

## Limits of code enforcement authority

### Requests for opinions from the Code Enforcement Office and common misconceptions

This office receives requests that sometimes the town has no authority or expertise to get involved with. For example:

- **Right of way** disputes between property owners are a civil matter between property owners. The town has no authority to become involved in determining where a right of way is, or who may be violating or encroaching upon a right of way.
- The town cannot determine where your **property lines** are. We are not surveyors/engineers. We will not determine setbacks from property lines. It is the responsibility of the owner to determine property lines. That may require a survey. Tax maps are for tax purposes only and cannot be used to determine ownership or boundary lines.
- The town does not **design buildings** to meet current building codes. We can assist you in finding answers to specific building code questions. We are not design engineers. We review applications and plans and perform inspections to ensure buildings are constructed based upon the building plans.
- If there is a question about **wetlands** and associated setbacks from the edge of wetlands, a soil scientist may be required to determine the edge of the wetlands.
- The town will not advise people of their legal rights or answer **legal questions**.
- The town will not perform **private building inspections** for the sale of properties. There are private building inspectors who are licensed and insured to do these types of inspections. The town performs building inspections on new construction based upon active building permits.
- The code enforcement officer reviews applications, performs inspections based upon permits issued, assists in finding information for applications. If professional services are required to gain more detailed information for an application it is up to the applicant to hire professionals to show they can meet the requirements of the zoning ordinance and current building codes.
- Often times the code enforcement office can assist in pointing you to the type of professional required to assist an applicant in getting the information required to submit an application. Please don't hesitate to ask for help, but please be understanding of the limits of our authority.

I have reprinted an excerpt from MMA's *CEO Manual* concerning this issue that you might find helpful. See [chapter 3, pages 48-99](#):

“Code enforcement officers are often asked by realtors, prospective buyers of real estate, and landowners to give advisory opinions about whether certain uses may be conducted legally on a certain lot, whether any code violations exist on the property, whether the existing septic system is in compliance with the plumbing code, and whether the chimney is safe. Some landowners ask CEO's to advise them about the legal status of their lots or ask the CEO whether a variety of hypothetical scenarios would be legal and how to design the project so that it would be legal.

Requests such as those described above are not legally something that a CEO must answer. Generally, CEOs should not place themselves in the position of certifying that property is in compliance with codes or that a land use activity which a prospective buyer or landowner is thinking about would be something the CEO would approve. Title attorneys, land use consultants, surveyors, and home inspection companies are in the business of offering opinions for a fee and have the necessary insurance coverage to back them up if they make a mistake. If a prospective buyer wants to know if she can operate a certain type of use or build a certain type of structure on a lot or expand an existing structure, the appropriate response from the CEO is to tell the person how to obtain a copy of the local ordinances and also explain generally what the ordinances do and do not allow. To give advice or a certification regarding a particular proposed use, the CEO should recommend that the buyer negotiate an option to purchase the property and then submit a permit application which describes in detail what the buyer wants to do. The CEO (if authorized by the ordinance) then could review and approve or deny the specific proposal following the legal procedures required by the ordinance and would clearly be acting within the scope of his/her authority for the purposes of being protected from liability under the Maine Tort Claims Act. 14 M.R.S.A. § 8111. . . .

. . . . It is difficult for a CEO to refuse these requests for advisory opinions and inspections, since good public relations is a vital part of any successful code enforcement program. However, when a CEO gives opinions about hypothetical proposals or the existence of any code violations or problems with an existing structure or use, the CEO is exposing himself/herself to possible personal liability for negligence if it turns out that the opinion about the hypothetical was wrong or that some hidden problem was missed. In the long run, it is in the best interests of the buyer or landowner and the CEO for the buyer to pay his or her own attorney or private inspector or consultant to give these opinions.”