
HCPC NEWSLETTER

Hancock County Planning Commission

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Fiscal Year 2008-2009

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PLANNING BOARD NEWS

By Tom Martin

STATEWIDE BUILDING CODE LAW: A STATUS REPORT

What does the New Law Require?

Public Law 699 (enacted by the 123rd Legislature) created a framework that establishes a statewide uniform building, energy and rehabilitation code. A state Board consisting of eleven professionals representing building trades, fire safety, historic preservation and energy will be appointed to amend, update and adopt the building and energy codes. National building and energy codes will be customized for Maine through amendments made by this Board. Codes would be updated regularly by the Board. The statewide building, energy and rehabilitation code will be adopted by the Board by Jan 1, 2010. After that date, municipalities will no longer amend or adopt codes and pre-existing local codes will no longer be in effect.

What does this Mean for Local Code Enforcement?

Towns with more than 2000 residents with a building code are required to enforce the new statewide code effective January 1, 2010. Towns with more than 2000 residents without a building code must begin enforcing the new code by January 1, 2012. Enforcement is optional in towns with less than 2000 residents.

Towns have four options for enforcing the code:

1. enforcing through their own code enforcement program, funded by local building permit fees
2. contracting with a regional agency for code enforcement services
3. sharing code enforcement services with other towns through an inter-local agreement
4. receiving a building inspection report from a certified inspector contracted by a building owner

All towns that enforce the building and energy codes will enforce the state uniform code, eliminating the need for towns to update, amend and adopt local codes. A state technical assistance telephone line will be available to answer code questions during regular business hours. The final interpretation of the codes for enforcement purposes is the jurisdiction of the local code officer.

What is the Role of the New State Board?

The state Board is authorized to resolve conflicts involving building and life safety codes. Code conflict resolutions will be adopted by rule and published on the web. Fire and building officials will work together on the new Board to enhance coordination and cooperation between the building and fire code professionals. The state Board is authorized to make recommendations to the legislature on conflicts with other codes and standards such as elevator standards and the Maine Human Rights Act.

How do Local Code Enforcement Officers Learn About the New Requirements?

The state Board is directed to provide affordable, accessible training to code enforcement officers and is authorized to create certification standards for these officers. Specific training in Maine's building and energy codes will be added to the certification requirements for code enforcement officers. Building Codes Training will be offered through the Department of Public Safety and coordinated with the State Planning Office. Training in Maine's energy code would be provided to local code officers at no cost and become part of the certification requirements for code officials. Towns with over 2000 residents will be required to enforce the energy code. Enforcement is optional for towns with fewer than 2000 residents. Towns may contract with certified inspectors for energy inspection services.

STATE PLANNING OFFICE ANNOUNCES LEGAL ISSUES & ENFORCEMENT TECHNIQUE WORKSHOPS FOR JANUARY, 2009

The State Planning Office will sponsor a two-day training workshop on Legal Issues and Enforcement Techniques for Municipal Code Enforcement Officers and Local Plumbing Inspectors. Durward Parkinson from the Law Firm of Bergen & Parkinson will be presenting this topic. **Day One will focus on the introduction to Legal Issues.** Topics covered in the training session will include jurisdiction and authority of the code enforcement officer regarding State and local laws, employment issues, conflict of interest and incompatibility of offices, resisting political pressure, ethical use of authority, record-keeping, liability, municipal ordinance authority, ordinance interpretation, nonconforming uses and lots, subdivisions, and appeals and variances. **Day Two will cover more complex issues** and will include a discussion on relationship building, review of recent case law and enforcement options. A revised training manual will be provided to all attendees. Twelve credits in the area of Legal Issues will be applied toward recertification for certified individuals.

