

MAINE LAND USE PLANNING COMMISSION
Department of Agriculture, Conservation & Forestry
22 State House Station - Augusta, Maine 04333-0022
TEL (207) 287-2631 FAX (207) 287-7439

MINUTES

REGULAR MONTHLY MEETING

Jeff's Catering, 15 Littlefield Way, Brewer
December 9, 2015

COMMISSIONERS PRESENT

Everett Worcester, Chair
Paul Underwood

Charles Pray
Mike Theriault

Bill Gilmore
Philip Curtis

Robert Everett

STAFF PRESENT

Nicholas Livesay, Executive Director
Samantha Horn Olsen, Planning Manager
Hugh Coxe, Chief Planner

Ben Godsoe, Senior Planner
Mary York, LUPC Augusta
Billie MacLean, Ashland Regional Representative

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; November 4, 2015 Minutes

Commissioner Pray moved to approve the minutes; Commissioner Gilmore seconded; Vote: 6-0-0-2

Unanimous (Commissioner Underwood was not present for this item; Vice-Chair Fitzgerald was not present for the meeting. The LUPC had one vacant seat at this time.)

DIRECTOR'S REPORT

Nick Livesay provided the director's report. He:

- Welcomed Bob Everett to the Commission and noted Bill Gilmore had been reappointed by Franklin County and had moved to a new seat;
- Provided an update on requests for petitions to remove areas from the expedited permitting area;
- Noted staff are working on preparing the annual report to the Legislature; and
- Noted interviews were scheduled for the following week to fill a vacant ES IV position.

PLANNING AND RULEMAKING MATTER

Community Guided Planning and Zoning, presentation of final product from Aroostook County steering committee and Northern Maine Development Commission; consideration of posting rule revisions for public comment; Hugh Coxe, Jay Kamm and Mark Draper

Hugh introduced the item, identified what the Commission will be asked to vote on following the presentation, and thanked the Steering Committee members and NMDC for their participation in the Aroostook CGPZ process.

Mark Draper talked about the overall process and some key takeaways. He said that committee members were appreciative of the opportunity to participate in the process and felt that consideration of local priorities is an important component of land use planning and regulation. The Committee struggled a bit initially trying to gain focus on a particular topic or issue because the geographic area is vast and there were many potential topics. He suggested that upfront efforts to “shrink the universe” would be very helpful in providing a regional committee with a starting point. He said it was helpful to re-focus the committee and to better define the role of LUPC staff which lead to staff providing more specific alternatives for committee consideration. Mark stated that after the committee decided to propose a new small/rural business subdistrict, the process worked well with staff developing products/documents; and the Committee providing insightful feedback. The process also provided significant opportunity for the public to participate with 5 public meetings in April & July. The committee felt that an ongoing process would be beneficial, to the extent funding and staffing permits, to monitor developments and be able to respond to issues in a timely and effective manner.

Jay Kamm described the development of the proposal for a rural business development subdistrict (D-RB) including the guiding principles, the objectives of the proposal, and the purpose of the subdistrict. Jay described the three categories of business types, what factors determine the category of business type, and where such businesses could be located both in terms of which townships and plantations are eligible, and where within the townships and plantations they could locate. He also discussed provisions in the proposal for the expansion of existing businesses.

Commissioner Pray asked how this would be more inclusive and how it might differ from municipal zoning. Commissioner Gilmore stated that this proposal seems to reflect the values of the region. Commissioner Worcester asked about measuring the success of this zoning process.

Hugh described the proposed rulemaking and some of the details of how this subdistrict would be incorporated into the LUPC regulatory structure. He described the performance based criteria which evaluate the type of facility, the size, and operations to determine the category of business type. The category designation determines which locations within the areas eligible for the D-RB subdistrict a particular rural business may be located. He described that rezoning to a D-RB does not require a finding of adjacency and that development within a D-RB does not create adjacency for other subdistricts.

Hugh described the next steps in the rulemaking and made the recommendation that the Commission direct staff to initiate rulemaking and post to a 30 day public comment period followed by a 21 day rebuttal period.

**Commissioner Gilmore moved to approve the staff recommendations; Commissioner Pray seconded;
Vote: 7-0-0-1 Unanimous**

ZONING MATTERS

Bancroft Deorganization; consideration of zoning map for final adoption; Bancroft Township, Aroostook County; Ben Godsoe

Having recently deorganized, Bancroft Township joined the area served by the Land Use Planning Commission on July 1st, 2015. State law requires that the Commission develop and adopt a land use guidance map for the township within one year of the effective date of deorganization. In order to generate the proposed zoning map, staff conducted an extensive inventory of existing land use conditions in Bancroft that included mapping the existing locations of development, water resources, and other natural features. This process also included significant efforts to engage residents and property owners about appropriate locations for future growth through public meetings,

Interpersonal outreach, mailings, and use of the Commission's website to reach property owners who are not residents.

