



HCPC NEWSLETTER

Hancock County Planning Commission
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HCPC Executive Board Fiscal Year 2016-2017

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PLANNING NEWS

by Tom Martin

Orland Waterfront Plan Completed

Hancock County Planning Commission, working with the Orland Waterfront Committee, recently completed the Orland Village and Waterfront Plan. You can find the plan posted on our website at <http://www.hpcpcme.org/orland/index.htm>!

This plan may interest other harbor committees for its ideas. For more information, contact Jen Boothroyd.

Recent Court Cases and What We Can Learn

Estate of Merrill Robins v. Cumberland

In 2014, the town of Cumberland purchased property located in the Low Density Residential district (LDR). In 2015, the town submitted a site plan review application to create walking trails, construct a parking lot, and relocate an existing bathhouse. The Code Enforcement Officer (CEO) determined that the town's proposed use was permitted in the LDR zone as a "municipal use," a designation

defined in the ordinance. The planning board approved the application.

The Estate, which owns property abutting the site, appealed the CEO's decision, arguing that the proposed use was an "outdoor recreation facility," a use not permitted in the LDR zone. The board of adjustment and appeals agreed with the CEO's decision. The Estate subsequently appealed to Superior Court. The court agreed that the proposed use clearly met the definition of "municipal use." The Estate subsequently appealed to the state's Supreme Court.

The Estate argued that because the town's proposed facility may be characterized as either a "municipal use" or an "outdoor recreational facility," and because a municipal use," but not an "outdoor Recreational facility," is permitted in the LDR zone, the ordinance is in conflict. The Court stated, "If the meaning of the ordinance is clear, we need not look beyond the words themselves."

See: *Wister v. Town of Mt. Desert*, 2009 ME 66, 17

<https://www.courtlistener.com/opinion/1540077/wister-v-town-of-mount-desert/>

The Cumberland Zoning Ordinance defines a "municipal use" as any use or building maintained by the town of Cumberland." The language of the ordinance is clear and unambiguous. It provides that "any use" by the town of Cumberland qualifies as a "municipal use," and that these uses are permitted in the LDR zone. The Supreme Court upheld the Superior Court's ruling. For the full text of this case, see: http://courts.maine.gov/opinions_orders/supreme/lawcourt/2017/17me178mo.pdf

Friends of Motherhouse et al v. City of Portland.

Sea Coast had an agreement to buy a 17.5-acre parcel in Portland that is the site of a private high school; St. Catherine's Hall, which is used as a residence by retired Sisters of Mercy; and the vacant St. Joseph's Convent, known as the "Motherhouse." Sea Coast intended to give the high school a twenty-five-year lease, retain St. Catherine's Hall's current use, develop the Motherhouse into a multifamily dwelling consisting of eighty-eight affordable and market-rate senior housing units, and develop the surrounding grounds into a retirement community consisting of additional dwelling units and assisted living facilities. Sea Coast requested a zoning amendment for a 13.5-acre portion of the property that did not include the high school and St. Catherine's Hall rezoned from R-5 residential to R-5A residential as described in Portland's comprehensive plan, "the permitted residential uses in the R-5a1 zone are very similar to those in the R-5 zone, except that multiplexes are not allowed. The other significant difference is that PRUDs [planned residential unit developments] may be developed at a higher density."

The Planning Board voted to recommend that the Council approve a zoning map amendment re zoning the Sea Coast property and approve amendments to the zoning ordinance having general applicability concerning the R-5A zone. The Planning Board's report to the Council contained an explicit finding that the amendments were consistent with Portland's comprehensive plan. The Council voted to adopt the text amendments while tabling the proposed map amendment. Sea Coast then reduced the portion of the property to be rezoned as R-5A to 7.51 acres, in the process reducing the number of potential housing units. The Council unanimously approved the

revised map amendment on rezoning the 7.51-acre portion of the property to R-5A.

Following the rezoning, Sea Coast applied to the Planning Board for a four-lot subdivision of the entire property, as well as a subdivision in the Motherhouse consisting of sixty-six affordable and twenty-two market-rate senior housing units. The Planning Board approved the application and Friends filed a two-count complaint to Superior Court seeking to invalidate the Council's rezoning. The complaint asserted that the comprehensive plan required that R-5A zones be created only by contractual or conditional rezoning, and that the map and textual amendments were "substantively inconsistent with the Comprehensive Plan's goals and policies for the neighborhood."

