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# HCPC NEWSLETTER

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Hancock County Planning Commission

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## STAFF NEWS

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HCPC welcomes Sherry Churchill as the newest member of our planning team. Sherry will primarily be working with Jef on waste management issues. Spearheading the “Mercury Waste and More” spring collection (look for her update in this issue!) is just one early project with which she is involved.

Originally from Aroostook County, Sherry holds degrees from the University of Maine at Presque Isle (B.S., Environmental Studies) and Indiana University’s School of Public and Environmental Affairs (Master of Public Affairs). In between her studies, she spent nearly two and a half years as a Peace Corps Volunteer in rural West Africa working on agroforestry and community development projects. Some of Sherry’s other previous experiences include an internship with former Senator George J. Mitchell, three years on a code enforcement appeals board in Bloomington, IN, and freelance work with the Hampden town office.

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## PLANNING BOARD NEWS

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### IMPORTANT TRAINING OPPORTUNITIES COMING UP

Almost all planning board members feel overwhelmed by the ever increasing number of court cases and changes in state legislation. While we attempt to keep you up to date through this newsletter, we also co-sponsor other training events with other agencies and organizations. Please note the following two sessions.

1. **Maine Municipal Association’s Planning Board/Boards of Appeal Workshop:**
  - Monday, April 22, 2002
  - 6:00 P.M. - 8:30 P.M.
  - Holiday Inn, Ellsworth

This workshop, presented by a MMA attorney, is designed as a basic introduction to the various legal rules governing decisions made by local planning boards and appeals boards. Topics that may be discussed include: jurisdictional issues, conflict of interest and bias, public notice requirements, site visits, public hearings, standing issues and procedures for reaching a decision. Other topics will also be addressed and there will be an opportunity for questions and answers. ***This is one of the most valuable training opportunities available for local planning boards.***

For registration information contact Cindy Wade or Joan Kiszely at 1-800-452-8786 (at the MMA). You may also register on-line at:

[www.memun.org](http://www.memun.org). Pre-registration is necessary with the MMA and there is a \$25 fee per person, which includes packet materials.

2. **HCPC Workshop on Access Management**

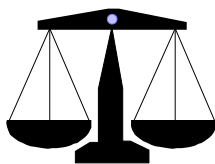
The HCPC will present a workshop for code enforcement officers, road commissioners and other interested municipal officials this spring on new access management laws affecting driveways and entrances onto state highways and state aid roads. The goals of these new laws are to preserve mobility along the arterial and major collector highways, protect the foundation of the roads through better drainage systems, and increase safety for motorists, cyclists and pedestrians. The laws will affect all new driveways and entrances as well as existing driveways and entrances when design or usage changes significantly.

A specific date has not been set, so please check the HCPC website or contact Jim Fisher or Sherry Churchill at 667-7131 or [jfisher@hpcme.org](mailto:jfisher@hpcme.org) if you are interested in attending.

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## LAND USE LAW & COURT CASES

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*Taken from the Southern Maine Regional Planning Commission newsletter. By Madge Baker, Esq.*

**Logan v. City of Biddeford**  
Maine Supreme Judicial Court  
May 21, 2001

**Facts:** Mr. Logan owns 4 substandard lots, one of which has a house on it, and another a garage. The lots are described in one deed. He applied to build

2 additional houses on the lots. The Planning Board denied the request on the grounds that the substandard lots had been merged by the deed into one lot. The ZBA heard the appeal and agreed. Superior affirmed the decision of the ZBA.

**Issue:** Does a single deed necessarily merge lots with respect to the zoning ordinance?

**Ruling:** The Court reviewed its previous ruling on this. *Bailey v. City of So. Portland*, 707 A.2d 391 (1998). The Court held that a deed description alone does not “destroy the independent standing of the constituent parts.” In addition the Court had ruled in *Farley v. Town of Lyman*, 557 A.2d 197 (1989) that the zoning ordinance must be applied to the facts of the case to determine if the ordinance requires a merger. Instead of then ruling on this case, the Court sent the case back to Biddeford for another hearing at the local level because neither the Planning Board or the ZBA prepared a full enough record for the Court to review the facts of this case.

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**MC Associates v. Town of Cape Elizabeth**  
Maine Supreme Judicial Court  
June 15, 2001

**Facts:** MC Associates owns a lot in Cape Elizabeth it purchased in 1989. The lot has existed since 1964. It is 18,570 sq. ft. in area and is not served by a sewer. In 1990 Cape Elizabeth established a 250 foot buffer around wetlands. When MC applied for a building permit in 1996 it was denied due to the proximity of the wetland zone. MC appealed to the ZBA, which ruled that it did not have the authority to hear an appeal from the Planning Board and denied a variance. MC then brought a takings case in court.

