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Memorandum

To: LUPC Commissioners
From: LUPC staff
Date: March 3, 2016
Re: Adjacency and Planning for the Location of Development

Introduction

At the February meeting, the Commission directed staff to prepare more information about refining or redefining the adjacency principle. This memo provides examples of why the adjacency principle should be revised, and some examples of how the Commission could think about adjacency differently. The final portion of the memo describes some considerations for a process to engage stakeholders in various regions. The goal would be to explore alternatives to the current application of the adjacency principle that better reflect what people want for their area and ensure the Commission fulfills its planning responsibilities throughout the unorganized and deorganized areas of the State.

Background

The adjacency principle is one of the fundamental elements of the Commission's planning for development. The 2010 Comprehensive Land Use Plan (CLUP) describes the adjacency principle as:

The requirement that new development should be located near existing development is referred to as the "adjacency" principle. The Commission has generally interpreted adjacency to mean that most rezoning for development should be no more than one mile by road from existing, compatible development¹ – i.e., existing development of similar type, use, occupancy, scale and intensity to that being proposed, or a village center with a range of uses for which the proposed development will provide complementary services, goods, jobs and/or housing. (CLUP, p.62)

¹ The Commission recognizes that there are certain instances in which a greater or lesser distance may be appropriate in measuring distances to existing developments.

The adjacency principle is most commonly applied in the evaluation of rezoning proposals. As a result, adjacency does *not* apply to development allowed in existing zones, including most residential development, or to the buildout of existing “D” zones (development subdistricts). Adjacency also does not apply to “2-in-5” lot splits or recreational lodging in the M-GN zone. Present zoning allows for this activity.

Adjacency *does* apply to all residential subdivision that is not already in a development zone. This is because rezoning to a “D” zone that allows subdivision is required, except in the case of level 2 subdivisions. Level 2 subdivisions do not require rezoning; however, adjacency is applied to level 2 subdivisions at the permitting phase. This measure was intended as a way to eliminate the rezoning step for subdivisions in certain pre-identified places. Additionally, adjacency generally applies to rezoning for commercial and industrial uses.

Some types of residential subdivision and commercial and industrial uses meet the principles of adjacency through special zoning instead of using the 1-mile rule of thumb. For example, the Planned Development (D-PD), Planned Recreation Facility Development (D-PR), Resource Plan (P-RP) and Recreation Facility Development (D-RF) subdistricts, as well as the proposed Rural Business Development (D-RB) subdistrict, all may be used in suitable areas more than 1 road mile from existing compatible development. While some exceptions or flexibility exist for certain development in certain locations, in general most new zoning for development needs to satisfy the 1-mile rule of thumb.

The CLUP acknowledges that the 1 mile by road rule of thumb is a rough tool that both could and would be improved upon (See, e.g., CLUP, p.128). Now is an opportune time to make these improvements. We have the tools we need for a good discussion about refining or reworking adjacency, and it is certainly possible to make improvements so that rezoning for development can be applied in a manner that produces better results, including an overall increase in the land available for subdivision and other types of development, ensuring predictability as to where rezoning is or is not likely to succeed, and eliminating the rezoning step for different types of development in some areas. There is substantial information in the statute and the CLUP as to the purposes that the adjacency principle should serve. Refinement of adjacency can be consistent with both.

The adjacency principle is a tool that promotes sound planning principles regarding the location of new development. The Purpose and Scope section of the Commission’s statute states that “it is desirable to extend principles of sound planning, zoning and development to the unorganized and deorganized townships of the State...” and goes on to describe some broad concepts that reflect these sound planning principles. The Commission’s task - to plan for an area that has importance to local residents and also has statewide economic and environmental importance - is a challenging one, but the legislature set out priorities, and some type of planning for location of

development is essential in meeting those expectations. The Commission's Purpose and Scope language is attached at the end of the memo.

Some identified issues with adjacency

The unorganized and deorganized areas of the State are a big place with widely varied activities, economies, traditions and landscapes. These areas have varied land use planning needs. The adjacency principle fulfills the broadly stated sound planning principles identified in the Commission's statute but, the 1-mile rule of thumb interpretation the Commission historically has applied is too simplistic a tool to account for every circumstance.

Past agency experience has illustrated that the adjacency principle does not always effectively: recognize differences between regions or uses; recognize that different types of development may require assessment of different locational factors; limit impacts of dispersed development; provide flexibility to accommodate site constraints; and provide predictable outcomes to zoning petitions.

Regional differences

While the planning principles embedded in adjacency are applicable throughout the Commission's service area, application of the adjacency principle through the 1 road mile rule-of-thumb does not always account for the unique characteristics of each sub-region. For example, in Northern Maine residents are used to driving long distances to get to jobs, access services or recreation activities. In other regions like Western Maine, residents may not be used to driving such long distances to access the same ranges of services and activities. Locating new residential or commercial development in each sub-region may require different metrics.

