

Legal Implications of the Comprehensive Plan

Planning is a lot of work and involves tough choices.

Communities decide to undertake the planning process for a variety of reasons. Here are three reasons why it may make sense for your community.

1. Legal protection for your ordinances.

According to the Maine Growth Management Act, your town must have a consistent* comprehensive plan in order to:

- Legally impose a zoning ordinance beyond the state minimum for shoreland zoning;
- Legally create an impact fee ordinance; or
- Legally create a rate of growth or building cap ordinance

2. A consistent comprehensive plan helps a town qualify for certain state grant and loan programs.

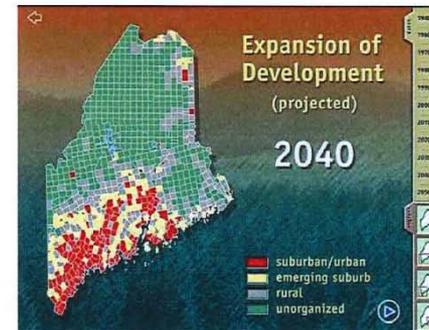
Over \$80 million annually is awarded through 25 state grant and loan programs with some level of consideration of local comprehensive plans. Examples of these programs include:

- Community Development Block Grants
- Land for Maine's Future
- Municipal Investment Trust Fund
- DEP 319(h) Non-Point Source Protection Grants
- DEP State Revolving Loan Fund
- SPO Plan Implementation Grants
- Land and Water Conservation Fund

3. Good planning makes good communities.

- Sustain rural living and vibrant village centers
- Preserve a healthy landscape and walkable communities
- Balance economic prosperity with quality of life
- Protect working waterfronts and community farms
- Develop a discussion among neighbors
- Develop a basis for sound decisions in town management

Maine is growing, and, as pointed out in the 2006 Brookings Institution report Charting Maine's Future: An Action Plan for Promoting Sustainable Prosperity and Quality Places, this growth is not limited to southern Maine or the coast. Other research by the State Planning Office—shown in the maps below—also indicates that future growth is likely state-wide.



*The term "consistent" means that the State Planning Office has reviewed a local comprehensive plan and issued a letter finding it consistent with the Growth Management Act.

Robert LaBonta, et al v. City of Waterville,
1987 ME 528 A.2d 1262

- ▶ Plaintiffs' Argument: the zoning amendment is invalid because it is not consistent with the Waterville comprehensive plan's stated goal of protecting residential neighborhoods. By the ultimate thrust of plaintiffs' argument, they would have us construe the Waterville comprehensive plan to prohibit city council from changing any boundary between a residential and a commercial zone. We reject that argument, as did the Superior Court, for it is based upon too narrow and inflexible a reading of the comprehensive plan.

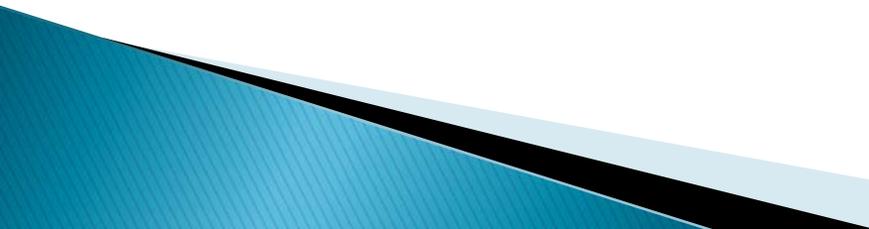
- ▶ The test for the court's review of the city council's rezoning action is whether "*from the evidence before it* the city council could have determined that the rezoning was in basic harmony with the [comprehensive] plan..."
 - ▶ City's comprehensive plan did not prohibit city council from making any boundary changes between residential and commercial zones.
 - ▶ Parties challenging city council's action in rezoning matter have burden of showing inconsistency between rezoning and city's comprehensive plan.
- 

Nestle Waters North America, Inc. v. Town of Fryeburg, 2009 ME 30, 967 A.2d 702

- ▶ The Statutory definitions of key terms used in the Growth Management Act reinforce the conclusion that the comprehensive plan is just that – a plan – and the ordinances adopted pursuant to the plan are its regulatory teeth. See 30–A M.R.S. § 4312(2)(C)(2008) (Legislature’s purpose in growth management program is to “[e]ncourage local and land use ordinances, tools and policies based on local comprehensive plans”).

- ▶ **Implementation Strategy.** A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances and period review of the comprehensive plan.
30-A M.R.S.A. §4326(3)

- ▶ A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances.
 - ▶ Implementation strategies must be consistent with state law and must actively promote policies developed during the planning process.
 - ▶ The timetable must identify significant ordinances to be included in the implementation program.
- 

- ▶ As a component of the implementation program, a “land use ordinance” is:
 - An ordinance or regulation of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land and *the standards of those uses*.
 - ▶ Ordinances must be consistent with the comprehensive plan, but so long as they are, the requirements of the ordinance are the concrete standards to be applied by municipal legislative bodies.
- 

- ▶ A zoning ordinance is consistent with its parent comprehensive plan if it “[strikes] a reasonable balance among the [municipality’s] various zoning goals”
 - ▶ **The comprehensive plan and the land use ordinance are complementary, but their purposes are different. The plan sets out what is to be accomplished; the ordinance sets out concrete standards to ensure that the plan’s objectives are realized.**
- 

- ▶ A comprehensive plan imposes an obligation on the *town*, not on private citizens or applicants for permits.

