

**MAINE LAND USE PLANNING COMMISSION**  
Department of Agriculture, Conservation & Forestry  
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**MINUTES**

**REGULAR MONTHLY MEETING**

The Rangeley Inn, 2443 Main Street, Rangeley  
September 10, 2014

**COMMISSIONERS PRESENT**

Gwen Hilton, Chair  
Everett Worcester  
Michael Theriault  
Charles Pray  
Bill Gilmore  
Betsy Fitzgerald (excused herself after the Rangeley Plan item)  
Durward Humphrey

**STAFF PRESENT**

Nicholas Livesay, Executive Director  
Samantha Horn Olsen, Planning Manager  
Tim Beaucage, Senior Planner  
Mary York, Augusta  
Sara Brusila, Regional Representative  
Jean Flannery, Permitting and Compliance Manager  
Jamie Francomano, Senior Planner

**OTHERS PRESENT**

Lauren Parker, Assistant Attorney General  
See attached Sign in Sheets

*Note: Commission votes are recorded in the following order:  
number voting in favor of a motion – number voting against a motion – number abstaining – number absent*

**ADMINISTRATIVE MATTERS**

**Introductions**

Introductions were made by members of the Commission, its staff, and the audience.

**Minute Approvals**

August 13, 2014 Minutes; **Commissioner Gilmore motioned to approve the minutes; Commissioner Fitzgerald seconded; Vote: 7-0-0-2**

**DIRECTOR'S REPORT**

Nick Livesay provided the director's report, noting:

- Several individuals with items that would have been on the agenda for the September meeting requested that the matters be scheduled for a future meeting in the Bangor/Brewer area;
- Ben Godsoe joined the LUPC as a part-time Sr. Planner;
- Since the public hearing on the proposed cell tower in Big Lake, the LUPC has received additional public comment and information from the applicant;
- Staff recently issued a permit for a cell tower in Long A Township;
- Several staff members recently participated in a site visit at Niboban Sporting Camps in advance of receipt of an anticipated subdivision application;
- Planning Decisions has been retained and will be providing facilitation services for the upcoming subdivision workshops.

Nick also circulated the anticipated calendar.

## PLANNING MATTERS

**Rangeley Plan**, Commissioner discussion of public comments received on September 9 and next steps; Samantha Horn Olsen

Samantha Horn Olsen presented a summary of public comment from the previous evening and to supplement this information with relevant implementation items from the 2014 Evaluation and Progress Report on the status of the Rangeley Plan. She said that the comments received the previous evening, as well as the results of the Commission's informal survey of stakeholders over the winter, would be appended to the Report.

Samantha indicated that staff had categorized the comments received last evening as follows: general comments; short-term actions requested or recommended; comments that may guide the timing and content of continued evaluations of the status of the Plan; comments on the regulation of subdivisions in the region or comments that might be applicable to the Commission's upcoming review of its subdivision rules jurisdiction-wide.

A few subjects covered in staff's presentation were then discussed in varying levels of detail by the Commission, including: the significance of land owner intent relative to the remaining development potential under the Rangeley Plan; the additional criteria for Commission review of proposed rezonings applicable in the Plan area; level of enforcement capabilities of the LUPC, and possible types of data collection and analysis that could go into future reports.

Commissioner Worcester asked for confirmation of the additional rezoning criteria applicable to the Rangeley Plan area, which were then read aloud from Section 10.08 of the Commission's rules.

Commissioner Theriault asked for more detail on the tax liabilities that result from removing potential development lands from the Tree Growth program. Commissioner Gilmore said that in his view, "it does get expensive, without question." Commissioner Humphrey said he believed the costs and benefits of the program vary widely depending on the mill rate in a given locale and may be more significant in coastal organized towns. Executive Director Nick Livesay indicated that he thought the issue of Tree Growth program often was factored into real estate development deals requiring removal of lands from the program and often allocate the costs to the buyer or developer.

Commissioner Hilton asked whether the amount of land registered in the Tree Growth program had been taken into account in determining the acreage of the new development zones created at the time of Plan adoption. Samantha responded that she did not know but that information on landowner intent more generally had been requested from individuals who participated in the prospective planning and zoning process leading up to Plan adoption. She indicated that these individuals had likely considered the status of their own lands with respect to the Tree Growth program in deciding how and whether to respond at that time.

Commissioner Gilmore suggested that the amount of land potentially entering into conservation easements in the future be considered as another issue related to landowner intent. He suggested that the Commission "ask the Rangeley Lakes Heritage Trust what's in their pipeline well in advance of making any adjustments to the Plan." Commissioner Pray concurred. He indicated that he expected that an accurate map or inventory would reveal that the land area under conservation is considerably greater than most people know of. He suggested that topographical constraints to development also be noted in any future maps on this subject.

