

To: Ordinance Review Committee
From: Mark Eyerman
Subject: Background – Review of Multifamily Housing
Date: October 14, 2021

The City's Land Use Ordinance requires that proposals to develop multifamily housing be reviewed and approved under both the subdivision provisions and the site plan review provisions. Here is some background about those requirements and a possible way to improve to the ordinance. The following is Eyerman's brief history of the regulation of multifamily housing. This is a broad brush overview.

The Maine Subdivision Law defines a subdivision as the creation of three or more lots or units in a five year period. Under the state law a structure that creates three or more dwelling units is a subdivision. So all multifamily housing that creates three or more units is subject to review under the state law and any local subdivision regulations. However the state review criteria that a local planning board has to use in reviewing subdivisions do not address many of the types of issues that come up with multifamily housing. Essentially the state standards and the model subdivision regulations are designed to address the layout of residential subdivisions and essentially address the layout of lots and roads and the provision of utilities. However they typically do not address the construction of buildings – design, landscaping, lighting, etc.

To address this "gap", communities began to include multifamily housing in the types of projects requiring site plan review under locally adopted site plan review provisions. The site plan review provisions typically address the use of the lot and many of the natural constraints but also deal with issues relating to the development of the site. This, however, created a duplicative and somewhat overlapping review process in which an applicant for multifamily housing requires two planning board approvals. This is the situation that the City finds itself in with respect to the review and approval of an application for multifamily housing.

This need for both subdivision and site plan review and approval existed for decades. Finally the state recognized this issue a few years ago and the legislature amended the state Subdivision Law to allow municipalities to review multifamily housing proposals under site plan review provisions if the local planning board finds that the locally adopted site plan review standards provide an equivalent or greater level of protection than the state subdivision review criteria. As the City considers possible revisions to the standards and requirements for multifamily housing, I strongly recommend that the Ordinance Review Committee look at the possibility of revising the ordinance so that future applications for multifamily housing are reviewed only under the site plan review provisions. And then the other standards for multifamily housing can be reviewed and revised as appropriate.