

LURC Reform Commission

November 3, 2011 – Washington County Community College – Calais, ME

Meeting Minutes

LURC Reform Members in attendance: Gary Lamb, Bill Beardsley, Lynda Quinn, Tom Rumpf, Chris Gardner, Hank McPherson, Durward Humphrey, Sarah Medina, Don White, Elbridge Cleaves, Judy East

DOC Staff in attendance: Dan Burke

Members of the public in attendance: Tom Abello (TNC); Fred Hardy (Franklin Cty. Commission); Ruby Hardy; Gordon Mott; Lindsay Bourgoine (AMC); Steve Tatko (NRCM); Ashley Gorczyca (ME Audubon); Steve Wight (Mahoosuc Land Trust); Buzz Lamb; Pat Strauch (MFPC); Roger Sherman (Sen. Dist. 34); Terry Hayes (H. Dist. 94)

Bill Beardsley

- Called meeting to order. Called for approval of the Oct. 20 meeting minutes.

Judy East

- Clarified a statement made by Bill Ferdinand in the minutes regarding Growth Management Act (GMA) and SPO approval. Stated that towns are not required to get SPO approval for Comp Plans or ordinances, but if they do submit their ordinances and they are not consistent with their comprehensive plans then SPO can deny those plans, i.e. as Bill Ferdinand said. However towns rarely submit their ordinances to SPO for a consistency review. The more important issue for towns is that if their zoning ordinance is not consistent with the Future Land Use Plan in their locally adopted Comprehensive Plan they risk a lawsuit from adjoining property owners or the property owner themselves.

Bill Beardsley

- Reiterated topics for discussion: 1) statement of purpose; 2) composition of statewide board; 3) where should planning start and end – should planning come from a county or a central entity?
- Introduced Patrick Strauch, executive director of the Maine Forest Products Council.

Forward-looking Recommendations from a Large Landowner Perspective

Patrick Strauch

- MFPC represents landowners owning approximately 8.5 million acres in the UT. Includes pulp and paper mills.
- For details, see separate handout from Pat.

Tom Rumpf

- Asked about concern for political swings at the county level if planning goes to county entities.

Pat Strauch

- Always going to be that pendulum swing for political bodies. Have to weigh the risk between having appointed and elected members.

Gary Lamb

- Asked if MFPC would favor a process where counties could appoint members to a statewide board.

Pat Strauch

- Leaning towards a board of elected county officials on a central board.

Judy East

- Asked about the appeals process.

Pat Strauch

- There should be consistency for hearing appeals. That might lend itself toward a centralized board.

Elbridge Cleaves

- Asked whether there was concern about large landowners being outnumbered by smaller landowners in the UT.

Pat Strauch

- Stated that the concern arises from not wanting to deal with multiple plans when ownership straddles county lines.

Don White

- Asked about landowners attitude towards the 2010 CLUP.

Pat Strauch

- Stated that most would prefer to work under the 1997 CLUP.

Elbridge Cleaves

- Asked for clarification on whether the MFPC was recommending a rollback to 1997 CLUP.

Pat Strauch

- 1997 CLUP was not perfect but the change to the 2010 was dramatic.

County Governments in Land Use Planning

Bill Beardsley

- Introduced Ed Bearor, partner at Rudman & Winchell, a law firm in Bangor.

Ed Bearor

- Represents counties and municipalities. Has extensive experience in municipal affairs.
- Under the present system, one large institution (LURC) regulates the UT.
- Maine is a home rule state. Municipalities are authorized to enact and enforce laws unless legislature has previously assumed that field.
- Stated that counties do have the authority to implement planning. The counties could either adopt their own plans or an existing overarching plan could be adopted. Suggested that the easiest way might be to have counties do their own planning.
- Stated that a comprehensive plan is a policy document and can't really be challenged. The process can be challenged because it is a statutory process. Ordinances must be enacted pursuant to and in agreement with the plan.
- About the process: most municipalities have appointed lay boards. LD 1534 contemplated that type of set up. Consultants would help with the adoption of a plan. Title 30-A in the GMA states purposes and goals. Suggested it might not be a good idea to alter those significantly.
- At the local level: the appointed body would review the plan, not the county commissioners.
 - Agreed that politics of county commissioners would probably change if a statute was enacted transferring planning authority to the counties.
- As a practitioner, suggested that it would be nice if definitions were consistent among county plans. Inconsistencies cause problems.
- Stated that there has to be an appeals process. There could be an overarching authority or they could go to the Superior Court. An appeals board adds another layer and possibly delays.