Still on the topic of landowner intent, Commissioner Worcester indicated that he believes many subdivision lots sold to absentee or future retiree owners are likely to be bought and sold multiple times before being developed. Other

Commissioners commented on the question of whether or not such lots were still “on the market.” It did not appear that the Commission would reach consensus on this point.

Samantha added that staff would note this issue for future evaluation of the Plan and could return to the Commission at that time to present options on how best to conduct optional surveying and analysis of landowner feedback, in particular as part of future assessment of remaining Plan capacity. However she noted that staff considers assessing the impact of landowner intent on future planning and zoning decisions to be a complex issue.

Before moving on to discussion of short-term Actions in the Plan area, Commissioner Worcester touched on the rezoning criteria again. He said that he would not be in favor of any change or clarification of the Rangeley Plan rezoning criteria, saying he believed it was clear that meeting all three tests is necessary.

Commissioner Worcester indicated that he thought the accessory apartments issue was worth addressing in future rule changes. He asked whether “accessory apartments” was a defined term, suggesting that it should be. A member of staff checked the Commission’s rules and replied that the term was not listed in the definitions. Commissioner Worcester indicated that he thought the standards for “home occupations” should be more permissive, if addressed in future changes. In response, Commissioner Gilmore suggested that the relative density of the area surrounding the proposed use may dictate the outcome in such cases, with higher impact home occupations being appropriate only in less densely developed areas.

Commissioner Hilton said she would recommend including both the “home occupations” and “accessory apartments” issues for potential rule revisions when all of the rule revision needs are assessed. This appeared to reflect the consensus of the Commission.

Samantha asked the Commission for feedback on the question of applying some of the zoning subdistricts and standards from the Rangeley Plan to other regions. Nick added that eventual products of the new Community Guided Planning and Zoning projects in other regions may lend themselves to broader applicability, as well. In response, Commissioner Hilton indicated that she would like to see what results from various local CGPZ groups working on their own before discussing in greater detail.

Regarding future evaluation and progress reports on the status of the Rangeley Plan, Samantha said that, in advance of the next report, staff would bring back recommendations to the Commission on efficient ways to provide a more robust land use inventory, including some reference to landowner intent.

Commissioner Humphrey and others suggested that some data and/or photo-documentation could be requested from the Maine Revenue Service and that he believes that MRS has regularly checked up on properties throughout the jurisdiction including his own. Commissioner Worcester said that a map tracking the locations of all new single family homes would be useful. Samantha noted that increasing availability of LiDAR data may make it practical to gather more data about structural development in the Rangeley region and throughout the Commission’s service area in the future.

Regarding the time frame for the next evaluation and progress report on the Rangeley Plan, Commissioner Hilton indicated that she thought the current five year interval for reporting is adequate and she questioned whether resources would be available to do this type of work at more frequent intervals. However she said that if the economy “heats up” then it may be necessary to review the status of the Rangeley Plan sooner. Samantha indicated that annual reporting on a few, relatively objective indicators could be provided relatively easily, like the numbers of housing starts and lots available, and that this could be useful to the Commission in deciding when to revisit the Plan.

Discussion of potential actions relevant to the Commission's upcoming review of its subdivision rules followed.

Samantha suggested that stakeholders and staff could look at ways to increase efficiency in the Commission's application procedures during the Commission's upcoming process for reviewing its subdivision rules. She said one recommended action from the public comments received was to provide a program whereby contractors could become certified in the application of best management practices and interpretation of the Commission's standards for site work, and then could qualify for streamlined permitting or compliance procedures.

In response to a question from Commissioner Hilton, Permitting and Compliance Manager Jean Flannery indicated that the Rangeley region appeared to have considerably more subdivision applications than other areas in the Commission's service area. Jean said that in recent times her staff has been doing a lot more hands-on assistance.

Referencing comments heard the previous evening, Regional Representative Sara Brusila noted that a few of the more complex types of development proposals, and not just subdivisions specifically, were included in the concerns raised. Commissioner Gilmore indicated that he thought it appropriate that some applicants also need professional assistance with some types of applications.

Numerous other topics were raised in the wide ranging discussion, some resulting in the Commission directing staff to make inquiries with other state agencies to follow up on specific concerns raised by the public comments received. These issues included some related to water quality, including maintenance and inspection of subsurface waste water systems as well as suspected sediment and erosion control problems stemming from recent work on State Route 4.

