DURHAM PLANNING BOARD REGULAR MEETING AGENDA Durham Town Offices, 6:00 p.m. July 13, 2022

- 1. Roll Call & Determination of a Quorum
- 2. Amendments to the Agenda
- 3. Acceptance of the Minutes of Prior Meetings (June 1, 2022)
- 4. Informational Exchange:
 - a) Town Officials
 - b) Residents
 - c) Non-Residents
- 5. Continuing Business
 - a) Completeness Review Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A
- 6. New Business:
 - a) Public Hearing Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A
 - b) Substantive Review Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A
- 7. Other Business:
 - a) Planning Board Discussion of Public Outreach Process for Land Use Ordinance Amendments For 2023 Town Meeting

6. New Business:

a. Public Hearing Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A

TOWN PLANNER COMMENTS:

- 1. A public hearing notice was posted in the Lewiston Sun Journal and at three prominent locations in town.
- 2. The bylaws provide that the Chairman is to describe the purpose of the hearing and the procedures to be followed.
- 3. Per those bylaws, the Board may receive oral or documentary evidence but shall exclude irrelevant, or unduly repetitious evidence. The Chairman shall make a determination of the relevance of any evidence or testimony and that determination can be challenged by a motion of any Board member subject to a majority vote of the Board members.
- 4. Every party shall have the right to present its case in the order determined by the Chairman and without interruption.
- 5. The Chairman may impose such reasonable time limits as may be necessary to ensure that all parties have an adequate opportunity to be heard.
- 6. Every party shall have the right to submit rebuttal evidence and to conduct cross examination of any other party through the Chair, provided however, that the Chairman may impose such other reasonable limitations as may be necessary to prevent an abuse of process.
- 7. An aggrieved party is defined as any person who can demonstrate that he or she will suffer a particularized injury by issuance or non-issuance of the license/permit approval in question. A particularized injury is one that directly operates against a party's property, pecuniary or personal rights. An injury suffered by all of the citizens of the Town in an equal and proportionate manner is not a particularized injury (Section 19.7 Durham Land Use Ordinance).
- 8. Comments and questions should be focused on helping the Planning Board determine whether the application meets the adopted Ordinance criteria and performance standards as opposed to debating Town growth management policies which are set at Town Meeting and must be followed by the Planning Board.
- 9. The application and staff comments were made available on the Town website and the purpose of the public hearing is to receive public input on the application.
- 10. The Planning Board will conduct its deliberations on the application after the conclusion of the public hearing. During its deliberations, the Planning Board can question the applicant and aggrieved parties.
- 11. These procedures and limitations on public input are required to ensure that the applicant and aggrieved parties are given due process and the legal deadlines for a Planning Board decision on the application can be met.

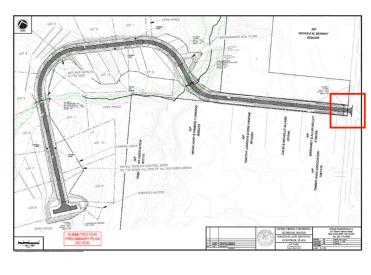
6. New Business:

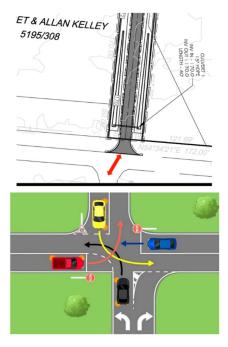
b. Substantive Review Preliminary Plan Application for Proposed 13-Lot Cluster Subdivision Hallowell Road Map 7, Lot 32A.

TOWN PLANNER COMMENTS:

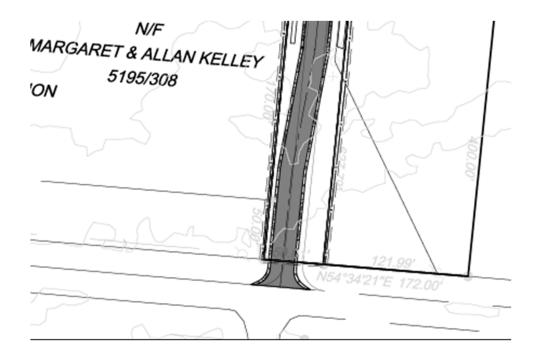
- 1. The submitted survey plan contains multiple notes about questionable title for land included in the subdivision application. The Planning Board is not a court with jurisdiction to settle land ownership disputes. But the Board does have responsibility to verify that the applicant has sufficient right, title, or interest to apply for requested permits. The questionable areas seem to be around the perimeter of the project, which will be common open space for the subdivision. The applicant should either resolve the title issues or verify that the proposed lots and common open space include sufficient area to meet the standards of the Ordinance without reliance on the areas of questionable title. The Board may want to see a plan clearly showing the questionable areas and calculations documenting compliance with the Ordinance standards. This could be a condition of final approval.
- 2. Section 4.1.a requires that every lot has a minimum buildable area of 40,000 square feet that is not in RP, wetlands, or steep slopes over 20%. Section 6.33 allows the Planning Board to reduce "lot size and street frontage" by up to 50% of the requirements of Article 4. It does not indicate that the "minimum buildable area" can be reduced by 50%. Lot 6 of the original preliminary plan clearly does not meet this requirement based on the amount of wetlands and Lot 7 should be checked as it looks close. The supplemental submission expands those lots out into the open space to meet the technical standard of 50%, but half of the buildable area is on the far side of the large wetland area. The Planning Board has discretionary authority over the approval of cluster subdivision layouts. A preliminary approval condition could be applied requiring a detailed site plan for development of any lots that are questionable in terms of having a suitable building site that will not have an adverse impact on identified wetlands. If that envelope is restricted by wetlands, there will be pressure to expand into those wetlands over time. The Planning Board could also require removal or relocation of any cluster lot that it deems unsuitable for development.
- 3. Section 6.2.A.4 requires a finding by the Planning Board that the proposed subdivision will not cause unsafe conditions with respect to the use of the highways or existing or proposed public roads. This general criterion is determined by a finding of compliance with Section 6.16.A.1 that requires that roads provide safe circulation and access connections to external streets. The proposed intersection on Hallowell Road is diagonally offset from the intersection of Patriot Way on the opposite side of Hallowell Road which potentially creates an unsafe condition for left turning vehicle movements. The applicant is in communication with the abutting Timber Oaks Association for possible cooperation to align the intersection to eliminate any offset. The applicant has provided measurements of safe sight distances for the new intersection and an MDOT traffic permit will be required. The following diagram presents a conceptual diagram of a similar intersection offset and the safety problems it creates. The intersection offset safety issue could be peer reviewed by a traffic engineer.