In a judgment dated April 19, 2016, the court concluded that the zoning code and map amendments at issue are "in basic harmony" with Portland's Comprehensive Plan and the rezoning of 7.51 acres of the St. Joseph's convent site to R-5A did not have to be accomplished by conditional or contract zoning. Accordingly, Interveners are entitled to summary judgment granting declaratory relief to that effect. Friends appealed.

The court stated that its review of the City Council's action must give deference to the legislative body. Judicial review of a rezoning decision is ultimately limited to determining whether the City Council could rationally have adopted the new zone in light of the evidence presented to it, the various policies articulated in the comprehensive plan, and the mandate of [the applicable statute]. By statute, zoning ordinances and subsequent rezoning actions must be "pursuant to and consistent with a comprehensive plan. When considering whether a rezoning action is "consistent with" a city's comprehensive plan, a court must determine whether the City

Council could have, from the evidence before it, found that the rezoning was in basic harmony with the comprehensive plan. The challenger bears the burden of proving that the amendment is inconsistent with the comprehensive plan. A zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it strikes a reasonable balance among the municipality's various zoning goals or overlaps considerably with the plan. A comprehensive plan is considered as a whole; a municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with some provisions of the plan, even if the action appears inconsistent with other provisions of the plan. The evidence before the Council included the Planning Board's report. In that report, the Planning Board found that the Sea Coast project was consistent with the purpose of the R-5A zone as set out in the comprehensive plan.

The Planning Board additionally identified goals and policies" stated in the comprehensive plan that it found to be relevant to the Sea Coast proposal, including several focusing on the need for an adequate housing supply for the City's residents in general, and for senior citizens at all income levels in particular. Given the portions of the comprehensive plan identified by the Planning Board and considered by the Council, Friends did not meet its burden to prove that the Council's action on rezoning was inconsistent with the comprehensive plan.

For the full text of this case, see: http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2016/16me178mo.pdf

What We Can Learn From These Two Cases

Both towns were prepared. The Cumberland zoning ordinance shows the importance of having clear definitions. The Portland case is an example of the value of a comprehensive in supporting zoning provisions during a court challenge.

Comprehensive Plans: Should You Update Yours?

According to state records, there are only five towns in Hancock County with adopted comprehensive plans that are consistent with the requirements of the Growth Management Act. A consistency determination lasts twelve years. If your plan was adopted more than twelve years ago, it is no longer consistent. Please note that some towns may be omitted from the state list of consistent plans. Contact Tom Martin if you have any questions about the status of your plan.

There are several advantages to having a consistent plan, these include:

1. Preference in Certain Competitive State Grant Programs: While some grant applications award points in the scoring process, almost any application benefits if it is based on the recommendations of a consistent plan. The CDBG program requires that projects be consistent with a comprehensive plan. It also gives preference to towns with consistent comprehensive plans for applications for growth-related capital investments.
2. Serves as the Legal Basis for Town-Wide Zoning: The law says that zoning ordinances must conform to a consistent plan. An expired finding does not

invalidate an ordinance. It does, however, provide an opening for a party affected by the ordinance to challenge it in court. The outcome of the *Motherland v. Portland* court case (see the summary on page 3) might have been different if the city's plan was not consistent. Consultation with legal counsel is recommended.

However, the advantages of a comp plan go far beyond these tangibles. Getting groups of residents and municipal officials together on a regular basis to identify the resources and assets of the community and their current and future adequacy. This creates a culture of involvement and buy-in for a shared vision of the town's future. It also means that your town is ready to act when resources become available, opportunity knocks, or a development proposal needs modification to address its potential negative impacts. Many towns regret not being able to manage a new development and ask themselves "why weren't we prepared?" Land use ordinances based on a comprehensive plan are essential steps in preparation.

