

Baldwin Planning Board Meeting Minutes 5/28/2020

I. Call to Order

Strock called the meeting to order at 7pm

II. Roll Call

Jo Pierce, Nichol Ernst, Bob Flint, David Strock, Matt Fricker Selectmen Dwight Warren and Gerry Brown. CEO West Sunderland Lee Jay Feldman from SMPDC, and Ben Thompson, assessor.

III. Reading of the Minutes From Last Meeting

Discussion of 5/14 minutes. Pierce made a motion we approve Bob Flint seconded, approved unanimously. Strock made a motion that we approve all outstanding minutes with one amendment 2/27/2020 to include his exchange with Gerry Brown.

IV. Open Business

A. Revisited Nature's Wilderness LLC having two parcels of land broken off of the mother lot. One lot was sold to an aunt of Mr. Efron. They approached the CEO who told them that because it was a blood relative it would not count as division in regards to criteria for a subdivision. However, a review by a lawyer from Maine Municipal Association (MMA) (see attachment), stated that an LLC cannot have a relative and therefore cannot use this exemption. Strock stated he is not sure what to do about this. Pierce said that he is recusing himself as a planning board member, but also stated that the write up from the lawyer stated that it is state law and makes it even more difficult for the town to make an exception because a mistake was made. Sunderland brought up that possibly because they are both shareholders in the LLC they could possibly do this. Amos suggested that either we could move ahead and have Nature's Wilderness work on a minor subdivision or they could recombine the land. Brown stated that they approached the town when they did this. They are open to either transferring the land back to the LLC or doing a minor subdivision application. Ernst asked if they transfer the land back, does that actually erase the issue? Sunderland stated that it would be similar to a violation and transferring the land back would be a correction. Brown stated that he is uncomfortable with the "violation" language as he feels they were misled in good faith and it is an error that will be corrected. He has already spoken with lawyers about transferring back the land from Mr. Efron's blood relative. Strock stated that if Nature's Wilderness wants to challenge the MMA ruling they are welcome to, but the board cannot issue a CUP until the issue is

resolved. Resumed conversation/review from last meeting re: document from Lee Jay Feldman. Discussed live music. Pierce, as a member of the public, asked about any limitations around live music such as volume or time it needs to end. Ernst brought up conditions put on place for a wedding and event venue and having a condition around amplified music and time of day. Strock brought up concerns about amplified music. Ernst brought up 10pm on weeknights and 11pm on weekends. Brown stated he was open to an 11pm cut off for amplified music. Pierce asked for a certain number of times per month. Brown stated that it would be a Friday or Saturday night. Sunderland stated that he played in a bluegrass band 40 years ago and music was not very loud. Fricker asked when live music got added to the CUP. Fricker stated he did not recall this coming up at the public hearing. Fricker wondered if the public did not have a chance to weigh in on live music. Fricker brought up a mass gathering plan referenced in Feldman's proposed conditions. Brown stated that he is asking for live music for the campers only and it is not open to the public. Strock proposed 1. no live music after 11pm, 2. limited to Fridays and Saturdays, 3. live music events would not be open to the public and 4. only available for campers and guests. 5. Any amplified music would not unreasonably interfere with the peace and enjoyment of neighboring properties. Ernst stated that he went back and looked at minutes from 2.27 at the public hearing and live music was discussed and Brown is stating his objective consistently. Brown proposed two nights per week on either Friday, Saturday or Sunday. Fricker asked Feldman about guidelines from the state regarding noise and if there is some kind of state noise ordinance. Fricker stated that he would like to hear from MMA or SMPDC some information or references on acceptable noise levels. Feldman said that the DEP does have certain noise standards but mostly applying to industrial sites like gravel pits and quarries. He stated that they deal with intermittent noise. Feldman stated that the size of phase 1 does not put them within DEP performance standards. Feldman stated that many towns have adopted a noise standard but Baldwin does not have one. Feldman stated that when there is a complaint, the CEO will have to go out with a sound meter and prove that noise is exceeding the town ordinance. Feldman stated that he could include decibel levels that other towns have adopted, which he stated is usually 50-60Db. Fricker stated that we should get ahead of this and put something in the CUP about decibel levels. Fricker stated that if the board does give the campground a decibel level then the CEO and town can clearly say whether the campground is violating conditions. Lee Jay Feldman stated that other comparable towns say decibel level cannot be above 67 decibels at 10pm. Fricker stated that 70 decibels is a vacuum cleaner at 10 feet. Strock stated that adding 67 decibel level at the property line at 10pm as a proposed condition to consider. Ernst stated that a quality decibel reader costs between \$400-\$500. Pierce proposed the applicant buy it. Strock stated that the town is likely to use it in other situations and that the selectmen should discuss this as a budgetary expense. Discussed no rental of ATV's. Brown agreed that ATV is a general term for all motorized vehicles. Discussed the multi-purpose building. No public allowed unless a guest. Ernst asked about the state regulation around the multi-purpose building and serving food. Brown described the process. Flint asked