DEER CREEK CROSSING INTERSECTION OFFSET





Based on these staff comments, the applicant submitted the following detail for a slight realignment of their project entrance:



4. Section 6.16.C.2 requires that a fire protection water supply be provided with a minimum of 10,000 gallons and an additional 2000 gallons per lot. That would set the standard for this subdivision at 36,000 gallons of on-site water storage which can be in underground storage tanks or a fire pond. Subsection C.7 of that Section allows this volume to be reduced with NFPA 13D compliant sprinklers installed in all dwellings and with Fire Chief approval. I do not consider that the Ordinance language allows the complete elimination of on-site water storage as being compliant with Subsection C.2 even if that has been past practice. The applicant is

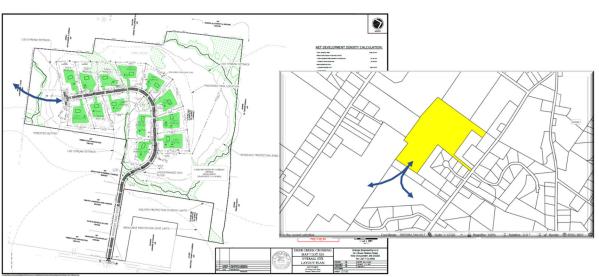
looking at installation of a fire pond and a dry hydrant on the brook.

In the applicant's June 22 supplemental submission, the following proposal to address water sufficiency was stated:

"A fire pond at the end of the hammerhead has been added to the plans to provide the required 36,000 gallons of on-site water storage. Confirmation from the fire chief that the required fire pond will eliminate the need for sprinkles is still pending. If sprinklers are still needed a dry hydrant will be installed at the stream crossing in place of the fire pond."

Section 6.16.C.2 requires that fire ponds, if proposed, must have a capacity of 120,000 gallons. Subsection 7. Allows this amount to be reduced with the protection of the homes by residential sprinklers and with approval from the Fire Chief. A dry hydrant at the stream crossing should be reviewed for expected water availability and capacity.

5. Section 6.18.C.1 requires the Planning Board to explore possible interconnection of the road system of every subdivision with existing and future development of the road network. There is undeveloped land to the southwest of the project site that could provide future road connections to Davis Road and back out to Hallowell Road as indicated in the following diagrams:



DEER CREEK CROSSING POTENTIAL FOR FUTURE ROAD INTERCONNECTION

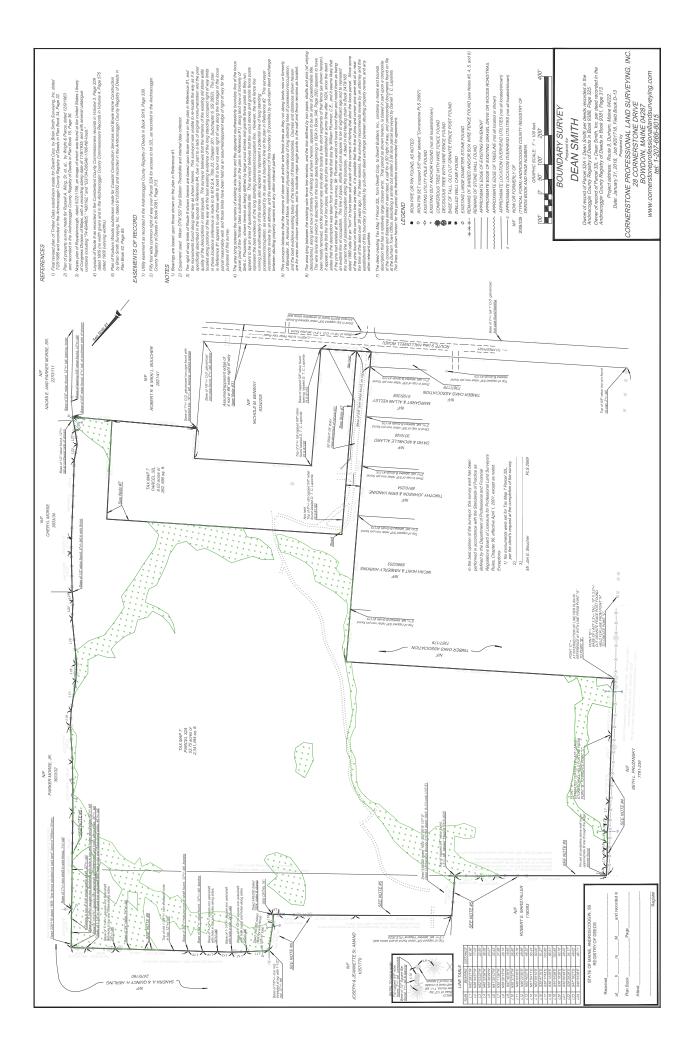
The ordinance requirement for coordination of the street network could be satisfied by establishing a dedicated right-of-way off the end of the proposed road for future interconnection. The Board can disregard this standard if the resulting road connection(s) would create the potential for significant cut through traffic. Any extension of the road to connect to other subdivisions would be the responsibility of other developers, but if the Planning Board applies this requirement, the legal documents for the subdivision should provide the legal rights to extend the road.

