

South Portland City Council  
***Position Paper of the City Manager***

***Subject:***

**ORDINANCE #3-14/15 – Amending Chapter 24, “Subdivisions” regarding vernal pools and natural, historic and archaeological resources. Passed first reading on 7/7/14. ROLL CALL VOTE. Passage requires majority vote.**

***Position:***

The Comprehensive Plan Implementation Committee has made proposed amendments to Chapter 24, “Subdivisions,” and Chapter 27, “Zoning,” as part of its charge of implementing the City’s new Comprehensive Plan. This ordinance amendment addresses changes in Chapter 24.

The new ordinance includes language defining natural, historic and archaeological resources and vernal pools. It also requires information about such sites in relation to impact, preservation and mitigation etc. from those submitting applications for minor and major subdivisions.

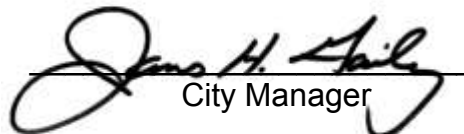
The Planning Board held a public hearing on April 22, 2014 and by a vote of 5-0 (Laidley absent; District At-Large vacant), the Planning Board recommended approval of the subdivision and zoning text amendments. Attached is a copy of the Planning Board report. This report covers both this item and Chapter 27, the next item on the agenda.

The ordinance passed first reading on July 7, 2014 and is in order for second reading and action.

Tex Haeuser will be at Monday’s meeting to answer any questions.

***Requested Action:***

Council passage of ORDINANCE #3-14/15.

  
City Manager

## MEMORANDUM

**To:** South Portland City Council

**From:** Tex Haeuser, Planning & Development Director  
Steve Puleo, Community Planner

**Cc:** James H. Gailey, City Manager  
Jon Jennings, Assistant City Manager  
Patricia Doucette, Deputy Planning & Development Director  
Steve Puleo, Community Planner  
Sherry Nadeau, Administrative Assistant  
Adin Wolfgram, Planning Secretary

**Date:** April 29, 2014

**Subject:** Proposed Natural/Historic Resources and Disability Zoning Text Amendments—  
Planning Board Public Hearing of April 22, 2014

### **INTRODUCTION**

As its second action to meet the charge of implementing the City's new Comprehensive Plan, the Comprehensive Plan Implementation Committee has brought forward a proposal to amend the Subdivision and Zoning Ordinances with three sets of revisions:

- A few Shoreland Zoning changes requested by Mike Morse at DEP.
- New Subdivision and Zoning requirements relative to historic and natural resources, including vernal pools.
- An "opt-in" streamlining amendment per the new State law that would let the Code Enforcement Officer grant variances for ramps or other disability structures that encroach in setbacks (so that disabled folks don't have to wait in rehab centers, etc., until the monthly Board of Appeals meeting rolls around).

On April 22<sup>nd</sup> the Planning Board held a public hearing regarding these proposed amendments after having workshopped them on March 25th.

Legal advertisements regarding this request appeared in the Portland Press Herald on March 26th and 31st, 2014, and a notice was posted at the City Hall on March 26th, 2014.

### **ZONING RECOMMENDATION FROM THE PLANNING BOARD**

By a vote of 5–0 (Laidley absent; District At-Large vacant), the Planning Board recommends approval of the subdivision and zoning text amendments regarding vernal pools and natural resources, historic and archaeological resources, shoreland zoning, and the streamlining the approval process for disability structures in need of a variances. The recommendation is based on the determination that the zoning amendments are pursuant to and consistent with the Comprehensive Plan.

## **Public Comments from the Draft Meeting Minutes of April 22, 2014**

**T. Haeuser** stated the amendments (other than for the disability structures) come from the Comprehensive Plan. The Planning Board had a workshop on the 25th. Amendments are required by the State to comply with the Growth Management Act. The Planning Board will make a recommendation to the City Council.

In Section 24-12 it is required that applicants describe any historic/archaeological resources and vernal pools. In section 24-18 there is a missing item to include in recommendation as part of the recommendation for approval. It includes for major subdivisions the narrative describing how historic/archeological items are to be treated as contained in the section for minor subdivisions. It will be 24-18(26). In the zoning ordinance site plan review application submissions section we similarly are asking the applicants to tell us about these resources. Under standards for site plan we say they need to be preserved to what is feasible and demonstrate options for preserving.