about alcohol. Brown stated it was possible if they get a liquor license or beer and wine license from the state. Discussed primitive sites. Discussed access to property. Strock proposed that public access to the property shall not be from Brown road and the applicant shall discourage such use. Discussed signage on Brown road to help people turn around. Feldman stated that if a town road it would be the responsibility of the town to provide such a sign unless conditions to do so were put on the applicant. Warren stated that he thinks it should be the responsibility of the applicant to provide the sign. Strock stated that the board would likely want the applicant to provide the sign. Discussed that people should not park on Marston's Rd. or backed up onto the road and have procedures in place to manage emergency access. Discussed managing dust and the applicant watering the road. Ernst brought up "dry spell" being weak language from an enforcement standard. Strock proposed we remove "dry spell" language. Discussed glare. Determined glare not a concern. Discussed fireworks. No personal fireworks allowed. Strock stated that there should be a limitation on fireworks displays and a notice to abutting property re: fireworks displays. Pierce brought up concern with fireworks displays being open ended in how often they can happen. Suggested some limitations on how many nights of fireworks. Pierce also brought up concerns about fire when dry. Brown brought up once per week. Ernst asked about state laws re: fireworks permitting and fire danger. Then he read them from the internet and brought up issue that there is no state law re: fire danger and fireworks that he could find and proposed that the town consider some condition around fire danger. Fricker proposed that fireworks could happen five times. Strock suggested 1. Maximum of 5 fireworks displays put on in any one calendar year 2. They have to give at least 14 days notice to the Baldwin Fire Department and landowner's within a quarter mile of the property boundary 3. The fire department has the authority to say no to the request based on fire danger or the individuals launching the fireworks 4. The campground shall follow state law in regards to times for the fireworks display. Sanborn brought up that when they do a fireworks display it has to be done by a professional. Brown stated that it is not their intent to always have professional displays. Fricker brought up licensed pyrotechnician as a Maine state license. Pierce brought up that the insurance company that covers Nature's Wilderness might be concerned. Pierce brought up requiring they have insurance. Ernst brought up that fireworks have not been legal in Maine for long and asked Feldman to share any information re: fireworks and what other towns are doing. Ernst brought up asking about a licensed pyrotechnician. Feldman said that many towns require a licensed pyrotechnician and often a minimum of \$10,000 for a 30 minute event. Brown brought up that lots of fireworks require a pyrotechnician license to purchase them. Fricker brought up a concern about fireworks in the woods. He also stated that he thinks Nature's Wilderness should be able to do this. Fricker asked if someone in our fire department has some competence/capability with fireworks and perhaps we could require this individual to be present. Sunderland brought up that Nature's Wilderness has their own fire truck. Also proposed the high fire danger designation as a time to not have fireworks. Strock brought up tabling fire danger, fire department involvement on hold and asked the fire chief to attend the

next meeting. Discussed industrial odors. Discussed ATV use could be the only issue. Brown brought up a conversation with a Game Warden and because a campground they do have to follow state law and do not get a private property exemption. Individuals need to register their ATV's even if just for the weekend. Discussed off street parking and that the specs as proposed have sufficient parking. Discussed sewage and discharge of waste water and compliance being met and the applicant has provided septic designs. Feldman discussed permitting that goes through the state. Discussed erosion and being overseen by DEP. Discussed stormwater drainage. Brown asked how much more time this would take to "get a vote". Strock discussed getting a revised set of conditions by the second meeting in June.