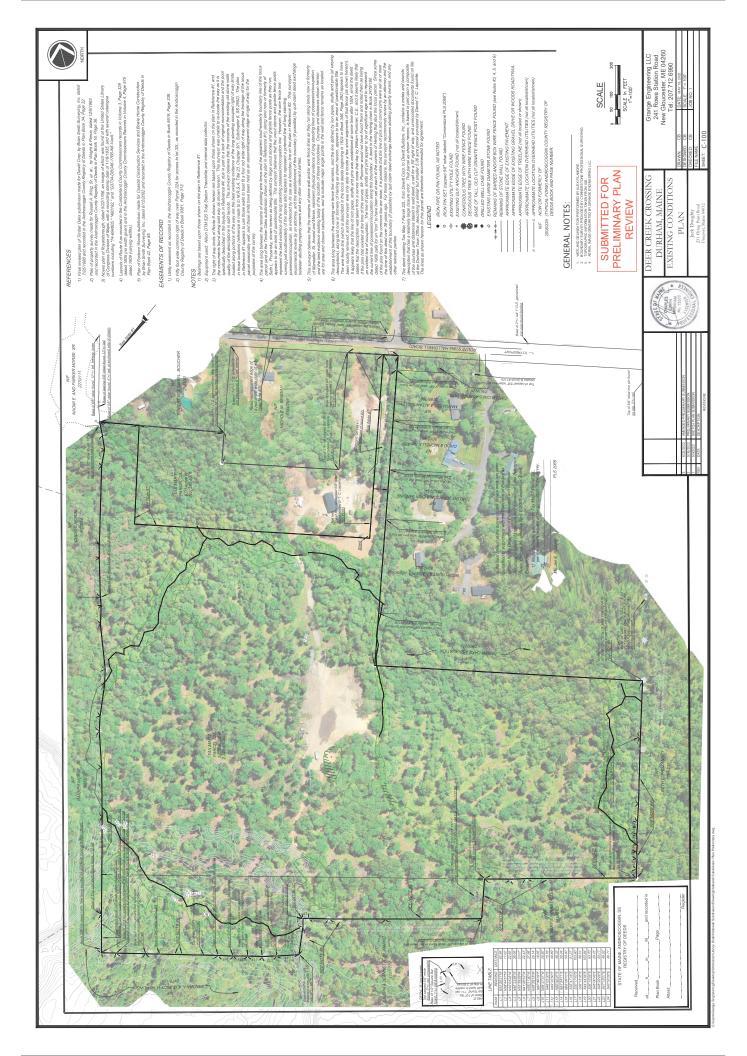
The applicant's supplemental submission indicated willingness to extend a right of way off the end of hammerhead turnaround.

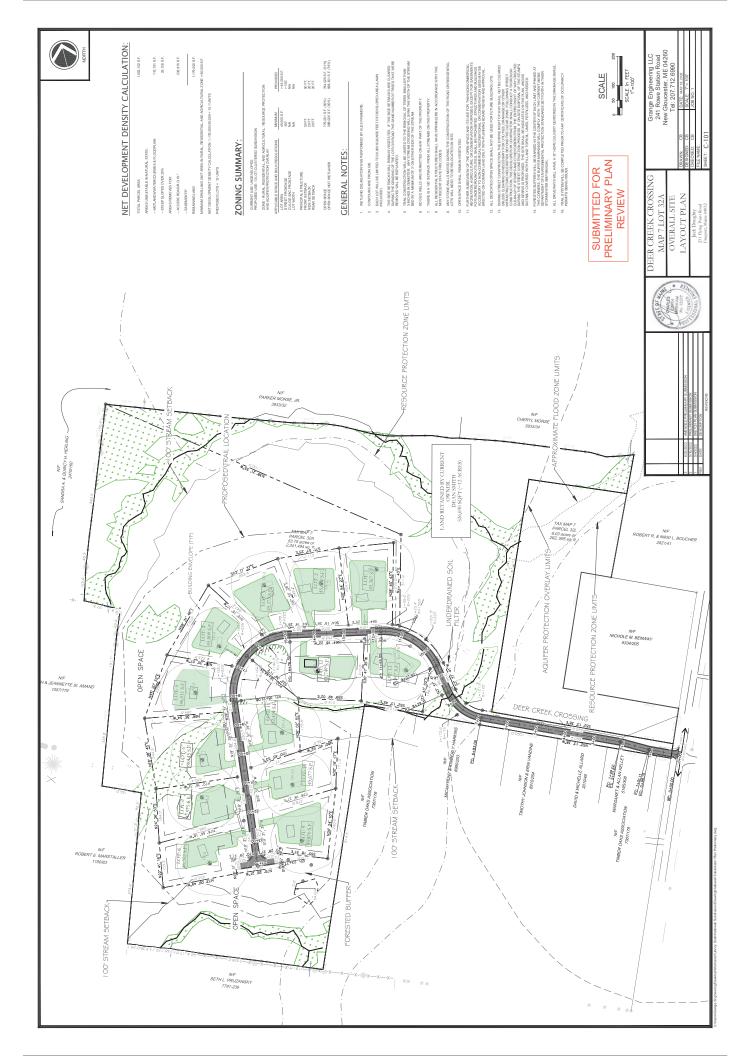
- 6. Section 6.31 requires the Planning Board to verify that any timber harvesting occurring on the project site within the past five years has been done in compliance with Maine's forest harvesting rules. The application indicates that timber harvesting has occurred within the past five years. The Planning Board can request a determination by staff at the Department of Agriculture, Conservation, & Forestry, or it can accept a determination by a licensed forester. This could be a condition for final subdivision plan review.
- 7. The Conservation Commission submitted review comments on June 1st that identified a concern with the accuracy of the wetland mapping given the site investigation being conducted in January. The wetlands report indicates that subsequent follow-up work was done in March. The applicant's wetland scientist should address whether the dates on which the delineation work was done could limit the accuracy of their conclusions. If a majority of the Planning Board considers this to be an issue, it can solicit a peer review opinion as a preliminary approval condition unless there is some objective evidence that inaccurate mapping has occurred or that the preliminary plan will fail to meet specific standards if not verified. The linear wetland associated with the road crossing is addressed in Comment #10 below.
- 8. The Conservation Commission also commented on the access road crossing the stream and its Resource Protection buffer. They are correct that this will require an additional review by the Planning Board outside of the subdivision review criteria and standards. The applicable conditional use criteria would be Section 7.4.A.4, requiring a finding by the Planning Board that the crossing will not result in sedimentation or erosion or have an adverse effect on water supplies. The applicant will also need to document that the crossing will meet the specific standards of Section 9.11.F, the DEP shoreland zoning requirements for roads and driveways. Additionally, environmental reviews will be conducted under DEP N.R.P.A rules with review by the Army Corps of Engineers, which will be requirements for the final plan application.
- 9. The Conservation Commission recommended a high intensity soil survey based on general Resource Conservation Service soil ratings. Those ratings were intended for use in the development of local regulations and are not appropriate for conducting project reviews. Most of southern Maine has limitations per this research, and a more objective basis for requiring high intensity soil mapping would be if there are extensive areas of hydric soils and/or topography that presents special drainage problems for construction of roads and/or home sites. Poorly drained areas outside of technical wetlands can cause problems for road base stability and foundation drainage. If there are no identified specific indications of soil issues, an engineering peer review of the final plan submissions can determine whether there are any soil limitations requiring special treatment such as geotextile fabric under the road base.
- 10. Finally, the Conservation Commission expressed concern for the location of the stormwater treatment basin in proximity to the stream and its Resource Protection buffer. The basin location is intended to capture and treat road runoff from the west side of the stream, and therefore will be located close to stream for maximum road drainage capture. The RP District extends 100 feet on either side of the brook and along any associated floodplain, whichever is greater. There may be need and opportunity to slightly adjust the basin location to minimize intrusion into the RP buffer. The stormwater treatment is designed to prevent the flow of contaminants