Joel Golder, et al v. City of Saco, et al, 2012 ME 76
A.3d 697

- ▶ When addressing whether a zoning action is consistent with a city's comprehensive plan, the test for the court's review of the city council's rezoning action is whether from the evidence before it the city council could have determined that the rezoning was in basic harmony with the comprehensive plan.
30-A M.R.S.A. § 4352(2)

- ▶ When the Supreme Judicial Court considers a zoning amendment is consistent with a statutory requirement, the record is limited to the record before the municipality's legislative body, deference is given to the judgment of the legislative body, and the challenger bears the burden of proving that the amendment is inconsistent.
- 

Remmel v. City of Portland, et al., 2014 ME 114

- ▶ **Relation to comprehensive plan.** A zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body, except that adoption of an adult entertainment establishment ordinance does not necessitate adoption of a comprehensive plan by a municipality that has not such comprehensive plan. 30-A M.R.S.A. §4352(2)

- ▶ When considering whether a rezoning action is consistent with a city's comprehensive plan, a court must determine whether the City Council could have, from the evidence before it, found that the rezoning was in basic harmony with the comprehensive plan.
30-A M.R.S.A. § 4352(2).
- 

- ▶ The challenger to rezoning action bears the burden of proving that the amendment is inconsistent with the comprehensive plan. 30–A M.R.S.A. § 4352(2).
 - ▶ A zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it strikes a reasonable balance among the municipality's various zoning goals or overlaps considerably with the plan. 30–A M.R.S.A. § 4352.
- 

- ▶ A comprehensive plan is considered as a whole; a municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with some provisions of the plan, **even if the action appears inconsistent with other provisions of the plan.** 30-A M.R.S.A. § 4352.
- 

- ▶ The Department of Agriculture, Conservation and Forestry finding of consistency triggers a number of state actions and benefits. Since passage of the Growth Management Act, various state agencies have tied their growth-related programs to it. The most well-known is the CDBG program, which will not award grant funding for growth-related capital investments to a town without a consistent plan. Other grant programs award point priorities to towns with consistent plans. Some state agencies, such as the MaineDOT, give priority in funding their own projects to towns with consistent plans.
- 

- ▶ The law says that zoning ordinances (as defined), impact fees and rate-of-growth ordinances (building permit caps) must conform to a plan which meets the requirements of the Growth Management Act (Refer to 30-A M.R.S.A. §4314(3)). An expired finding does not invalidate these ordinances. It does, however, provide an opening for a party affected by the ordinance to challenge it in court.

- ▶ However, in this instance the court has no alternative but to conclude that, at least where plaintiffs' property is concerned, Scarborough's zoning ordinance is not consistent with the 1994 Comprehensive Plan. Although the 1994 Comprehensive Plan expressly contemplated that within two years the Town would “revise the zoning districts, the requirements of those districts, and the official zoning map per the Future Land Use Plan” contained in the comprehensive plan, this was not done. Nor, for whatever reason, has this been done during the subsequent eight and a half years. Moreover, the Comprehensive Plan itself has not been revised or altered but remains unchanged. To the extent that the Town's attitudes may have changed and its officials might wish to take the Town in a different direction, it would have been incumbent on the Town to amend its Comprehensive Plan.

ALC Development Corp. v. Town of Scarborough, 2005 WL 2708349 (Me.Super.,2005)

- ▶ Thus, the court emphatically disagrees with the Town's suggestion, contained in the affidavits submitted by Ziepniewski and Eyerman, that leaving the existing R-F zoning in place in the Dunstan area is consistent with the comprehensive plan because the R-F zone constitutes a “de facto ‘holding area’” that will allow the Town to reconsider the future development of the Dunstan area. Ziepniewski Affidavit ¶ 16, Eyerman Affidavit ¶ 18. If accepted, this suggestion would render the entire concept of a comprehensive plan meaningless. One could just as well argue that five or ten acre zoning would be consistent with the comprehensive plan because it would allow fewer units (and therefore greater future flexibility) in the “holding area”. Under the Comprehensive Plan, Dunstan is not designated as a holding area but as a location where significant residential growth should occur. The Town's reliance on “de facto holding areas” merely serves to underline that the R-F zone is directly antithetical to the comprehensive plan's requirement that Dunstan be designated as a village compact area configured to accept increased density and a significant share of the Town's residential growth.

ALC Development Corp. v. Town of Scarborough, 2005 WL 2708349 (Me.Super.,2005)