- B.** Discussed Flint and Pierce's work re: comparing local subdivision ordinance to state ordinance. Discussed asking MMA. MMA said that have to follow State law controls and the town can choose to be more restrictive. But if the town is less restrictive, have to follow State law. Pierce and Flint prepared a document that was provided to everyone. Flint discussed definitions in local land use ordinance vs. state and Pierce and Flint assessed where they felt the state was stricter than the town. Summary was that we need to do something to get our sub division ordinance in order. Flint brought up that for a definition that is less strict has to be submitted in writing to the registry of deeds in June of 2020. Flint brought up some discrepancy re: town definition of a dwelling unit. Flint brought up that term "more restrictive" is an issue to understand. Flint discussed some case law around stricter in regards to more subdivisions vs. less as opposed to "more restrictive" within a particular definition. Question came up of if we submit our ordinance to the registry of deeds and take action, do we need a town meeting? If we take the course of inaction, and let state law prevail, we still need a new subdivision ordinance by January of 2021. Ernst stated that until the voters approve a new subdivision ordinance then we automatically default to the state position. Strock suggested we think about this and discuss at the next meeting to decide a course of action. The question being do we file to preserve what we have or do we not file?
- C.** Discussed Waters Edge LLC wanting to have subdivision that the subdivision proposal would only apply to their lot and the board would take into "consideration" the other two lots, but they are not necessarily required to follow subdivision requirements. Strock stated that it allows Mr. Theriault to submit his subdivision application for his parcel. Does not mean the board is approving his subdivision, but rather that the board can entertain his application.

V. New Business

- A. Strock brough up James MacDonald coming before the board with an application for a subdivision on the property across the road from the old school/town office. It is for leasing to solar panels but some intricacies that require it to be a minor subdivision. Strock stated he will forward to info for the next meeting.

VI. Adjournment

Motion to adjourn by Fricker at 9:12pm seconded by Pierce, voted unanimously.

Submitted by: Nichol Ernst

David Strock

May 27, 2020, 2:49
PM (12 days ago)

to Josiah, Matthew, Nichol, Matt, Glen, Danielle, Bob, Ijfeldman

At the 2/27/20 meeting, at 31.05 minutes, I asked the question of NWR...There are no plans to sell anything from the 469 acre lot. The answer from Gerry was no, it will all be campground. I am not quoting, but pretty darn close. I did not hear a reference to the same issue in the meetings before and after.

David Strock

Wed, May 27, 9:39
AM (12 days ago)

to Josiah, Matthew, Nichol, Matt, Glen, Danielle, Bob, Ijfeldman

Planning Board Agenda -

- (1) Review and Vote on Prior Minutes
- (2) Continued Review of Nature's Wilderness CUP (same documents as last meeting)
- (3) Review of Subdivision Ordinance issues (state v. local) (new documents)
- (4) Discussion of legal questions posed at last meeting
- (5) Entertain motion to adjourn

NOTE - Meeting will be held virtually, so please contact baldwinselectmen@gmail.com or call 625-9107 for Zoom meeting information.

Thank you. David

Comparison of Baldwin's Subdivision Ordinance with Maine statute. Submitted by Josiah Pierce and Bob Flint. Statutes in black, Pierce and Flint commentary in red

There are a number of definitions in "MRS Title 30-A 4401. Definitions" that are the same word for word or the same with minor word differences that don't appear to change the meaning of the definitions. We haven't included them in this comparison.

The statute has a "better" definition of many of the exemptions because each exemption is listed in a stand-alone paragraph instead of them all being lumped together in one long, run-on, sentence which can be difficult to parse.