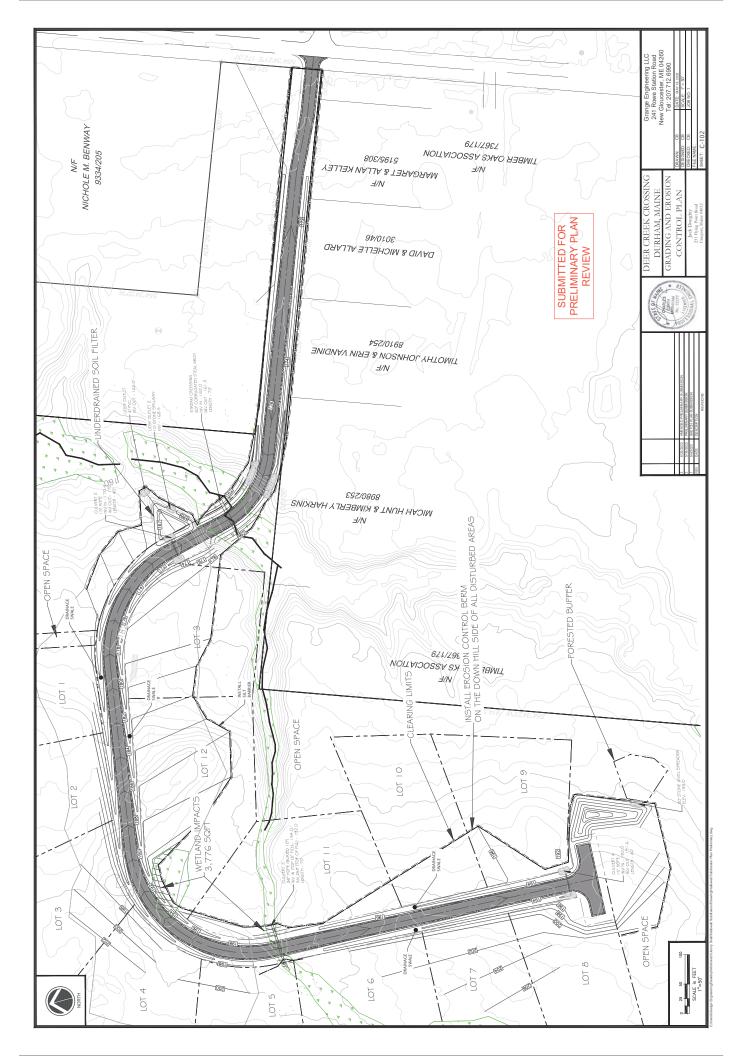
into the water, not the RP per se. Again, if the majority of the Planning Board considers that the location or the design is a problem, it can include that issue in the engineering peer review. I'm not sure how the linear wetland of the stream crossing is distinct from the road crossing itself and would once more point out that State and Federal permitting will have qualified professional reviews if there are issues.

