

Amanda Stearns

From: Amanda Stearns
Sent: Friday, September 05, 2008 3:33 PM
To: Council
Cc: Nathan Poore; 'William Plouffe'; Albert Farris; Ethan Croce
Subject: Misplaced Dwellings Legal Review
Importance: High

Hi Council Members,

I have asked Bill Plouffe to review this amendment and have summarized my discussion with Bill Plouffe regarding the proposed amendment for misplaced dwellings. Generally, Bill feels that the approach taken is fine. The following suggestions speak more to the details of the process.

1. Using the Conditional Use approval process to enable the BZA to grant relief may not be the best mechanism to achieve this. Bill will be researching the statutes, specifically 30-A M.R.S.A. 4353, §4. C. to determine if this is a better avenue. I have attached this language for your review. There is case law which may effect the interpretation of some of the language.
2. Consider redesigning the fine and penalty section to have a minimum and maximum fine based on standards other than equivalent cost of construction. Using that as a basis, unless more clearly defined, will lead to disputes in value. In addition, using value as a basis for the fines could lead to arbitrary results in that the value of the offending portion of the structure might be high because of the design, materials, and other factors that have nothing to do with the extent of the encroachment.

I will keep you posted on further research. If you would like staff to work on a different structure for fines that addresses Bill's comments please let me know.

Take Care,
Amanda