such filter strip is impracticable, appropriate techniques shall be used to reasonably avoid sedimentation of the water body. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed so as to reasonably avoid sedimentation of the water body.
- (6) Ditch relief (cross drainage) culverts, drainage dips and water turnouts will be installed in a manner effective in directing drainage onto unscarified filter strips before the flow gains sufficient volume or head to erode the road, driveway or ditch.
 - (a) Drainage dips may be used in place of ditch relief culverts only where the grade is 10% or less.
 - (b) On sections having slopes greater than 10%, ditch relief culverts shall be placed at approximately an angle of 30° down slope from a line perpendicular to the center line of the road or driveway.
 - (c) Ditch relief culverts, drainage dips and water turnouts shall direct drainage onto unscarified filter strips as required in Subsection B(4) and (5) above.
 - (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their

inlet and outlet ends shall be stabilized with appropriate materials.

- (e) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Grade (percent)	Spacing (feet)
0 to 2	250
3 to 5	200 to 135
6 to 10	100 to 80
11 to 15	80 to 60
16 to 20	60 to 45
21+	40

- (f) Ditch relief culverts, drainage dips and associated water turnouts and other stormwater runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

C. Within the Shoreland Zone, all new roads and driveways shall be set back a minimum of 100 feet, horizontal distance, from the normal high-water line of a great pond, the Mousam River and the Little Ossipee River and 75 feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams or the upland edge of a wetland, unless no reasonable alternative exists as determined by the Planning Board. If no reasonable alternative exists, the road and/or driveway setback reduction shall be no less than 50 feet, horizontal distance, and may be permitted by the Planning Board upon a clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of water bodies, tributary streams or wetlands. Such techniques may include, but are not limited to, the installation of settling basins and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream or wetland.

- (1) On slopes of greater than 20%, the road and/or driveway setback shall be increased by 10 feet, horizontal distance, for each five-percent increase in slope above 20%.
- (2) This subsection does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline, or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Road and driveways providing access to permitted structures within the setback area shall comply fully with

the requirements of this section except for that portion of the road or driveway necessary for direct access to the structure.

- D. In a Resource Protection District new roads and driveways are prohibited, except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District, the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream or upland edge of an inland wetland.

§ 105-60. Driveways. [Added 3-12-1988 ATM by Art. 65; amended 6-30-2009 STM]

No driveway providing access to a public road shall be built before obtaining written permission to proceed with construction from the appropriate Town Road Commissioner. Prior to giving written permission, the Road Commissioner shall approve the design with respect to culverts and erosion control to ensure that the driveway will not produce unsafe conditions on the public road or cause flooding on the public road. With respect to water crossing requirements, § 105-59 shall apply.

§ 105-60.1. Private ways. [Added 3-19-2005 ATM by Art. 19]

The Planning Board shall approve the use of a fifty-foot-wide private right-of-way to provide frontage and access to individual lots of land in accordance with the following provisions:

- A. A plan showing the private way shall be prepared by a registered land surveyor or licensed engineer. The plan shall be labeled "Plan of Private Way" and shall provide an approval block for the signatures of the Planning Board members. The plan shall delineate the proposed way and each of the lots to be served by the private way.
- B. A street plan, cross section, and drainage plan shall be submitted for each private way.
- C. The plan shall bear notes that the Town of Shapleigh will not be responsible for the maintenance, repair, or plowing of the private way and that further lot divisions utilizing the private way are prohibited without prior approval of the Shapleigh Planning Board.
- D. If the private way is to provide access to two or more lots, a maintenance agreement shall be required by the Planning Board and recorded in the York County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.

- E. The construction of private ways shall meet the following minimum standards:

Standard	Number of Lots Served	
	1	2 or more
Minimum roadway width (feet)	12	16
Minimum subbase (heavy road gravel, maximum size 4 inches) (inches)	12	15
Wearing surface (crushed gravel) (inches)	2	2
Maximum length of dead end (feet)	1,500	1,500
Maximum grade	10%	8%
Minimum grade	0.5%	0.5%
Turnaround at dead end	Hammerhead or T	Hammerhead or T

- (1) One turnout to provide space for two vehicles to pass shall be provided for every 500 feet of private way.
 - (2) The hammerhead or T shall have a useable surface area that is a minimum of 24 feet deep and 24 feet wide.
- F. The plan shall be recorded in the York County Registry of Deeds within 90 days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.
- G. When the private way permit has been secured under the provisions of this chapter by vote of the Planning Board, the applicant has one year to begin the project and two years to complete the private way; otherwise, the permit becomes null and void. **[Added 3-9-2013 ATM by Art. 9⁴⁹]**
- H. After a private way has been approved by the Planning Board to provide access to a lot or lots, no further lots shall be created which are to be provided access by means of the private way without the prior approval of the use of the private way for access to such lots by the Planning Board.
- I. The applicant shall pay a private way application fee of \$100, payable to the Town of Shapleigh, prior to review of the private way application by the Planning Board.