Suggested legislation might be an opportunity to propose another branch of the Superior Court to deal with administrative appeals.

- In short, there are no legal impediments to transferring LURC authority to a county level of government.

Hank McPherson

- Asked if Ed thought local planning boards were generally competent?

Ed Bearor

- Most are. The larger the community, the larger the volunteer pool is. Board members bring personal biases to the table.

Elbridge Cleaves

- Expressed concern about the ability to protect cohesiveness of planning around resources like lakes that straddle county lines. Concerned about the outcome of planning on these lakes.

Ed Bearor

- The GMA has very broad goals. Believes transferring planning authority to counties would not result in a disconnect. The counties would still be guided by the GMA.
- Each county would have to inventory its assets and decide what the appropriate zoning should be. Under the municipal model, towns hold a joint meeting.

Lynda Quinn

- Stated that county commissioners would be able to do planning. The people who live on the land are going to take care of it. Believes that counties do not need the oversight of a statewide board.

Judy East

- Brought up Title 30-A. The process for a town plan being consistent with the GMA is to submit to SPO (not required). In that review, the issue of coordinating planning across borders is present. Should a reviewing authority be the SPO or should it be LURC?

Tom Rumpf

- Wanted clarification about home rule and county charters.

Ed Bearor

- Home rule is inherent. It is reserved to municipalities in the Maine Constitution.
 - Note: The Maine Constitution does not extend home rule to counties.
- To impose a requirement on counties requiring them to adopt a charter would be a long process.

Gary Lamb

- Expressed concern, not about the counties being capable, but about the outcome of the planning process.

Ed Bearor

- Given the present pace of development, a non-cohesive outcome should not be a concern. The possibility of being overrun by development is there but it is doubtful that planning documents would vary much from county to county. Most town plans are very consistent. The environmental and economic concerns won't be addressed differently. The main difference will be how those plans are administered.

Bill Beardsley

- Asked if there should be an overarching state body that makes sure.

Ed Bearor

- Expressed it in the form of a wish to have consistency for the “consumers.” Maybe a stamp of approval from a state agency is all that would be needed.

Don White

- Trees go across county lines. Mills pull from everywhere; they don’t care about county lines. Asked how counties with different objectives would be managed.

Ed Bearor

- Excited about county involvement as a model. Whether it includes statewide oversight is up for determination.

Judy East

- Concerned that planning boards are volunteer boards that are called upon to understand and apply complicated zoning rules. There is high turnover and a steep learning curve.

Chris Gardner

- Stated that that same sentiment can be applied to the state legislature. The entire state legislature is based upon volunteers.

Pat Strauch

- Need to differentiate between CLUP and other town plans. The CLUP is critical to the UT. Some towns just shelf their plans.

Bill Beardsley

- Wanted group agreement that a statewide board should play a significant role in overseeing county planning efforts.

Chris Gardner & Hank McPherson

- A statewide board is a tool and a mode of compromise. Expressed general trust in county governments. Need to have discussion on term of “significant.”

Don White

- Brought up discussion from Oct. 20 regarding “superboard.”

Bill Beardsley

- The discussion was had but not vote taken. Something to follow up with.

Break from 11:40 to 11:45 a.m.

Work Session

Bill Beardsley

- Proposed a discussion on the statement of purpose.

Don White

- Passed out revisions to it. See handouts.

Chris Gardner

- Suggested striking the first paragraph altogether.

Judy East

- Thought a lot would be lost.

Durward Humphrey

- Prefers “protect” over “preserve”

Chris Gardner

- Suggested striking “appropriate.”

Tom Rumpf

- The point of planning is to do what is “appropriate.”

Sarah Medina

- Thought both paragraphs are needed. The second just reinforces the first. It is important to include strong language that says “things have changed.” These changes do that. The word “appropriate” is subjective but should not be left out. It gives planners an opportunity to balance. A zoning board is there to protect conflicting uses from affecting each other.

Durward Humphrey

- Suggested taking out to “prevent the development in these areas of substandard structures . . .”

Judy East

- The last four clauses are specific references to types of prevention. Thinks it far stronger language to mention “natural resource economy.”