There are also a number of definitions that do have different definitions or definitions in the statute that don't appear in the Baldwin ordinance. They are listed below stated as an ISSUE followed by a COMMENT. When our comments indicate the statute is stricter, we indicate why. The Baldwin ordinance clause is in black (if the town ordinance has a corresponding clause), the statute in red.

ISSUE

1. **Densely developed area.** "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

COMMENT

This definition is not in our ordinance and Not sure this has any application in our subdivision ordinance but may have in the land use ordinance. Stricter because we do not have this in our ordinance.

ISSUE

Dwelling Unit: A room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, and sleeping facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums.

2. **Dwelling unit.** "Dwelling unit" means 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.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

COMMENT

The statute definition of dwelling unit differs in a number of ways. Baldwin's definition dwells on what is in the unit where as the statute talks about units that are sold or leased which are intended for habitation. Stricter because intent is now the standard

ISSUE

2-B. Farmland. "Farmland" means a parcel consisting of 5 or more acres of land that is:

A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or [PL 2009, c. 356, Pt. C, §1 (NEW).]

B. Used for the production of agricultural products as defined in Title 7, section 152, subsection 2. [PL 2009, c. 356, Pt. C, §1 (NEW).] [PL 2009, c. 356, Pt. C, §1 (NEW).]

COMMENT

Farmland is not defined in our ordinance. Not sure if it needs to be. Stricter because we do not have in our ordinance

ISSUE

Freshwater Wetland: Areas which are 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; and are not part of a great pond, coastal wetland, river, stream or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

2-A. Freshwater wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. 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; and [PL 1989, c. 404, §1 (NEW).]

B. Not considered part of a great pond, coastal wetland, river, stream or brook. [PL 1989, c. 404, §1 (NEW).]

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

[PL 1989, c. 404, §1 (NEW).]

COMMENT

This is Stricter. There are additional criteria.

ISSUE

New Structure or Structures: Includes any structure for which construction begins on or after

September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure.

5. New structure or structures. "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

COMMENT

Stricker. There are additional criteria.

ISSUE

3. Principal structure. "Principal structure" means any building or structure in which the main use of the premises takes place.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW); PL 1989, c. 497, §1 (RPR).]

COMMENT

Principle structure is not defined in our ordinance. Not sure that it needs to be. This is lacking in our ordinance.

ISSUE

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel shall be considered to create the first 2 lots and the next dividing of either of the first 2 lots, by whomever accomplished, unless otherwise exempted herein shall be considered to create a third lot, unless:

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

C. A lot of 40 or more acres must be counted as a lot, except:

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435 or a municipality's shoreland zoning ordinance. [PL 2001, c. 651, §1 (AMD).]

COMMENT

Baldwin's ordinance is the same in the statute in part A but the statute has exemptions B and C.

C is optional for the municipality, B is not and is important. A statement of what exists now. I am not sure of the meaning. I think it allows for legal subdividing over time, ie. one division every five years.

ISSUE

b. The division of the tract or parcel is otherwise exempt under this definition.

A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality or by transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of these regulations, unless the intent of the transferor in any transfer or gift is to avoid the objectives of these regulations. If real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this definition. The grant of bona fide security interest in an entire lot that has been exempted from the definition under this paragraph, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of these regulations.

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than 1/2 the assessed value of the real estate. [PL 2001, c. 359, §3 (NEW).]

D-5. A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [PL 2001, c. 359, §3 (NEW).]

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection. [PL 2013, c. 126, §1 (AMD).]

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

H-2. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of "subdivision" except as provided in this subchapter. A municipality that has a definition of "subdivision" that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2021. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2020 for the definition to remain valid for the grace period ending January 1, 2021. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located. [PL 2019, c. 174, §1 (AMD).]

I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [PL 2001, c. 359, §5 (AMD).]

[PL 2019, c. 174, §1 (AMD).]