The Shoreland zoning is a small change to coastal wetlands affected by tide (astronomical high tide). This better delineates the coastal wetland boundary. In the ordinance portion definitions are repeated. The amendments also clarify in the performance standards that land below normal high water line should not be included when calculating lots. In the disability structure item, the Board of Appeals already has the ability to give variances to disability structures. The CEO now can take care of this. These amendments come out of the Comp Plan implementation Committee. They will go to City Council after this.

### **PUBLIC SESSION CLOSED**

F. Hagan motioned to recommend to the City Council approval of the subdivision and zoning text amendments regarding vernal pools and natural resources, to repeat #16 to 24-18(26), historic and archaeological resources, shoreland zoning, and the streamlining the approval process for disability structures in need of a variances. The recommendation is based on the determination that the zoning amendments are pursuant to and consistent with the Comprehensive Plan, K. Phillips seconded 5-0 (Laidley absent, District At-Large vacant).

### **Attachment**

1. Proposed Subdivision and Zoning Text Amendments v04-29-14



CITY OF SOUTH PORTLAND

GERARD A. JALBERT  
Mayor

JAMES H. GAILEY  
City Manager

SUSAN M. MOONEY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDINANCE #3-14/15

**THE COUNCIL** of the City of South Portland hereby ordains that Chapter 24 "Subdivisions" of the "Code of Ordinances of the City of South Portland, Maine" be and hereby are amended as follows (additions are underlined; deletions are ~~struck out~~) and;

. . .

**Sec. 24-3. Definitions.**

. . .

Archaeological resource. A site with established or potential value as a location of prehistoric or historic archaeological significance as identified by the City's Comprehensive Plan or a list of local archeological resources adopted by the City Council.

Historic resource. A building, structure, or site with established historic significance as identified by the City's Comprehensive Plan or a list of local historic resources adopted by the City Council.

Significant wildlife habitat. Any area that is identified as significant wildlife habitat in accordance with the state's Natural Resources Protection Act.

Vernal pool. A natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species.

Vernal pool, significant. A vernal pool that is defined as significant in accordance with the state's Natural Resources Protection Act determined by the number and type of pool-breeding amphibian egg masses in a pool, or the presence of fairy shrimp (*Eubbranchipus* spp.) or use of the pool by threatened or endangered species.

District One  
MICHAEL R. POCK

District Two  
PATRICIA A. SMITH

District Three  
MELISSA E. LINSKOTT

District Four  
LINDA C. COHEN

District Five  
GERARD A. JALBERT

At Large  
MAXINE R. BEECHER

At Large  
THOMAS E. BLAKE

...

**Sec. 24-12. Submissions.**

...

- (14) Information on the presence on the property of any historic or archaeological resources sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the City, vernal pools, or rare or irreplaceable natural areas, or any public rights for physical or visual access to the shoreline (including copies of any legal instruments relating to any such public rights) on or across the property.
- (15) A description of how the impact of the development activities on vernal pools, including significant vernal pools, and significant wildlife habitats will be minimized and what actions will be taken to mitigate any negative impacts on these resources. If the proposed activities require a permit or other approval under the state's Natural Resources Protection Act or from the Army Corps of Engineers, any such application and supporting information shall be provided as part of the submission.
- (16) A narrative describing how historic or archaeological resources will be preserved and incorporated into the development plan. If a resource will be removed, altered, or not included as part of the development plan, a statement shall be provided as to why the resource cannot be preserved and the options considered but rejected for including it as part of the development plan.

...

**Sec. 24-18. Submissions.**

...

- (24) Information on the presence on the property of any historic or archaeological resources sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the City, vernal pools, or rare or irreplaceable natural areas, or any public rights for physical or visual access to the shoreline (including copies of any legal instruments relating to any such public rights) on or across the property.
- (25) A description of how the impact of the development activities on vernal pools, including significant vernal pools, and significant wildlife habitats will be minimized and what actions will be taken to mitigate any negative impacts on these resources. If the proposed activities require a permit or other approval under the state's Natural Resources Protection Act or from the Army Corps of Engineers, any such application and supporting information shall be provided as part of the submission.
- (26) A narrative describing how historic or archaeological resources will be preserved and incorporated into the development plan. If a resource will be removed,

altered, or not included as part of the development plan, a statement shall be provided as to why the resource cannot be preserved and the options considered but rejected for including it as part of the development plan.

...

[Fiscal Note: Less than \$1000]

Dated: July 7, 2014