

184 Loop Rd.
Wells, ME 04090
July 28, 2018

RE: 2016 Comprehensive Plan

Dear Planning Board Members:

I was a “citizen representative” and one of the three members (hereinafter: “we”, “our”) of the CPURC who voted against the proposed 2016 Comprehensive Plan (hereinafter: “2016 Plan”).

I voted against the 2016 Plan because of process issues and substance issues. When our concerns were not taken seriously, we three members engaged a well-regarded, municipal attorney to present some of these issues to the Town.

The 2016 Plan’s process issues are clearly set forth in the two attached December 17, 2017, letters from the Law Offices of David A. Lourie. The demand letter regarding workshop minutes was satisfied. The Wells Town Attorney has attempted to rebut the other process issues letter.

The 2016 Plan’s substance issues are so numerous that I will address only a few of the major ones in this brief feedback submission:

- The attached December 5, 2016, letter from the Law Offices of David Lourie addresses statements in the 2016 Plan’s Introduction that we believe will critically mislead Wells citizens to think the 2016 Plan has no legal import in the Maine courts. The Town Attorney has not attempted to rebut this letter. It is instructive to note that the State’s *Comprehensive Planning: A Manual for Maine Communities*, https://www.maine.gov/dacf/municipalplanning/docs/2005manual_highres.pdf, states in the first paragraph of the Introduction, “Comprehensive plans are the legal underpinning of zoning ordinances—“
- Contrary to the heart of the Growth Management Act, the Future Land Use section of the 2016 Plan, initially given to us for review, wrongly directed “growth” areas to western Wells, west of I-95, from North Berwick to the Sanford and Kennebunk lines. Despite some modification to the newly constructed Future Land Use Map, we believe the current developmental sprawl to rural areas of western Wells will continue unabated.
- The 2005 Comprehensive Plan Update (hereinafter: “2005 Plan”) is, substantially, a much better Plan. Since the 2016 Plan was essentially a complete re-write, rather than an update, the CPURC was not given a copy of the 2005 Plan. Six months into our meetings, we three members finally realized we should look at the 2005 Plan; and, noted the following critical differences:
 - The 2005 Plan has a useful, conventional, navigable Table of Contents, consisting of five Parts, each with clearly defined, self-contained subsections; and, the page numbering is consecutive; whereas, the 2016 Plan has none of this.
 - The 2005 Plan appears to be constructed substantially in accordance with the recommendations of the State’s *Comprehensive Planning: A Manual for Maine*

Communities (available from the link above); whereas, the 2016 Plan employs a new format never before used by The Southern Maine Regional Planning Commission (SMRPC). We, and the State reviewers (see the May 2, 2016, incompleteness letter from Phil Carey to Mike Livingston), found this new format extremely difficult to navigate.

- The 2005 Plan's Introduction provides Wells citizens with a much better explanation of the basic aspects of comprehensive plans.
- Each of the 2005 Plan's, Part 2, Policies and Implementation Strategies chapters clearly identifies the policies and implementation strategies designed to ensure meeting specific State, Regional, and Wells goals. The Implementation Programs of Part 3 further describe how these goals, policies and standards will be implemented and who is responsible. – In contrast, the 2016 Plan's XI. Summary of Goals, Policies & Strategies section confusingly appears to equate goals, policies and strategies; and, includes a high proportion of non-directive items serving simply as suggestions or general guidelines, rather than as directives specifying exactly what is to be done.
- The 2016 Plan appears to be designed to lead citizens into believing that goals are of primary importance, rather than the corresponding policies and implementation strategies designed to achieve such goals. In this regard, sections IV through VII begin with one or more pages of white text on a bright red background, listing State, Regional, and often a myriad of Municipal Goals. If one compares the 2016 Plan to the 2005 Plan, practically all of the 2005 Plan goals are in the 2016 Plan. However, if one searches for the continuation of policies from the 2005 Plan to the 2016 Plan, it's evident that many, if not most, of the one hundred and fifty-five (155) policies of Chapters 2 through 17 were not carried forward. For example, none of the nine (9) Chapter 12, Open Space policies was carried forward into the 2016 Plan as policies; whereas, portions of two of these policies were stuffed into Municipal Goals sections. One has to ask why? Considering the intense argument we had with another committee member regarding protecting open space in perpetuity, as is now required for cluster subdivisions, one wonders if there are particular development pressures against continuing existing 2005 Plan open space policies?
- One particular reason why I believe the 2005 Plan is superior to the 2016 Plan is the former was written by a group of nine (9) Wells residents, followed by an improvement task force of another twelve (12) Wells residents who gathered weekly with various groups of residents from around town, to hear their concerns and suggestions. In contrast, my understanding is that the 2016 Plan was written by 1 resident and 3 non-residents with comparatively minimal public participation...just enough participation to satisfy the State's completeness requirement.