COMMENTS

This is the run-on sentence that contains exemptions in Baldwin's ordinance.

D-4 Stricter. The statute more closely defines who is a relative for the purposes of the exemption and the consideration value of the gift. A gift to a cousin or an aunt, even though a blood relative, would not appear to qualify. **Donor must have owned land for five years to qualify**

D-5. Stricter. The statute includes the requirement that the gift be accepted by the municipality.

D-6. Stricter. The statute talks about transfer to an abutter but also talks about merged lands. This is the interesting situation where transfer to an abutter on the other side of a road creates two lots, "the new lot appears to qualify as an exemption" that cannot be merged due to Baldwin and the statute's definition of a Tract or parcel of land.

E. Stricter. The statute gives exemption to or "grandfathers" divisions and structures which legally existed prior to Sep 23, 1971. Baldwin's ordinance does not include this.

H. This is the statute paragraph that doesn't need to be included in the Baldwin ordinance but is directive in that municipalities are required to get into conformance with state statute. Appears this requirement has been enacted several times, this being the latest.

I. Stricter. This is a clarification.

ISSUE

a. Both divisions are accomplished by a subdivider who has retained one of the lots for the

subdivider's own use as a single-family residence or for open space land as defined in Title 36 M.R.S.A., §1102 for a period of at least 5 years before the second dividing occurs; or |

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter. [PL 2001, c. 359, §1 (AMD).]

COMMENTS

(1) Stricter. Includes the exemption for open space which doesn't exist in Baldwin's ordinance.

(2) Stricter or a clarification?

ISSUE

In determining the number of dwelling units in a structure, the provisions regarding the determination of the number of lots shall apply, including exemptions from the definition of a subdivision of land.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

COMMENT

Stricter. a clarification

ISSUE

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 shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

6. Tract or parcel of land. "Tract or parcel of land" means all contiguous land in the same ownership, except 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 after September 22, 1971.

[PL 2007, c. 49, §1 (AMD).]

COMMENT

Stricter. The statute gives clarity about which roads divide a panel into separate lots based on when the road was established ie prior to September 22, 1971.

ISSUE

7. Outstanding river segments. In accordance with Title 12, section 402, "outstanding river segments" means:

Q. The Saco River from the Little Ossipee River to the New Hampshire border; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

COMMENT

Stricter. This is not in the Baldwin Ordinance. Not clear what if any impact it would have.

ARTICLE 3 - DEFINITIONS

In general, words and terms used in these regulations shall have their customary dictionary meanings. More specifically, any word or term defined in the Baldwin Zoning Ordinance shall have the definition contained in that ordinance, unless defined differently below; other words and terms used herein are defined as follows:

Affordable Housing: Housing units which will meet the sales price and/or rental targets established by the comprehensive plan for housing affordability.

Applicant: The person applying for subdivision approval under these regulations.

Average Daily Traffic (ADT): The average number of vehicles per day that enter and exit the premises or travel over a specific section of road.

Buffer Area: A part of a property or an entire property, which is not built upon and is specifically intended to separate and thus minimize the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

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.

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.

Complete Application: An application shall be considered complete upon submission of the required fee and all information required by these regulations, or by a vote by the Board to waive the submission of required information. The Board shall issue a written statement to the applicant upon its determination that an application is complete.

Complete Substantial Construction: The completion of a portion of the improvements which represents no less than thirty percent of the costs of the proposed improvements within a subdivision. If the subdivision is to consist of individual lots to be sold or leased by the subdivider, the cost of construction of buildings on those lots shall not be included. If the subdivision is a multifamily development, or if the applicant proposes to construct the buildings within the subdivision, the cost of building construction shall be included in the total costs of proposed improvements. ,

Comprehensive Plan: A document or interrelated documents adopted by the Legislative Body, containing an inventory and analysis of existing conditions, a compilation of goals for the development of the community, an expression of policies for achieving these goals, and a strategy for implementation of the policies.

Conservation Easement: A nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

Density: The number of dwelling units per acre of land.

Developed Area: Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, and streets.