Differences between uses

Locating commercial or industrial development near other similar types of facilities may not be the most important consideration in siting this type of development. For example, some locations may be appropriate for commercial development because they provide a needed amenity or service such as equipment repair and processing facilities near a high concentration of farms, or recreation support businesses that rely on nearby resources such as trailheads or waterbodies. Similarly, it may be more important to locate industrial facilities near infrastructure such as utilities, ports, rail or other transportation networks, than within 1 mile of other similar types of facilities.

Limiting impacts of dispersed development

The adjacency principle sometimes is not effective in limiting the negative effects of dispersed development. Also, because it promotes development near other compatible development, it may not be effective in encouraging development in more appropriate locations (that are not necessarily within a mile of existing development). Each new development zone can serve as a

basis for future re-zonings up to 1 road mile away. Development zones were originally drawn based on existing development, and as a result are fairly dispersed. The adjacency principle has the potential to sanction a “leapfrogging” effect, where each new development can potentially become the basis for another rezoning. Consequently, the adjacency principle does not prevent the leading edge of development from advancing into undeveloped areas. This dispersed development pattern has a negative impact on remoteness, which is one of the principle values of the service area. (See CLUP, page 121.)

Flexibility

Application of the 1 road mile rule-of-thumb provides desired predictability, but sometimes has not allowed enough flexibility for proposals to account for existing natural resources and site constraints such as poor soils, wetlands, steep slopes, habitat, or waterbodies, which may suggest alternative sites beyond 1 road mile from other comparable development in order to achieve a good design.

Similarly, a strict interpretation of the 1 road mile measurement may incentivize the foreclosure of certain areas to uses that otherwise might be well, or even better, suited for the area. For example, requiring the location of new residential development next to existing residential development can result in a development pattern that shuts out opportunities for locations to be used for recreational access, commercial uses, or agricultural or forest management activities, without consideration of whether allowing the residential development more than 1 road mile away might allow for a more desirable use of resources and preferable land use patterns in the area.

Additionally, there may be instances where the planning principles underlying the adjacency principle would be satisfied by development, a residential subdivision for example, more than 1 road mile from existing compatible development.

In all of these scenarios, flexibility in applying the adjacency principle, as opposed to rigid adherence to the 1-mile rule of thumb, can lead to sound planning results. There is an opportunity for the Commission to refine its application of the adjacency principle to provide greater flexibility – by better accounting for the variety of development types and location characteristics within the unorganized and deorganized areas when planning for the location of development.

What tools already exist? Are there new tools that may be useful?

The Commission has already done a substantial amount of thinking about location in addressing recreational lodging and Aroostook County small business. We can capitalize on that work and also bring in information about residential development, recreation infrastructure development, forestry and agriculture-related businesses, and other commercial/industrial development, as well

as natural resource information. Bringing these pieces together is likely to yield a simpler, better, more durable product than only addressing one development type at a time.

There are many ways to think about planning for development, and the Commission is likely to hear a variety of good ideas when the public weighs in on these issues. In the meantime, the Commissioners were interested in hearing about some of the options that staff have already identified. What follows are *examples* of ways to approach the planning process – it is by no means an exhaustive list.

Proximity

Sometimes proposed development should be located close to certain types of existing infrastructure and services, or a particular natural or recreational resource. Proximity measurements are useful when a use is dependent on a resource or infrastructure that is fixed in a geographic location. For example, the Rural Business Development Subdistrict (D-RB) developed in the Aroostook County CGPZ process requires that new rural businesses be located within a certain distance of a public road. One of the reasons for this requirement is to reduce impacts to nearby uses and to existing infrastructure that are associated with increased levels of traffic to and from the new business. Similarly, the Minor Civil Divisions (MCDs) within which the D-RB would be available were selected in part because they contained a public road and so the location of any D-RB and associated business would be near existing transportation networks, utilities, and other infrastructure. This would allow the county to efficiently maintain existing infrastructure and would not create demand for new public roads as a result of new commercial or industrial development.

The Aroostook County CGPZ steering committee also discussed locating certain types of development in close proximity to remote international border crossings. These small developed areas are often more closely related to development patterns on the Canadian side of the international border and feature few services on the Maine side, and are very remote from any development in Maine. The border crossing represents a specific opportunity where some level of development is necessary to support the existence of these remote border crossings, the primary purpose of which is to facilitate the movement of timber resources across the border. However, if development were to expand beyond a fairly close proximity to the border crossing, it would negatively affect high value remote landscapes in the Commission's service area.

The Washington County CGPZ group discussed hospitals as another interesting example of a proximity consideration. Hospitals can create travel, employment and housing networks based on employee and patient movement to individual facilities or between them. These networks can affect future development patterns, which can be anticipated and incorporated into a land use planning effort.