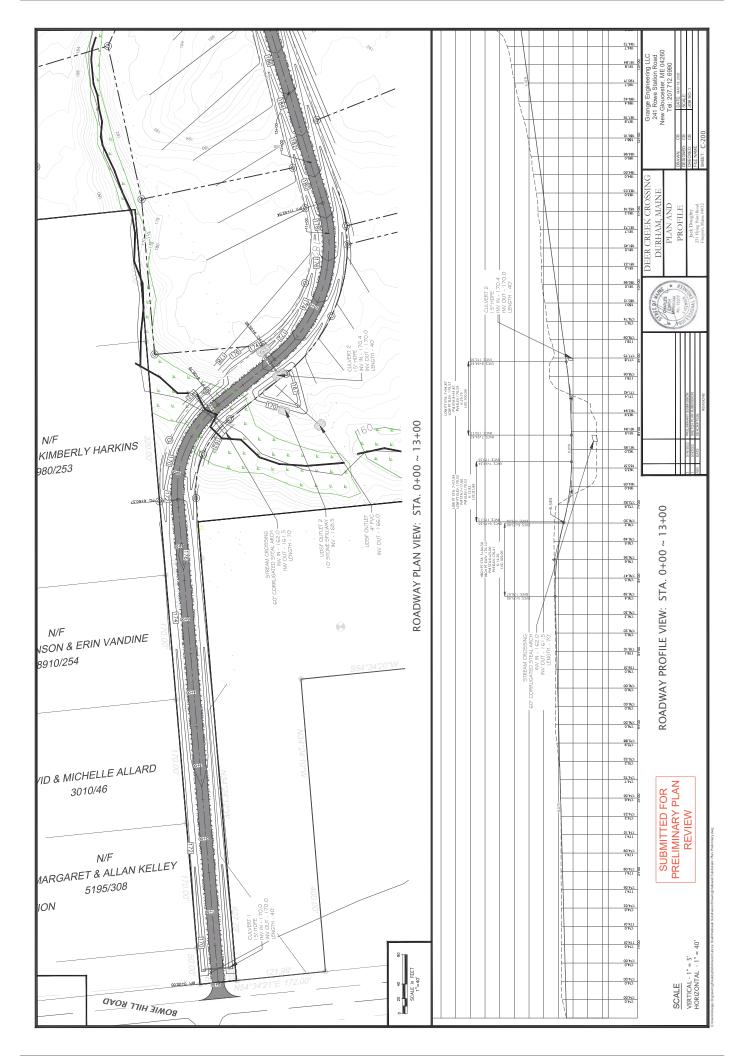
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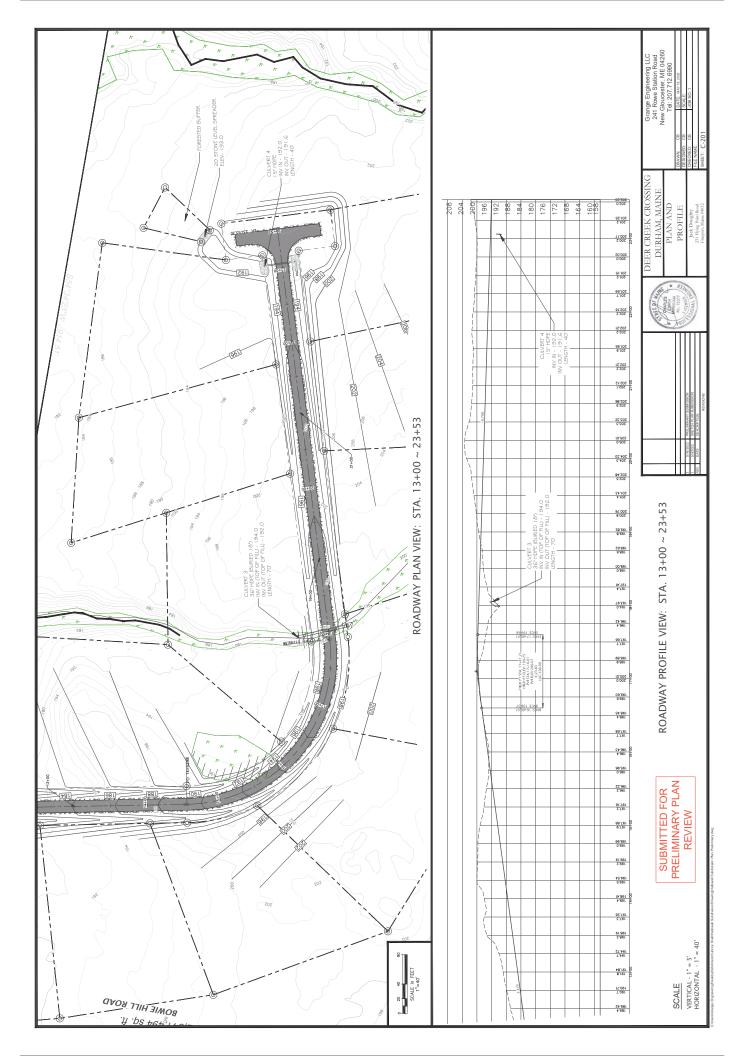