Some towns defer updating a plan due the time and cost involved. There are ways to manage costs. Some examples are shown below:

1. A town with a dedicated team of volunteers and municipal officials can tackle the plan on their own. Many municipalities in Maine, small and large, have successfully drafted and submitted comprehensive plans that are consistent with state law. Remember, that while a comp plan must reflect the unique needs of a town, there is no need to reinvent the wheel. One can use other plans as a template. (Just be sure to avoid reference to non-existent features. One inland town once had a marine resources chapter).

- 2.. Although not necessary, volunteer comp plan committees like those described above can bolster their work through collaboration with their regional planning commission (that's us!) to review and edit the document, create maps, or coordinate state submission. These services can be provided at a nominal cost.
3. A municipality can contract with their planning commission or a consultant to provide individual services, such as meeting facilitation or drafting of the plan chapters. Having some professional assistance may provide the support needed to combat volunteer fatigue and keep the planning process on schedule.
4. A municipality can negotiate a contract for a full-service comprehensive plan, where professional planners attend and facilitate meetings, gather most data, and draft and present chapters and maps. A local committee of volunteers and officials is still necessary, but the work they need to do on their own is minimized.

CDBG NEWS

By Tom Martin

The CDBG (Community Development Block Grant) Program has been an important source of funds for towns in Hancock County. Examples range from water and sewer system improvements, public facilities such as public safety buildings, revitalized downtowns, and rehabilitation of substandard housing. CDBG-funded projects must either primarily benefit low to moderate-income households or, in the case of downtown revitalization, eliminate slums and blight. For details on these requirements, contact Tom Martin at HCPC (667-7131 or tmartin@hpcme.org). The Maine Office of Community Development (OCD) has current program information on its website: <http://www.maine.gov/dec/d/meocd/>

Towns have also used CDBG funds for economic development projects that make a binding commitment to create or retain jobs primarily for low-to-moderate income (LMI) persons. **Remember that while there are income requirements for most CDBG programs, a town's overall population need not be 51 percent LMI to qualify for Economic Development funding.** Any town may apply if at least 51 percent of the jobs are held by individuals who meet the income requirements.

Towns had more limited options for CDBG funds during the 2016-2017 grant cycle. OCD did not accept new Public Infrastructure (PI) applications this year. All PI funds were committed to four priority projects from last year's grant completion. There was not enough money to fund these projects in the 2015-2016 grant cycle. No funds were allocated for Public Facility projects this grant year. Funds may become available if there are unexpended balances in other CDBG programs.

This means that the competition for CDBG funds will likely be very stiff next year. Towns interested in applying should start preparing now. Remember grants are scored on a point system and you need as many points as possible. Here are some general hints:

- a. To Earn Points, Get to the Point: The grant reviewers need a concise application that clearly explains how CDBG funds will be used. Everything they need to know should be explained in the application. Few, if any, of the OCD staff are mind readers. They are not omniscient and don't know local place names or the history of the project.
- b. Create a Citizen Advisory Committee: Citizen Participation normally counts for

up to 20 percent of the total points awarded. While a formal public hearing is required, your application will earn more points if you conduct an extensive outreach program. Invite all residents to meetings to get their thoughts on the importance of the project. If you are planning to seek Economic Development funds, explain why the targeted business should be funded while others are not. Give the committee time to explore alternatives. Show in your application narrative how public input helped shape the project. Spread the word about the meetings through articles in the town newsletter, social media, flyers, and notices at community events.

- c. Get Firm Commitments for Matching Funds: Explain why you need CDBG funds. Document what other sources of money you have sought and why these were not available. For example, a sewer district may have reached its borrowing limits. For more information on possible funding sources, see: www.hcpcme.org/comdev.html

- d. Remember the Large Print Giveth and the Small Print Taketh Away: (with apologies to Tom Waits). Put another way; follow the application instructions to the letter. For example, be sure you are using the current income levels in any surveys and that your survey meets the OCD requirements. Assemble the application package in the order required. Be sure you meet the page limits, font size, and margin requirements.

How Can HCPC Help?