Separation

Sometimes proposed development should be located separate from other development or from sensitive natural resources. For example, recreational lodging facilities may need to be separated from more densely developed areas in order to provide a certain experience for their clientele. Campgrounds, commercial sporting camps, and other similar facilities may need some level of separation from more developed areas to effectively deliver a sense of solitude or remoteness. The Commission's new regulatory approach minimizes potential impacts through a performance-based system that categorizes facilities based on anticipated levels of impact. This framework is sensitive to the need to locate some facilities more remotely and others close to services.

More familiar is the concept of separating one use that might be noisy, such as a mill, from another that might be disturbed by the noise, such as a neighborhood or school, or the separation of a fuel storage area from a wetland for environmental protection purposes. This is commonly done in planning for development in communities.

Complementary Uses

Development should complement and be compatible with other nearby existing uses. Encouraging compatible development can minimize potential land use conflicts and potentially could enhance the economic viability of each sub-region by encouraging a critical mass of similar uses and activities that support each other. For example in the Western Maine CGPZ project, the planning committee talked about ways to facilitate development of recreational support businesses² in locations where there is already a lot of existing recreational activity such as concentrations of trailheads, water or other access points. These areas may not necessarily be close to other similar types of development, but these kinds of additional support services and businesses would be compatible with existing uses, and would enhance the existing development pattern by raising the overall level of services for recreational tourists and increasing the a region's ability to attract this type of visitor.

Density

Density can help determine reasonable limits on development to minimize impacts to sensitive natural resources, as well as indicate suitable areas based on what already exists. For example, in the Accessible Lake Protection (P-AL) and Great Pond Protection 2 (P-GP2) Subdistricts, development density is specifically restricted around certain lakes in order to protect sensitive natural resources. The P-AL restricts density to one development unit per mile of shoreline around Management Class 2 Lakes, which are accessible, highly valued lakes for their undeveloped shorelines and other natural attributes. The P-GP2 subdistrict restricts development densities and

² Recreational support businesses may include facilities such as canoe or kayak rentals, bike shops, trails centers, or other stores or services that cater primarily to recreational users.

intensities around two semi-remote lakes³ in the Rangeley Prospective Plan region in order to preserve their essential character, which includes seasonal recreational uses. So, for example, residential development is limited to seasonal camps. (See Chapter 10, Sections 10.23,A; and 10.23,F.)

In other circumstances, increasing density could also be a trigger for different types of considerations in a rezoning process than for very low density areas. This could be a way to predict what type of review is needed for certain issues – for example, dispersed wildlife impacts or service provision requirements.

The other side of this issue is that density of existing development can indicate a certain level of economic activity, or help describe characteristics of an area. For example, when selecting eligible MCDs for the D-RB, the Aroostook CGPZ steering committee considered population levels and the location of existing development in the County. Some candidate MCDs were not included on the list because they did not have enough existing development or existing infrastructure beyond the presence of a public road.

Density could potentially help indicate where large lot subdivisions could fit in within the development pattern of a region. It may not be desirable to have low density residential development too close to hamlets or other development nodes because it would take up logical areas for future (denser) growth; and it may not be desirable to have the same type of development in truly remote locations as the additional infrastructure needed to serve those developments would potentially be fairly dispersed and inefficient for counties to maintain. The area in between that already exhibits a similar density level may be suitable for such development.

Process Considerations

Because the Commission's service area is so diverse, staff recommend a regional approach to the discussion of adjacency. Gathering information and ideas in regional settings and then putting it all together in a coordinated fashion will make it easier for residents and local officials to participate. It will also enable people to talk about what they know best – their area – and may help to avoid conversations that go nowhere because people are talking about a common topic, but with completely different circumstances or locations in mind.

Prior to asking for input, it will be important for staff to put together materials that explain, in simple terms, what the Commission is asking about and encourage people to envision the future of their region and to express their priorities about development. The topic of adjacency and the location of development can be confusing, and having a consistent set of explanatory materials that anyone can review prior to giving input will be important.

³Lower Richardson Lake and Aziscohos Lake

Before contacting people in a given region, staff will contact the coordinators of any active CGPZ processes to avoid duplication and connect, where possible, to the CGPZ projects. This will help avoid volunteer burnout and confusion between the two projects. The adjacency discussion will not replace prospective zoning or CGPZ efforts. However, there is enough overlap in the considerations for CGPZ and adjacency that we should be working together.

There appear to be three broad phases of this process:

- 1) Prepare explanatory materials and take regional and stakeholder input
- 2) Staff analysis and option development
- 3) Commission consideration, public comment, decision

Of course, this is a rough outline with no specifics as to how to convene folks. If the Commission is in favor of this course of action, the staff will routinely check in with the Commissioners for guidance.