§ 105-61. Mineral exploration and extraction, processing, and removal, including sand and gravel. [Added 3-9-1991 ATM by Art. 53; amended 6-3-2009 STM; 3-12-2011 ATM by Art. 5]

49. Editor's Note: Pursuant to this article, former Subsections G and H were also redesignated as Subsections H and I, respectively.

- A. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures, to restore disturbed areas and to protect the public health and safety.
- B. Mineral extraction may be permitted under the following conditions:
- (1) A reclamation plan shall be filed with and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Subsection B(15) below.
 - (2) No part of any extraction operation including drainage and runoff control features, shall be permitted within 100 feet, horizontal distance, of the normal high-water line of a great pond classified GPA, or a river flowing to a great pond classified GPA, and within 75 feet, horizontal distance, of the normal high-water line of any other water body, tributary stream or the upland edge of a wetland. Extraction operations shall not be permitted within 75 feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
 - (3) Developers of new gravel pits along significant river segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than 75 feet and screened from the river by existing vegetation.
 - (4) The smallest amount of bare ground shall be exposed for the shortest time feasible. The Planning Board shall set a specific date after which bare ground shall not be exposed.
 - (5) Temporary ground cover (such as mulch) and temporary runoff filter (such as hay bales in swales) shall be used as required to prevent stream sedimentation.
 - (6) Diversions, silting basins, terraces and other methods to trap sediment shall be used.
 - (7) Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Department of Marine Resources or Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board.
 - (8) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.

- (9) Fill shall not restrict a floodway, channel or natural drainageway.
- (10) The sides and bottom of cuts, fills, channels and artificial watercourses shall be constructed and stabilized to prevent erosion or failure. Such structures are to be designed and built according to the Maine Soil and Water Conservation Commission, Technical Guide, Standards and Specifications.
- (11) Where activities carried out under this article require the removal of existing ground cover, revegetation shall be carried out.
- (12) Specific plans are established to avoid hazards from excessive slopes or standing water. Where embankment must be left upon the completion of operations, it shall be at a slope not steeper than one foot vertical to four feet horizontal.
- (13) No excavation shall be extended below the grade of an adjacent street, except for drainageways, unless 100 feet from the street line. No excavation below the grade of the surrounding land shall be allowed within 100 feet of any side or rear lot line. However, removal of earth material deposits from hills or knolls may be allowed within 50 feet of a side or rear lot line if no excavation below the grade of the abutter's properties occurs.
- (14) Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (15) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of minerals are removed in any consecutive twelve-month period, ground levels and grades shall be established in accordance with the following:
 - (a) All debris, stumps and similar material shall be removed for disposal in an approved location or shall be buried on site. Only materials generated on site may be buried or covered on site. (NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A. § 1301, and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations, may contain other applicable provisions regarding disposal of such materials.)
 - (b) The final graded slope shall be 2 1/2 to 1 slope or flatter.
 - (c) The Planning Board shall set a specific date by which permanent ground cover shall be planted.
- (16) No existing rock, gravel or sandpit will be extended or expanded until the operator has complied with the provisions of this chapter and obtained a permit therefor.

- C. Optional conditions of permit. The Planning Board may impose other reasonable conditions to safeguard the neighborhood and the municipality, which may include those relating to:
- (1) Methods of removal or processing.
 - (2) Days and hours of operation.
 - (3) Type and location of temporary structures.
 - (4) Routes for transporting material.
 - (5) Area and depth of excavations.
 - (6) Provision of temporary or permanent drainage.
 - (7) Cleaning, repair and/or resurfacing of streets used in removal activities which have been adversely affected by said activity.
 - (8) The need for written approval of a soil and erosion and sedimentation plan by a State of Maine licensed civil engineer selected by the applicant for the Planning Board.
- D. Surety and terms of permit.
- (1) No permit shall be issued without a surety bond or other equivalent security to ensure compliance with such conditions as the Planning Board may impose. The bond or surety shall be in an amount recommended by the Code Enforcement Officer and approved by the Planning Board, as sufficient to guarantee conformity with the conditions of approval, taking inflation into account.
 - (2) No permit shall be issued for a period to exceed three years, although such permits may be renewed for additional periods in the same manner.
- E. Existing operations. Any operation involving the excavation, processing or storage of soil, earth, loam, sand, gravel, rock or other mineral deposits in lawful operation at the time this chapter became effective (March 12, 1983) may operate for a period of three years from the effective date. Discontinuance of any existing operation for a period of more than one year shall require application for a new permit. Continuance of any existing operation for more than three years shall require a permit from the Planning Board.

