



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

Memorandum

To: LUPC Commissioners
From: LUPC staff
Date: April 5, 2016
Re: Adjacency and Planning for the Location of Development

At the April Commission Meeting staff will do a presentation about the function and purpose of the adjacency principle. The presentation will include several hypothetical scenarios, in which we will discuss how the Commission has historically interpreted the “1 road mile” rule-of-thumb, and the objectives that the adjacency principle seeks to achieve in a reactive re-zoning.

We will have some maps and other materials available at the meeting to spur discussion. This agenda item does not include a written memo, but we have attached a short handout about zoning and adjacency for your consideration.

One attachment: Zoning and Adjacency Handout

Zoning and Adjacency in the Unorganized and Deorganized Areas of Maine

Most existing development zones in the unorganized and deorganized areas of Maine contain little or no undeveloped land to accommodate future growth, so most new development requires rezoning land to a development zone. Such rezonings are generally done on a case-by-case, property owner-driven basis. Prospective zoning is an alternative to case-by-case zoning and proactively directs growth in certain parts of the unorganized and deorganized areas. Prospective zoning is similar to zoning in many organized municipalities where zoning districts are created, based on suitability for development and likely growth in a community over time, before there is any specific development proposal for that area.

When the Land Use Planning Commission (LUPC or Commission) zones land, state law requires that “a land use district boundary may not be adopted or amended unless there is substantial evidence that:

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
- B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.” (12 M.R.S. § 685-A(8-A)).

The statutory requirement that a proposed rezoning be consistent with the Comprehensive Land Use Plan (CLUP) is similar to requirements for municipalities that their zoning be consistent with their comprehensive plan. The CLUP contains provisions pertaining to rezoning that state the Commission is “guided by the premise that most new development should occur in or near areas where development already exists. ... The premise [is] based on generally accepted planning principles of concentrating development near services to reduce public costs and minimizing development near productive natural resource-based activities to reduce land use intrusions and conflicts... The requirement that new development should be located near existing development is referred to as the adjacency principle.” (CLUP Section 4.3)

For zoning on a case-by-case, property owner-driven basis, 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 development – 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 Section 4.3.B).

The objectives the adjacency principle seeks to achieve are to:

- Ensure that the provision of public services matches the new development, or that any needed additional service capacity may be added efficiently and economically over time
- Encourage well-planned and managed multiple uses while reducing land use intrusions and conflicts

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- Minimize development near productive natural resource based activities
- Promote economic health of development centers
- Protect resources and values of the jurisdiction
- Ensure that the anticipated future development is in keeping with the character of the area
- Ensure orderly growth by pacing development
- Allow for incremental assessment of impacts from development (the resources and values of the jurisdiction may be better supported, and development may be better planned, by providing an opportunity for interim assessments of impacts because future phases of development can then consider those impact assessments).

An important value of the “no more than a mile” interpretation for the adjacency principle is that it provides a greater level of predictability for landowners, applicants, and the public as to when the adjacency principle has been satisfied and helps to ensure equal treatment of all petitioners. It reduces the discretionary aspect of interpreting and applying the adjacency principle to a rezoning petition by presuming that the objectives of the adjacency principle have been adequately met if the new development is no more than one mile by road from existing, compatible development.

There are some cases in which the purposes of adjacency are satisfied in ways other than the one mile interpretation. Some of the Commission’s subdistricts allow rezoning for types of development that must, by their nature, be distant from other development. These subdistricts specify how the location is to be evaluated so that the overall goals of the statute and the CLUP are achieved without relying on the one mile rule of thumb. In addition to these case-specific rezonings, the Commission may plan for a broad area all at once and place zones on the ground based on sound planning principles without adherence to the one mile rule of thumb. This is called prospective zoning.

Under prospective zoning, the Commission uses information on existing development patterns, natural resource constraints, recent trends, and future planning considerations to identify and zone areas appropriate for future growth. This approach does not rely on the strict “no more than a mile” interpretation of the adjacency principle. Prospective zoning allows greater discretion for directing development within a region to suitable areas proximate to development centers and infrastructure based on whether those areas meet the objectives of the adjacency principle.

As a tool used to guide the location of new development, the one mile rule of thumb does not convey a level of information and analysis sufficient to determine if a place is suitable for growth beyond the scope of what already exists nearby. However, consideration of factors such as the existing development pattern, natural resource constraints, recent trends, and future planning considerations, could be used to refine application of the adjacency principle in case-by-case rezonings. Because of constraints on resources and limited development activity, not all places will undergo prospective zoning. For those places which are not prospectively zoned, a refinement of the adjacency principle could be beneficial.