There are so many more deficiencies in the 2016 Plan; but, two more examples will have to suffice for now:

- Let's consider potential/current drinkable groundwater located in State recognized, Significant Sand and Gravel Aquifers within the Town of Wells.

The 2016 Plan, page VII: 23, mentions the Town's four Significant Sand and Gravel Aquifers; and, there are two non-directive ("consider") items in the section XI. Summary of Goals, Policies & Strategies; but, the [2016 Plan's Significant Sand and Gravel Aquifers Map](#) includes only the Wells quadrangle map.

The other three quadrangle maps (North Berwick, Alfred, Kennebunk) are necessary to show the Route 9, Bragdon, and Ell Pond aquifers (see the attached composite maps of all four quadrangles, pp 18-19 below).

Similar to the Branch Brook aquifer, these three potential/current drinking water resources should be placed in resource protection. The Route 9 aquifer, in particular, should be designated a no salt corridor; but, we were allotted no time by Town staff to have such a discussion.

- My final issue in this feedback is that the 2016 Plan does not adequately address the most important issues facing Wells, as expressed by citizens in the March, 2016, Public Survey:
 - Character and appearance (including a Town center)
 - Beaches and Harbor
 - Roads (maintenance, traffic, signals, sidewalks, bike lanes, walking paths)
 - Growth Management/Overdevelopment
 - Property Tax Assessments
 - Business and Employment
 - Environmental Protection
 - Social Issues

Rather than simply eyeballing the public survey results, I identified these issues via a 100+ hour manual spreadsheet analysis of the results of the survey question regarding the three most important issues facing Wells. Although I presented these results to the CPURC, Town staff, again, did not allot time to address these issues. There appeared to be more concern that the CPURC be promptly disbanded by the end of its 90-day extension period.

I should stress that the State did not "approve" the 2016 Plan; the Plan can only be approved by voters at a Town Meeting. Rather, the State performed a two-part "consistency" review with regard to the goals and guidelines of the Growth Management Act (30-A M.R.S.A. §§ 4312 - 4350): 1) a "completeness" determination was made for all required elements of a comprehensive plan; and 2) a more in-depth review of the Future Land Use Plan. This consistency review is far removed from an objective analysis of whether this Plan addresses the most important issues facing Wells.

If this proposed 2016 Plan is placed on the November ballot, I will actively work to defeat it.

Sincerely,

Ed Paré

Edmond B. Paré, Ph.D., MST

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Via e-mail
December 15, 2017

Jon Carter, Town Manager
Town of Wells
P. O. Box 398
Wells, ME 04090-0398

Re: Town of Wells Apparent Violation of Charter §§2.09

Dear Jon:

In the course of my assignment to review the Wells Charter requirements for the CPURC, I noted the Town's practice of conducting a "workshop sessions" of the Board of Selectmen immediately prior to each meeting of the Board of Selectmen where decisions are made on the same issues discussed at the workshop. I have no doubt that these workshop sessions are "public proceedings" under the Freedom of Access Act, and probably under applicable Charter provisions, even if no action is taken. My clients have been unable to obtain copies of meeting minutes from "workshop meetings" from the Town Clerk's office concerning the CPURC, and understand that the minutes from workshops on this issue do not exist.

The problem I am calling to your attention is that the practice of the Town Manager's office in not making and/or not distributing minutes of workshop meetings of the Select Board appears to violate Charter §§2.09, and 3.06.

I note that detailed minutes are recorded by the Town Manager's office for the evening meeting that follows immediately thereafter, in accordance with Charter §§2.09, and 3.06. Why are minutes of the so-called workshop sessions not made and distributed as well?

