

Department of Agriculture, Conservation and Forestry

MAINE LAND USE PLANNING COMMISSION

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Commission Policy
on
Receiving Public Comment

May 8, 2024

LAND USE PLANNING COMMISSION

COMMISSION POLICY ON RECEIVING PUBLIC COMMENT

I. PURPOSE AND GUIDING PRINCIPLES

The purpose of this policy is to encourage fair and effective opportunities for public comment on the Commission's work, including comments by an applicant, interested parties, or the general public. In seeking to provide ways for inviting and receiving public comment on its work, the Commission recognizes the following guiding principles:

- The Commission encourages public participation; before making decisions, the Commission wants to be fully informed of the concerns and views of affected parties and the general public;
- The manner by which public comment is received should enable the Commission as a body to legally consider that comment in formulating decisions and policies;
- The Commission's process must be fair to all members of the public;
- Each Commission member should have an equivalent opportunity to hear and consider public comment before making a decision; and
- The Commission should conduct its business assembled at open public meetings and hearings and otherwise in a manner that accords with the public trust.

Even as the Commission attempts to fulfill these guiding principles, it is important to recognize that its job often involves making tough decisions among competing and sometimes adversarial interests in controversial matters. This means that, ultimately, the Commission's decision will sometimes be contrary to the expressed views of some parties or members of the public. Thus, fairness and openness to public comment in the Commission's process cannot mean that all concerns will be given the same weight in the Commission's decision-making, which itself is a deliberative process of balancing and choosing among sometimes competing views.

It is also important to recognize that the Commission is a part-time, volunteer board, its members having been appointed by one of the eight counties with the most acreage in the Unorganized Territories or by the Governor to bring to the table diverse viewpoints, backgrounds, and community perspectives representative of Maine. Inherent in this diversity is the fact that each Commission member will and should have an individualized sensitivity and awareness with respect to the issues and viewpoints presented in its work. At the same time, the Commission wishes to make decisions informed by the views and concerns of interested parties and the public at large, a fact that requires an open process in which all interested persons are given a fair opportunity to present their views.

II. OBJECTIVES

Bearing these principles in mind, the Commission adopts the following objectives to ensure that diverse public viewpoints are given a fair opportunity to be heard and considered in the course of the Commission's work.

A. **Public Engagement with the Commission**

Members of a part-time and volunteer commission do not and should not live in a vacuum apart from their communities and the fair exchange of ideas in many public and private forums. Individual Commission members are often approached by associates and members of the public who want to express views on the Commission's work. ***When public expressions generally deal with the Commission's program and do not involve a particular matter pending before the agency, individual discussion between the Commission members and the public is healthy.*** Public interactions with Commission members on general concerns are one of the ways that the Commission can be aware of and sensitive to public sentiments about its program.

When a particular matter (such as an application for zone change, permit application, rule or plan amendment) is pending before the Commission, comment from an applicant or the public about that matter should be channeled in a way that allows the comment to be properly heard and considered by the full Commission. In this context, it is important for everyone to understand that Commission members cannot consider, no less act upon, public input unless it is orally provided to the Commission as a body at a Commission meeting or hearing, or it is addressed to the Commission in writing. When a member of the public, including an applicant or other interested person, approaches an individual Commission member with views on a matter pending before the agency, that person should be counseled as to the appropriate way (described below) in which these views can be presented to the Commission at large. ***Private discussions by Commission members with interested parties or members of the public should avoid the merits of a matter pending before the Commission.*** In counseling a member of the public in this way, the Commission member is actually helping that person to have views effectively heard and considered by the Commission in its decision-making process.

The points below deal with particular contexts in which public comment may be offered to the Commission on its work and the best approach to take in allowing that input so that it can be effectively heard and considered.

B. **Receiving Comment on a Matter Pending Before the Commission at a Regular Meeting (which does not involve an adjudicatory hearing)**

When a member of the public (including an applicant, an interested party, or the general public) wishes to comment to an individual Commission member on a matter pending or soon likely to be pending at a regular Commission meeting, that person should be counseled to either come to the Commission meeting or to write to the Commission, addressing correspondence to the Commission's office in Augusta. That person can be

assured that any writing timely sent to the Commission at its office will be copied and distributed to all Commission members before action is taken on the matter. It is important for everyone to understand that, on matters pending before the Commission, having the ear of one Commission member outside of a Commission meeting will not provide an effective means for the Commission, or even that member of the Commission, to properly consider the views that are offered.