Our staff has worked with the CDBG Program since 1980. We can help towns determine if a

project is eligible for funding and competitive. The OCD funds us to assist towns in the general application development process. **There is no charge for these general services.** These include assuring that income surveys comply with state guidelines, public hearings meet notification requirements, and how to document a binding commitment for matching funds. We can attend public outreach meetings and prepare detailed outlines for use in preparing the final application narrative. We are also available to review and comment on draft applications.

HCPC staff are qualified to administer CDBG grants. OCD requires that certified grant administrators manage all grants. Two of our staff are certified and are familiar with the paperwork involved in handling grant funds.

BROWNFIELDS NEWS

by Tom Martin

Hancock County Continues to Benefit from the Brownfields Program

What Are Brownfields?

Brownfields are defined as abandoned or under-utilized properties with limited or no potential reuse due to actual or perceived contamination. Examples include abandoned industrial sites, automobile service stations, old boat yards, and other properties that be contaminated with petroleum or hazardous materials. They range in size from a small business employing a few people to large sites such as the tannery site in Ellsworth or the former Verso paper mill in Bucksport.

HCPC received another round of brownfields assessment funding. We have used this grant to hire an environmental consultant to conduct site investigations of brownfields sites. The

grant pays for two types of Environmental Site Assessments (ESA). Phase I is an initial investigation of potential sources of contamination. Phase II involves preparing a detailed site clean-up plan. Many banks and other lending institutions require a Phase I ESA or a comparable investigation before financing a property. We are now identifying potential sites for investigation. If you know of any properties in your town, please contact Tom Martin at HCPC. He can explain the eligibility criteria and site selection process. The program gives preference to sites with a reuse plan that benefits the community. The ESA should serve as a catalyst for further private and public investment.

Why is This Program Important?

The identification of potentially harmful contamination sources is one benefit. The program also is an antidote to sprawl, helps businesses open and expand and can spur projects that benefit the entire community. As Hancock County grows, developers are looking for properties that have good access to utilities and services. Brownfield sites are frequently ideal for redevelopment since they tend to have some basic infrastructure. We have already seen several businesses open or expand on brownfield sites in or adjacent to existing built-up areas. This reduces the need to build in less developed areas where there is the risk of sprawl-related problems. HCPC has also used brownfields funds to spur the creation of trails, scenic turnouts, conservation properties and improve public access to the shore.

Also, we invite you to attend our Brownfields workshop date still to be determined.

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.

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.



Results of the 2016 Household Hazardous Waste Collection

The 2016 Ellsworth Area Household Hazardous Waste Collection was a great

success. 138 households from 16 communities brought items to the collection event. 166 units which equals 830 gallons of paint and other chemicals were disposed. 108 TV's and computer monitors were collected along with 834 fluorescent light bulbs. We also collected 70 devices containing mercury.

The 2017 Greater Ellsworth Household Hazardous Waste collection is scheduled for Saturday, August 19, 2017. Please encourage your town leaders to participate in this collection. Mark your calendars.

TRANSPORTATION **NEWS**

by Jennifer Boothroyd

Healthy and Safe Walking

HCPC has been awarded a grant from the Downeast Public Health Council and Washington-Hancock Community Agency for a new initiative, "Heart Health: A Walk in the Park". This spring, we will be working with communities and organizations throughout Hancock County to map and promote 30-minute (1.5-mile) walks with the goal of increasing heart-healthy physical activity and improving pedestrian safety.

Brisk walking can lower the risk of high blood pressure, high cholesterol, and diabetes as much as running, according to the American Heart Association (AHA). Walking is the perfect way to get that heart-healthy activity in, since nearly everyone can do it, it requires no expensive gear or facilities, and it can be done at whatever pace works for the walker. Thirty minutes of walking a day is the goal recommended by the AHA, and we will be promoting thirty-minute walks in communities throughout Hancock County.

Using the rule of thumb that the average person walks at a pace of three miles per hour, we will collaborate with municipalities and regional bicycle-pedestrian organizations to identify walks of approximately 1.5 miles long that take advantage of the safest, most accessible routes. We will create maps of the walking routes, and inventory any pedestrian hazards and recommended safety improvements. We will also be creating posters for participating communities and groups, highlighting the heart-healthy benefits of thirty-minute walks, and outlining the walking routes with custom maps.

