

NEWRY PLANNING BOARD

Guidance Memorandum

Scope of Board Review: Applications to Amend a Previously Approved Subdivision or Site Plan

Prepared for Planning Board members

August 11, 2026

This memorandum is administrative guidance prepared for the Board's internal use. It summarizes general principles of Maine subdivision and site plan law as of August 2026 and the Town's Unified Development Review Ordinance (UDRO). It is not a legal opinion and does not substitute for case-specific advice from municipal counsel, which the Board should seek for any legally contested, unusually complex, or appeal-sensitive amendment.

Executive Summary

Board members reviewing an application to amend a previously approved subdivision or site plan should keep six points in mind:

1. **An amendment is a new proceeding, not a reopening of the file.** The Board must make findings of fact on whether the proposed change meets the applicable criteria in UDRO Section 5 (30-A M.R.S. § 4404) — it is not re-approving the entire, previously final project. (30-A M.R.S. § 4407)
2. **Keep the review focused on the change.** Scrutinize the proposed revision and its reasonably related impacts. Elements of the original approval that the amendment does not touch generally should not be relitigated, unless the change creates a new nonconformity or undermines a finding the Board previously relied on.
3. **Current standards govern.** The amendment is reviewed under the version of the UDRO and applicable state statutes in effect when the amendment application is filed — not the rules in effect when the original plan was approved. (1 M.R.S. § 302)
4. **Not every field change is a Board matter.** UDRO Section 6.A distinguishes minor modifications the Inspecting Official may approve administratively from “major modifications” (e.g., relocated rights-of-way, grade changes greater than 1%) that require a full amended application and Board review.
5. **Watch for third-party property interests.** Where lots have already been sold or built upon, those owners may hold private rights in the subdivision as platted. Confirm notice is adequate and consider whether affected owners need to be heard.

6. **End with defensible findings.** Every amendment decision should close with written findings tied to the applicable criteria, supported by competent evidence in the record — that record is all a reviewing Superior Court will see on a Rule 80B appeal.

1. Purpose and Applicability

This guidance applies whenever an applicant seeks to change a subdivision or site plan that has already received final Planning Board approval — regardless of whether the applicant's paperwork calls it an “amendment,” “revision,” “modification,” or something else. Examples include lot line adjustments or lot splits within an approved subdivision, changes to an approved building footprint or use, relocation of a road or driveway, revised stormwater or septic design, or changes to conditions of approval.

It does not apply to the routine, as-built field adjustments the Code Enforcement Officer or Inspecting Official may approve administratively during construction under UDRO Section 6.A — the threshold test in Section 2 below explains how to tell the difference.

2. Threshold Question: Does This Require Board Review?

Ask two questions before reaching the merits:

1. **Was there a prior final Planning Board approval?** If the original project never received final approval — it is still pending, or was exempt from review — the current submission is not an amendment. Treat it as an initial application.
2. **Is the change significant enough to require Board action?** UDRO Section 6.A (Inspection — Modification During Construction) allows the Inspecting Official to approve minor field modifications during construction without returning to the Board. “Major modifications” — the ordinance gives relocation of rights-of-way and grade changes greater than 1% as examples — require the applicant to submit an amended application for Board review and approval.

The table below summarizes the distinction. Beyond the construction phase, any proposed change to the density, layout, lot lines, use, or conditions of an approved subdivision or site plan should be treated as requiring an amendment application and full Board review — the narrow administrative allowance in Section 6.A is limited to field conditions encountered while building out an already-approved plan.

Administrative — CEO / Inspecting Officer may approve	Requires an amended application and full Board review
• Field adjustments made necessary by unforeseen site conditions (e.g., hidden ledge, natural springs) • Grade changes of 1% or less • Revised plans are filed with the Board for the record, but no further Board vote is required	• Relocation of a right-of-way • Grade changes greater than 1% • Any change to lot lines, density, use, layout, or conditions of approval • Any change outside the construction phase to an already-final approval

3. Governing Legal Framework

State statutes

30-A M.R.S. § 4404 — sets the substantive criteria (pollution, traffic, sewage disposal, water supply, erosion, municipal services, and others) that a subdivision must satisfy. Newry has codified these criteria locally in UDRO Section 5 (Criteria of Approval).

30-A M.R.S. § 4407 — governs revisions to an existing, approved plat or plan. An application that amends a previously approved subdivision must identify the original plan, and “[i]n reviewing such an application, the municipal reviewing authority shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of section 4404.” This is the statutory anchor for the entire approach in this memorandum: the Board’s findings are about the revision, tested against the same substantive criteria that governed the original approval.

1 M.R.S. § 302 — the general savings statute. It provides that pending actions and proceedings are not affected by a later amendment or repeal of an ordinance. The corollary, applied consistently by the Board, is that a new proceeding — including an amendment application — is governed by the ordinance in effect when that proceeding begins, not the ordinance that applied to the original approval years earlier.