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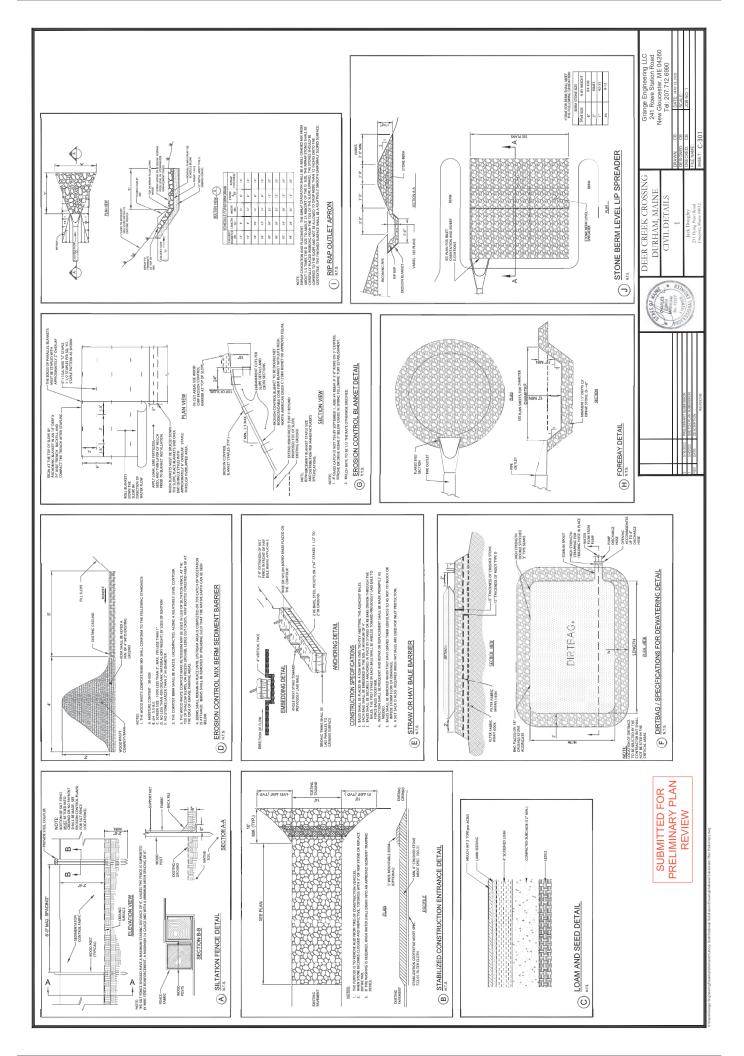
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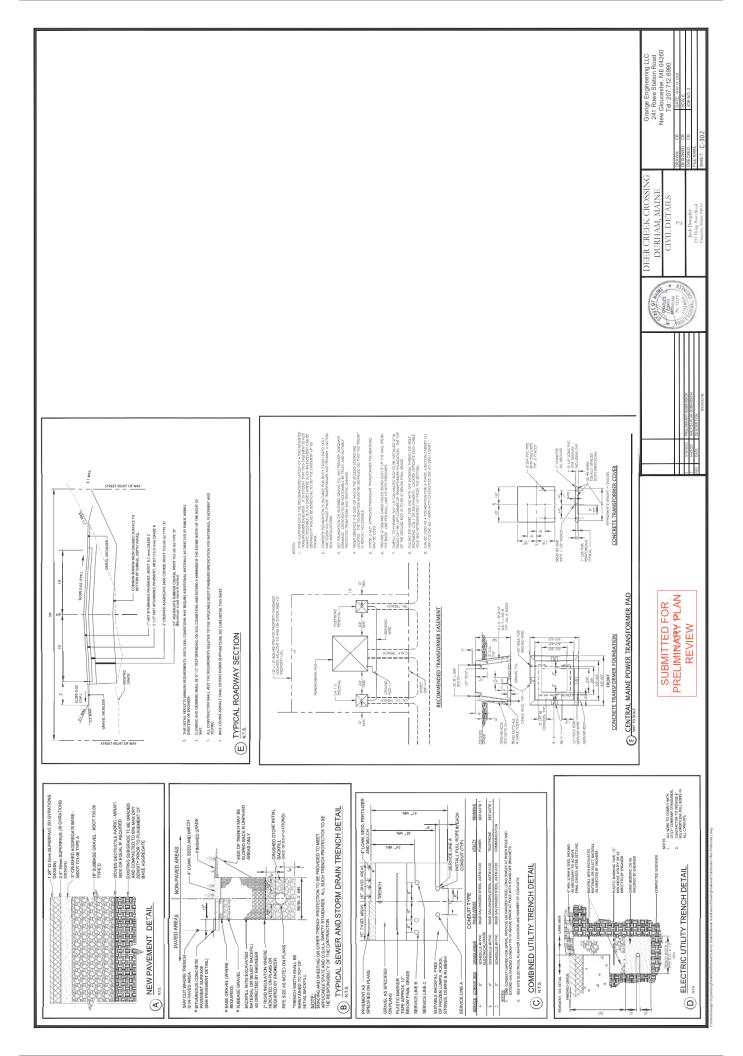
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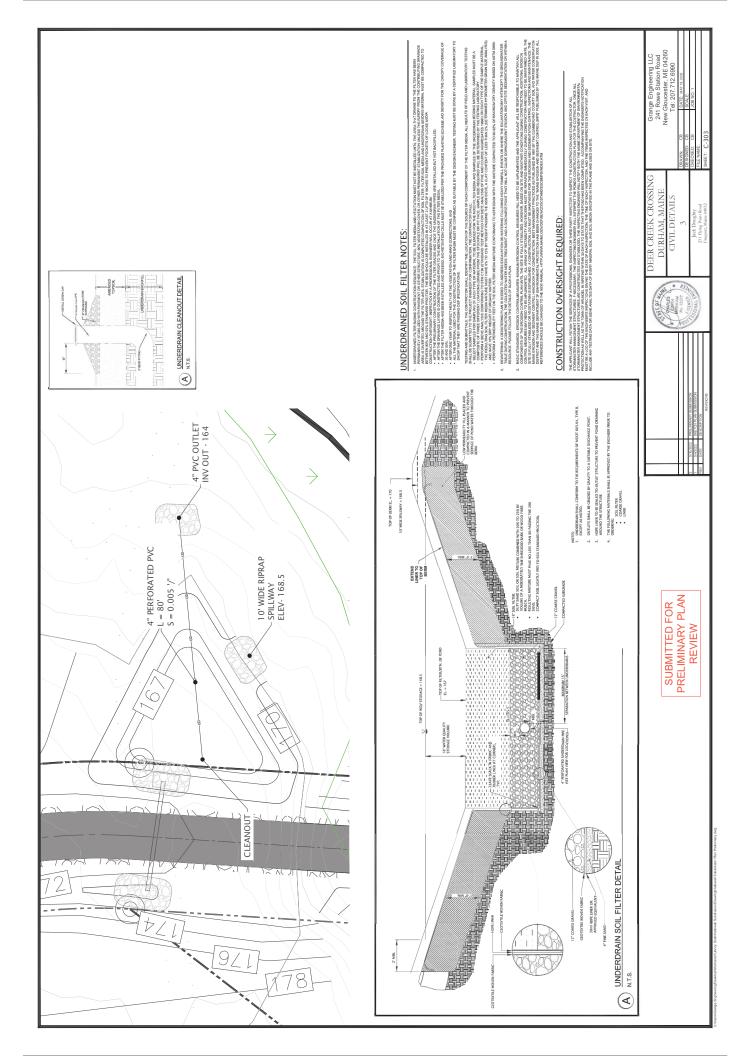
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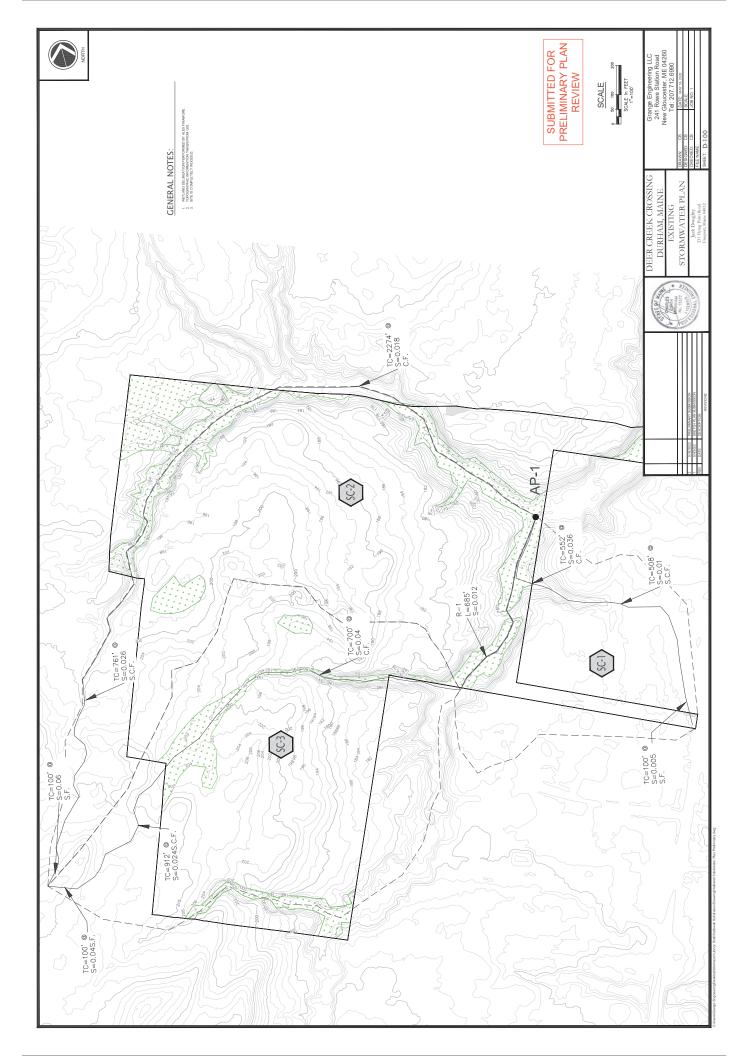
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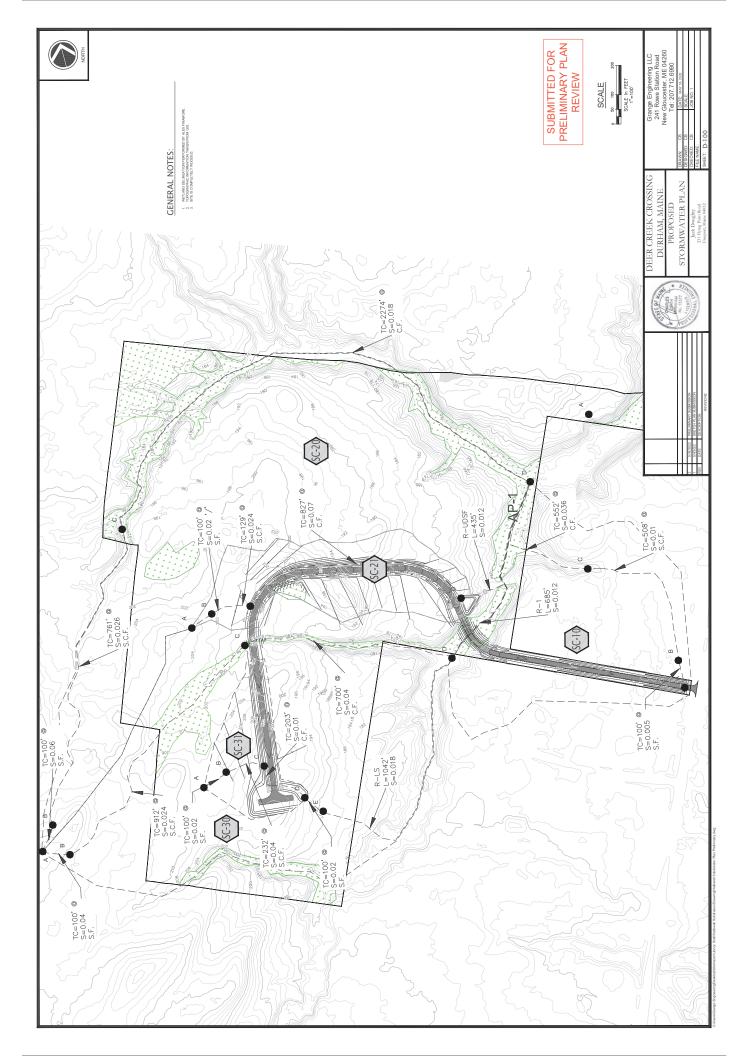
REVIEW