Sarah Medina

- Flip the positions of “to support Maine’s natural resource based economy . . .” and “to encourage appropriate residential, recreational . . .”

Bill Beardsley

- Uncomfortable with double negative created by use of “appropriate” then “inappropriate”. Proposed splitting first paragraph into two.

Chris Gardner

- Asked whether this is discussion assumed LURC will remain.

Tom Rumpf

- This statement attempts to lay out the goals of planning, regardless of the outcome.

Sarah Medina

- Group must think about political implications of deleting “appropriate.”

Break from 12:15 to 12:45 p.m.

Lynda Quinn

- Believes any state involvement at this point will corrupt county desires. If the towns can do it, counties can do it. That is why LURC should be abolished. However, would be amenable to a system with county influence.

Judy East

- In favor of retaining LURC as a centralized authority. Can’t get rid of it entirely because there are existing projects and an institutional memory. If LURC was modified and gave the counties the option of taking on more authority and control by using the prospective zoning framework that already exists in Title 12.
- Can’t assume it all goes to the counties, but giving them the option to take on smaller projects with permitting. This is an enabling approach rather than a wholesale takeover approach.
- A statewide board would ask tough questions in light of the purpose and goals established by statute.

Bill Beardsley

- Stated that control seems to be the central issue.

Chris Gardner

- Building on Lynda's point. That idea needs to be fleshed out. Do away with LURC, give it back to the counties and have an appeals board made up of representatives from other counties.

Hank McPherson

- We are only talking about counties taking over a part of local government that is close to the people. We've already agreed that big issues.

Don White

- The Gifford Bill addresses many of these issues.

Tom Rumpf

- Expressed concern about group's process. Asked if two proposals should emerge.

Elbridge Cleaves

- Concerned about creeping development. A 14 lot subdivision might be fine, but five years later there could be another 14 lots, and so on.

Chris Gardner

- Reiterated that, just because the Gifford Bill did not pass, it does not mean it is not still an option. The legislature wanted more information. Hence this commission. It also goes to great lengths to specify what the counties do not have. It is very specific and is filled with compromise.

Judy East

- Group could probably take from the language that appears in the Gifford Bill. Not ready to say LURC should be totally disbanded. SPO is also potentially being disbanded. Asked what would happen to land use planning in Maine. There still needs to be some kind of state review and wisdom on what is important in the state of Maine.

Hank McPherson

- The Gifford Bill did provide for an oversight board. It was very well thought out but was brought to the committee on the day of the hearing. That timing is why this group is here.

Gary Lamb

- Stated that going back to square one would be a mistake. LURC did not create this, the legislature did.

Chris Gardner

- Suggested a compromise: leave LURC in place but make the commission comprised of county commissioners. The staff would be accountable to them. If the commission is made up of county commissioners or those appointed by them, they could steer the commission new directions.

Don White

- Stated that MFPC had drafted legislation under the framework of Title 12 hashing many of these issues out. Two major things included: 1) changing the purpose and scope; and 2) changing the composition of the commission to county commissioners from 5 counties plus two at-large appointed by the Governor.

Sarah Medina

- Suggested the group take a look at these prior efforts. It could help get down into the details.

Chris Gardner

- Suggested another compromise: leave LURC in place but allow counties to opt out and do the planning for UTs within their borders.

Tom Rumpf

- Stated that he would consider that last offered compromise, but would need to think about it.

Hank McPherson

- Suggested that the group was close to agreement, except for who will be responsible for the planning and zoning.

Bill Beardsley

- Stated that SPO is being disbanded, but the state function that oversees planning and zoning is not.

Judy East

- Reiterated that there needs to be some statewide agency that oversees county planning for consistency with broad principles of planning and zoning.

Durward Humphrey

- Stated that that not much different than what is already in place, which is broken. There needs to be real involvement at the county level.
- Reiterated that it is important not to go to the legislature with choices and multiple recommendations.

Chris Gardner

- Clarified last suggested compromise: if a county opted out of LURC, it would be complete. A plan would be deemed sound or unsound based on broad principles. If sound, a county would then be on its own – no more input from LURC.

Durward Humphrey

- Agreed with the opt-out option. Suggested that counties opting out should have a choice of using the 1997 or 2010 CLUP during the transition.