There are three locations in Bancroft proposed to be Development Subdistricts. All are based on existing development densities and uses. Two of these locations would be General Development (D-GN) Subdistricts and were identified by residents during the public meetings as places that either already include or would be appropriate for future small-scale commercial development. The remaining development zone would be a D-RS (Residential Development) Subdistrict, and would include an existing residential neighborhood with a relatively dense pattern of development.

Large portions of Bancroft are managed as working forest or agricultural land and would be appropriate for the General Management (M-GN) Subdistrict. Protection subdistricts proposed for existing resources in Bancroft include aquifer resource protection (P-AR), flood protection (P-FP), great pond protection (P-GP), shoreland protection (P-SL), and wetland protection (P-WL).

In a few locations near the Mattawamkeag River and Baskahegan Stream, mapped wetlands and flood prone areas overlapped existing structural development and the Commission directed staff to work with property owners to obtain more detailed information to ensure proposed zoning would accurately reflect conditions on the ground. Consultations with property owners and in some cases more formal wetland delineation by consultants yielded accurate boundaries of existing wetlands at each site.

Additionally, Bancroft is no longer within the expedited permitting area because it is no longer an organized municipality and it is not specifically identified in the Commission's Chapter 10 rules.

Staff recommends the Commission adopt the draft Bancroft Township Land Use Guidance Map and approve Zoning Petition ZP 756, which would become effective on 12.24.2015.

Commissioner Gilmore asked what the total valuation of property in Bancroft was, and how many students were enrolled in local schools. Those and other statistics are compiled in the Bancroft Deorganization Procedure, which staff will forward at the earliest opportunity.

**Commissioner Pray moved to approve the staff recommendations; Commissioner Gilmore seconded;
Vote: 7-0-0-1 Unanimous**

OFLC, Inc.; consideration of rezoning approximately 1.5 acres from P-FW to M-GN to accommodate proposed gravel pit expansion; Big Moose Township, Piscataquis County; Hugh Coxe

Hugh presented the zoning petition, describing the location, the proposal and the reasons for the proposed rezoning. The zoning petition is a companion application to a pending Development Permit application DP 4965 submitted by Mike Theriault Construction, LLC for an approximately 10.4 acre expansion to an approximately 5.6 acre gravel pit. The purpose is to accommodate an after-the-fact approval of the existing 5.6 acre gravel pit and the approval of a 10.4 acre expansion. This would result in rezoning about 1.7 acres of existing P-FW (designated as a deer wintering area) to M-GN. Theriault Construction proposes to continue operation of the gravel pit consistent with the terms and conditions of any permit issued upon completion of the review of the pending Development Permit application - including reclamation recommended by the Department of Inland Fisheries and Wildlife (IF&W) for the entire 1.7 acres, excluding the land management road that runs through this area that previously was issued an after-the-fact permit by the Maine Forest Service.

Hugh presented the statutory and regulatory review criteria and provided analysis that the use as a gravel pit is

consistent with the intent of and standards for the M-GN. Standards for removal of deeryards are strict, as the deeryard program is designed to be a long-term habitat protection program, but removal of land from the P-FW designation is appropriate in some cases such as when both IF&W and the landowner agree that removal is appropriate. Rezoning of 1.7 acres from P-FW to M-GN would have no undue adverse impacts on uses and resources within this area and reclamation of this area with an herbaceous mix (as recommended by IF&W) would be a requirement of any permit issued for DP 4965 and would increase forage opportunities for deer in this area.

Staff recommended the Commission approve the petition of the OFLC, Inc., to rezone 1.7 acres from P-FW to an M-GN.

Several Commissioners asked how the area was originally designated as a deer yard, on what basis it has been determined to be appropriate for removal, and how can the Commission be sure that IFW recommendations for replanting are sound. Mike Theriault stated he met with IFW on site and there was evidence that the area has not been an active deer yard for at least 6 years and that removing the deer yard would not have an adverse impact. The revegetation with clover would be available for future forage if the deer were to come back.

Several Commissioners expressed concern that the gravel pit is in violation of LUPC regulations and asked about enforcement. There was a discussion about addressing the violation through an after-the-fact permit. Commissioners also discussed whether there are other deer yards in the area and whether there is a process for swapping areas.

Several Commissioners discussed making a motion to approve the rezoning with a stipulation that IFW provide statements in writing that supports removing the deer yard area. Commissioners felt the communication from IFW should come from a person at IFW that has the authority to make the determination.