§ 105-61.1. Archaeological sites in Shoreland District. [Added 3-13-1999 ATM by Art. 65]

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on or eligible to be listed on the National Register of Historic Places shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment at least 20 days prior to action taken by the permitting authority. The

permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

§ 105-61.2. Telecommunications facilities. [Added 3-13-1999 ATM by Art. 67]

- A. In order to minimize the adverse impacts of telecommunications towers on the Town, including visual impacts, environmental impacts and property value impacts, any telecommunications facility constructed as the principal use on a lot is classified as a conditional use. Any telecommunications facility which does not exceed 70 feet in height and which is proposed as accessory to a principal use on a lot and used for the private communication of the owner or business located on the lot is classified as a structure accessory to either a permitted or a conditional use and is regulated according to the provisions in § 105-17 of this chapter. If the tower is higher than 70 feet, it shall be classified as a principal use and a conditional use permit shall be required.
- B. Any telecommunications facility classified as a conditional use shall be reviewed according to the conditional use procedures in Article VII and pursuant to all applicable standards elsewhere in this chapter. In addition, all telecommunications facilities requiring a conditional use permit shall conform to the following standards:
 - (1) No telecommunications facility, tower or antenna shall exceed 190 feet in height.
 - (2) No telecommunications facility shall be lighted.
 - (3) Towers shall have a galvanized steel finish or be painted a neutral color so as to reduce visual obstructiveness.
 - (4) Towers, guys and accessory facilities shall meet the minimum zoning district setback requirements.
 - (5) The owner shall allow other future wireless service carriers, including providing space to public agencies (like fire agencies if requested at the time of review by the Planning Board), using functionally equivalent personal wireless technology to collocate antennas, equipment and facilities on a telecommunications tower and site, unless satisfactory evidence is presented, and the Planning Board concurs, that technical constraints prohibit collocation.
 - (6) The owner shall provide evidence to the Planning Board that the telecommunications facility is designed, constructed and maintained in conformance with applicable federal, state and Town building, electrical and safety codes.
 - (7) No advertising or signage is permitted on telecommunications facilities.

- (8) The owner of a telecommunications facility shall be required to remove the tower should it not be used for the use or uses approved for a period of 12 consecutive months. An applicant for a conditional use permit under this section shall post a performance guaranty with the Town prior to obtaining a permit that is equal to 125% of the cost of removing the structure. The performance guaranty shall be for a minimum term of five years. It must contain a mechanism satisfactory to the Town, for review of the cost of removal of the structure every five years and a mechanism for increasing the amount of the guaranty should the revised cost estimate so necessitate.
- (9) The minimum size of a lot with a telecommunications facility more than 70 feet in height shall be 80,000 square feet.

§ 105-61.3. Location of adult businesses. [Added 3-13-2004 ATM]

- A. Definitions. As used in this section, the following terms shall have the meanings indicated:

ADULT BUSINESS — Any business in any use category, a substantial or significant portion of which consist of selling, renting, leasing, exhibiting, displaying, or otherwise dealing in materials or devices of any kind which appeal to prurient interest and which depict or describe specified sexual activities.

PUBLIC BUILDING — A building owned, operated or funded in whole or in part by the Town of Shapleigh in which members of the general public have occasion to visit, either regularly or occasionally, such as, but not limited to, the Town Hall, the public library, and the fire station.

SPECIFIED SEXUAL ACTIVITIES — Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

VIEWING BOOTH — Any booth, cubicle, room or stall within the premises of an adult business used to display, by audio or visual reproduction, projection or other means, any of the materials described in the definition of "adult business" above.

- B. Location restricted. No adult business shall be located where the building footprint would be closer than 1,000 feet, measured in a straight line without regard to intervening structure or objects, to the nearest point of the boundary of any property which is:
- (1) Occupied by a residence, school, park, playground, religious institution or public building.
 - (2) Occupied by another adult business.
- C. Outside displays prohibited. No material or devices displaying or exhibiting specified sexual activities or of prurient interest shall be

visible from the exterior of the building in which the adult business is located.

- D. Design of viewing booths. Viewing booths shall be designed, located and lighted so that the interior of each viewing booth is clearly visible from the interior common areas of the premises, and visibility into the viewing booths shall not be blocked or obscured by any doors, curtains, partitions, drapes or any other visual barriers.

§ 105-61.4. Essential services. [Added 6-30-2009 STM]

- A. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- B. The installation of essential services, other than roadside distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- C. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

§ 105-61.5. Small wind energy systems. [Added 3-13-2010 ATM by Art. 6]

- A. Purpose. The purpose of the Small Wind Energy Systems Ordinance is to allow for small windmills, producers of alternative, renewable energy, to be erected in the Town of Shapleigh, with rigorous provisions for their potential impacts on abutters and the surrounding environment.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

METEOROLOGICAL TOWER (MET TOWER) — A tower used for the measurement and collection of wind data that supports various types of equipment, including but not limited to anemometers, data recorders, and solar power panels. MET towers may also include wildlife-related equipment such as ANABAT detectors, bird diverts and wildlife entanglement protectors.

SHADOW FLICKER — The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

SMALL WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind generator, a tower, associated control or conversion electronics, which has a rated capacity of 50 kilowatts or less and will be used primarily for on-site consumption.

WIND TOWER — The freestanding structure on which a wind measuring or energy conversion system is mounted.

TOWER HEIGHT — The height above grade of the fixed portion of the tower, to the center of the turbine or wind generator.