We would like to include communities from all corners of the county in this initiative. If your town or organization is interested in being involved, please contact us soon, work is underway! We hope to replicate this project in the future, so even if we cannot work with you this spring, we may be able to include your community in a future iteration. Check our website in late spring for a new section devoted to the 'Healthy Walks' project, including maps, information on heart health, and more!

High Crash Locations

HCPC is continuing to work with MaineDOT in 2017 to improve the safety of drivers, pedestrians, and bicyclists throughout our region. We recently completed an analysis of six High Crash Locations in Ellsworth (you can view them on our website at www.hcpcme.org/transport.html), and are planning to review others this year. We will also be examining barriers to pedestrian safety and ADA compliance of street crossings. If there are particular locations in your community that are unsafe or in need of an evaluation, please contact Jen at 667-7131, so that we may prioritize your area.

Spring is here, and with it comes all sorts of road hazards! As you travel around our beautiful communities, please be wary of potholes and frost heaves, which can damage your car and cause drivers to lose control. Also, be on the lookout for animals that may wander into roadways as they emerge from hibernation or search for a mate. Turtles are a special concern, as they often choose sandy road shoulders to lay their eggs. In addition, of course, warm weather brings the return of pedestrians, bicyclists, roadwork and tourists. Pay attention, whether on foot or on wheels; safe roads require everyone's participation. Enjoy spring in Hancock County!

GRANT NEWS

2018 Recreational Trails Program Grant Open

The next round of RTP grants is now open and all information and documents on the [grant website](#) are up to date and ready for your use. RTP funds are available to municipalities, other qualified sub-divisions of state government and to qualified non-profit organizations under guidelines established by the Bureau of Parks and Lands in conjunction with the Maine Trails Advisory Committee.

Eligible projects may include:

- Maintenance and restoration of existing recreational trails.
- Development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails.
- Construction of new recreational trails.
- Acquisition of easements or fee simple title to property for recreational trails or recreational trail corridors.
- Operation of educational programs to promote safety and environmental protection as those objectives relate to use of recreational trails.

RTP is a reimbursement program providing up to 80% of eligible project costs.

Land and Water Conservation Fund

LWCF 2018 Grant Round Now Open

As of Friday, March 10th all documents and dates associated with the Maine Land and Water Conservation Fund program have been updated. The next grant application round is now officially open! The Land and Water Conservation Fund Act of 1964 (LWCF) was established to assist federal, state and local governments in the acquisition and/or development of public outdoor recreation facilities. Administered at the federal level by the National Park Service and at the state level by the Bureau of Parks and Lands in the Maine Department of Agriculture, Conservation and Forestry, LWCF grants can provide up to 50% of the allowable costs for approved acquisition or development projects for public outdoor recreation.

Any community interested in applying for LWCF assistance must first request a pre-approval site inspection. The link to the request form is on the department's LWCF grant website, but for your convenience, you can access that form by clicking on this link: http://www.maine.gov/dacf/parks/grants/land_water_conservation_fund.html The purpose of this site inspection is to evaluate whether the site is eligible for funding assistance. During this on-site meeting we will also discuss the proposed work and long term commitments of accepting LWCF assistance. For communities with existing LWCF assisted sites, we will also discuss any compliance issues that may exist with these as they may affect the eligibility to apply for this funding.

Anticipated Funding Levels.

We anticipate that the 2018 LWCF grant round will have at least \$450,000 in total funding available for project awards. Typically, at least half of this amount is awarded to local (municipal, school district, county) projects. For more information about the Maine LWCF program, please visit the LWCF grant website, or contact Doug Beck, at doug.beck@maine.gov or (207)-624-6090

Dates to Remember:

HCPC Annual Meeting

Tuesday, May 23, 2017
Social Hour at 6:00 PM
Meeting begins at 7:00 PM
Franklin Veterans Club – Route 182
Guest Speaker: Steven Rowe
President and CEO
Maine Community Foundation

Please RSVP to Sheri Walsh (667-7131 or swalsh@hpcme.org) by May 19.

**2017 Greater Ellsworth Household
Hazardous Waste Collection**

Saturday, August 19, 2017

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 2017 Newsletter



395 State Street
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Change Service Requested