Commissioner Gilmore moved to approve the staff recommendations subject to receiving a written letter from IFW verifying its agreement with removal of the area from the deer yard; Commissioner Pray seconded; Vote: 6-0-1-1 Unanimous (Commissioner Theriault recused himself from the matter.)

C&E Real Estate, LLC; consideration of zoning petition to revise configuration of D-RS subdistrict to accommodate proposed subdivision; Big Moose Township, Piscataquis County; Hugh Coxe

Hugh presented the zoning petition, describing the location, the history of the property, and the reasons for the proposed rezoning. The petition proposes a small rezoning to adjust the boundaries of the D-RS Subdistrict to align the subdistrict boundaries with the area proposed for a residential subdivision. A prior Zoning Petition (ZP 744) rezoned 18.8 acres of the C&E parcel from M-GN and P-GP to D-RS to allow for development of a residential subdivision. In December 2014, 9 acres of the C&E parcel was transferred to Rodney and Vanessa Folsom and included a portion of the area rezoned to D-RS in ZP 744.

In September 2015 C&E filed a subdivision application which differed from the conceptual subdivision plan submitted as part of ZP 744 in order to account for transfer of the Folsom lot and several other lot and roadway changes. The total number of residential lots created by C&E on the peninsula would not change from the seven contemplated in ZP 744. Petition seeks only to adjust the boundaries of the subdistrict and is otherwise consistent with approval of ZP 744.

Staff recommended the Commission approve Zoning Petition ZP 758.

Commissioner Gilmore asked for clarification about the number of lots allowed.

**Commissioner Pray moved to approve the staff recommendations; Commissioner Curtis seconded;
Vote: 6-0-1-1 Unanimous (Commissioner Theriault recused himself from the matter.)**

RULEMAKING MATTER

Wind Power; discussion of overview document regarding the process for residents to petition the Commission to remove areas from the expedited permitting area and the Commission's substantive review of petitions; Samantha Horn Olsen

Samantha reviewed the memo and overview document that were attached to the agenda, and changes that were made since the last time the Commission reviewed it.

Commissioner Pray asked for clarification about an addition on page 4 that areas that have been removed won't be factored in to the decisions on the other petitions. Samantha explained the reasoning. The Commissioners discussed it and asked for clarified language in the final document.

Samantha addressed questions that Commissioners asked about this matter in prior meetings. The Commissioners discussed the residency requirement, but did not have additional changes at this time. If it becomes an issue in the future, the Commission may take it up at that time. Commissioner Everett asked about how the processing fee would be calculated and assessed. Samantha referenced how we have handled that type of fee in the past.

She then reviewed the informal comments staff received on the document. The Commission did not direct any further change and indicated that they would like the document to be posted for the public to use.

CERTIFICATION MATTER

Number Nine Wind Farm LLC (subsidiary of EDP Renewables North America LLC); overview of project and pending request for certification; T10 R3 WELS, E Township, T9 R3 WELS, T8 R3 WELS, TD R2 WELS, TC R2 WELS, TA R2 WELS, Forkstown Township, St. Croix Township; Aroostook County; Billie MacLean

Billie gave a presentation on the proposal and Certification Request (SLC-7) for the Number Nine Wind Farm including a review of which standards are reviewed by the LUPC and by MDEP.

Commissioner Gilmore asked for clarification on why LUPC was not permitting MET towers for this project. Billie explained that once a project triggers Site Law, all of the development is reviewed by MDEP and noted that several MET towers have been previously permitted by the LUPC. Director Livesay further explained the term "common scheme of development" and how it affects existing MET towers under State Law and wraps them into the Site Law permit but new MET towers associated with another project would be permitted by the LUPC.

Director Livesay noted that this item was on the agenda because the meeting was in Aroostook County and staff had hoped to have a draft certification for consideration. However, we are lacking some additional information. He mentioned that the Commission generally reviews all Certifications but can decide that staff can do the certification or they can continue as usual and move on to the next agenda item. Chairman Worcester asked for comments and Commissioner Gilmore stated that the Commission should go to the next agenda item, implying that the Commission not delegate the Certification to the staff at this time and that the Certification be brought back to the Commission. Chairman Worcester said that we will do that.

RULEMAKING MATTER

Chapter 10 Subdivision Rulemaking; update on review of subdivision rules; Samantha Horn Olsen and Stacie Beyer

Samantha updated the Commission on the progress of the focus groups and Stacie's work on how to make a sketch plan stage user-friendly and helpful in achieving the Commission's goals. She has been talking to professionals, such as engineers and surveyors, that prepare subdivision designs to find out what is a low-cost, efficient way to do this. Staff will come back with more information in February.

