



HCPC NEWSLETTER

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

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HCPC Executive Board Fiscal Year 2015-2016

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- Ian Staub, County Comm. Representative

HCPC Staff

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

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HCPC AWARDS CEREMONY AND ANNUAL MEETING MAY 24

Dear resident of Hancock County:

Hancock County Planning Commission is celebrating its 46th annual meeting on May 24, 2016 with a different approach. While we will still review our past accomplishments, present our budget and workplan, and seek eligible people to serve on the executive board, we will also be looking at accomplishments by other groups. We will be giving awards for towns and other organizations that have undertaken exemplary projects. These projects may serve as inspiration for your own community.

We are still finalizing the details (such as the location) as we go to press. We will notify you in the next few weeks. In the meanwhile, feel free to contact Tom Martin if you have any questions.

PLANNING NEWS

by Tom Martin and Jen Boothroyd

STREAM SMART CROSSINGS

What is Stream Smart?

Stream Smart is a collaboration of partners including Maine Audubon, The Nature Conservancy, the Maine Departments of

Environmental Protection and Inland Fisheries and Wildlife, and others. The program promotes focuses attention on the problems associated with poorly-designed road-stream crossings, and promotes their reconstruction.

Poorly-designed and maintained bridges and culverts can hinder the ability of fish and wildlife populations to traverse, access, and feed naturally in our streams and waterways. Improperly-sized culverts can also reduce the flood capacity of streams, undermining the crossings and creating road safety hazards. The Stream Smart program suggests redesigning these bad crossings by focusing on the four “S”s;

1. *Span the stream.* Spanning the stream involves the replacement of pinched or undersized culverts that narrow the flow of the stream with broad, spanned crossings that encompass the natural width of the stream bed.

2. *Set the elevation right.* Replace any hung culverts or other physical barriers to ensure the elevation of the stream crossing matches the natural stream elevation.

3. *Slope matches the stream.* The stream crossing bed should also be designed so that it matches and maintains the stream’s natural slope.

4. *Substrate in the crossing.* Sand, cobbles, and other natural streambed substrate materials should lie within the crossing, as throughout the natural stream.

Workshops Offer Chance to Learn Smart Use of This Tool

Several upcoming workshops have been planned throughout Maine, focusing on Stream Smart concepts and improved stream crossings. Links to the brochure and registration materials can be found on HCPC’s

website, www.hcpcme.org. For more information about the Stream Smart program and its concepts, visit <http://maineaudubon.org/streamsmart/>.

What Grants Are Available?

Maine DEP is offering grants for culvert upgrades to eligible recipients, including municipalities, unorganized townships, watershed districts, and non-profit organizations. Successful projects must meet a variety of criteria, including environmental and habitat benefits, improved public safety, and provisions for climate resiliency. A portion of the grant award may be used to cover design and engineering services, and the maximum grant award is \$95,000. The RFP can be viewed at <http://www.maine.gov/dep/rfp/rfp.html?id=669090>, and can be found on HCPC’s website. Proposals must be submitted by 2:00 PM on April 5, 2016.

HCPC is partnering with the Maine Department of Agriculture, Conservation, and Forestry to assist inland communities in Hancock County with culvert assessment, Stream Smart principles, and preparation of DEP Culvert Grant applications. Please contact Jen Boothroyd today if your community would like to take advantage of this opportunity to become Stream Smart!

Recent Court Case: Exhaust Administrative Remedies and Avoid Unripe Appeals

The Case: In *Bryant v. Town of Camden* (2016 ME 27) the court stated “ in an effort to reduce confusion, costs, and delay in municipal appeals, we today announce ... the need for finality in municipal decisions before a municipal entity’s action may be appealed to the courts. Specifically, we consider when a municipal agency’s decision constitutes a

final action subject to immediate judicial review and when, instead, additional municipal decision making is necessary before an appeal is ripe for consideration by the courts.”

Breda, LLC, the owner of the Camden Harbour Inn, applied to the town of Camden for authorization to increase the number of guest rooms and parking spaces. Because the Inn is located within the town’s Traditional Village District, the Inn was required by the zoning ordinance to obtain a special exception permit from the Zoning Board of Appeals (ZBA) before seeking site plan approval from the planning board.

The ZBA granted that permit subject to further consideration by the Planning Board, and allowed the Inn to proceed to the Planning Board for site plan review. Before site plan review could occur, Susan E. Bryant, an abutter, appealed the ZBA’s decision to grant the permit to Superior Court. The court affirmed the ZBA’s grant of the special exception permit. Although Bryant’s appeal was expressly provided for in the Ordinance, the Supreme Court vacated the lower court’s decision because the decision of the ZBA was not a final action subject to appellate review in the courts.