- C. Submission requirements. The applicant shall provide the following along with a completed conditional use permit application:
- (1) Location of the proposed small wind energy system and associated equipment.
 - (2) Setback requirements as outlined in this section.
 - (3) The right-of-way of any public road that is contiguous with the property.
 - (4) Any overhead utility lines.
 - (5) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, wind tower type (freestanding or guyed).
 - (6) If the small wind energy system will be connected to the power grid, documentation shall be provided regarding the notification of the intent with the utility regarding the applicant's installation of a small wind energy system.
 - (7) Wind tower foundation blueprints or drawings.
 - (8) Wind tower blueprint or drawings.
 - (9) Sound level analysis prepared by the wind turbine manufacturer or qualified engineer.
 - (10) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code (usually provided by the manufacturer).
 - (11) Estimated cost of physically removing the small wind energy system to comply with surety standards.
- D. Capacity. A small wind energy system shall have a maximum rated capacity of 50 kW.
- E. Location and dimensional standards. Small wind energy systems shall not be permitted in the Shoreland District or in the Resource Protection District. In all other districts, small wind energy systems are subject to standards regulating accessory structures.
- (1) Lot requirement. A small wind energy system shall be permitted only on a conforming lot.

- (2) Setbacks. A small wind energy system shall be set back a minimum horizontal distance of 1.5 times its total height, including all components, from:
 - (a) All surrounding property lines, except when the adjacent lot is held in common ownership;
 - (b) Overhead utility lines (these do not include a small wind energy system's associated electrical collection and supply equipment); and
 - (c) Public roads.
- (3) Height.
 - (a) Wind tower height shall not exceed 80 feet to the center of the turbine on lots under three acres in size.
 - (b) Wind tower height shall not exceed 100 feet to the center of the turbine on lots equal to or greater than three acres in size.
 - (c) The allowed total height shall be reduced if necessary to comply with Federal Aviation Administration (FAA) requirements.
 - (d) The height limits of this section supersede other building and structure height standards in the Town of Shapleigh's Zoning Ordinance.

F. Performance standards.

- (1) Noise. A small wind energy system shall not exceed 50 dBA, as measured at the neighboring property lines. The sound level, however, may be exceeded during short-term events such as severe windstorms. In the event of a conflict between this standard and the Town of Shapleigh's Noise Ordinance,⁵⁰ the more restrictive of the two shall prevail.
- (2) Color. To minimize visual disruption, the small wind energy system's tower and blades shall be a nonreflective color that blends into the surrounding environment to the greatest extent possible.
- (3) Signs. Small wind energy systems shall not display any signs except for manufacturer identification or appropriate warning signs. Writing, symbols, logos, or graphic representation of any kind shall not be visible beyond the lot on which it is located.
- (4) Lighting. Small wind energy systems shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall

50. Editor's Note: See § 105-22, Noise.

provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

- (5) Preservation of landscape. Placement of a small wind energy system shall recognize existing topography and vegetation. Clearing of natural vegetation and grade changes to the site shall be limited to the minimum necessary for the construction and maintenance of the small wind energy system.
- (6) Safety.
 - (a) All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - (b) Horizontal axis small wind energy towers shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 12 feet above the ground.
 - (c) Vertical axis small wind energy towers shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of nine feet above the ground.
 - (d) Blade clearance. For all horizontal axis small wind energy systems the minimum distance between the ground and any protruding blades shall be 15 feet as measured at the lowest point of the arc of the blades.
- (7) Negative visual impact.
 - (a) Efforts shall be made to minimize visual prominence of small wind energy systems.
 - (b) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to, information regarding site selection, wind generator design or appearance, buffering, and screening of ground-mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
- (8) Electromagnetic interference. The system shall be operated and located such that no disruptive electromagnetic interference with signal transmission or reception is caused beyond the site. If it has been demonstrated that the system is causing disruptive interference beyond the site, the system operator shall promptly eliminate the disruptive interference or cease operation of the system.
- (9) Shadow flicker. Small wind energy systems shall be sited and designed in a manner that minimizes shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per

year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.

- (10) Structural integrity. A professional engineer (PE) shall certify structural integrity of design before any small wind energy system is constructed. The property owner shall be responsible for having structural integrity of the system re-evaluated a minimum of every five years, and shall retain records of such as long as the small wind energy system is standing.
 - (11) Structure type. A small wind energy system shall be designed as a self-supporting structure without guyed supports.
 - (12) Other uses. A small wind energy system shall be used exclusively for the production of electrical power, and shall not include mounting of equipment for any other use, including but not limited to the collocation of wireless communication facilities equipment.
 - (13) Number per lot. There shall be no more than one small wind energy system per lot.
 - (14) Off-site consumption. Excess electrical power generated and not immediately needed for on-site use may be used by the utility company.
 - (15) MET towers shall be permitted under the same standards, as applicable, permit requirements, restoration requirements, and permit procedures as a small wind energy system.
- G. Abandonment of use. A small wind energy system which is not generating electricity for 18 consecutive months shall be deemed abandoned and shall be dismantled and physically removed from the property at the expense of the property owner within three months of determination of abandonment. Determination of abandonment shall be made by the Code Enforcement Office. "Physically remove" shall include, but not be limited to:
- (1) Removal of the wind generator and wind tower and related above-grade structures.
 - (2) Restoration of the location of the small wind energy systems to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- H. Violation. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this chapter or with any condition contained in the conditional use permit issued pursuant to this chapter. Small wind energy systems installed prior to the adoption of this chapter are exempt.

