

## Comparison of Baldwin's Subdivision Ordinance with Maine statute.

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 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).]

#### **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 Balwin Ordinance. Not clear what if any impact it would have.