Background

Breda, LLC, owns and operates the Camden Harbour Inn, which is located in the town’s Traditional Village District. In that district, a hotel is ordinarily permitted only if, among other criteria, the hotel has “more than ten (10) but fewer than fifteen (15) sleeping rooms,” with restaurant facilities that “prepare food and serve meals only to overnight guests of that hotel.” The Inn, however, has more than fifteen

sleeping rooms, and it prepares food and serves meals to the public—uses that are currently allowed because the uses were “lawful at the time of adoption of this Ordinance.”

Breda applied for a special exception permit to add new rental rooms and parking spaces. In the Traditional Village District, the “[e]xpansion of hotels or motels with ten or more rooms ... for rent, legally in existence as of March 1, 1985. is permitted as a special exception, “subject to conformity with applicable standards. Breda’s application included information offered to establish compliance with the criteria for granting a special exception permit.” The ZBA found that the proposed change in use satisfied the special exception criteria and approved the permit “[s]ubject to the conditions that . . . as part of their Site Plan Review, we strongly encourage the Planning Board to take a look at” its standards.

What we can Learn from This Case

Don’t Appeal to a Court Until Administrative Remedies Are Exhausted

Final administrative (in this case the town) decision making must occur before a court appeal. The doctrine of primary jurisdiction holds that “courts should avoid ruling on matters committed by law to the decision-making authority of an administrative agency before the administrative agency has first had an opportunity to review and decide the facts on the merits of the matter.”

‘Primary jurisdiction’ and ‘exhaustion of administrative remedies’ are closely allied. They rest on the premise that an agency has the primary authority to make certain decisions deemed relevant to the

determination of the controversy.” A party must exhaust all possible administrative remedies before initiating action in the courts.

In the absence of a final administrative decision as in the absence of a final court judgment - an appeal is unripe because an appellate court cannot undertake complete and meaningful appellate review.

Be sure Your Ordinance’s Appeals Process Follows Judicial Doctrines

A town may not create an appeals process that does not comply with judicially established doctrines requiring finality of decision making. Specifically, the doctrines of primary jurisdiction, exhaustion, and ripeness may not be overwritten through a town’s exercise of the ordinance authority conferred on it by the Legislature. Simply put, the legislative power vested in a municipality through home rule may not supplant the power of the courts to determine whether a justifiable controversy has occurred.

Conclusion

The ruling states “(w)e again encourage Maine’s cities and towns, ... to review the myriad provisions in local ordinances addressing finality and appealability. “ The creation of standardized, understandable, and comprehensive rules for the provision of appellate review could reduce the problems of cost and delay created by the language of the municipalities’ disparate ordinances.

Shoreland Zoning: How Far Can State Minimum Standards be Exceeded Without the

Support of a Comprehensive Plan?

Every town is required to have shoreland zoning standards that meet the latest DEP guidelines. If a town were to enact standards beyond the state minimum guidelines, the standards must be based on a comprehensive plan that is consistent with the provisions of Maine’s Growth Management Act (30-A MRSA 187). <http://legislature.maine.gov/legis/statutes/30-a/title30-Ach187sec0.html> . Section 435 of the Shoreland Zoning Act states “(w)hen a municipality determines that special local conditions within portions of the shoreland zone require a different set of standards from those in the minimum guidelines, the municipality shall document the special conditions and submit them, together with its proposed ordinance provisions, to the commissioner for review and approval. ”

What Have Recent Court Cases Ruled?

(This section is adapted from correspondence with Maine Municipal Association Attorney Rebecca Warren Seel)

MMA reports that it was not aware of any Maine Supreme Court case addressing a shoreland zoning ordinance that only regulated the 250-foot shoreland zone but was more restrictive than the state minimum shoreland zoning guidelines regarding district designations within the 250-foot zone or substantive performance standards. The Maine Supreme Court decision in *Enos v. Town of Stetson*, 665 A. 2d 678 (Me. 1995), involved a town which had a shoreland zoning ordinance but no comprehensive plan. Nothing in the court decision indicated that the ordinance was more restrictive than the State minimum shoreland zoning guidelines in

any way. The facts as stated in the case suggest that the town was only regulating the 250 foot shoreland zone area, not a larger area. The court held that a comprehensive plan was not necessary in order for the Stetson ordinance to be valid because of the history of the enactment and implementation of the mandatory shoreland zoning statute.