UDRO cross-references

Section 5 (Criteria of Approval) — the local codification of 30-A § 4404, applied to the amendment.

Section 6.A (Inspection) — distinguishes administrative field modifications from “major modifications” requiring an amended application (see Section 2, above).

Section 4 (Administration) — general application, public hearing, and conditions-of-approval provisions that apply to an amendment application in the same manner as an initial application.

Note: Section 1.H of the UDRO (“Amendments”) governs how the Town amends the ordinance itself through town meeting — a different subject from an applicant’s amendment to an individual, previously approved plan, which is the focus of this memorandum.

4. The Proper Scope of Review: Focused, Not De Novo

The central judgment call for the Board on any amendment application is how much of the file to reopen. Two principles work together:

4.1 Start from the change, not the whole project

Section 4407 asks the Board to find whether the proposed revision meets the Section 4404 / UDRO Section 5 criteria. In practice, that means examining how the specific change affects traffic, water supply, sewage disposal, stormwater, erosion, and the other applicable criteria — not re-litigating aspects of the design the amendment does not touch. For example, an application to split one lot within an already-approved subdivision should focus the Board’s review on whether the two resulting lots (individually and together) satisfy the applicable criteria — adequate sewage disposal area, road frontage, sight distance for new driveways, and similar change-specific questions — rather than re-approving the subdivision’s overall road network, density, or open space design, which are unaffected by the split.

4.2 Broaden the review when the change requires it

A focused review is not a rubber stamp. The Board should look beyond the immediate change — and may need to revisit findings from the original approval — when:

- The amendment creates or worsens a nonconformity (e.g., a resulting lot no longer meets minimum frontage or lot size);
- The change has cumulative or system-wide effects — for example, added traffic, stormwater, or wastewater loading that the original approval’s infrastructure was not sized to handle;

- Conditions on the ground have materially changed since the original approval in ways relevant to the applicable criteria (e.g., a road since accepted by the Town, a different flood hazard designation, a since-identified habitat concern); or
- The amendment would alter a finding or condition the original approval specifically relied on (for example, a condition addressing phosphorus loading, buffer strips, or a performance guarantee tied to the design being changed).

In short: the burden is on the applicant to show the amendment satisfies the applicable criteria, and the Board's findings should explain, briefly, why the scope of review it applied — narrow or broadened — was the right one for that application.

5. Which Regulations Apply: Current Ordinance Governs

Applicants sometimes assume an amendment can rely on the ordinance standards that were in effect when the original plan was approved. That is not correct. Under 1 M.R.S. § 302, the amendment application is a new proceeding and is reviewed under the UDRO (and any applicable state statutes) in effect on the date the amendment application is filed.

The Law Court's vested-rights doctrine points the same direction. In *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, the Court reaffirmed that a developer does not acquire a vested right to develop under a given set of standards until a valid building permit has issued and physical construction has actually begun. An earlier, final subdivision or site plan approval does not freeze the ordinance in place for a future amendment — particularly for the specific component being changed.

Practical effect: if the current UDRO requires, for example, a minimum lot size or road frontage greater than what applied when the original plan was approved decades ago, the new lot or component created by the amendment must meet today's standard — not the standard in effect at original approval. If it cannot, the applicant needs a variance or cannot be approved as proposed; the Board has no authority to apply superseded standards to a new proceeding.

The UDRO codifies this same non-vesting principle in its own text: Section 9.D (“Rights Not Vested”) provides that submittal or review of a pre-application sketch plan “*shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1, M.R.S.A., § 302.*” The same logic applies to an amendment: only the filing of the amendment application itself — not the decades-old original approval — starts the “proceeding” that fixes the applicable standards.

6. Rights of Other Lot Owners and Abutters

Once lots in a subdivision have been sold or built upon, the purchasers generally acquire private property rights in the subdivision as platted and recorded — rights that belong to those owners, not just to the applicant seeking the amendment. An amendment that would affect those existing lots (shared infrastructure, road access, density, common land, or restrictions the purchasers relied on) is not simply a matter between the Board and the applicant.

Before acting on such an amendment, the Board should confirm that:

- Notice has gone out consistent with UDRO Section 4.G (Public Hearings) and any applicable abutter-notice requirements;
- Any lot owners whose property or reasonable reliance interests are directly affected have a meaningful opportunity to be heard; and
- Where the amendment would alter shared infrastructure, common land, or recorded restrictions, the record reflects whether affected owners have consented or, at minimum, been heard on the record.

This is a fact-specific inquiry, and a proposal that materially affects other owners' recorded rights is a good candidate for referral to municipal counsel before the Board acts.