1. Densely developed area. "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

Direct Watershed of a Great Pond: That portion of the watershed which drains directly to the great pond without first passing through an upstream great pond. For the purposes of these regulations, the watershed boundaries shall be as delineated in the comprehensive plan. Due to the scale of the map in the comprehensive plan there may be small inaccuracies in the delineation of the watershed boundary. Where there is a dispute as to exact location of a watershed boundary, the Board or its designee and the applicant shall conduct an on-site investigation to determine where the drainage divide lies. If the Board and the applicant can not agree on the location of the drainage divide based on the on-site investigation, the burden of proof shall lie with the applicant to provide the Board with information from a professional land surveyor showing where the drainage divide lies.

Driveway: A vehicular accessway serving two dwelling units or less.

Dwelling Unit: A room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, and sleeping facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums.

2. Dwelling unit. "Dwelling unit" means 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.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

Engineered Subsurface Waste Water Disposal System: A subsurface waste water disposal system designed, installed, and operated as a single unit to treat and dispose of 2,000 gallons of waste water per day or more; or any system designed to be capable of treating waste water with higher BOD, and total suspended solids concentrations than domestic waste water.

2-B. Farmland. "Farmland" means a parcel consisting of 5 or more acres of land that is:

A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or [PL 2009, c. 356, Pt. C, §1 (NEW).]

B. Used for the production of agricultural products as defined in Title 7, section 152, subsection 2. [PL 2009, c. 356, Pt. C, §1 (NEW).] [PL 2009, c. 356, Pt. C, §1 (NEW).]

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.

Freshwater Wetland: Areas which are 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; and are not part of a great pond, coastal wetland, river, stream or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

2-A. Freshwater wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. 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; and [PL 1989, c. 404, §1 (NEW).]

B. Not considered part of a great pond, coastal wetland, river, stream or brook. [PL 1989, c. 404, §1 (NEW).]

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

[PL 1989, c. 404, §1 (NEW).]

Great Pond: Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has surface area in excess of thirty acres, except for the purposes of these regulations, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

High Intensity Soil Survey: A map prepared by a Certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water table or bedrock at that location. Single soil test pits and their evaluation for suitability for subsurface waste water disposal systems shall not be considered to constitute high intensity soil surveys.

100-Year Flood: The highest level of flood that, on the average, has a one percent chance of occurring in any given year.

High Water Mark:

Inland 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. In the case of wetlands adjacent to rivers, streams, brooks, or ponds, the normal high-water mark is the upland edge of the wetland, and not the edge of the open water.

Level of Service: A description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the Highway Capacity Manual, 1991 edition, published by the National Academy of Sciences, Transportation Research Board. There are six levels of service ranging from Level of Service A, with free traffic flow and no delays to Level of Service F, with forced flow and congestion resulting in complete failure of the roadway.

Multifamily Development: A subdivision which contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums or mobile home parks.

Municipal Engineer: Any registered professional engineer hired or retained by the municipality, either as staff or on a consulting basis.

Net Residential Acreage: The total acreage available for the subdivision, as shown on the proposed subdivision plan, minus the area for streets or access and the areas that are unsuitable for development as outlined in Section 12.10.C.3.

Net Residential Density: The average number of dwelling units per net residential acre.

New Structure or Structures: Includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure.

5. New structure or structures. "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

3. Principal structure. "Principal structure" means any building or structure in which the main use of the premises takes place. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW); PL 1989, c. 497, §1 (RPR).]

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

Planning Board: The Planning Board of the Town of Baldwin

Preliminary Plan: The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

Professional Engineer: A professional engineer, registered in the State of Maine.

Public Water System: A water supply system that provides water to at least 15 service connections or services water to at least 25 individuals daily for at least 30 days a year.

Recording Plan: An original of the Final Plan, suitable for recording at the Registry of Deeds and which need show only information relevant to the transfer of an interest in the property, and

which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts, and building lines.