Registration will open at **8:30 A.M.** at all sites. The presentation will start at **9:00 A.M.** and will end by **4:00 P.M.**

Workshops will be held at the following locations:

Day One

South Portland - (Tues) January 6th – Merry Manor Inn, 700 Main Street

Orono – (Tues) January 13th – Black Bear Inn and Conference Center

Lewiston – (Thurs) January 15th – Ramada Inn

Presque Isle – (Thurs) January 22nd – Keegan Hall, NMCC

Day Two

Orono – (Wed) January 21th – Black Bear Inn

Presque Isle – (Fri) January 23rd – Keegan Hall, NMCC

Lewiston – (Thurs) January 29th – Ramada Inn

South Portland - (Tues) February 3rd – Merry Manor Inn, 700 Main Street

Cancellations: *If the workshop is canceled due to inclement weather you will be contacted the day before the event. There will also be a recorded announcement at 287-8056. Also, if you are attending a session at a Community College and it is closed due to inclement weather, the workshop will be canceled. Please listen to broadcasts on the radio and/or television.*

For further information contact:
State Planning Office
C.E.O Legal Issues Workshop
38 State House Station
Augusta, ME 04333-0038 or FAX: 287-6489

Or register on-line at
www.maine.gov/spo/ceo/training

SUBDIVISION DEVELOPMENT AND PERSONAL PROPERTY RIGHTS:

Striking a Balance in Hancock County

by Tom Martin



January 28 Workshop Planned on Municipal Energy Issues

The next workshop in the HCPC's *Striking A Balance* series is scheduled for January 28, 2009 (storm date: January 29) from 5:00 PM to 8:30 PM. The agenda will include conducting a municipal energy audit and regulating outdoor wood-fired boilers and small-scale electrical wind generators. Also, the HCPC is gathering model ordinances on wind generators and outdoor boilers. Contact Tom Martin for more information.

The \$17 registration fee includes a light supper. Pre-registration is necessary and the registration deadline is January 23, 2009. More detailed information will

be mailed to all HCPC towns in late December or early January. Funding is provided in part by the Maine State Planning Office and Bar Harbor Bank and Trust.

RECENT COURT CASES

reprinted from the Southern Maine Regional Planning Commission Newsletter Fall 2008. Case Notes by JT Lockman and Madge Baker, Esq.

Vickie L. Mills v. Town of Eliot, et al., Maine Supreme Judicial Court. Decided August 28, 2008

Facts: The CEO approved a building permit for a third house in a "family subdivision," which had been recorded without Planning Board approval. All those involved in the recording believed themselves to be exempt under the definition of "subdivision" in the Subdivision Law. Aggrieved neighbor Mills appealed the CEO's building permit issuance, alleging that the Cullen and Bullis family divisions were made with the intent to avoid the objectives of the statute. Mills' appeal was denied by the Eliot Board of Appeals. The ZBA found that there was no intent to avoid, and that Mills' appeal was late. The Superior Court upheld the Appeals Board decision. The Maine Supreme Court vacated the judgment of the Superior Court, remanding the decision all the way back to Code Enforcement Officer, to do the decision over.

Issues and Rulings:

- 1: Mills was not late in her appeal, even though the family subdivision was filed in 2001. Because the possibility of a violation of the subdivision law would not emerge until the CEO issued a third permit within five years on that parcel, you should use the issuance date of the 3rd building permit rather than the time of filing of the family subdivision, to count 30 days from the decision. Although the CEO approved the creation of the family subdivision in 2001, the filing of a family subdivision requires no municipal decision. When a CEO checks a family subdivision it is not a "legally cognizable action."
- 2: The CEO was responsible for determining whether the intent of the families was to avoid the objectives of the Statute – not the ZBA or appellant.
- 3: The CEO did not make findings of fact or in any way document that he investigated the intent of the land dividers before issuing the 3rd permit.
- 4: The town should not have been involved in the review and approval of the family subdivision in 2001,

as it never had adopted a stricter or broader definition for a “subdivision” than the one found in the statute.

Planning Implications: CEO’s should not assume that a particular family subdivision is Ok because it has been recorded for many years and no one has ever challenged it. The CEO needs to investigate and document the “pedigree” of lots that are part of exempt family subdivisions before issuing permits. For more information, see the text of the opinion at http://www.courts.state.me.us/court_info/opinions/2008%20documents/08me134mi.pdf

Jade Realty Corp. v. Town of Eliot, Maine Supreme Judicial Court, decided May 8, 2008

Subdivision case

Facts: In 2006 Jade Realty applied for and received a permit to construct an access road to an undeveloped portion of its large subdivision. In 2005 the Town amended its zoning ordinance to provide that no new access road serving more than 14 lots is permitted if it connects to a public street that does not meet current town street standards at the intersection of the access road and the street. The CEO interpreted the ordinance as requiring that the access road only needed to meet town standards. Several town citizens appealed the CEO’s decision. The ZBA disagreed with the CEO and conditioned the permit upon upgrading the public road. Jade Realty took the case to court. Superior Court upheld the CEO’s decision and overruled the ZBA.

