



HCPC NEWSLETTER

Hancock County Planning Commission
395 State Street
Ellsworth, ME 04605
phone 207-667-7131; fax 207-667-2099
E-mail: hcpc@hcpcme.org Internet: www.hcpcme.org

Volume XXXVIII, Issue 1

Summer 2017

HCPC Executive Board
Fiscal Year 2017-2018
Chairman: Roderic Franzius, Hancock

Directors:

- Denis Blodgett, Brooksville
- Valerie Chiasson, Brooklin
- Michele Gagnon, Ellsworth
- Raymond Jones, Gouldsboro
- Lee McWilliams, Mariaville
- Dave Milan, Orland
- Beverly Sanborn, Cranberry Isles
- Janet Michaud, County Comm. Representative
- Ian Staub, County Comm. Representative

HCPC Staff

- Thomas E. Martin, Executive Director
tmartin@hcpcme.org
- Jennifer Boothroyd, Regional Planner
jboothroyd@hcpcme.org
- Sheri Walsh, Planning Technician & Administrative Assistant
swalsh@hcpcme.org

In this issue. . . .

Table of Contents	Page
PLANNING NEWS	1
SOLID WASTE NEWS.....	6
HEALTH NEWS.....	9

PLANNING NEWS

by Tom Martin

THE TIMES: THEY ARE CHANGING

Planning involves preparing for the future. This entails identifying what changes are likely to occur and how to respond. We discuss several trends and how we and others are responding.

An Aging Population

One big change Hancock County faces is demographic. The total year-round population is projected to decrease by about 2 percent by 2034 (from 54,738 in 2014 to 53,770 in 2034). The changes are more notable in projections for particular age groups. The 65 year and older group it is projected to increase by 34.5 percent. All other age groups decrease. The highest percentage decrease (3.81 percent) is the school-age group (5-19 years). The next highest decrease (3.08 percent) is in the 45-64 group. The 20-44 age group, (those of prime child bearing years) are estimated to decrease by 1.49 percent.

For more information, see table below. For a review of the assumptions used in making these projections, see:

<http://www.maine.gov/economist/state/projects.html> .

PROJECTED CHANGE IN POPULATION BY AGE GROUP, 2014- 2034, HANCOCK COUNTY						
Age Group	0-4	5-19	20-44	45-64	65 +	Projected total
2014	2,436	8,372	14,661	17,516	11,753	54,738
2034	2,392	8,053	14,446	12,072	15,807	52,770
Numeric change	- 44	- 319	- 215	- 5,444	+ 4,054	- 1,968
Percent change	-1.81%	-3.81%	-1.47%	-3.08%	34.5%	3.6%
SOURCE: Maine Office of Policy & Management						

As of 2014, the median age in Maine was 44.5 years, the oldest in the country. This will affect the need for services and housing for the elderly. It may be harder to keep some

schools open as enrollment declines. Our fire departments, many of which already are short of volunteers, may face increased recruitment problems.

Possible Response: Consolidation of Services

There has been ongoing discussion about increased sharing of services. This could include town clerks, assessors, code enforcement officers and fire fighters. HCPC is seeking grant funds for a study of the potential of increased sharing of services by a group of small towns. This would involve extensive input from current service providers. This is to ensure that any proposed changes build on existing arrangements.

The *Maine Shared Community Needs Assessment* for 2016 listed obesity as its first health priority for Hancock County. Creating opportunities for safe physical activity is important in combating obesity. The HCPC’s Healthy Walks initiative (see page 9) is an example of how towns can promote healthy activities.

Increased Obesity

Another change is increasing obesity rates. *The State of Obesity: Better Policies for a Healthier America*, a report by Trust for America’s Health presents some revealing statistics. In 2015, Maine had an obesity rate of 30.0 percent, the 24th highest obesity rate in the US. This is an increase from 18.9 percent in 2000 and 10.9 percent in 1990.

Energy Facilities

Solar electric electricity Photo-Voltaic (PV) is becoming more affordable. More PV’s and other renewable energy structures (such as wind turbines) are being built. For more information how to adapt your shoreland zoning standards to allow PV’s see the article on page 6. HCPC has sample wind turbine ordinances on its website (see: <http://www.hcpcme.org/landuse.html>) and expects to add more information on the regulation of solar generating facilities.