7. Other Business:

a. Planning Board Discussion of Public Outreach Process for Land Use Ordinance Amendments For 2023 Town Meeting

- As indicated in Planner comments on the outcomes of the June 8 workshop, the Board at that meeting indicated that it wants to develop an effective public outreach on the next round of Land Use Ordinance amendments.
- Board members mentioned putting an item on the next meeting agenda to discuss this.
- The Conservation Commission and Historic District Commission will be discussing public outreach efforts for their proposed Land Use Ordinance revisions.
- The Planning Board decided to focus its efforts on addressing the new State law requiring greater allowance of multiple dwelling units on individual lots.
- The Board also indicated a desire to address an allowance for single back lots to be accessed by a driveway rather than a roadway.
- The Town Planner contacted Maine Municipal legal services for guidance on how to address the new requirements.
- The attached memo from MMA outlines their recommendations for municipal responses to the law's requirements.
- The parts applicable to Durham are highlighted.



New Affordable Housing Law; Summary for Municipalities MMA Legal Services

June 22, 2022

On April 27, 2022, Governor Mills signed new affordable housing legislation into law. (<u>P.L. 2021, c. 672</u>, entitled, An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions).

The law (Chapter 672) aims to increase affordable housing in Maine by:

- (1) establishing state-wide and regional housing production goals and the municipal role in achieving those goals;
- (2) imposing density and other requirements for affordable housing developments that preempt inconsistent municipal regulations;
- (3) requiring municipalities to allow up to two, three, or four dwelling units on each lot where housing is allowed, depending on the location of the lot and whether it contains an existing dwelling unit; and
- (4) requiring municipalities to allow an accessory dwelling unit (ADU) on the same lot as a single-family dwelling unit in any area where housing is permitted and to comply with certain requirements pertaining to ADUs.

The requirements of the law are briefly summarized below. **This summary is not intended to be a complete analysis of the law and its requirements**. MMA Legal Services is currently analyzing the provisions in the new law and anticipates releasing more comprehensive guidance in the upcoming months based on guidance to be issued by the state.

Chapter 672 does not go into effect until August 8, 2022, and municipalities are not required to comply with many provisions in the law until July 1, 2023.

State-wide and Regional Housing Production Goals

Chapter 672 requires the state Department of Economic and Community Development (DECD) to establish state-wide and regional "housing production goals" aimed at increasing the availability of affordable housing in the state. 5 M.R.S. § 13056(9). The DECD must establish measurable standards and benchmarks of success to achieve those housing production goals. The DECD is required to consider information submitted by municipalities concerning current or prospective housing developments and permits issued for the construction of housing when establishing housing production goals. Municipalities that have this information readily available are encouraged to submit it to the DECD, as it may help DECD establish realistic housing production goals for your region.

The law requires municipalities to ensure that local ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act and the Maine



Human Rights Act. 30-A M.R.S. § 4364-C. Municipalities may also establish and enforce shortterm rental regulations to achieve the state housing production goals. At this time, it is not clear what specific actions a municipality must take to "affirmatively further" these laws beyond reviewing local ordinances and regulations to ensure that they do not discriminate against a protected class of individuals. Further guidance may be issued by the DECD regulations establishing state-wide housing production goals.