- I. Penalties. Any person who fails to comply with any provision of this chapter or a building permit issued pursuant to this section shall be subject to enforcement and penalties as stipulated in § 105-68 of this chapter.

§ 105-61.6. Retaining walls. [Added 3-10-2018 ATM by Art. 6]

Any portion of a retaining wall in excess of 48 inches in height shall be designed by a licensed engineer, or the owner shall secure a written confirmation by a licensed engineer that the proposed wall will be structurally sound if built as designed.

ARTICLE VII
Administration

§ 105-62. Enforcement.

This chapter shall be enforced by the Code Enforcement Officer appointed by the municipal officers.

§ 105-63. Application for and issuance of permits.

- A. All applications for permits shall be submitted, in writing, to the Code Enforcement Officer on forms provided for the purpose. Applications for a residential (dwelling unit) building permit must be accompanied by a growth permit issued by the Planning Board.⁵¹
- B. Within seven days of the filing of an application for a permit, the Code Enforcement Officer shall approve, deny or refer to the Planning Board for a conditional use permit all such applications. His decision shall be in writing on a form designed for the purpose, and communicated directly to the applicant. One copy of the Code Enforcement Officer's decision shall be filed in the municipal office. In cases where the Code Enforcement Officer deems that a conditional use permit is required, he shall also provide a copy of his decision to the Planning Board.
- C. No building permit for a building or structure on any lot shall be issued except to the owner of record thereof, or his authorized agent, until the proposed construction or alteration of a building or structure shall comply in all respects with the provisions of this chapter or with a decision rendered by the Board of Appeals or the Planning Board. Any application for such permit shall be accompanied by a plan, accurately drawn to scale, showing the actual shape and dimensions of the lot to be built upon, an on-site soils survey in accord with the U.S.D.A. Soil Conservation Service National Cooperative Soil Survey, the exact location and size of all buildings or structures already on the lot, the location of the new buildings to be constructed, together with the lines within which all buildings and structures are to be constructed, the existing and intended use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this chapter.
- D. Applications for permits with their accompanying plans and building permits shall be maintained as a permanent record by the municipal officers or the Code Enforcement Officers.
- E. A building permit secured under the provisions of this chapter shall expire if the work or change is not commenced within one year of the date on which the permit is granted, and if the work or change is not substantially completed within two years of the date on which the permit is granted.

51. Editor's Note: See Ch. 68, Residential Growth.

- F. When the Code Enforcement Officer has reason to believe that the proposed construction would not be in compliance with other local regulations or state laws, he shall not issue any building permit until all questions have been resolved to his satisfaction. When a violation of subdivision standards is believed to exist, the Planning Board shall be given the opportunity to examine the proposal.

§ 105-64. Plumbing permit required.

No building permit shall be issued for any structure or use involving the construction, installation or alteration of plumbing facilities unless a valid plumbing permit has been secured by the applicant or his authorized agent in conformance with the sanitary provisions of this chapter.⁵²

§ 105-65. Fees. [Amended 3-10-1984 ATM by Art. 5; 3-9-1985 ATM by Art. 7; 8-31-1985 STM by Art. 4; 3-12-1988 ATM by Art. 65; 3-10-1990 ATM by Art. 31; 3-14-1992 ATM by Art. 26]

- A. No permit shall be issued by the Code Enforcement Officer or the Planning Board without payment of a fee according to the schedule set forth by a committee comprised of a Selectman, the Code Enforcement Officer, Planning Board Chairman and a Budget Committee member. Fees are to be set by majority vote of the committee and will become effective 30 days from the date of the vote. Any person who shall commence any work for which a permit is required by this chapter without first having obtained a permit therefor shall, if subsequently permitted to obtain a permit, pay the after-the-fact permit fee fixed by the schedule. **[Amended 3-13-1999 ATM by Art. 66]**
- B. All fees collected by the Code Enforcement Officer shall be turned over to the Town Treasurer at the end of each week to be deposited to the general account of the Town.

§ 105-66. Notice of violation.

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this chapter. If the Code Enforcement Officer shall find that any provision of this chapter is being violated, he shall notify, in writing, such violator, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures, removal of illegal buildings, structures, additions or work being done, or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.

§ 105-67. Legal action to enforce provisions.

When any violation of any provision of this chapter shall be found to exist, the Municipal Attorney, as designated by the municipal officers, either on his own initiative or upon notice from the Code Enforcement Officer,

52. Editor's Note: See § 105-46.

is hereby authorized and directed to institute any and all action and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the municipality.

§ 105-68. Violations and penalties. [Amended 3-14-1992 ATM by Art. 27; 6-30-2009 STM]

All violations and penalties shall be in accordance with 30-A M.R.S.A. § 4452.

§ 105-69. Liability of contractors for penalties.

Any person, firm, construction company, contractor or individual carpenter employed to prepare a site, construct or erect a structure hereafter will be held liable and subject to full penalties of this chapter along with the property owner.

§ 105-70. (Reserved)⁵³

§ 105-71. Board of Appeals.