**Issues:** 1. Ripeness; and 2. Loss of all value.

**Ruling:** 1. I do not have a good enough understanding of this jurisdictional issue to summarize it. Municipal board members need not concern themselves with the matter.

2. The Town argued that the 1990 ordinance did not render the property valueless because it was not buildable before 1990, and because the appraisal indicated the property retains some value. The Court found that MC had failed to present a case that the lot was buildable before the enactment of the wetlands ordinance, and thus agreed with the Town on the first point. With respect to the second, the Court agreed with the Town as well. All MC had submitted was an appraiser's estimate that the lot if buildable is worth \$88,000, if unbuildable it is worth \$3,000. In the words of the Court opinion, "The appraisal does not even purport to establish the value of the lot prior to the alleged taking, nor does it address whether the lot retains substantial uses other than to support a single-family residence."

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**Rockland Plaza Realty Corp. v. City of Rockland**

Maine Supreme Judicial Court  
 May 11, 2001

**Facts:** Ellsworth Builders Supply (EBS) owns a grandfathered lot in the city. EBS applied for and received site plan approval. Plaza Realty, an abutter, appealed. Both the ZBA and Superior Court upheld the decisions of the Planning Board.

- Issues:** 1. Is the case ripe for review?  
 2. Was the ordinance correctly interpreted?  
 3. Are the standards too ambiguous?

**Ruling:** In all respects the Supreme Court found for the City. One interpretation challenge for the Planning Board was: is a cupola sufficiently similar to a chimney, steeple, or spire to be allowed as an exception to the building height restrictions? The Planning Board said yes and the Court agreed. Another was whether the building coverage standards applied to all the buildings as a group, or each building individually. Since the ordinance defines a building coverage as "the horizontal area measured at the outside of the exterior walls of all principal and accessory buildings on a lot" the Court agreed with the Planning Board's interpretation that the coverage

requirement should be applied to all the buildings as a group.

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## CDBG NEWS

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### INCOME GUIDELINES AND HOW THEY AFFECT YOUR TOWN

*By Thomas Martin*

We have spoken with many towns over the years about the CDBG program. As most of you now know, towns are not eligible to apply for grants that benefit an entire town (such as a community center or fire station) unless at least 51 percent of the households in town are low to moderate income. These income data may be ascertained in two ways. First, through U.S. Census data. Second, through a town-wide income survey that follows a methodology approved by the Maine Office of Community Development.

As we go to press, we do not have the townwide income data for the 2000 U.S. Census. These data will probably be available by the time the next round of CDBG grants is due. If a town is conducting its own survey, it is important to use the latest income guidelines. These change on a regular basis. The guidelines for 2002 are shown below. As can be seen, the guidelines are based on household size. The HCPC can provide information on the details of conducting a survey.

<b>Low to Moderate Income 2002 CDBG Guidelines, Hancock County</b>	
Household Size	Maximum Income
1	\$22,700
2	\$25,900
3	\$29,150
4	\$32,400
5	\$35,000
6	\$37,600
7	\$40,150
8	\$42,750

**If our town does not meet these guidelines, may it still apply for CDBG funds?**

Towns that don't meet the guidelines for the entire population may still seek funds for projects that have a limited clientele. For example, a town may seek housing improvement funds for low to moderate-income households. It may also apply for funds under an economic development program for a project that creates or retains jobs for low to moderate-income persons.

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**HANCOCK COUNTY MARINE PROCESSING FUND NEWS**

*By Jef Fitzgerald*

The Hancock County Marine Processing Fund has been granted a one-year extension by the Office of Community Development. The new closeout date is May 31, 2003 instead of the same date in 2002. Applicants can breathe a sigh of relief because the deadline is now much more manageable. This extra time will also give others a chance to apply. There are currently eight active applicants, with room for a few more.

The program has found it quite challenging to match business owners with financial resources and builders. Owners are working with program administrators, bankers and contractors to come up with creative solutions. Please call Jef Fitzgerald at 667-7131 if you have any suggestions. Thanks.



**SOLID WASTE NEWS**

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**“MERCURY WASTE AND MORE” ~  
2002 Collection Update**

*By Sherry Churchill*

In January, the Hancock County Planning Commission (HCPC) invited solid waste managers, municipal managers, and interested community members to an informational/brainstorming session to discuss options for the spring mercury collection event. Of primary consideration was how to best use the \$6,000 grant recently awarded to HCPC by the State Planning Office. While the weather was not the best, we still had a good turnout and got some excellent input!