Issue: Does the Town road at the intersection of the Town road and the subdivision road have to be upgraded?

Ruling: Yes it does. Apparently Superior Court had agreed with the CEO that the definition of “intersection” was vague enough as to be open to interpretation. The Supreme Court did not concur. The Justices concluded that no matter how you interpret “intersection,” the intent of the ordinance language was clear: both the private and the public roads at the intersection had to meet Town road standards.

CDBG NEWS

by Tom Martin

HCPC Seeking Funds for County-Wide Well and Septic Replacement Grant

The Hancock County Planning Commission is, in conjunction with the Washington Hancock Community Agency, seeking Community Development Block Grant funds for a well and septic replacement program. This project would allow income-qualifying households to receive grant funds to provide safe and reliable drinking water and install septic systems that met all state plumbing code requirements. The income limits in this grant apply to individual households rather than the town as a whole. This means that if you have some households in town that meet the income guidelines, your town can apply. These guidelines are on a sliding scale according to family size. For example, a family of four must earn no more than \$42,700. Almost every town in Hancock County has some qualifying households.

If you feel you have qualifying applicants in your town, please contact Tom Martin at the HCPC. He can provide more information on how to participate and what information we need from participating towns. *To be successful, we need as many towns participating as possible.*

CDBG Economic Development Programs Available to Help Local Businesses and Towns

At a time when many Hancock County businesses are experiencing job losses or decreased revenues, CDBG economic development funding may be able to help. The Economic Development Program provides communities with gap financing to assist businesses in the creation/retention of jobs for low to moderate income persons. There are four grant subcategories:

1. for public infrastructure such as sewer, water, electricity and roads that are necessary for job creation or retention. In recent years, HCPC staff have helped towns use this program to extend three-phase power and public water and sewer lines to businesses;

2. for direct business support through non-capital equipment, land and site improvements, rehabilitation or construction of commercial or industrial buildings;
3. for working capital; and
4. Development Fund Loans: for acquisition of existing facilities, land and site improvements necessary for the construction of a new facility, rehabilitation or construction of commercial or industrial buildings, structures, non-capital equipment, capital equipment, working capital and real property improvements. For details on program requirements, contact Tom Martin at the HCPC. The first round of letters of intent is for categories 1-3 is January 9, 2009. Contingent upon funding, there will be rounds on April 3, 2009 and June 12, 2009. Development Fund loan applications are due the first Friday of every month.

BROWNFIELDS NEWS

by Tom Martin

By the time you receive this newsletter, the HCPC's search for potential brownfields sites that could be candidates for in-depth investigations by our environmental consultant should be underway. We are urging all towns to think of possible sites that you believe may be contaminated. These could include, but are not limited to, abandoned automotive service stations, old industrial, mining and commercial operations and rail sidings. According to a 2004 survey by the DEP there were 86 potential brownfields sites in the 28 Hancock County towns that responded to the survey. Based on the experiences of other regions, there are likely many more sites. If you think there are sites in your community, contact Tom Martin at the HCPC.

HEALTH NEWS

by Jim Fisher

Common Health Marches into 2009

Jim Fisher continues to host Common Health on WERU 89.9 FM on the third Wednesday of each month at 10:00 AM. Future call in programs will include:

- December 17: Disabilities and Society
- January 21: Recreation and Health
- February 18: The Political and Economic Roots of Homelessness

Our recent programs on impacts of toxic pollutants on wildlife, strategies for heating your home this winter, health care policy and politics, and adolescent health are available as audio archives at www.commonhealth.org.