- A. Establishment. A Board of Appeals is hereby established in accordance with state law and the provisions of this chapter.
- B. Appointment and composition.
 - (1) The Board of Appeals shall be appointed by the municipal officers and shall consist of five members and two alternates, who shall be legal residents of the municipality, serving staggered terms of at least three years and not more than five years. The Board shall elect annually a Chairman and a Secretary from its membership. The Secretary shall keep the minutes of the proceedings of the Board, which shall show the vote of each member upon each question. All minutes of the Board shall be public record. A quorum shall consist of three members.
 - (2) A municipal officer or the spouse of a municipal officer may not serve as a member.
 - (3) Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by majority vote of the members, except the member who is being challenged.
 - (4) A member of the Board may be dismissed for cause by the municipal officers upon written charges and after public hearing.
- C. Powers and duties of the Board of Appeals. The Board of Appeals shall have the following powers: **[Amended 3-9-1985 ATM by Art. 7;**

53. Editor's Note: Former § 105-70, Appeals procedure, as amended 3-13-1993 ATM by Art. 65, was repealed 3-14-2009 ATM by Art. 5. For current provisions, see § 105-71, Board of Appeals, and § 105-72, Appeal procedure.

3-13-1993 ATM by Art. 65; 3-13-1999 by Art. 65; 3-14-2009 ATM by Art. 6]

- (1) Administrative appeals: to hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this chapter; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of an action on a permit application under this chapter. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this chapter is not appealable to the Board of Appeals.
 - (2) Variance appeals: to authorize variance upon appeal, within the limitations set forth in this chapter.
- D. Variance appeals. Variances may be granted only under the following conditions: **[Added 3-14-2009 ATM by Art. 6]**
- (1) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements. Any such variance granted by the Board shall be the minimum variance from the terms of the chapter as will allow for the resolution of the hardship pleaded, and not necessarily the full variance sought by the applicant.
 - (2) Variances shall not be granted for establishment of any uses otherwise prohibited by this chapter.
 - (3) The Board shall not grant a variance unless it finds that:
 - (a) The proposed structure or use would meet the provision of land use standards of this chapter except for the specific provision which has created the nonconformity and from which relief is sought; and
 - (b) The strict application of the terms of this chapter would result in undue hardship. The term "undue hardship" shall mean:
 - [1] That the land in question cannot yield a reasonable return unless a variance is granted;
 - [2] That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - [3] That the granting of a variance will not alter the essential character of the locality; and

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

- (c) Hardship is not, therefore, a condition experienced by an individual. It is a characteristic of the property itself. Moreover, when a variance is granted, it attaches to that property and can be transferred to subsequent owners.
- (4) Notwithstanding Subsection D(3)(b) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- (5) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this chapter to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (6) When the property lies within the Shoreland Zone, a copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

E. Administrative appeals. **[Added 3-14-2009 ATM by Art. 6]**

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

of the Planning Board only upon finding that the decision was contrary to specific provisions of the chapter or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding. The Board of Appeals may not alter the conditions attached by the Planning Board.

§ 105-72. Appeal procedure. [Amended 3-10-1984 ATM by Art. 5; 3-13-2004 ATM; 3-19-2005 ATM by Art. 18; 3-14-2009 ATM by Art. 7]

A. Making an appeal.

- (1) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for the enforcement-related matters as described in § 105-71C(1) above. Such an appeal shall be taken within 30 days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty-day requirement.
- (2) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal on forms provided by the Board of Appeals which includes:
 - (a) A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - (b) A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (3) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

B. Appeal procedures.

- (1) Before taking action on any appeal, the Board of Appeals shall hold a public hearing. In appeals involving the use of buildings or premises, the Board of Appeals shall notify by certified mail the applicant and the owners of all property within 500 feet of the property involved, at least 10 days in advance of the hearing, of the nature of the appeal and the time and place of the public hearing.

- (2) In the case of appeals involving space and bulk regulations or interpretation, the Board of Appeals shall notify by certified mail the applicant and only the owners of property abutting the property for which appeal is taken, at least 10 days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing thereon. For the purpose of this section, abutting properties shall include properties directly across a street from the property for which the appeal is made. Owners of property which is located within 500 feet of the appellant's land, on the opposite side of any water body or watercourse, shall be notified of the public hearing. This shall include properties in other towns, when they satisfy the above criteria.
- (3) The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board of Appeals.
- (4) Following the filing of an appeal, the Board of Appeals shall hold a public hearing on the appeal within 30 days of its next regular meeting. The Board of Appeals shall notify the Code Enforcement Officer and the Planning Board, at least 20 days in advance, of the time and place of the hearing, shall publish notice of the hearing at least 10 days in advance in a newspaper of general circulation in the area and shall post hearing notices in the locations where Town Meeting warrants are normally posted.
- (5) At any hearing, a party may be represented by an agent or attorney, provided that an authorization signed by the owner is presented to the Appeals Board. Hearings shall not be continued to other times except for good cause.
- (6) The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs or other materials he deems appropriate for an understanding of the appeal.
- (7) The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.

C. Decision by Board of Appeals.

- (1) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal. A majority vote of the full voting membership is required to grant a variance or approve an administrative appeal.
- (2) The person filing the appeal shall have the burden of proof.

