Revisions to Shoreland Zoning section of the UDO, by Tim Ferrell, Surry Code Enforcement Officer

Earlier this year, I was in a continuing education seminar on shoreland zoning put on by the Maine Department of Environmental protection (MDEP). In that session, one of the instructors, Ms. Dawn Hurd of MDEP, made a reference to the fact that a certain town did not have the authority to enforce shoreland regulations because their shoreland zoning section had not been formally approved by MDEP. During a break, I asked her if Surry had formal approval on its shoreland zoning. She indicated she would get back to me.

Later that week, she contacted me via email to say that Surry did not have an MDEP-approved shoreland zoning section. Since the UDO had been updated around 2016, I sent her a copy of our current shoreland zoning and asked for the approval. In her response, she indicated that the current version in use was not acceptable, and attached an MDEP template to use to upgrade our shoreland section to make it consistent with the MDEP template.

Over the next several months, I sent her several updated versions for review. With each submittal, we got closer to the format and wording that would be suitable for MDEP approval. The final version of that process is what is being voted upon.

Most of the changes have to do with formatting. For example, our organization of the shoreland regulations (ie titles, headings, subheadings, section numbers) did not match MDEP’s template, and had to be revised, even though the words were the same. In addition, we had some references to forestry, which is solely the responsibility of the Maine State Forest Service. All of these had to be found and deleted, so there is no reference to forestry in the shoreland regs. The new shoreland section is required to include a land use table, which our old section did not. It was not included in the old shoreland section because other parts of the UDO already have a Land Use Table. Since approval by MDEP requires a land use table in the shoreland section that delineates land use only in shoreland areas, I used the revised Land Use Table developed by the current UDO committee to develop the table required for the shoreland section. I used the UDO committee table in order to avoid any conflicts between the two tables. There are no changes to what is allowed or not allowed in the shoreland zones.

That being the case, it is logical to ask why we need to have a revised shoreland zoning section. The answer is that without formal MDEP approval, we do not have a solid legal basis from which to enforce our shoreland zoning regulations. To get formal MDEP approval, the Town of Surry first needs to vote to accept the new format. Without that acceptance, MDEP will not approve our shoreland regulations. What that means to us is that without a voter and MDEP-approved shoreland zoning section, a clever applicant could have a legal basis to push for a development not currently allowed under our rules, such as a commercial development in a residential shoreland zone. In addition, the CEO would be limited in what action he can take to curtail violations of shoreland zoning regulations, and for what projects he can refuse to issue permits. By an affirmative Town vote and by formal MDEP approval, our shoreland zone can be protected in accordance with state, and more importantly, local, guidelines on a sound legal basis.