Climate Change and Sea Level Rise

We have seen more severe storm events and sea level rise is expected to continue. This means that towns may need to update their stormwater management standards to incorporate low impact development (or LID) practices. LID manages stormwater runoff from new or expanded development by designing drainage systems that retain most stormwater on the site by using natural features. This involves reducing the area of impervious surface, installing roof drains, and planting of vegetation to absorb stormwater on-site.

See

www.hpcme.org/environment/LID/index.html for more information.

RECENT COURT CASES

WOLFRAM et al. v. TOWN OF NORTH HAVEN et al.

1. Background

In October 2013, Nebo Lodge, Inc., and Nebo Real Estate, LLC, (collectively, Nebo Lodge) filed an application for a land use permit. Nebo Lodge, which operates an inn and restaurant in North Haven, sought to tear down “the bungalow”—one of two existing structures on the property—and rebuild it as “the annex.” The other structure, “the lodge,” houses the inn and restaurant. The lodge was previously renovated and expanded in 2009 and 2010. Nebo Lodge proposed a change in use, including two bedrooms for staff; an office; storage, and a kitchen. Nebo Lodge submitted a second application for a permit seeking authorization a “partial tear down” that would leave a “small piece” of the previous bungalow structure intact. The Planning Board held three public hearings in the fall of 2013. Steven Wolfram, who owns property across the street from the Nebo Lodge property, opposed the

applications. The Planning Board approved the applications with conditions.

Wolfram appealed to the Board of Appeals (BOA), which held hearings in March 2014. Four BOA members recused themselves due to conflicts of interest, and they were replaced by other individuals believed to have no conflicts. The BOA accepted evidence and made factual findings. The BOA affirmed the Planning Board decision in a written decision. Wolfram appealed to the Superior Court, contending that the BOA erred in interpreting various provisions in North Haven’s Ordinance and that the permit review process violated his due process rights. The court affirmed the BOA’s decision. Wolfram appealed.

2. Discussion

A. Standard of Review

“Our review of administrative decision-making is deferential and limited.” *Beal v. Town of Stockton Springs*, 2017 ME 6, ¶ 13, 153 A.3d 768. “When a zoning board of appeals acts as the tribunal of original jurisdiction as both fact finder and decision maker, we review its decision directly for errors of law, abuse of discretion, or findings not supported by substantial evidence in the record.” *Brackett v. Town of Rangeley*, 2003 ME 109, ¶ 15, 831 A.2d 422.

B. Ground Area Restriction for Nonconforming Structures

The Nebo Lodge property is less than the 20,000-square-foot minimum lot size in the Village District, which rendered the bungalow and the lodge nonconforming. Wolfram first argues that the annex exceeds the allowable expansion of a nonconforming structure pursuant to the Ordinance. Because the intent of zoning is generally to abolish nonconforming structures and uses, “zoning

provisions that restrict nonconformities are liberally construed, and provisions that allow nonconformities are strictly construed.” *Day v. Town of Phippsburg*, 2015 ME 13, ¶ 15, 110 A.3d 645.

The ordinance states “[a]ny structure in existence as of the effective date of this Ordinance, which becomes non-conforming solely from a failure to satisfy the area requirements of the district in which it is located, may be repaired, maintained, and improved.” It allows nonconforming structures to be enlarged . . . without a variance,” so long as the enlargement contains no more than 33% of the ground area of the grandfathered structure. the ground area of the annex is less than 33% larger than the ground area of the previous structure, the bungalow.

Wolfram interprets the ordinance to limit the total expansion of *all* nonconforming structures on a lot to 33% of the ground area of a *single* nonconforming structure. He maintains that the Town must aggregate each expansion on the lot and to prohibit further expansion once that percentage, tied to a single nonconforming structure, has been reached. Because Nebo Lodge expanded the lodge in 2009 and 2010, and further expansion to the separate annex would, in the aggregate, exceed 33% of the original lodge’s ground area, Wolfram contends that Nebo Lodge can expand no further and thus the annex violates the ordinance.