The only other case of which MMA was aware dealt with a municipality with a comprehensive plan. The court upheld the town council's refusal to amend specific shoreland zoning provisions in the town's zoning ordinance, finding that the existing ordinance provision was consistent with the comprehensive plan and the proposed amendment was not consistent with the plan. *F.S. Plummer Co. v. Town of Cape Elizabeth*, 612 A. 2d 856 (Me. 1992).

What Does This Mean for Towns Without A Comprehensive Plan?

First, do not exceed the 250- foot minimum shoreland zone area. Second, if you exceed other state standards, be sure that you have a good basis for doing so. For example, one town designated additional areas as Resource Protection. The purpose was to protect additional bird habitats. The more restrictive Resource Protection designations related to bird habitat are probably enforceable without a comprehensive plan, based on the language in 30-A MRSA section 4314(2), (<http://legislature.maine.gov/legis/statutes/30-A/title30-Asec4314.html>) despite language requiring a comprehensive plan in 38 MRSA section 438-A(2) (<http://legislature.maine.gov/legis/statutes/38/title38sec438-A.html>.) The language of 30-A MRSA section 4314(2) was added in 2003, while the language in 38 MRSA section 438-A(2) was enacted in 1993. The MMA Legal Services Division maintains the more recent provision on essentially the same issue

prevails. Finally, be sure to consult with DEP and an attorney before making your shoreland zoning standards more restrictive than the state minimum.

CDBG NEWS

by Tom Martin

As of now, no major changes are foreseen in the FY-17 Community Development Block Grant (CDBG) Program. Competition for funds is very stiff. We urge all towns that are contemplating applying for the next round to start preparing now. Steps could include arranging initial public outreach meetings, seeking matching sources of funds, and preparing cost estimates. HCPC staff is available to meet with any interested town to discuss the basics of the program and how it could be used to benefit your community.

Although the program requires that projects either primarily benefit low to moderate income (LMI) households or eliminate slums and blight, this does not mean that towns with town-wide incomes over the LMI threshold do not qualify for CDBG funds. There are two basic ways for higher income towns to qualify for CDBG. The first to focus the project in an area where there is a concentration of LMI households. For example, a sewer line replacement could be eligible for funding if it served a street where at least 51 percent of the household were LMI.

The second way is to target the program to a predominately LMI population. If a town were seeking a job creation or retention program, it would need to assure that at least 51 percent of the jobs were taken by LMI individuals. For more information on income and other program requirements, see: <http://www.hcpcme.org/comdev.html>. Feel free to contact Tom Martin at the HCPC if you have any questions.

BROWNFIELDS NEWS

by Tom Martin

HCPC is about to enter the third and final year of its current brownfields assessment grant. (We are awaiting word on further funding). This grant has allowed us to hire an environmental consultant to investigate the extent and nature of contamination and prepare clean-up plans for properties with significant contamination.

Some of our accomplishments have been big such as preparing clean-up plans for the Hancock Tannery site and parts of the former Navy facility in Corea. The smaller projects are also valuable. Our consultant has assessed conditions at small business operations in Ellsworth and Surry. This allows the owners to invest in these properties without having to worry about environmental contamination.

Other sites are still under investigation or are awaiting approval from U.S. Environmental Protection Agency, the funding agency for this program. Overall, we have used brownfields funding to assess sites that have provided access to the shore, created jobs, and opened new areas to recreation. **There still may be some funds available for site assessments by the time you read this article.** If there is a property in your town that is underutilized or abandoned due to fear of contamination, contact Tom Martin. We can determine if it is eligible for investigation.

FLOODPLAIN NEWS

by Jennifer Boothroyd

You may have noticed a new floodplain ordinance on your town meeting warrant. You may also have seen the preliminary floodplain

map for your town. By now, your town has received a “Letter of Determination”, setting the final map and giving notice that the updated map must be adopted into your local floodplain ordinance before the date that the map becomes effective (July 20, 2016). ***If this doesn't happen, your community will be suspended from the National Flood Insurance Program the day after the map takes effect.***

The State of Maine has provided each community with an updated, customized ordinance to make the update process easier. The final Hancock County maps are not yet available electronically, but will be published on-line at the FEMA Map Service Center before the date they become final. When they are available, we will link to them from the HCPC website. Each community will also be mailed a hard copy and a CD with the electronic files.