Beginning January 1, 2005, municipalities must provide a way for households to dispose of mercury-containing items such as thermostats, button-style batteries, florescent lamps, and medical or scientific equipment. Coming up with a long-term solution can be challenging for a municipality with no Universal Waste disposal options. There is so much to think about - such as packaging the items, transportation, how to handle potential spills, and most of all... the expense. That's why HCPC is thinking well beyond the spring collection event, and working now to explore affordable options for communities to dispose of mercury waste in the long-term.

Among those in attendance at the January meeting was Matthew Strong, owner of Crow International, a local electronic reuse and recycling company. Crow International currently accepts computers, fax machines, copiers, television sets, and other electronic equipment for resale or recycling. At our January meeting, Matthew announced that he intends to add mercury-containing items to Crow's collection list in the near future. If all goes well, Crow may soon

be poised to accept any unbroken mercury-containing items, for a small fee. That's good news for Hancock County, so we hope Crow can work out the details soon.

In the short-term, we are still seeking input (and volunteers!) for the spring collection. By the time you read this, our second meeting will have occurred. However, if you are interested in participating, or just want the most up-to-the-minute update, please get in touch with Sherry at HCPC (schurchill@hpcme.org) who can fill you in on all of the details.

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## **SMART GROWTH NEWS**

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### **A SUMMARY OF CHANGES IN THE GROWTH MANAGEMENT ACT**

*By Thomas Martin*

As the January 1, 2003 deadline approaches, we are getting more inquiries from towns who do not have comprehensive plans or whose plans need updating. Many of you already know that state grant funds for comprehensive plans and plan updates are very tight. Given the current state fiscal situation, we cannot predict what funds will be available next fiscal year.

#### **What should towns do if they can't meet the deadline?**

Recent changes in the state law mean that there are fewer sanctions for towns who do not meet the deadline. The majority of towns in Maine will not meet this deadline. It is far better for a town to take its time to prepare a plan that reflects community needs and wishes than to try to rush to meet the January 2003 deadline. The major changes in the law are summarized below:

#### **1. Relationship Between Comprehensive Plan and Local Land Use Authority.**

The law was clarified to require that, as of January 1, 2003, any portion of a municipal zoning, rate of growth or impact fee ordinance must be consistent with a comprehensive plan meeting the requirements of the Growth Management Act. Other land use ordinances will not legally be required to be based upon a qualifying comprehensive plan. Shoreland zoning ordinances that govern land beyond the minimum authorized in statute must also be based upon a comprehensive plan meeting the requirements of the Act. There are some exemptions based upon status within the State Planning Office (SPO) financial assistance program and a transition clause.

#### **2. Removal of Requirement to Designate Commercial and Industrial Growth Areas in Slow Growing Municipalities or Municipalities Without Suitable Locations.**

The law had already exempted slow-growing municipalities and municipalities with no suitable physical locations from having to designate residential growth areas. Now commercial and industrial areas are also optional in such municipalities.

#### **3. State Review Procedure Shortened From 3 to 2 Steps.**

As of September 21, 2001, when the amendments took effect, SPO will review comprehensive plans and then complete growth management programs. Zoning and subdivision ordinances (formerly reviewed between the plan and program phases) will not be reviewed by SPO for consistency with the Act unless and until a municipality seeks certification of its Growth Management Program (plan, ordinances, capital improvement program and other essential implementation measures).

#### **4. State Agencies Directed to Assist Municipalities with Implementation of Their Growth Management Programs.**

“All state agencies, as partners in local and regional growth management efforts, shall

contribute to the successful implementation of comprehensive plans and growth management programs adopted under this subchapter by making investments, delivering programs and awarding grants in a manner that reinforces the policies and strategies within the plans or programs. Assistance must be provided within the confines of agency policies, available resources and considerations related to overriding state interest.”

**5. State Agencies Directed to Establish Preferences in Discretionary Grant and Investment Programs for Consistent Growth Management Programs and Comprehensive Plans.**

Programs to assist in accommodating growth and development, improving public facilities, or acquiring land for conservation, recreation or economic development (excepting sewage treatment, public health or education) shall establish preferences first for municipalities with certified growth management programs and, secondly, for municipalities with consistent comprehensive plans. Municipalities must submit amendments to any certified growth management program to SPO for review 60 days prior to applying for a program utilizing a preference to allow time for preference status verification. SPO is to assist agencies with developing appropriate preference mechanisms that respect the primary purpose of the grant or investment program.