Wolfram’s interpretation is unsupported by the language of the Ordinance. Even strictly construed, the Ordinance clearly permits *any* nonconforming structure to be expanded by up to 33% of the ground area *of the previous structure*. Here, the annex expansion does not exceed 33% of the ground area of the structure that it replaced, the bungalow. Any expansions made to the lodge—a separate nonconforming structure—were irrelevant

because the ordinance does not prohibit the expansion of multiple nonconforming structures on a single lot. Instead, the 33% ground area restriction applies to each individual nonconforming structure. Because the property had two nonconforming structures—the annex and the lodge—each may be enlarged by up to 33% of the ground area of the structure that it replaced.

C. Willfully Destroyed Structure

Wolfram next contends that the annex expansion violated section 2.6 of the Ordinance, which provides that “[a]ny non-conforming use or structure which is hereafter damaged or destroyed by cause other than the willful act of the owner of his agent, may be restored or reconstructed to its original dimension. Wolfram interprets section 2.6 to prohibit restoration or replacement of a willfully demolished nonconforming structure and to limit any restoration or replacement to the size of the original structure. We conclude that section 2.6 does not apply to a willful demolition for renovation purposes undertaken with municipal approval.

D. Twenty Percent Lot Coverage

Wolfram next asserts that the annex violates a 20% lot coverage restriction applicable to guest houses. “Guest house” is listed among the permitted structures as an accessory use to a “single-family dwelling use.” *Id.* § 1.6. “Guest house” is not defined; the Ordinance provides that “[t]erms not defined will have customary dictionary meaning.” *Id.* § 1.5. Webster’s Dictionary defines “guesthouse” as “a small house on the same property as a larger main house.

“Although interpretation of an ordinance is a question of law, we accord substantial deference to the Planning Board’s characterizations and fact-findings as to what

meets ordinance standards.” The BOA found that the proposed annex was not a guest house because the bedrooms would be used by Nebo Lodge employees, not paying guests, and further that the annex was not a single-family dwelling use because the kitchen was not internally accessible from the bedrooms. The BOA therefore determined that section 4.1 did not apply. This conclusion is supported by factual findings based on record evidence, and we discern no error of law.

E. Due Process

Finally, Wolfram argues that his due process rights were violated by bias and ex parte communications. Ex parte communications implicate the due process rights of the excluded party and will be grounds to vacate a “decision if, as a result of [the] communications, the decision results in ‘procedural unfairness,’” which calls into question the integrity and fairness of the decision. *Duffy*, 2013 ME 105, ¶ 18, 82 A.3d 148.

Wolfram identifies emails in the administrative record, mostly between Nebo Lodge representatives and members of the Planning Board, as the primary evidence supporting his contention that his due process rights were violated. None of those communications, however, implicates the BOA’s impartiality. Many emails are correspondence between Nebo Lodge and Town officials directed at complying with the permit process, the Ordinance, and other applicable standards prior to the Planning Board hearing. Assuming the emails were improper ex-parte communications, this would not be a basis to vacate the BOA’s decision, the operative decision under review, because Wolfram has failed to point to any evidence that the communications fact affected that decision.

BALANO v. TOWN OF KITTEERY et al.

Background

Richard M. Balano appeals a Superior Court judgement affirming the Town of Kittery Planning Board’s decision to approve a site plan application for a hotel on Route 1. Balano argues that the flat-roof design for the building is not permitted by the Town’s ordinance because the evidence presented to the Board does not support its finding that a pitched roof is not “practicable,” and that the proposed building will exceed height restrictions prescribed by the zoning ordinance.

Balano also argues that the Planning Board acted beyond its authority by effectively granting variances when it approved the roof design and building height. “We review the Planning Board’s approval of the permit directly for error of law, abuse of discretion[,] or findings not supported by substantial evidence in the record.” *Osprey Family Tr. v. Town of Owls Head*, 2016 ME 89,. We accord substantial deference to “local characterizations or fact-findings as to what meets ordinance standards.” *Rudolph v. Golick*, 2010 ME 106, ¶ 8, 8 A.3d 684.