This portion of the law will go into effect August 8, 2022.

Density Bonus for Affordable Housing Developments (30-A M.R.S. § 4364)

Chapter 672 overrides local density requirements for new affordable housing developments. Specifically, any municipality that has adopted residential "density requirements," must allow a "density bonus" for any "affordable housing development" approved on or after July 1, 2023. Municipalities must also comply with additional requirements listed in the law. 30-A M.R.S. § 4364. Note that the law does not define local "density requirement" for purposes of § 4364; DECD regulations may provide further guidance on how to implement this requirement.

To be eligible for a "density bonus," the development must (1) meet the definition of "affordable housing" in 30-A M.R.S. § 4364, (2) must be located in any area where multifamily dwellings are allowed, and (3) must be located in a "designated growth area" (as defined by the law) or be served by a public, special district or other centrally managed water system and a public, special district, or other comparable sewer system. The development must also meet several requirements listed in § 4364 and the state subsurface wastewater disposal system minimum lot size requirements (12 M.R.S. Ch. 423-A).

If eligible, an affordable housing development must be granted a "density bonus," or a dwelling unit density of at least 2.5 times the base density that is otherwise allowed by municipal ordinance in that location.

This section applies to affordable housing developments approved on or after July 1, 2023.

Dwelling Units Allowed; Dwelling Unit Density Bonus (30-A M.R.S. § 4364-A)

Chapter 672 overrides local dwelling unit restrictions beginning July 1, 2023. This section has requirements both for lots that do not already contain a dwelling unit and for lots that contain an existing dwelling unit. Note that the law does not define "dwelling unit" for purposes of § 4364-A; regulations issued by the DECD may clarify applicable requirements.

Lots without a dwelling unit. A municipality must allow structures with up to 2 dwelling units per lot, on any lot located in an area where dwelling units are allowed, provided that the lot does not contain an existing dwelling unit and meets the state subsurface wastewater



disposal system minimum lot size requirements. However, if the lot is located in a designated growth area or connected to public water and sewer, a municipality is required to allow structures with up to 4 dwelling units per lot. 30-A M.R.S. § 4364-A(1).

Lots with an existing dwelling unit. On lots with an existing dwelling unit, a municipality must allow the addition of up to 2 dwelling units per lot. The additional units may consist of one additional dwelling unit attached to an existing structure or one additional detached dwelling unit, or one of each.

Municipalities must ensure that local land use ordinances and regulations meet the additional requirements stated in § 4364-A with respect to dwelling units allowed under § 4364-A, including dimensional and setback requirements and parking requirements.

Compliance with this portion of the law is required by July 1, 2023.

Accessory Dwelling Units Density Bonus (30-A M.R.S. § 4364-B)

Chapter 672 also overrides local accessory dwelling unit (ADU) restrictions. Effective July 1, 2023, municipalities must allow one ADU to be constructed on the same lot as a single-family dwelling unit in any area of the municipality where housing is permitted, unless prohibited by the state subsurface wastewater disposal system minimum lot size statute. 30-A M.R.S. § 4364-B. Note that the law does not define "accessory dwelling unit" or "single-family dwelling unit" for purposes of § 4364-B; regulations issued by the DECD may clarify applicable requirements.

An eligible ADU must be constructed (1) within an existing dwelling unit on the lot; (2) attached to or sharing a wall with a single-family dwelling unit; or (3) as a new structure on a lot for the primary purpose of creating an ADU.

Municipal land use ordinances and regulations must conform with additional requirements in the law with respect to ADUs, including dimensional and setback requirements for ADUs, parking requirements, and exemptions from density requirements and rate of growth calculations.

Municipalities must comply with this portion of the law by July 1, 2023.

What should municipal officials do now?

As noted above, the law takes effect August 8, 2022, but municipalities are not required to comply with most of the new requirements until July 1, 2023.

<u>Now:</u> Because statutory provisions requiring state-wide and regional housing production goals take effect August 8th, municipalities should focus on compliance with these sections first. At this time, we suggest that:

• Municipalities review land use regulations for consistency with the federal Fair Housing Act and Maine Human Rights Act prohibitions on housing discrimination based on race,



color, religion, national origin, ancestry, sex, sexual orientation or gender identity, disability, familial status, receipt of a permanent protection order, or receipt of public assistance.

- Municipalities should also consider evaluating local land use regulations to determine how they affirmatively further affordable housing in the municipality. For example, an existing municipal comprehensive plan may address affordable housing and the municipality may have adopted ordinance provisions implementing the plan's affordable housing goals. In municipalities without a comprehensive plan or extensive land use regulations, the municipality might determine that the lack of land use regulations on multi-family housing, lot size, etc., allows for unlimited affordable housing development options throughout the municipality.
- Municipalities should document any actions they take to review ordinances (i.e., recording minutes of a workshop dedicated to ordinance review, or making express written findings of an official, board, or committee) in the event that the law is later determined to require municipalities to demonstrate they took steps to "ensure that local ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act and the Maine Human Rights Act" as required by 30-A M.R.S. § 4364-C.

<u>Longer term:</u> Over the course of the next year, each municipality will need to review its ordinances and regulations to ensure that those ordinances or regulations will comply with the affordable housing density requirements, dwelling unit requirements, and accessory dwelling unit requirements contained in Chapter 672 by July 1, 2023. At this time, we suggest that municipalities:

- Identify whether local charters, ordinances, or regulations may need to be amended to comply with Chapter 672, identify the process for amending those documents, and estimate the time required to accomplish any necessary amendments.
- Determine which municipal officials will oversee drafting any necessary amendments, and ensure that the official, board, or committee has the required authority and funding to accomplish this task. Consider working with a professional who is knowledgeable in land use planning when developing ordinance language appropriate for your municipality.
- Consult the municipality's attorney for review of any proposed ordinance amendments.

<u>Funding:</u> Note that the Maine Legislature created the Housing Opportunity Program and Housing Opportunity Fund in separate legislation (PL 2021, c. 635) this spring. Through this



Program and Fund, the DECD is required to provide technical and financial assistance to support communities implementing zoning and land use related policies necessary to support increased housing development, including model ordinance development. We anticipate compiling information on financial and technical resources available to municipalities as these resources become available.

Maine Municipal Association Legal Services

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