§2.09 states:

Rules and minutes. The Board of Selectmen shall, by resolution, adopt its own rules and order of business. **The Town Manager's office** shall give notice of Board of Selectmen meetings to its members and to the public, and **shall keep minutes of its proceedings. Such minutes shall be a public record.**

§3.06 states:

Chairman, Vice-Chairman, and recording secretary. Members of all boards, commissions and committees shall elect a Chairman and Vice-Chairman to serve for the ensuing twelve-month period. The Vice-Chairman shall preside as acting Chairman in the absence of the Chairman. Each board, commission or committee shall have a recording secretary, who may or may not be a member of that board, commission or committee. **The recording secretary** shall attend meetings and **shall prepare and distribute meeting minutes to all members of the board, commission and committee members and to the Town Clerk.**

I demand that you correct this unlawful practice in future. In addition to being legally improper, it is a disservice to the public, and the problems created are exacerbated whenever recordings of such “workshop meetings” of this body are not kept or maintained. If minutes were prepared, or can be prepared from past workshops meetings, my clients demand that you generate minutes of at least the nine (9) workshops where the most recent Comprehensive Plan update was discussed.

Please advise if you have any questions concerning the above.

Sincerely

David A. Lourie

Cc: Leah B. Rachin, Esq.

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Via e-mail
December 15, 2017

Members of Select Board
Town of Wells
P. O. Box 398
Wells, ME 04090-0398

Re: Errors in the Comprehensive Plan Update Review Committee Process

Dear Select Board Member:

I am writing to direct your attention to irregularities and illegalities in the development of the so called “updated” Comprehensive Plan for the Town of Wells before it is sent to the Town Meeting next year.¹ While some of the Charter violations may not fatal once the proposed “update” is adopted by Town Meeting, it has not yet been adopted, and members of the Select board are required ensure that the Growth Management statute, the Town Charter, and applicable ordinance requirements were followed before sending it to Town Meeting. Compliance with applicable law is *required*, as compliance is a condition precedent to adoption of the Comprehensive Plan by Town Meeting. The errors and inconsistencies detailed below need to be addressed, even if the errors are such as to require a complete “do over” of a plan that otherwise appears ready to be sent to the Town Meeting for adoption.

¹ I am limiting my comments to procedural and legal issues, as I was daunted by the task of reviewing the substance of a purported “update.” It is unfortunate that the so-called “update” was developed in a format wholly different from that followed in 2005. A true update would have been formatted in the same way as the 2005 Plan so that changes, especially omissions, would be more obvious and verifiable by the Select Board and voters at the Town Meeting.

Legal Errors in the Proceedings of CPURC

30-A M.R.S. §4324 provides the statutory framework for the CPURC:

“This section governs a municipality's or multimunicipal region's responsibility for the preparation or amendment of its growth management program. When procedures for the adoption of comprehensive plans and ordinances are governed by other provisions of this Title or municipal charter or ordinance, the municipality or multimunicipal region may modify the procedural requirements of this section as long as a broad range of opportunity for public comment and review is preserved.”

Thus, 30-A M.R.S. §4324 supplements, and does not supersede otherwise applicable Town Charter and Ordinance requirements.

All requirements of the Wells Town Charter and its Code of Ordinances, as well as §4324, must be followed by a Town of Wells planning committee in developing a Comprehensive Plan. As is detailed below, several Charter and Ordinance requirements and limitations applicable to the CPURC were not met in the so-called update process.

The appointment and service of Kathleen Chase on the planning committee (the "CPURC") was prohibited by the Charter, as well as by Town Ordinance.

1. The Town Code of Ethics was violated.

Code §230-3(G)(7) (discussed in Ms. Rachin's opinion) provides:

“Incompatible employment or office. No Selectman, board member, committee member or commission member shall occupy any other office, elected or appointed, in any other governmental entity when the duties of such office are incompatible with the proper discharge of his or her official duties with the Town. **For purposes of this code, the occupancy of any office, elected or appointed, with any other governmental entity by any Selectman, board**

member, committee member or commission member is hereby prohibited in any one of the following circumstances:

- (a) **Where the duties of the other office make it a physical impossibility to discharge the duties of the Town position;**
- (b) **Where one office is a subordinate of the other;**
- (c) **Where one office carries the power of removal of the other; or**
- (d) **Where the occupancy of both offices is otherwise prohibited by law.**

Although simultaneous service on more than one board of committee is clearly prohibited in the case of §230-3(G)(7) paragraphs (a), (b), (c), or (d), Ms. Rachin's opinion does not adequately discuss each of these disqualifications, and her conclusions as to (b), (c) and (d) are clearly incorrect.

