



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1381

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H.P. 960

House of Representatives, April 11, 2017

### An Act To Clarify Appeals of Municipal Land Use Decisions

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Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative MONAGHAN of Cape Elizabeth.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 30-A MRSA §2691, sub-§3, ¶C**, as enacted by PL 1987, c. 737, Pt. A, §2  
3 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is  
4 further amended to read:

5 C. The board may provide, by regulation which ~~shall~~ must be recorded by the  
6 secretary, for any matter relating to the conduct of any hearing, ~~provided except~~  
7 the chair may waive any regulation upon good cause shown. Unless otherwise  
8 established by charter or ordinance, the board shall conduct a de novo review  
9 pursuant to paragraph D. If a charter or ordinance provides for an appellate review,  
10 the board shall limit its review to the record established by the board or official  
11 whose decision is the subject of the appeal and to the arguments of the parties. The  
12 board may not accept new evidence as part of an appellate review.

13 **Sec. 2. 30-A MRSA §2691, sub-§3, ¶F**, as amended by PL 2003, c. 635, §1, is  
14 further amended to read:

15 F. The board may reconsider any decision reached under this section within 45 days  
16 of its prior decision. A request to the board to reconsider a decision must be filed  
17 within 10 days of the decision that is to be reconsidered. A vote to reconsider and the  
18 action taken on that reconsideration must occur and be completed within 45 days of  
19 the date of the vote on the original decision. The board may conduct additional  
20 hearings and receive additional evidence and testimony as provided in this  
21 subsection.

22 Notwithstanding paragraph G, appeal of a reconsidered decision must be made within  
23 15 days after the decision on reconsideration or within the applicable time period for  
24 any final decision if the request is also the subject of another municipal  
25 administrative review process.

26 **Sec. 3. 30-A MRSA §2691, sub-§3, ¶H** is enacted to read:

27 H. For purposes of this section, a final decision occurs when the request has received  
28 all required municipal administrative approvals by the board of appeals, the planning  
29 board or municipal review authority, a site plan or design review board, a historic  
30 preservation review board and any other review board created by municipal charter or  
31 ordinance. If the final municipal administrative review is by a board other than the  
32 board of appeals, the time for appeal is that set out under section 4482-A. Any denial  
33 of the request by the board of appeals must be considered a final decision even if  
34 other municipal administrative approvals are required for the request, and the  
35 decision must be appealed within 45 days of the date of the vote to deny or within 15  
36 days of final action on a reconsideration that results in a denial of the request.

37 **Sec. 4. 30-A MRSA §4482, sub-§1**, as enacted by PL 2015, c. 459, §1, is  
38 amended to read:

39 **1. Review of significant municipal land use decision.** A complaint may be filed  
40 either in the general docket of the Superior Court for the county in which the municipality  
41 is located or directly in a docket designated by the Supreme Judicial Court for business

1 matters. Any complaint filed in the general docket of the Superior Court for the county in  
2 which the municipality is located must be transferred upon request of any party to the  
3 proceeding to a docket designated by the Supreme Judicial Court for business matters. An  
4 appeal under this section may not be filed until the issuance of a final decision by the  
5 municipality pursuant to section 2691 or 4482-A.

6 **Sec. 5. 30-A MRSA §4482-A** is enacted to read:

7 **§4482-A. Review of municipal administrative land use decision**

8 This section governs the process for seeking review of municipal administrative land  
9 use decisions other than a significant municipal land use decision under section 4482 or a  
10 decision of a board of appeals under section 2691.

11 **1. Review of municipal administrative land use decisions.** A party may take an  
12 appeal within 30 days of the date of the vote on a final decision to the Superior Court,  
13 except that the time period may be extended by the court upon motion for good cause  
14 shown. The hearing before the Superior Court must be without a jury.

15 **2. Final decision.** For purposes of this section, a final decision occurs when an  
16 application has received all required municipal administrative approvals by the board of  
17 appeals, the planning board or municipal review authority, a site plan or design review  
18 board, a historic preservation review board and any other review board created by  
19 municipal charter or ordinance. No appeal may be made prior to review and final  
20 approval by each applicable municipal administrative review board. A denial of an  
21 application must be considered a final decision even if other municipal administrative  
22 approvals are required and must be appealed in accordance with the requirements of the  
23 Maine Rules of Civil Procedure, Rule 80B. If the final municipal administrative decision  
24 is by the board of appeals, the time for appeal is that set out under section 2691.

25 **Sec. 6. Maine Revised Statutes headnote amended; revision clause.** In the  
26 Maine Revised Statutes, Title 30-A, chapter 190, in the chapter headnote, the words  
27 "judicial review of significant municipal land use decision" are amended to read "judicial  
28 review of significant municipal land use decisions and municipal administrative land use  
29 decisions" and the Revisor of Statutes shall implement this revision when updating,  
30 publishing or republishing the statutes.

31 **SUMMARY**

32 This bill amends the laws regarding municipal boards of appeal and regarding  
33 appeals of municipal land use decisions to reflect the holding of the Law Court in "Susan  
34 E. Bryant v. Town of Camden et al.," which relates to when a local land use decision is  
35 ripe for appeal. It provides that a final decision occurs when an application has received  
36 all required municipal administrative approvals by a municipality's board of appeals,  
37 planning board or municipal review authority, a site plan or design review board, a  
38 historic preservation review board and any other review board created by municipal  
39 charter or ordinance and that an appeal to the Superior Court may not be made until a  
40 final decision occurs.