C. Receiving Comment on a Matter Pending Before the Commission in Rulemaking or Amending the Comprehensive Plan

When a matter involves a rulemaking hearing, a member of the public wishing to express views should be counseled to attend the hearing and give oral testimony or to provide comments in writing to the Commission during the comment period. The public can be assured that written comments received in this way will be distributed to all Commission members and considered before a decision is made.

When a member of the public has a significant comment on a proposed rule or plan amendment after the rulemaking record (including the written comment period) has closed, that person or any Commission member or the staff may request that the comment period be reopened so that the comment can be properly considered prior to the decision. Reopening the comment period in this fashion is within the discretion of the Commission. Reopening the comment period means giving all affected parties and the public notice and an opportunity to participate.

Because efficiency requires an effort to achieve closure on matters after a hearing record is closed, the Commission ordinarily will reopen the comment period only when the offered comment involves a significant point or issue that was not and could not be adequately addressed during the public hearing process.

D. Receiving Comment on a Matter Pending before the Commission Involving an Adjudicatory Hearing

Where the Commission has decided to hold a formal hearing on a permit application, it is particularly important to make sure that public comment, including by an applicant or intervenor, is provided to the Commission in a fashion which does not compromise the proceeding. Public comment on such a matter should be given to the Commission only at the public hearing, during any applicable period for written comments, or otherwise in a fashion that the Commission's rules specifically provide. In these situations, public comment must not be given to individual Commission members *ex parte* (without notice and opportunity for other parties to participate).

E. Receiving Comment on a Matter Pending Before the Staff

In connection with permit applications currently pending before the staff, communications by an applicant or the general public to individual Commission members should be referred to the staff. This is so that the staff is fully informed before the director makes a

decision on the matter. It is also important to remember that matters currently being handled by the staff may be appealed to the full Commission, so Commission members should attempt to channel public communications on these matters to the staff to avoid jeopardizing the fairness of the process should an appeal to the Commission be later heard.

F. Receiving Comment on Matters Headed to the Commission

A matter that is at the pre-application stage but is headed for a later Commission hearing or decision-making should be treated in the same fashion as a matter currently being handled by the staff. See Paragraph E above.

G. Site Visits by Commission Members

Consistent with the above principles, if an individual Commission member is interested in visiting the site of a development proposal that is currently or is likely in the future to be under the Commission's review, the best course is to first discuss the idea with the staff or with the full Commission at its next meeting to enable all Commission members to participate in the site visit and not to prejudice the rights of interested parties in the proceeding. When the Commission has decided to hold an adjudicatory hearing on an application, it is particularly important that any visits by Commission members to the site should be organized by the staff with notice given to all interested parties.

H. Commissioners Receiving Comment Materials

Materials supporting, opposing, or generally regarding Commission or agency matters must not be provided to individual commissioners directly, verbally, by hand-delivery, email, or mail (e.g., USPS, UPS, FedEx). Such materials should be directed to the Commission staff, who will provide them to the Commission and other affected parties as needed. In the event one or more commissioners receive information directly, the Commissioner will notify the director, who will act to ensure the information is included in any applicable hearing or project file.

III. SUMMARY

The Commission welcomes and relies on public participation in its process, including comments by interested parties as well as suggestions and criticisms from the public. When a matter involves a public hearing, it is important that public comment be presented to the Commission as a body in a way that properly appears in the hearing record. When the public comment involves a matter pending before the Commission without a public hearing, it should be directed to the Commission at a public meeting or put in writing and addressed to the Commission at its office to be distributed to all Commission members before they make a decision. When the comment involves a matter currently pending before the staff or otherwise likely to be later headed to the Commission for decision, it should be referred directly to the staff.

By these means, public comment to the Commission can be effective in the Commission's process and fair to all concerned.

EFFECTIVE DATE:

May 8, 2024¹

¹ Previously adopted by the Commission as a guidance document on October 16, 1996, then repealed and replaced as a Commission adopted policy on May 8, 2024.