TRANSPORTATION NEWS

by Jim Fisher

Schoodic Byway Awarded Gateway Grant

The Federal Highway Administration recently announced grant awards for America's Scenic Byways. Funding this year has been substantially reduced for many byways, but we are fortunate to have two proposals receive our full request for the Schoodic National Scenic Byway. We are particularly excited to have received \$78,000 in federal funds for the construction of a gateway facility in Prospect Harbor. A key to winning this substantial grant was the Town of Gouldsboro's commitment to match federal support with local funds dedicated to improving a parking area next to the Town Office and a private donation by the Cole Transportation Museum of two stone benches for a veteran's memorial.

Prospect Harbor is the eastern gateway to the Schoodic National Scenic Byway, but to-date visitors have not known quite where to stop, whom to ask for information nor what there might be to see in the community. The proposed gateway facility will serve visitors with a small interpretive area with information about lighthouses, lobstering, sardines and the famous S. S. Queen Victoria bell that was given to the Town after the crew and passengers were rescued following a hurricane in 1866.



The gateway will also serve as a commemorative park for Gouldsboro's veterans, with a small memorial and donated stone benches. The proposed location will also be convenient for school children and persons wanting to ride the Schoodic Point shuttle bus that runs seasonally. The Schoodic National Scenic Byway

Corridor Management Committee will be working on the design of this facility and the interpretive panels this winter. The public is always invited to participate in our meetings. Contact Jim Fisher (jfisher@hpcme.org) for more information.

Schoodic Byway Interpretive Signs Installed

Travelers along the Schoodic National Scenic Byway will discover new facts about the region's natural resources, history and working landscape. Scenic stops at the Taunton Bay gateway facility, Frenchman Bay Scenic Turnout and Long Cove rest area will find colorful stories, images and educational lessons in a series of ten interpretive panels installed in September.

Years of planning, fund raising and collaboration are paying off for this unique byway that connects Taunton Bay in Hancock with Prospect Harbor in Gouldsboro following Route 1 and Route 186 and



including the Schoodic District of Acadia National Park. Partners working to

enhance the Schoodic National Scenic Byway include the towns of Hancock, Sullivan, Gouldsboro and Winter Harbor, the Hancock County Planning Commission, the Maine Department of Transportation, the National Park Service, Friends of Acadia, Frenchman Bay Conservancy, historical societies and other local organizations.

The Schoodic Byway Corridor Management Committee, chaired by Barbara Shanahan of Sullivan and Peter Drinkwater of Winter Harbor, has labored for more than a decade to make improvements to the byway and their communities.

The stunning graphics and layouts were created by the Schoodic Byway Corridor Committee and Nancy Montgomery, owner of Montgomery Design (www.nmontgomerydesign.com). Her work can be

seen on byways and scenic locations throughout Maine.

The interpretive signage program has been made possible through a generous grant from the Federal Highway Administration and technical support from the America's Byways Resource Center.

Major accomplishments along the byway include the construction of a gateway facility in Hancock next to the new Taunton Bay Bridge that this summer has been upgraded with five new interpretive signs, a new privy and improvements in landscaping. Additional work planned for this fall includes granite benches and trails. The Frenchman Bay Scenic turnout has been transformed from a 12-foot gravel shoulder into a paved turnout, separated from highway traffic, with four interpretive panels (one to be completed), sidewalks, views of the bay and Mount Desert Island. Long Cove has received a larger paved parking area, picnic tables, a new privy and three new interpretive signs.

Additional interpretive signs have been prepared that chronicle the history and resource bases of Winter Harbor and Prospect Harbor. These signs will be on display in temporary locations as permanent locations are prepared.



In addition to these byway improvements, recent improvements to Route 1 and Route 186 make traveling the byway a memorable and safer experience for visitors. While additional improvements are needed for some sections of Route 186, great progress has been made. The village center of Winter Harbor is also undergoing significant improvements with new sidewalks and street lighting.



Additional information for the Schoodic National Scenic Byway is available online at www.schoodicbyway.org. Brochures are available at

the Greater Ellsworth Chamber of Commerce Visitor Center and online. Images of the newly installed and yet to be installed interpretive signs are available online at: www.schoodicbyway.org/photo/interp.

