

Zoning and Adjacency in the Unorganized and Deorganized Territories of Maine

January 20, 2015

Most existing development zones in the unorganized and deorganized territories (UT) contain little or no undeveloped land to accommodate future growth, so most new development requires rezoning land to a development zone. Such rezonings are generally done on a case-by-case, property owner-driven basis. Prospective zoning is an alternative to case-by-case zoning and proactively directs growth in certain areas of the UT. Prospective zoning is similar to zoning in many organized municipalities where zoning districts are created before there is any specific development proposal for that area.

When the Land Use Planning Commission (LUPC or Commission) zones land, state law requires that “a land use district boundary may not be adopted or amended unless there is substantial evidence that:

- A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
- B. The proposed land use district has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.” (12 M.R.S. § 685-A(8-A)).

The statutory requirement that a proposed rezoning be consistent with the Comprehensive Land Use Plan (CLUP) is similar to requirements for municipalities that their zoning be consistent with their comprehensive plan. The CLUP contains provisions pertaining to rezoning that state the Commission is “guided by the premise that most new development should occur in or near areas where development already exists. ... The premise [is] based on generally accepted planning principles of concentrating development near services to reduce public costs and minimizing development near productive natural resource-based activities to reduce land use intrusions and conflicts... The requirement that new development should be located near existing development is referred to as the adjacency principle.” (CLUP Section 4.3)

For zoning on a case-by-case, property owner-driven basis, the Commission “has generally interpreted adjacency to mean that most rezoning for development should be no more than one mile by road from existing, compatible development – i.e., existing development of similar type, use, occupancy, scale and intensity to that being proposed, or a village center with a range of uses for which the proposed development will provide complementary services, goods, jobs and/or housing.” (CLUP Section 4.3.B).

The objectives the adjacency principle seeks to achieve are to:

- Ensure that the provision of public services matches the new development, or that any needed additional service capacity may be added efficiently and economically over time
- Encourage well-planned and managed multiple uses while reducing land use intrusions and conflicts
- Minimize development near productive natural resource based activities
- Promote economic health of development centers
- Protect resources and values of the jurisdiction
- Ensure that the anticipated future development is in keeping with the character of the area
- Ensure orderly growth by pacing development
- Allow for incremental assessment of impacts from development (the resources and values of the jurisdiction may be better supported, and development may be better planned, by providing an opportunity for interim assessments of impacts because future phases of development can then consider those impact assessments).

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An important value of the “no more than a mile” interpretation for the adjacency principle is that it provides a greater level of predictability for landowners, applicants, and the public as to when the adjacency principle has been satisfied and helps to ensure equal treatment of all petitioners. It reduces the discretionary aspect of interpreting and applying the adjacency principle to a rezoning petition by presuming that the objectives of the adjacency principle have been adequately met if the new development is no more than one mile by road from existing, compatible development.

Under **prospective zoning**, the Commission uses information on existing development patterns, natural resource constraints, recent trends, and future planning considerations to identify and zone areas appropriate for future growth. This approach does not rely on the strict “no more than a mile” interpretation of the adjacency principle. Prospective zoning allows greater discretion for directing development within a region to suitable areas proximate to development centers and infrastructure based on whether those areas meet the objectives of the adjacency principle.

The following factors cited in one recent zoning decision help to illustrate the types of considerations that are often addressed in any zoning matter:

- Proximity to a retail hub or service center is an indicator that adequate services may be efficiently provided to the location.
- Proximity to a major public road is an indicator that transportation and utility infrastructure exists near the area and that the area already experiences a level of traffic that would be consistent with a more developed location.
- Proximity to existing development may be an indicator that development in this location would not fragment large blocks of undeveloped land (suggesting an efficient use of land), that the proposed zoning fits the character of the area, and that the location can make an efficient use of existing infrastructure.
- Proximity to a recreation attraction¹ or multiple recreation attractions may be an indicator that the area may draw people to recreate in a relatively concentrated and non-remote location.
- Proximity to future, intensive, non-remote residential, commercial, and resort development potential (as set out in the Concept Plan for the Moosehead Lake Region) may be an indicator that the region is appropriate for the proposed development in that it is not remote, its character is consistent with a more developed pattern, or that it has, and is likely to continue to have, adequate services and infrastructure.

These factors can be linked to the objectives of ensuring efficient and economical provision of public services and encouraging well-planned and well-managed multiple uses, while reducing land use intrusions and conflicts, minimizing development near productive natural resource-based activities, protecting resources and values, and promoting economic health of development centers which adjacency seeks to achieve.

To further illustrate how these factors are considered in a specific rezoning matter, we will provide, during the January 21 Steering Committee meeting, an example of key findings from a recent zoning petition decision. This example is provided only as an illustration. Any rezoning, case-by-case or prospective, depends on the location, context, and circumstances of the particular rezoning.

¹ Recreation attraction is considered in this context to be a non-remote location that attracts people for recreation activities in a relatively concentrated pattern of use. A prime example of a recreation attraction is a downhill ski area.