7. Procedural Requirements for Board Action

- **Identify the original approval.** The application should identify the plan being amended, consistent with 30-A § 4407.
- **Written findings of fact.** The Board's decision must include findings addressing the applicable UDRO Section 5 / 30-A § 4404 criteria as they apply to the proposed revision, plus any elements the Board determined needed to be reopened under Section 4.2, above.
- **Public hearing and notice.** Apply UDRO Section 4.G and any other applicable notice provisions in the same manner as for an initial application.
- **Build a record that supports the decision.** A Superior Court reviewing the decision under Maine Rule of Civil Procedure 80B asks whether competent evidence in the record supports the Board's findings — it does not reweigh the evidence. Testimony, submitted plans, staff review, and expert reports should all be reflected in the record the Board relies on.

- **Issue a written decision.** State the scope of review applied, the findings on each applicable criterion, and any conditions of approval, consistent with UDRO Section 4.F.

8. Practical Checklist for Board Members

1. Has the applicant identified the original, final approval being amended?
2. Is this a “major modification” requiring an amended application, or could it have been (or should it have been) handled administratively under UDRO Section 6.A?
3. What, specifically, is changing — and what is not?
4. Does the change, on its own, satisfy the applicable UDRO Section 5 / 30-A § 4404 criteria?
5. Does the change create or worsen any nonconformity, or have cumulative/system-wide effects that require reopening other parts of the original approval?
6. Have conditions changed materially since the original approval in ways relevant to the applicable criteria?
7. Does the current UDRO — not the ordinance in effect at original approval — govern the standards applied to the change?
8. Are other lot owners, abutters, or holders of recorded rights affected, and has adequate notice and opportunity to be heard been provided?
9. Do the proposed findings of fact and record evidence support the decision the Board is prepared to make?
10. Has the written decision been issued consistent with UDRO Section 4.F, including any conditions of approval?

9. Sample Findings of Fact and Motion Language

The following template can be adapted for a typical amendment application. It should be tailored to the specific criteria implicated by the change; not every criterion will be relevant to every amendment.

Motion: “I move that the Planning Board [approve / approve with conditions / deny] the application for an amendment to the [name of original approval], specifically to [describe the change], identified as [map/lot or parcel identifiers], based on the following findings of fact, made pursuant to 30-A M.R.S. §§ 4404 and 4407 and UDRO Section 5:”

- **Pollution and water quality:** The Board finds that the amendment [will / will not] result in undue water or air pollution, and that [describe basis — e.g., sufficient area for septic/sewer disposal under current UDRO standards].
- **Sufficient water:** The applicant has demonstrated access to sufficient water for the reasonably foreseeable needs created by the amendment.
- **Traffic and road access:** The Board finds that the amendment will not cause unreasonable highway or road congestion, and that any new or modified access meets current sight-distance and safety standards.
- **Sewage disposal:** The applicant has provided evidence (e.g., soil testing, HHE-200 forms) that the affected lot(s) can support subsurface wastewater disposal in compliance with State and local rules.
- **Erosion and stormwater:** The Board finds that the amendment [does / does not] require additional infrastructure, and that erosion and stormwater controls currently in effect will apply to any resulting construction.
- **Conformity with current UDRO standards:** Pursuant to 1 M.R.S. § 302, the Board has reviewed the application against the UDRO currently in effect and finds that the amendment [does / does not] meet applicable dimensional standards (lot size, frontage, setbacks).
- **Impact on the original approval:** The Board finds that the amendment [does / does not] adversely affect the layout, density, infrastructure capacity, or other findings of the original approval not otherwise addressed above.

Conclude with any conditions of approval, the vote tally, and the basis for the decision on the record, consistent with UDRO Section 4.F.

Appendix: Key Citations

Citation	Subject
30-A M.R.S. § 4404	Substantive criteria for subdivision approval (pollution, traffic, sewage, water supply, erosion, and others); codified locally in UDRO Section 5.
30-A M.R.S. § 4407	Governs revisions/amendments to a previously approved subdivision plat or plan; requires findings of fact on whether the revision meets § 4404.
1 M.R.S. § 302	General savings statute; a pending proceeding (including an

Citation	Subject
	amendment application) is governed by the ordinance in effect when the proceeding begins.
Kittery Retail Ventures, LLC v. Town of Kittery, 2004 ME 65	Law Court decision confirming that a developer has no vested right to develop under prior standards until a building permit issues and construction begins.
Maine R. Civ. P. 80B	Governs Superior Court review of the Board's final decisions; review is limited to whether competent evidence in the record supports the Board's findings.
UDRO Section 4	Administration — application requirements, public hearings, conditions of approval.
UDRO Section 5	Criteria of Approval — local codification of 30-A § 4404.
UDRO Section 6.A	Inspection — distinguishes administrative field modifications from “major modifications” requiring an amended application.
UDRO Section 9.D	Rights Not Vested — confirms that pre-application review does not start the § 302 “proceeding”; only the filed application does.

Citations to specific UDRO section and subsection numbers reflect the Town's Unified Development Review Ordinance, PB Rev 5 (12/22/2025), effective May 12, 2026. Board members should confirm current section numbers against the version of the UDRO in effect at the time of review, and are encouraged to have municipal counsel verify citations before formal adoption of this guidance.