If you have any questions regarding floodplain ordinances or flood insurance mapping, please contact Sue Baker (program manager, 207-287-8063), Jennifer Curtis (mapping coordinator, 207-287-8051) or Janet Parker (Planner II, 207-287-9981) at the Maine Floodplain Management Program.

SOLID WASTE NEWS

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.

TRANSPORTATION

NEWS

by Jennifer Boothroyd

Smart Signs

The Maine Department of Transportation has a variety of offers this spring that may interest your town. Each municipality can receive up to four orange 'Road Posted "X" Miles Ahead' signs at no charge. These temporary signs are 11" by 22" and printed on cardstock. They work well for roads that are posted further down a non-posted road. To get some, contact Robert Stevens at Maine DOT (Robert.stevens@maine.gov) or by phone at 624-3263.

The Department is also offering towns an opportunity to obtain a free set of solar powered" Rectangular Rapid Flashing Beacons". These are push-button activated crosswalk signals. The crosswalks need to be at approved locations at mid-block on a state road, and must meet ADA standards for the

Department to approve the location. Signs need to be in areas with full sun.

Smart Speed Feedback Signs

Also available to municipalities from Maine DOT this spring are free post-mounted dynamic speed feedback signs. These are signs that use radar to provide feedback to drivers on their travel speed. The signs are capable of recording time-of-day so the information can be used by law enforcement to perform targeted enforcement. The town would need to agree to use the signs as designed and use the information to help reduce speeding infractions. Priority will be given to rural village areas located on higher speed roadways. The sign can be mounted on u-channel posts and be moved around. Both the Flashing Beacons and speed feedback signs are being made available by DOT on a first-come, first-served basis. The Department will supply the equipment and the municipality will be responsible for installation and maintenance. For questions or to apply, contact Steve Landry at 624-3632 or stephen.landry@maine.gov .

MaineDOT's 2016-2018 Work Plan

MaineDOT's 2016-2017-2018 Work Plan is now available on-line at <http://www.maine.gov/mdot/projects/workplan/>. The Work Plan outlines the work that the department plans to perform over the next three years. The Work Plan is calendar year-based and includes all MaineDOT work activities. The projects listed in the Work Plan are sorted alphabetically by county and within county alphabetically by municipality. Projects and activities show the location, scope of work, funding, and estimated delivery year. Those for calendar Year 2016 are more firmly funded and tied to definite schedules, while those for calendar Years 2017/2018 may be more subject to change.

You may also use the online search tools to view proposed projects in your community, or view the Work Plan's projects on the MDOT Map Viewer.

MaineDOT has initiated a public involvement website that makes it easy for anyone to share comments, questions, or concerns regarding transportation in Maine: <https://mainedot.mysidewalk.com/>. The site allows DOT to post various "initiatives" or projects, and the public can then post comments about those initiatives. Input can also be shared related to any of the five MaineDOT Regions. An initiative is posted for each region with a map helping to direct the public to the appropriate region. A separate initiative has been posted for general comments or questions that may not be specific to any region or project. This additional opportunity for public involvement will make it much easier for the public to make comments and interact with MaineDOT, since it allows for an ongoing, continuing method of communication that is quick and easy.

If you would like the public to see which local roads in your community are posted, the DOT would be happy to include them on their website here: <http://maine.gov/mdot/postedroads/>. Please review this page and if you want to either update the current list or add your town's list, please contact Clifton.curtis@maine.gov.

Transportation Workshops & Training

Several Local Roads Center workshops are planned in the coming months for local officials/employees. The schedule is available on-line at: <http://maine.gov/mdot/events/#events2>. The Spring meeting of the Maine Chapter of the American Public Works Association (MCAPWA) will be in Waterville on April 7. The MCAPWA is a group of Maine public works professionals who do many activities for Maine towns and cities. For the latest information and membership info, go to the new website at <http://maine.apwa.net>.

Additionally, MaineDOT is offering Local Project Administration Certification Training on Thursday, April 28, 2016 at the Augusta Civic Center. This training is open to city and town officials interested in undertaking state DOT projects with funding from MaineDOT. The program will cover the basic requirements for overseeing a project. Successful completion will result in a certification that is valid for 4 years. Additionally, participants will earn 6 professional development hours, if applicable. The cost of the program is \$40, which includes all materials and lunch. For more information, please contact Mike Laberge, MaineDOT's Local Projects Coordinator, at (207) 624-3508 or Michael.Laberge@maine.gov. Information is available online: <http://www.maine.gov/mdot/lpa/ccm/>

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.

SPRING 2016



395 State Street
Ellsworth, ME 04605

Change Service Requested