With respect to the roof design, pursuant to the Town Ordinance, if an applicant has “demonstrated to the Planning Board’s satisfaction that [a pitched roof] is not practicable,” the Board is authorized to approve an alternative roof design.) The Board was presented with evidence that a pitched roof would pose safety issues resulting from snow accumulation, and that mechanical equipment would be more accessible in an emergency if located on a flat roof as opposed to within the interior space of a pitched roof. The Board’s finding that a pitched roof is not practicable is supported by substantial record evidence, and because the Board itself was authorized to

approve a flat-roof design, its decision did not amount to a variance.

Regarding the building height, the Board did not err in its application of the Ordinance's height restrictions because roof parapets are not included in calculating the building height and approval of the proposed building height that complied with the Ordinance's requirements is not a variance.

Alternative Energy Structures in the Shoreland Zone

Adapted from Maine DEP Shoreland Zoning News, Spring 2017



Solar arrays and wind turbines are considered structures under shoreland zoning and therefore must meet the structure setback requirements. DEP staff conferred with the Department of the Attorney General and determined that the format of the current language in the Mandatory Shoreland Zoning Act provides municipalities the option of amending their local shoreland zoning ordinances to begin permitting solar panels and wind turbines within the shoreland setback in some cases.

DEP is allowing municipalities to amend local ordinances to permit solar arrays and wind turbines within the shoreland setback with certain conditions. Specifically, the area within the setback in which the solar and wind-power structures are proposed must be a legally existing clearing (e.g. existing lawn), and any

additional vegetation removal necessary must conform to the vegetation removal provisions within the ordinance. In addition, the extent of a proposed alternative energy project must be limited by design to the energy needs of the existing use on the property. Sale of energy to the power grid must be limited to incidental excess power generation. Projects designed for commercial generation of power must comply with structure setback requirements. If your municipality wishes to establish this allowance for such structures, feel free to contact Tom Martin at the HCPC or Dawn Abbot (dawn.abbott@maine.gov) or 356-8318 at DEP with any questions as you develop your local ordinance language.

SOLID WASTE NEWS

By: Sheri Walsh

HCPC is now offering curbside recycling bins for sale. They are \$9 each. You may stop by our office Monday-Friday 8 AM to 4:30 PM.



Capacity is 18 gallons and it is made from recycled materials.

Compost Bins

HCPC is now offering Earth Machine compost bins for sale. They are \$48 each. You may stop by our office Monday-Friday 8 AM to 4:30 PM.



2017 Ellsworth Area Household Hazardous Waste Collection

As this newsletter goes to print, HCPC is pleased to announce we have 15 towns participating in the Household Hazardous Waste collection for Saturday, August 19th at Ellsworth High School. Residents of Blue Hill, Brooklin, Brooksville, Dedham Deer Isle, Ellsworth, Gouldsboro, Hancock, Mariaville, Sedgwick, Sorrento, Sullivan, Surry and Winter Harbor can dispose of Household Hazardous Waste (HHW) and Universal Waste (UW). HHW refers to materials with caustic, flammable, toxic or reactive properties. Examples include pesticides, polishes, lye, acids, solvents, oil-based paint, swimming pool chemicals, and old gasoline. Universal Waste includes materials containing mercury, cadmium and lead such as rechargeable batteries, cathode ray tubes, TV's and computer monitors, fluorescent lamps, mercury thermostats, motor vehicle switches, PCB ballasts, and thermometers. UW will not accepted from Dedham and Hancock residents due to disposal arrangements are in place year round. The collection is restricted to households. Commercial and other forms of waste cannot be accepted.

Participants are permitted to dispose of up to ten gallons or 40 pounds of HHW/UW without charge. For details on what materials are accepted and other requirements see: <http://www.hcpcme.org>

Residents from non-participating towns may dispose of up to five gallons or 20 pounds of HHW for \$26. There is no charge for computer monitors or televisions for any Hancock County resident. There is small disposal fee for other electronics for residents from non-participating towns. Contact Sheri Walsh at swalsh@hcpcme.org or 667-7131 for more information.