MaineDOT Considers Acadia Byway Extension

The Acadia Scenic Byway Corridor Committee – Trenton Extension subcommittee, working with the Hancock County Planning Commission recently completed a proposed Corridor Management Plan for Route 3 in Trenton as a foundation document for the extending the Acadia All American Road from its

current northern point at Thompson Island to the Ellsworth-Trenton town line. The corridor management plan provides readers with

documentation about the unique assets found along the byway, the goals and objectives for preserving and improving the corridor and strategies for moving

forward. Plans to construct the Acadia Gateway Center in the center of Trenton have provided added support for extending byway status through Trenton, thus creating incentives for beautification and visitor facilities in this critical gateway community. The proposed corridor management plan is available online at www.acadiabyway.org. Readers are encouraged to send their comments to Jim Fisher

(jfisher@hcpcme.org). Future public meetings are planned to gather additional input for ways to implement this corridor management plan.



Trail Initiative for the Blackwoods

The Maine Bureau of Parks and Lands has convened a working group to plan a series of hiking trails connecting the Down East Sunrise Trail, Schoodic Mountain, Black Mountain, Donnell Pond, Tunk Lake, Tunk Mountain and points further east along Route 182. The committee will initially seek to organize and create a series of loop trails for day hikes. Our long range vision will be to connect these trails creating the opportunity for a three day backpacking trip between eastern Hancock County and western Washington

County. This back woods experience will be a unique opportunity for eastern Maine, providing local scout troops, hunters, backpackers and tourists with a chance to see one of Maine’s most scenic areas incorporating mountains, lakes and the ocean. Even more exciting is the connection that these trails will have to the soon-to-open 82-mile Down East Sunrise Trail (www.sunrisetrail.org) and two scenic byways (www.blackwoodsbyway.org as well as www.schoodicbyway.org). People interested in really stretching out can ride their bicycles to a trail head, then hike, paddle and peddle for days. The Hancock County Planning Commission is participating in the planning committee and will host additional information online at: www.hcpcme.org/townships/trails. Please contact us if you would like to provide input in the planning process.

East to West and North to South Corridor Plans

The Hancock County Planning Commission, in collaboration with the Washington County Council of Governments is into the final stages of an east-west corridor management plan, called the “Down East Coastal” incorporating Route 1, Route 9 and connecting corridors.



Draft documents are posted to www.hcpcme.org/transportation/needs/decoastal

Readers are encouraged to send comments to us as soon as possible.

As one plan wraps-up, another is being launched. The “Acadia Express” corridor runs north to south, primarily along Route 1A from Holden to Ellsworth and Route 3 from Ellsworth to Mount Desert Island. We encourage interested persons living in the towns along this corridor to contact Jim Fisher (jfisher@hcpcme.org) with your questions and suggestions. The website for the Acadia Express is: www.hcpcme.org/transportation/needs/acadia.

Bucksport Bicycle Pedestrian Plan Underway

The Town of Bucksport has launched a bicycle-pedestrian planning initiative with HCPC assistance.

The six month process engages residents, local leaders, businesses and health advocates to assess the state of sidewalks, shoulders and trails throughout the community and propose improvements to create a more connected community. The research phase is underway and will include GIS mapping of existing sidewalks and trails, photographing areas of concern and conducting walking audits to identify local assets and needed improvements.

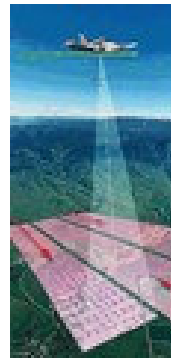
There are good reasons to create a bicycle-pedestrian plan. In every community there are places that are safe to walk or peddle, but also places where small gaps, narrow passages or even poorly built drainage can discourage people from leaving their cars. These barriers loom larger as our the average age of our residents increases.

HCPC staff is available to assist your community to prepare a bicycle pedestrian plan. Contact Jim Fisher (jfisher@hpcme.org) for more information.

TECHNOLOGY NEWS

by Jim Fisher

HCPC continues to expand the services that we can offer online. We have recently reorganized our website to make access to information about your town more convenient. Our new system permits anyone to visit www.hpcme.org/yourtownname for maps, demographic data, plans and other documents. You can also navigate to your town by selecting it from a county map at www.hpcme.org. Also, remember that we now have high resolution color aerial photography for the entire county. These images are indispensable for accurate mapping and land use planning.