Feel free to contact Tom Martin at the Hancock County Planning Commission if you have any questions.

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**BUILDING THAT SENSE OF COMMUNITY: THE LIGHTER SIDE**

**Premise:**

In view of the upcoming April Fool’s day observations, here is a lighter look at some smart growth ideas. Much of the discussion of great American neighborhoods has been on their design.

In an era where we are “bowling alone” the idea often seems a throwback to an earlier era where we lived in the towns where we worked and poor transportation and mass communication restricted our social contacts more to our immediate neighborhood. In modern communities, not only do we have less chance to communicate with our neighbors, there is less need. Our social needs can be fulfilled more with communication with like-minded people rather than those who happen to live in the same neighborhood.

Overall, communities come from shared experiences. How can we create such bonds in an era where both spouses work long hours, often in different towns, and have become highly mobile? Here are some ideas:

1. Creative use of marginal soils. As prime, developable land becomes scarce, we need to reconsider constructing on poorly drained soils. The resulting frost heaves on driveways, flooded basements and settling houses immediately create a shared experience among neighbors. As they help each other cope with these problems they get to know each other. A joint lawsuit against the developer is always unifying.
2. The bad neighbors program. MSHA (Maine State Housing Authority) has recently started a new neighbors program as a way to attract more households to neighborhoods in transition. A converse to this program would be one that assured that every subdivision had at least one difficult neighbor. This gives the rest of the development a shared sense of misery as neighbors relate war stories about that one household. In terms of land use ordinance changes, it is important to allow large numbers of unrelated persons to live together or other measures to create virtual fraternity houses.
3. Creative mixed land uses. In recent years there have been many strong arguments against Euclidian zoning (the term derives from the *Euclid v. Ambler* court case) due to the over

separation of uses. LULU's (locally undesired land uses), however, have the additional advantage of bringing neighbors together as they circulate petitions and contemplate strategy seated around the kitchen table.

4. Relaxation of street construction standards. As an automobile-oriented society, we most often pass our neighbors in our cars. It has been charged that the automatic garage door opener means that we have virtually no chance of getting out of our car and incidentally greeting our neighbor. However, continued street flooding, gaping pot holes and other problems resulting from poorly constructed streets slow traffic and increase the chances of contact with our neighbors. Unusually steep roads offer another advantage. Neighbors get to know each other on snowy nights as they dig each others' stuck cars out of snow banks.



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## CENSUS UPDATE:

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*By James Fisher*

The US Bureau of Census ([www.census.gov](http://www.census.gov)) has just released Summary File 2 (SF 2) data containing 47 detailed tables focusing on age, sex, households, families, and occupied housing units for the total population of Maine. Hancock County towns have most of these data already, though the SF2 tables are repeated for 249 detailed population groups, such as race and ethnicity. Summary File 3 (SF 3) tables containing detailed economic data are due out later this spring or early summer. If you would like assistance in working with Census data, please contact Jim Fisher: 667-7131 or [jfisher@hcpcme.org](mailto:jfisher@hcpcme.org).

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## TRANSPORTATION NEWS

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*By James Fisher*

It didn't take the annual bout of frost heaves to put transportation on the top of many Hancock County residents' list of concerns, though recent frost heaves have not gone unnoticed. In December the Ellsworth Comprehensive Planning Survey found that traffic congestion was a primary concern for 44% percent of responses, four times higher than the next most cited concern. Over a year ago traffic congestion in Ellsworth and the lack of an integrated land-use management and transportation planning process were identified as priorities at the Hancock County Planning for Prosperity Symposium (see proceedings at [www.hcpcme.org/transportation](http://www.hcpcme.org/transportation)).

### Seeking Solutions

Leaders from across the county have been looking for long-term solutions to transportation problems amidst the steady drumbeat for smoother roads, paved shoulders and more aggressive law enforcement. The needs are many:

- building better roads,
- expanding alternative modes such as bus, rail and ferry services,
- meeting new security requirements at the Bar Harbor-Hancock County Airport,
- providing safe places for residents to bicycle and walk, for healthier communities,
- slowing residential and commercial sprawl contributing to excess traffic volumes.

... the resources are few. The national economic recession has been muted in Maine, but transportation initiatives require a partnership of local, state and federal expenditures. Recent budgetary pronouncements from Washington, D.C. warn us that federal support for transportation programming is likely to remain flat or decline in coming years. Few local governments are prepared to pick up the difference.



## A Comprehensive Approach?

Is this a good time to engage in a countywide comprehensive transportation analysis? Perhaps so, as scarcity of resources and abundance of needs means that we will have to set priorities based on factors such as economic impact, current road conditions, traffic volumes and regional growth patterns.