- (3) The Board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
 - (4) The Board of Appeals shall state the reason and basis for its decision, including a statement of facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant within seven days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.
 - (a) When the property is located in the Shoreland Zone the Board shall cause written notice to be mailed to the Department of Environmental Protection within seven days of the Board's decision.
 - (5) Upon notification of the granting of the appeal by the Board of Appeals, the Code Enforcement Officer shall immediately issue a building permit in accordance with the conditions of the approval.
 - (6) A variance under the provisions of this chapter secured by vote of the Board of Appeals shall expire if the work or change involved is not commenced within two years of the date on which the appeal is granted and if the work or change is not substantially completed within two years of the date on which the appeal is granted. **[Amended 3-19-2005 ATM by Art. 18]**
 - (7) All variances granted relating to setbacks shall require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the variance. **[Added 3-13-2004 ATM]**
- D. Appeal to Superior Court. Except as provided by 30-A M.R.S.A. § 2691(3)(F), an aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with state laws within 45 days from the date of any decision of the Board of Appeals.
- E. Reconsideration.
- (1) In accordance with 30-A M.R.S.A. § 2691(3)(F), the Board of Appeals may reconsider any decision within 45 days of its prior decision. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the

original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

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

F. Fees. Fees for all applications for appeals shall be set by the committee established and described in § 105-65A above. The fee structure for appeals shall include the following fees for the Board of Appeals to use, if the Board determines it necessary, to hire independent consulting services to review the application:

- (1) The applicant shall pay into a special account the cost to the Town of hiring independent consulting services. The fee shall be determined after the Board of Appeals has secured an estimate of the cost of the services and the applicant has seen the estimate.
- (2) If the balance in the special account is drawn down by 75%, the Board shall notify the applicant and require an additional amount. Any balance in the account remaining after a final decision on the application shall be returned to the applicant.

§ 105-73. Conditional use permits. [Amended 3-10-1984 ATM by Art. 5; 3-12-1988 ATM by Art. 66]

A. Authorization. The Planning Board is hereby authorized to hear and decide upon applications for conditional use permits in accordance with state law and the provisions of this chapter. The Board shall approve, approve with modifications or conditions or disapprove an application for a conditional use permit. No conditional use permit shall be authorized unless specific provision for such conditional use is made in this chapter. **[Amended 3-13-1993 ATM by Art. 65]**

B. Existing conditional use of structure. **[Amended 3-13-1993 ATM by Art. 65]**

- (1) A conditional use which existed prior to the effective date of this chapter may not be changed to another conditional use nor substantially expanded or altered except in conformity with all regulations of this chapter pertaining to conditional uses. Substantial expansion shall be defined as:
 - (a) Floor space increase of 25%; or
 - (b) New materials or processes not previously associated with the existing use.
- (2) No changes shall be made in any approved conditional use without approval of the change by the Planning Board.
- (3) A conditional use which is discontinued for a period of one year shall not be resumed. **[Added 3-17-2001 ATM by Art. 12]**

- C. Application procedure. A person informed by the Code Enforcement Officer that he requires a conditional use permit shall file an application for the permit with the Planning Board on forms provided for the purpose. The applicant shall be responsible for a filing fee which covers administrative and legal advertisement costs.
- (1) All plans for conditional uses presented for approval under this section shall be drawn at a scale of not smaller than one inch equals 50 feet and show the following information unless the Planning Board waives these requirements:
 - (a) The name and address of the applicant (or his authorized agent), plus the name of the proposed development, and a copy of the deed of ownership, the assessor's map and lot number.
 - (b) Total floor area, ground coverage and location of each proposed building, structure or addition.
 - (2) The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Planning Board all plans, photographs or other material he deems appropriate of an understanding of the application.
 - (3) The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.
- D. Meeting with applicant; public hearing. Following the receipt of the complete application by the Planning Board, the Board shall hold a meeting with the applicant to obtain a more detailed description of the proposed use and to discuss submissions requirements and concerns of the Board. The Board may also decide to request the submission of additional information from the Code Enforcement Officer, the Fire Chief, other knowledgeable officials and persons with knowledge or expertise pertaining to the application. Before taking action on any application, the Planning Board may hold a public hearing on the application within 40 days. The Board shall notify the Code Enforcement Officer and municipal officers and shall publish notice as to the time, place and subject matter of the hearing at least 10 days in advance in a newspaper of general circulation in the area. **[Amended 3-13-1999 ATM by Art. 63]**
- (1) The Board shall notify by regular United States mail, first class, postage prepaid, the applicant and the owners of all property within 500 feet of the property involved at least 10 days in advance of the hearing, of the nature of the application and of the time and place of the public hearing.
 - (2) The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing

nor invalidate any action by the Planning Board. **[Amended 3-19-2005 ATM by Art. 18]**