A new innovation in aerial photography is called “**LIDAR**”, which stands for **L**ight **D**etection and **R**anging. LIDAR is an optical remote sensing technique that measures scattered light to find distance and or other information about a distant object. Photographing the land from LIDAR equipped airplanes provides detailed information in addition to high quality images. The ranging feature, for instance, creates highly detailed contour information. While we currently map contours in intervals of 10 to 20 feet, LIDAR will enable us to map contours intervals of just 2 feet. This level of detail is extremely helpful for determining flood plains and slopes that can affect land suitability for development. The United States Geologic Survey (USGS) has announced partnership opportunities for regions interested in contracting for LIDAR services. Two important caveats are that towns need to work together and local matching funds are required. If your town is interested in collaborating in a partnership proposal, please contact us.

GRANT NEWS

by Tom Martin

Hazard Mitigation Grants Available

The Maine Emergency Management Agency (MEMA) has a round of Hazard Mitigation Grant funding available. Grants are due in Augusta on January 30, 2009. Eligible activities are described on the table below. Watch the MEMA website (http://www.maine.gov/mema/mema_mitigation.shtml) for upcoming workshops that help applicants complete a competitive application. This web site also provides details on grant amounts and other requirements. Also, feel free to contact Tom Martin at the HCPC if you have any questions.

ELIGIBILITY - APPLICANTS

404 MITIGATION

Eligible Applicants:	Primary Requirements:
<p><i>Eligible</i> applicants include:</p> <ul style="list-style-type: none"> • State and Local governments • Indian tribes or other tribal organizations • Certain non-profit organizations (such as public libraries) 	<p>To receive grants, <i>all</i> applicants must:</p> <ol style="list-style-type: none"> 1. PLAN - Be participating in a FEMA approved Hazard Mitigation Plan 2. NFIP - Be in good standing with the National Flood Insurance Program (NFIP) <p>COST BENEFICIAL – Must have project with benefits exceeding costs</p>
<p>Note: Individual homeowners and businesses <i>can not</i> apply directly to the program; however, a community may apply on their behalf.</p>	

ELIGIBILITY - PROJECT

404 MITIGATION

YES	NO
Acquisition of primary residences that have been repetitively damaged by natural hazards (such as flooding) and conversion to open space	Major flood control projects such as dams, dikes, floodwalls, groins, jetties, levees, seawalls, waterway channelization or, beach re-nourishment projects
Relocation of primary residences that have been repetitively damaged by natural hazards.	Maintenance or Capital Improvement Projects such as annual ditch cleaning or new paving
Elevation of primary residences that have been repetitively damaged by natural hazards.	Emergency Repairs – these are covered under PA and/or 406 if related to the declared storm/county; otherwise, the town’s responsibility
Public roads/culverts – Upgrades, upsizing and / or stabilization at repetitively flooded areas	Engineering Designs that <i>are not integral</i> to a proposed project
Minor structural flood control projects – such as low water crossings on public roads with repetitive flooding, but low traffic count.	Studies or Mapping – (Engineering, drainage, flood, feasibility...) that <i>are not integral</i> to a proposed project
Bank Stabilization on public roads to solve repetitive erosion problems	Generators that <i>are not integral</i> to a proposed project
Storm water management of repetitively flooded public roads / streets	Phased or partial projects

Five *minimum* criteria that all projects must meet in order to be considered for funding:

1. Is cost-effective; it has a Benefit to Cost Ratio (BCR) of 1:0 or greater
2. Conforms with the State and Local Hazard Mitigation Plans
3. Provides beneficial impact upon the designated disaster area
4. Conforms with environmental laws and regulations
5. Solves problem independently or is functional portion of solution

DATES TO REMEMBER

Striking A Balance Workshop

Wednesday, January 28 Storm Date (Jan. 29th)

VFW Hall on Washington Junction Road

Ellsworth, ME

\$17.00 Registration fee.

5:00 – 6:00 Dinner

6:00 – 8:30 Workshop

Topic: Municipal Energy Issues

Pre-Registration is required. Call 667-7131 for more information or see article Page 3.

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.

Winter 2008 Newsletter

Change Service Requested