Household Hazardous and Universal Waste Alternative Return and Disposal Options



Updated July 2017

How do I dispose of batteries? *Regular household Batteries* (AA, AAA, B, C, D, 9 volt): can be disposed of in your household garbage since they no longer contain heavy metals. *Rechargeable batteries*: you can return them to the place of purchase (Radio Shack, Wal-Mart, etc.). *Car, lawn mower, and boat batteries*: return to the place of purchase or call One Steel Recycling at 947-3710. *Watch & other button-style batteries*: are accepted by most stores that sell camcorders or cell phones. Jewelry stores usually accept watch batteries. Contact them for more information. Rechargeable and watch batteries can also be dropped off at HCPC during regular office hours.

How about latex and oil-based paint? A statewide paint-recycling program for latex and oil-based paint products has been implemented. These paints can be disposed of free at stores in Ellsworth, Bar Harbor, Southwest Harbor, and Northeast Harbor. See list on other side for details. Please call them ahead of time for more information and requirements. Paint will also be accepted at the HCPC annual collection event. You are limited to 5 gallons (total) of latex paint at the event with your town paying for the disposal. If you exceed 5 gallons of latex paint, you must pay for the disposal of the excess amount.

What can I do with my fluorescent light bulbs (compact fluorescents or curly bulbs, u-tubes, circline tubes, and straight tubes)? Fluorescent bulbs contain mercury and, by law,

you cannot throw them into the waste stream. Maine has a statewide recycling program for recycling mercury-containing household bulbs, which includes fluorescents. We maintain a list of retailers in various towns that will accept them for recycling. See list on other side. Coastal Recycling, 114 Franklin Road, Hancock also accepts them for a fee. Call 422-6766 for prices and current operating hours.

Where can I dispose of electronics such as old computers, printers, and televisions? Coastal Recycling (see above) accepts most electronics for a fee. Goodwill in Bangor will also accept donations of some items, including computer monitors, computers, printers, scanners, hard drives, keyboards, mice, speakers, cords, cables, ink and toner cartridges, software, and webcams.

How do I dispose of mercury-containing thermostats? Maine has a statewide recycling program for mercury thermostats. Maine residents will receive a \$5 in-store credit for recycling their mercury thermostats at participating retail stores, and can recycle their mercury thermostats for free at other participating businesses. See list on other side for details.

Is there a year-round facility that accepts Household Hazardous Waste? The nearest facility is the Environmental Depot at 424 River Road in Lewiston, which is open for All Maine residents. There is a \$28 per "unit" fee. A unit consists of 5 gallons of liquid, 20 pounds of solid waste, or a combination of liquid and solid waste. The Depot is open the 1st and 3rd Saturdays of each month May through November from 08:00 AM to 12:00 PM. If the Saturday falls on a holiday weekend (such as Fourth of July), it will be CLOSED. For more information and directions, see:

<http://www.envdepot.com/contact.html> or call (207) 786-7390. In addition, Riverside Recycling at 910 Riverside Street in Portland accepts Household Hazardous Waste from 7AM-1PM on the first Saturday of each month from May through November. For more information and directions, see: <http://riversiderecycles.com/> or call (207) 797-6200.

What about pesticides? The Maine Bureau of Pesticide Control has an annual free collection for which pre-registration is required. At the time this information is being printed, the date has not been set but is typically in October. For more information, the Maine Bureau of Pesticide Control would like you to visit its website www.thinkfirstspraylast.org or call 207-287-2731.