Before you make up your mind, let's take stock of some recent research and planning activities. Many of these documents are available in the HCPC library or online at the HCPC and MDOT web sites ([www.hcpcme.org](http://www.hcpcme.org) and [www.state.me.us/mdot/planning/bureauweb/docs](http://www.state.me.us/mdot/planning/bureauweb/docs), respectively).

1998

Twenty-year Plan

1999

Strategic Passenger Transportation Plan  
RTAC Truck Freight Study

2000

Biennial Transportation Investment Plan  
Bicycle Pedestrian Study  
Calais Branch Rail with Trail Study

2001

RTAC Six-Year Plan  
RTAC Regional Advisory Report  
Planning for Prosperity Symposium  
SYSTRA Rail Reuse Study - I  
Schoolic Transit Study  
ANP Capacity Symposium  
Biennial Operations Plan (Transit)

2002

Bucksport Transit Study  
Biennial Transportation Investment Plan

Transportation studies range from highly specific, such as the transit study for Bucksport, to very broad-based, such as the systems-wide RTAC Regional Advisory Report. Specific engineering studies and corridor studies, including research on Route 9, are too numerous to list.

We can draw some high-level conclusions from these studies: we are increasingly dependent on private automobiles, our roads are carrying heavier traffic volumes and heavier trucks, our economic future depends on good transportation systems, yet our economic growth along arterials jeopardizes mobility.

The Maine Department of Transportation organizes these studies in their twenty-year system plan, six-year corridor prioritization and two-year implementation program. The cumulative impact of so many studies may be to accomplish the needed county-wide transportation study, but only if, 1) ample opportunities exist for local input and 2) the study leads to good decisions.

## Local Input

Local input is solicited at every level, including the annual municipal survey that is in the field right now in which towns are requested to provide MDOT with needs for roads, bridges, enhancement projects and more. Unfortunately, many towns do not respond to the survey, leaving significant information gaps.

On-the-ground decisions are most clearly articulated in the Two Year Investment Program (BTIP). The BTIP provides readers with very specific information on the timing and location of projects ranging from major road reconstruction and maintenance paving. Providing a public work plan helps towns to plan infrastructure changes, such as water and sewer lines that run under roads, sidewalks and local road improvements. This document is available in the HCPC library and online <http://www.state.me.us/mdot/planning/btip/btip>.

The current BTIP includes major projects on Route 15, Route 1 and Route 1A. Some projects that were planned in Hancock County are now in jeopardy due to funding shortfalls and intense competition among Maine's towns. Ongoing local participation is essential to project momentum and completion.



## What's Next?

Two big initiatives are on the table this spring, a possible bypass road for Ellsworth and the future of the disused Calais Branch Rail Line.

MDOT is seeking local input for a purpose and needs statement to be taken to the Maine Legislature as part of a funding request to mitigate Ellsworth's traffic congestion problems. A leading contender among congestion solutions is the construction of a bypass between northern Ellsworth and southern Ellsworth or Trenton. This is a long process, likely to take more than a decade to complete.

The Calais Branch rails and trails alternatives are also under the microscope as MDOT attempts to put the corridor back to work, either carrying trains, bikes/ horses/ walkers/ atvs/ snowmobiles or both. More information is available at HCPC.

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### Mark Your Calendar:

**April 22, 2002: MMA Planning Board/Boards of Appeal workshop; 6-8:30 P.M. at the Ellsworth Holiday Inn.**

**Spring 2002: HCPC Workshop on Access Management (check our website or contact Jim Fisher or Sherry Churchill for a date).**

**May 28, 2002: HCPC's Annual Full Commission Meeting; 7-9 P.M. at the Ellsworth Public Library.**

Thought for the day:

*excerpt from "Leadership," The Economics Press Inc.:*

Finding a bright spot in the ominous task known variously these days as "rightsizing" or "workplace reengineering" isn't easy. But one consultant brought in to help remaining managers through the process of reducing the workforce while maintaining productivity added a contemporary twist to the old classic.

"What does the optimist say about the glass and the water?" he asked.

"It's half full," was the reply.

"And what does the pessimist say?" he queried.

"It's half empty."

"And what does the process reengineer have to say about it?"

Silence---until the consultant revealed the new additional answer: "Looks like you've got twice as much glass as you need there."

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Hancock County Planning Commission is a partner with local and county government to: protect our heritage and resources, plan for the future and promote a sound economy for the people of Hancock County.

**SPRING 2002 NEWSLETTER**

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