ENFORCEMENT MATTERS

Quebec, Inc. (EC 11-06); consideration of settlement agreement regarding gravel pit activities; Big Twenty Township, Aroostook County; Billie MacLean

Billie gave a brief presentation of Enforcement Case EC 11-06 for Quebec Inc. outlining the history, applicable standards, violations, and proposed administrative settlement agreement, which was not yet signed by the respondent.

Commissioner Gilmore asked if Quebec Inc. would be required to compensate the abutting landowner or reclaim the portion of the pit located on that property. Commissioner Pray wanted to add this requirement into the settlement with permission from the abutter. Commissioners also generally commented that the penalty was too low and recommended assessing the penalty for each type of violation. Director Livesay agreed that this would be within the statutory ability of the Commission. Commissioners furthermore voiced concerns that Quebec Inc. will continue to ignore the standards and requirements and will not sign the settlement.

Mike White, a consultant for Quebec Inc., presented a history of the development and stated that the intent was to have Mr. Morin, President for Quebec Inc., sign the settlement on December 22, 2015 when he returned from Florida. Commissioners discussed with Mike White the costs of getting an after-the-fact permit and reclaiming the pit; the logistics of getting Mr. Morin to sign the settlement while in Florida, how many additional acres of gravel are available, the groundwater table, and the option of requiring a performance bond or guarantee to satisfy the Commission's concerns that the site may not be reclaimed as required in the settlement.

Don Cote, a member of the public and former LUPC employee commented that he worked on this case for many years and normally when agreements were reached they would not be done, with the exception of the recent reclamation. He further commented that he felt the penalty was "minor" considering the economic gain and that there were additional photos in the file that should be reviewed by the Commissioners.

The Commissioners ended by commenting that Quebec Inc. cease all activities, that the penalty be reassessed, and a performance guarantee be included in the settlement. Finally, Commissioner Worcester requested that staff not negotiate with Quebec Inc. at this time and instead bring a revised draft settlement back to the Commission for review.

No Decision was made. (Commissioner Underwood left due to illness during the lunch break.)

LaForge, Guildor and Donna, and Guy McCluskey (EC 90-35 and EC 97-46); discussion of pending enforcement matter and Commission direction on achieving resolution; Long Lake, T17 R3 WELS, Aroostook County; Billie MacLean

Billie gave a brief presentation of Enforcement Cases EC 90-35 and EC 97-46 outlining the history, applicable standards, violations, and proposed administrative settlement agreement in which the respondents were not interested in signing.

Donna LaForge read a written statement she had prepared detailing their family's communications with the LUPC staff from 1982 to 2015, voicing her and her husband's frustration with the amount of time this case has taken to get to this point, and explaining the difficulties involved with relocating their home, which is on a permanent foundation. They wish to retain the existing structures in their present locations and pay a monetary penalty.

Commissioner Gilmore asked Ms. LaForge to clarify her affiliation with Guildor LaForge and to what extent she was aware of the violations when she and her husband purchased the lease. Ms. LaForge explained that Guildor was her father and that she knew there had been issues in 1997 but that her father had written to LUPC staff and not heard back for many years. Commissioner Pray asked if staff agreed with the timeline presented by Ms. LaForge. Billie stated that it seemed quite accurate and noted that the settlement changed over time from allowing the dwelling to stay in place to requiring it's relocated after discussions with the AG's office.

Commissioners discussed past cases where dwellings were required to be relocated, the monetary cost and environmental impact of moving a dwelling. Director Livesay explained that staff needed guidance from the Commission on how to deal with these more difficult cases, particularly when staff is not able to reach an agreement with the violator. Commissioner Worcester expressed that he was leaning towards having the camp moved. Commissioner Gilmore felt the camp should be camp should remain in place with a higher penalty to avoid environmental disturbance. Commissioner Theriault suggested that each Commissioner leave with homework and figure out what they wanted to do with cases involving dwellings that could not be permitted.

**Commissioner Pray moved to table this item until the February meeting; Commissioner Curtis seconded;
Vote: 6-0-0-2 Unanimous**

OTHER MATTERS

Commissioner Comments – N/A

ADJOURN

Meeting adjourned at approximately 3:45pm.

Land Use Planning Commission

SIGN-IN SHEET

Please Print Clearly

Date 12/9/15

NAME	AFFILIATION
James May	
ALAN & KAY MICHAHA	LEXINGTON TWP
Billie Maclean	LUPC
Bob Clark	NMD@
Ben Godsoe	LUPC
Patrick Strauch	ME FOREST PROD COUNCIL
Donald Cote	
Ken Arndt	city of P.I.
Mike White	White Farm h.h.c.
Kellen Ingalls	EDP Renewables
Elizer Donaghe	NRCM
Nonna LaJoye	
Guy McCheskey	