Where may I bring latex and oil-based paint, mercury thermostats, and fluorescent bulbs year round when there is not a collection event? The following Hancock County businesses offer free recycling for one or more of these items. Please see the list below for details on what each will accept. In addition to CFLs and other small fluorescent bulbs and tubes, some stores also accept 4-foot and 8-foot fluorescent tubes. Contact the store you plan to bring your bulbs into for more information. ***Be sure to contact paint disposal businesses beforehand for restrictions and to make sure they have room to accept the amount of paint you want to drop off.***

Paint	Fluorescent bulbs	Mercury thermostats	Location			
✓	✓	✓	True Value (Paradis)	31 Holland Ave	Bar Harbor	288-4995
	✓		EBS Supplies	1513 SR- 102	Bar Harbor	288-9756
	✓		EBS Supplies	112 Main St	Blue Hill	374-2814
	✓		Tradewinds Market	15 South St	Blue Hill	374-5137
	✓		Viking Lumber	114 Mines Rd	Blue Hill	374-5645
	✓		True Value	3 Acadia Hwy	Bucksport	469-2451
	✓		EBS Supplies	261 State St	Ellsworth	667-7134
	✓		Renys	175 High St	Ellsworth	667-5166
✓			Sherwin Williams	43 Downeast Hwy	Ellsworth	667-2150
		✓	Bangor Pipe & Supply	55 Foster St	Ellsworth	667-5346
	✓		Viking Lumber	751 US Hwy 1	Hancock	422-3321
✓	✓	✓	F T Brown	106 Main St	Northeast Harbor	276-3338
✓			S R Tracy Inc	8 Summit Rd	Northeast Harbor	276-3338
✓	✓		Trustworthy Hardware	345 Main St	Southwest Harbor	444-7243
	✓		V&S Ace Hardware	1 Burnt Cove Rd.	Stonington	637-5570
	✓		Trenton IGA	1007 Bar Harbor Rd	Trenton	667-6012

Funded by the USDA Rural Utilities Service. Any opinions, findings, conclusions or recommendations expressed in this material are solely the responsibility of the authors and do not necessarily represent the official views of the Utilities Program.

HEALTH NEWS

by Jennifer Boothroyd

HCPC Launches Heart-Healthy Walking Initiative

HCPC has recently rolled out *Heart Health: It's a Walk in the Park!* This project, funded by a grant from the Downeast Public Health Council, is designed to get Hancock County residents out for a walk in their communities. Taking a cue from the American Heart Association's recommendation of a thirty-minute walk to improve heart health, HCPC has mapped out thirty-minute (approximately 1.5 miles) walks in communities throughout the region. The walking routes are being promoted through printed materials (posters and map cards, to be placed in the town offices), a website

(<https://hancockhealthywalks.wordpress.com>), and a Facebook page ([@HancockHealthyWalks](#)).

A second phase of the project, funded by MaineDOT, is an inventory of pedestrian hazards along the identified walking routes. This phase is currently underway and the inventory will be made available to MaineDOT and the participating municipalities for planning and funding allocation.

Currently, the project features heart-healthy walks in Ellsworth, Winter Harbor, Blue Hill, Franklin, Castine, and Bucksport. There are many great walking opportunities in other Hancock County towns, and we hope to highlight routes in additional communities in the future.

We are actively seeking participation and feedback! Check out our walks, “like” our Facebook page, and feel free to forward to Jen Boothroyd (jboothroyd@hpcme.org) comments, suggestions, and ideas for additional walks.



ROAD SALT JOINT PURCHASE

Morton Salt was awarded the road salt bid. Hancock County towns were offered prices that are the lowest we have received in 15 years which will result in Hancock County towns saving \$103,000 on their road salt

purchases this year compared to last year’s prices. Some towns will save hundreds while high tonnage towns will save more between \$10,000 and nearly \$15,000. Thank you so much for participating in the salt bid. There is strength in numbers with 30 towns participating in the bid.

How resilient is your town to floods?

HCPC is assisting Hancock County towns with a rapid assessment of flood hazards and resiliency plans. We will provide maps, analysis and we will work with towns to complete a [Flood Resilience Checklist](#) and develop alternative adaptation strategies.

Your town will receive detailed maps showing areas at risk of flooding, have information useful when applying for flood adaptation assistance grants and be better prepared to protect life and property.

Please call us at 667-7131 or [click here](#) if you would like to learn more about this program. There is no charge for participating, but time is limited.

Hancock County Planning Commission is a partner with local and county government to: protect our heritage and resources, plan for the future and promote a sound economy for the people of Hancock County.

Summer 2017 Newsletter



395 State Street
Ellsworth, ME 04605

Change Service Requested