- (3) The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Planning Board all plans, photographs or other material he deems appropriate for an understanding of the application.
 - (4) The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.
- E. Projects needing Board of Appeals review. When an applicant needs a variance from a requirement in this chapter before the Planning Board is able to approve the application as submitted, an appeal may be submitted to the Board of Appeals prior to final action by the Planning Board. If an appeal is filed with the Board of Appeals prior to the Planning Board making a final decision, the Planning Board shall table final action on the application pending the Board of Appeal's decision and shall notify the Board of Appeals of that action.
- F. Decision.
- (1) Within 40 days of the public hearing, the Planning Board shall reach a decision on a conditional use and shall inform, in writing, the applicant, the Code Enforcement Officer and municipal officers of its decision and shall prepare a detailed finding of facts and conclusions. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Board or deny a building permit, if applicable. **[Amended 3-10-1990 ATM by Art. 32]**
 - (2) A conditional use permit secured under the provisions of this chapter by vote of the Planning Board shall expire if the work or change involved is not commenced within two years of the date on which the conditional use is authorized.
 - (3) A conditional use permit tabled at the request of the applicant or planning board shall expire if after 90 days the applicant does not return before the planning board with new information in order to continue with the application process. **[Added 3-12-2011 ATM by Art. 6⁵⁴]**
 - (4) An appeal may be taken within 30 days after a decision is rendered to Superior Court.

54. Editor's Note: Article 6 also provided for the renumbering of former Subsection F(3) as Subsection F(4).

G. Standards applicable to conditional uses. It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. The Board shall approve the application unless it makes written findings that one or more of these criteria have not been met.

- (1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat.
- (2) The use will conserve shore cover and visual, as well as actual, access to water bodies.
- (3) The use is consistent with the Comprehensive Plan.
- (4) Traffic access to the site is safe.
- (5) The site design is in conformance with all municipal flood hazard protection regulations.
- (6) Adequate provision for the disposal of all wastewater and solid waste has been made.
- (7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made.
- (8) A stormwater drainage system capable of handling a fifty-year storm without adverse impact on adjacent properties has been designed. **[Amended 3-19-2005 ATM by Art. 18]**
- (9) Adequate provisions to control soil erosion and sedimentation have been made.
- (10) There is adequate water supply to meet the demands of the proposed use, and for fire protection purposes.
- (11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like.
- (12) All performance standards in this chapter applicable to the proposed use will be met.

H. Conditions attached to conditional uses.

- (1) Upon consideration of the factors listed above, the Planning Board may attach such conditions, in addition to those required in this chapter, that it finds necessary to further the purposes of this chapter. Violation of any of these conditions shall be a violation of this chapter. Such conditions may include but are not limited to:
 - (a) Specifications for type of vegetation, increased setbacks and yards.

- (b) Specified sewage disposal and water supply facilities.
 - (c) Landscaping and planting screens.
 - (d) Period of operation.
 - (e) Operational controls.
 - (f) Professional inspection and maintenance.
 - (g) Sureties.
 - (h) Deed restrictions.
 - (i) Restrictive covenants.
 - (j) Locations of piers, docks, parking and signs.
 - (k) Type of construction.
 - (l) Any other conditions necessary to fulfill the purposes of this chapter.
- (2) In evaluating each application, the Board may request the assistance of the County Soil and Water Conservation District, a state or federal agency or consultant which can provide technical assistance.

I. Performance guaranties.

- (1) At the time of approval of the application for conditional use, the Planning Board may require the applicant to tender either a certified check payable to the Town, an irrevocable letter of credit from a lending institution or a performance bond payable to the Town issued by a surety company in an amount adequate to cover the total costs of all required improvements, taking into account the time span of the bond and the effects of inflation upon costs. The conditions and amount of the certified check or performance bond shall be determined by the Planning Board with advice from the Board of Selectmen. The bond shall be presented to the Planning Board within 45 days of application approval and, once approved, must be rendered to the Town of Shapleigh no later than 90 days from the date of bond approval, or the application shall be null and void. **[Amended 3-12-2011 ATM by Art. 6]**
- (2) Prior to the release of any part of or the entire performance guaranty, the Board shall determine to its satisfaction, in part upon the report of the engineer hired by the Town to inspect the development and whatever other agencies and departments may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested. Any interest accumulated on an escrow account shall be returned with any money owed by the Town to the developer after it has been

determined that the proposed improvements meet all design and construction requirements.

- (3) If the appointed engineer finds, upon inspection of the improvements performed before release of the guaranty, that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the applicant, he shall so report to the Board and Code Enforcement Officer. The Board shall then notify the applicant, and, if necessary, the bonding company or lending institution, and take all necessary steps to preserve the Town's rights under the guaranty.
 - (4) Performance guaranties, when required, shall be tendered for all improvements required under this chapter, including but not limited to sidewalks, drainage facilities, parking areas, lighting, signs, landscaping and buffer areas.
- J. Fees. The fee structure shall include for conditional use permit applications the following fees for the Planning Board to use to hire independent consulting services to review the application: The applicant shall pay into a special account the cost to the Town of hiring independent consulting services. The fee shall be determined after the Planning Board has secured an estimate of the cost of the services and the applicant has seen the estimate. If the balance in the special account is drawn down by 75%, the Board shall notify the applicant and require an additional amount. Any balance in the account remaining after a final decision on the application shall be returned to the applicant.