Reserved Affordable Housing: Affordable housing which is restricted by means of deed covenants, financing restrictions, or other binding long term methods to occupancy by households making 80% or less of the area median household income.

Sight Distance: The length of an unobstructed view from a particular access point to the farthest visible point of reference on a roadway. Used in these regulations as a reference for unobstructed road visibility,

Sketch Plan: Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

Street: Public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways.

Street Classification:

Arterial Street: A major thoroughfare which serves as a major traffic way for travel between and through the municipality. The following roadways shall be considered arterial streets: State Routes 5, 11, 107, 113 and The Douglas Hill Rd. and the River Road.

Collector Street: A street with average daily traffic of 200 vehicles per day or greater, or streets which serve as feeders to arterial streets, and collectors of traffic from minor streets.

Cul-de-sac: A street with only one outlet and having the other end for the reversal of traffic movement.

Industrial or Commercial Street: Streets servicing industrial or commercial uses.

Minor Residential Street: A street servicing only residential properties and which has an average daily traffic of less than 200 vehicles per day.

Private Right-of-Way: A minor residential street servicing no more than eight dwelling units, which is not intended to be dedicated as a public way.

Subdivision: The division of a tract or parcel of land into 3 or more lots within any 5-year period, that begins after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

4. Subdivision. "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel

of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel shall be considered to create the first 2 lots and the next dividing of either of the first 2 lots, by whomever accomplished, unless otherwise exempted herein shall be considered to create a third lot, unless:

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

C. A lot of 40 or more acres must be counted as a lot, except:

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435 or a municipality's shoreland zoning ordinance. [PL 2001, c. 651, §1 (AMD).]

a. Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence or for open space land as defined in Title 36 M.R.S.A., §1102 for a period of at least 5 years before the second dividing occurs; or |

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter. [PL 2001, c. 359, §1 (AMD).]

b. The division of the tract or parcel is otherwise exempt under this definition.

A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality or by transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of these regulations, unless the intent of the transferor in any transfer or gift is to avoid the objectives of these regulations. If real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this definition. The grant of bona fide security interest in an entire lot that has been exempted from the definition under this paragraph, or subsequent transfer of that entire lot by the original holder of the security

interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of these regulations.

D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [PL 2001, c. 359, §3 (NEW).]

D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [PL 2001, c. 359, §3 (NEW).]

D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [PL 2001, c. 359, §3 (NEW).]

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than 1/2 the assessed value of the real estate. [PL 2001, c. 359, §3 (NEW).]

D-5. A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [PL 2001, c. 359, §3 (NEW).]

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the **merged** land, then the previously exempt division creates a lot or lots for the purposes of this subsection. [PL 2013, c. 126, §1 (AMD).]

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

In determining the number of dwelling units in a structure, the provisions regarding the determination of the number of lots shall apply, including exemptions from the definition of a subdivision of land.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

H-2. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of "subdivision" except as provided in this subchapter. A municipality that has a definition of "subdivision" that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2021.

Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2020 for the definition to remain valid for the grace period ending January 1, 2021. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located. [PL 2019, c. 174, §1 (AMD).]

I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. [PL 2001, c. 359, §5 (AMD).]
[PL 2019, c. 174, §1 (AMD).]

Subdivision, Major: Any subdivision containing more than four lots or dwelling units, or any subdivision containing a proposed street.

Subdivision, Minor: Any subdivision containing four lots or dwelling units or less, 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 shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

6. Tract or parcel of land. "Tract or parcel of land" means all contiguous land in the same ownership, except 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 after September 22, 1971.
[PL 2007, c. 49, §1 (AMD).]

Usable Open Space: That portion of the common open space which due to its slope, drainage characteristics and soil conditions can be used for active recreation, horticulture or agriculture. In order to be considered usable open space, the land must not be poorly drained or very poorly drained, have ledge outcroppings, or areas with slopes exceeding 10%.

7. Outstanding river segments. In accordance with Title 12, section 402, "outstanding river segments" means:

Q. The Saco River from the Little Ossipee River to the New Hampshire border; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]