**Kingsbury Plantation (ZP748)**, consideration of Commission-initiated rezoning of property from D-RS to M-GN, Piscataquis County; Jean Flannery

Jean Flannery gave a brief presentation on the Commission-initiated rezoning of 9 acres of property in Kingsbury Plantation from a D-RS to an M-GN. Jean Nichols and Steve Wood own/operate 2 acres, and Greg Peacock et al own 7 acres.

**Commissioner Gilmore motioned to approve staff recommendations; Commissioner Humphrey seconded;  
Vote: 6-0-0-3**

## **PERMITTING MATTER**

**Floodplain Management**, presentation by Maine Floodplain Management Program and discussion of FEMA Letters of map Change (LOMC) and the role of the Commission; Jennifer Curtis

Jennifer Curtis presented information about the Letter of Map Change process. This issue arose because the Commission recently received a request for a permit to place fill to elevate a building site. In addition to general information about the FEMA regulations and process, Ms. Curtis described the Commission's role in approving and certifying the fill. The Commission discussed the regulations and the process.

## RULEMAKING MATTER

**Accessory Structures**, discussion of potential modification of accessory structure rules; Nicholas Livesay

Nick provided a PowerPoint presentation summarizing how accessory structures currently are regulated under the Commission's rules and the basis for the 2012 rulemaking that enabled certain residential accessory structures to be allowed without a permit, subject to standards. He also discussed draft language that could be adopted through rulemaking to require submission of a notice of intent to construct prior to building an accessory structure.

Commissioner Worcester expressed concern that presently we do not know who is constructing accessory structures or where they are being built. Nick acknowledged that that is the case and the best we can do is estimate how many accessory structures are being built based on historical development rates prior to the 2012 rule change.

Commissioner Gilmore commented on the importance of capturing value for taxation purposes and the role LUPC permitting can have on capturing value. Nick summarized how the LUPC is funded. Commissioner Humphrey noted that in his experience Maine Revenue Service is pretty good at identifying structures during their routine surveys and inspections.

Commissioner Humphrey asked if there was evidence of increased noncompliance since the 2012 rulemaking. Nick explained that there is no evidence of greater noncompliance at this point and summarized the concerns expressed by Commissioner Theriault at a prior meeting that prompted the present discussion about moving to a notification or permit-by-rule type system. Commissioner Humphrey expressed concern that the Commission was thinking of doing the work of MRS.

Commissioner Worcester suggested we not change the rules at this point, but said the Commission should be firm with violators and make them come into compliance. Commissioner Theriault stated that he thinks requiring someone to fill out a form, with their own pen, will improve compliance. He also asked if we should require some form of notification in order to collect data on the number of accessory structures. Commissioner Humphrey asked what value would come with collection of the data. Commissioner Hilton noted the data could help with inspections.

Samantha Horn Olsen summarized the Commission's thinking in 2012 when it undertook the prior rulemaking and why the Commission decided not to require a permit or notification for certain accessory structures. Commissioner Hilton wondered whether some form of notice for development in shoreland areas would be beneficial because of potentially increased environmental risks.

**Commissioner Worcester moved to not move forward with accessory structure rulemaking at this time; Commissioner \_\_\_\_\_ Seconded; Vote: 5-1-0-3 (Commissioner Gilmore opposed)**

## ENFORCEMENT MATTERS

**St. John, Peter and Judy**, consideration of settlement agreement, dwelling reconstructed in excess of standards, filling and grading not to standards within 100 feet of the NHWM, Winterville Plt., Aroostook County; Jean Flannery

Jean Flannery gave a brief presentation of the enforcement case, EC 10-27.

Commissioner Gilmore asked how this violation was discovered. Jean responded that she was unsure but said it may have been from just a drive-by by staff working in the area.

**Commissioner Pray motioned to approve staff recommendations; Commissioner Gilmore seconded;**

**Vote: 5-1-0-3 (Commissioner Humphrey opposed)**

**Santerre, Ernest and Ann**, consideration of settlement agreement, dwelling reconstructed in noncompliance with permit conditions; deck constructed 8 feet from NHWM without a permit and in excess of standards, T1R9 WELS, Piscataquis County; Jean Flannery

Jean Flannery gave a brief presentation on enforcement case, EC 14-24. There was no discussion.

**Commissioner Gilmore motioned to approve staff recommendations; Commissioner Pray seconded;  
Vote: 5-1-0-3 (Commissioner Humphrey opposed)**

### OTHER MATTERS

Commissioner Comments – N/A

### ADJOURN

Meeting adjourned at approximately 12:30pm.