Judy East

- Concerned that the opt-out option does not address the uniqueness of the UT – a statewide asset. It is a vast resource. It is not group of large municipalities. It is a large expanse that feeds the forest products industry. A county might be able to make a comprehensive plan that protects these features, but there is a risk that it would not.

Chris Gardner

- Stated that this all comes down to trusting people to protect their surroundings. Believes local people care more about their backyards than someone living across the state.

Sarah Medina

- Stated that there should be a statement of values and goals that must be addressed in any county comprehensive plan.

Durward Humphrey

- Stated that whatever options are put on the table, they still have to fall within the purpose and scope.

Elbridge Cleaves

- Also must address the synergy between any state and county entities.

Don White

- Noted that simply abolishing Title 12 leaves a huge void. Title 12 could be tinkered with to shape a new process that just might work.

Chris Gardner

- Expressed agreement. Stated that he was against tinkering with LURC at the outset, but if counties have an opt-out where they can plan for themselves, that process could work well. Stated that the opt-out should also provide for taking funding with it.

Gary Lamb

- Asked whether a county could go back under LURC jurisdiction.

Durward Humphrey

- Concerned about the simplicity and quickness of the opt-out option.

Chris Gardner

- Suggested giving counties an option between the 1997 and 2010 CLUPs, imposing a time limit to conduct the planning and zoning, and requiring that the plans pass muster with whatever state body is designated.

Bill Beardsley

- Suggested counties agree to start with the 2010 CLUP but could opt to change to the 1997 CLUP.

Elbridge Cleaves

- Stated that counties would have to adopt rules and regulations to conduct regular business.

Tom Rumpf

- Agreed that each would have to adopt the zoning maps and rules. Counties must also demonstrate that plans are sound.

Judy East

- Concerned about the legality of getting rid of the 2010 CLUP. It did go through a process that can't be ignored. Counties must also demonstrate that they have the capacity to do their own planning.

Break from 2:30 to 2:45 p.m.

Public Comment Session

Arnold "Jim" James

- Had numerous bad experiences with LURC which were all costly. Talked about LURC staff's lack of knowledge and stated that they do not listen. Expressed hope that this group disbands LURC.

John Reisman

- A professor at UM – Machias and has watched land use in the UT for almost 30 years. Expressed dismay over Plum Creek hearings. If a plan like that ever comes up again, hearings should not be held so far from the actual land. Must look at the cost of planning. Liked the opt-out system proposed at this meeting. Stated the returning control to counties, if they want it, will go a long way in fixing the land use problems today.

Dean Bradshaw

- Generally speaking, believes LURC staff doesn't have expertise in many areas it should. Unlike DEP, LURC does not have engineers and scientists when it probably should. Liked idea of giving industrial projects to DEP for that reason and letting LURC focus solely on planning. The counties should handle small projects within their borders.

- Believes that the LURC zoning maps need major updates. They are not accurate. LURC staff has stated that they cannot be changed which does not make sense. There needs to be a mechanism for changing them.
- Appointing a staff ombudsman to work through projects or appeals might work. There is a need to clarify what the criteria for approval are. An applicant ends up searching around for what he/she has to do to get to “yes.” There should not be a need to hire lawyers and engineers for simple projects.

Marie Emerson

- Overall believes LURC has done a pretty good job. Feels that counties are in need of money and that need may cause counties to take a short term view in terms of development opportunities.
- Believes that there should be a balance between property rights and values and conservation.

Gary Guisinger

- See written comments.
- Understands that this is a work in progress. Solutions are not easy. Finds it distressing that there is movement to disband LURC and disperse its responsibilities to counties who are cash strapped. Concerned that counties will raise taxes to pay for staff and expertise to handle functions now handled by LURC.

Dan Ackley

- A builder/contractor. Dealt with LURC for 25 years. It is easy to look at LURC and say they are doing a good job when you don’t deal with them regularly. Dealing with small projects has not been bad, but the problem has been with subdivisions. Standards are not clear and LURC staff seemed inflexible and unable to communicate.
- Concerned that LURC staff was not local. The closest office was in Cherryfield, but that moved to Bangor. The staff is inaccessible.
- The one size fits all approach does not work for such a large area. The opt-out option could work. Believes that local planning boards work hard and does not see why counties could not do the same. Developers would absorb the cost of their projects, not the counties.

Adjourn at 3:45 p.m.