As to ¶(b), the Board of Selectmen is a committee of the Town Meeting under Maine Law generally. Unlike the Zoning Board of Appeals, the Planning Board, or committees established by the Town Meeting, the CPURC is a §4324 planning committee, created by the Wells Select Board as an alternative to having the Planning Board recommend changes to the Comprehensive Plan. The CPURC is not independent of the Select Board. The CPURC was created by the Select Board, its members were appointed by the Select Board, and can be removed by the Select Board. As such it is subordinate to the Select Board.

Ms. Chase's service on the CPURC was in violation of §230-3(G)(7)(b).

As to ¶(c), the Select Board has the power to remove members of the CPURC pursuant to Charter §2.06. (The Select Board is given the power to create and disband committee, and to appoint and remove committee members.) **Ms.**

Chase's service on the CPURC was in violation of §230-3(G)(7)(c).

As to ¶(d), Charter §2.10 expressly prohibits the simultaneous service of Ms. Chase of the CPRUC, as long as she is remains a Selectperson. **Ms. Chase's service on the CPURC was in violation of §230-3(G)(7)(d).**

Charter §2.10 PROHIBITIONS clearly forbids Kathleen Chase from holding any other "office" in the Town:

"Holding other office. Except where authorized by law, no Selectman shall hold any other office or employment with the Town during the term for which the Selectman was elected to the Board of Selectmen, and no former Selectman shall hold any compensated employment with the Town as an individual until one year after the expiration of the term for which the Selectman was elected."

Ms. Chase's service on the CPURC was in violation of both §230-3(G)(7)(d) and Charter §2.10. Ms. Chase's appointment to the CPURC, other than *strictly as a liaison* (attending meetings and reporting back to the Select Board was illegal. She should not have been permitted to vote, to participate *as a member*, nor to function as chair of the CPURC.

2. The Functioning of the CPURC Was Illegal

The CPURC was required to elect a Chairman and Vice Chairman, as required by Charter §3.06. Town Manager Carter ran the meetings, *as if* he had elected chairman. This was a clear violation of Charter §3.06:

"Chairman, Vice-Chairman, and recording secretary. Members of all boards, commissions and committees shall elect a Chairman and Vice-Chairman to serve for the ensuing twelve-month period. The Vice-Chairman shall preside as acting Chairman in the absence of the Chairman."

Another problem of not having the required planning committee chair arose when it became necessary for someone to co-sign the State Certificate as

planning committee chair. Kathleen Chase then misrepresented her status and signed the Certificate as Chair. (Although never elected chair, and disqualified from even serving on the planning committee, Ms. Chase claimed the office of *Chairman* (after dissolution of the CPURC) an issue that may have to be corrected by litigation since the State continues to rely upon the bogus signature.

3. Kathleen Chase Was Also Disqualified from Participating on Matters before the CPURC in Which She Had a Financial Interest

Kathleen Chase is co-owner and Vice President of Chase & Hamlyn Mineral Extraction, Inc. Chase & Hamlyn owns, among other properties within the Town of Wells, a five-lot subdivision, a 10-lot cluster subdivision, and a sand and gravel mining operation, all located on top of a mapped, State of Maine, *Significant Sand and Gravel Aquifer*.² The 2005 Comprehensive Plan Chapter 3 - Natural Resources Policies and Strategies, Page 12, and elsewhere sought to protect drinking water by calling for:

“Review the Aquifer Protection provisions of the Town’s Land Use Ordinance to determine whether or not there is sufficient protection of the groundwater in the Town’s sand and gravel aquifer areas. Where appropriate implement and enforce regulations that control the use, handling and storage of hazardous materials in these areas.”

That review never occurred. The suggestions for again including provisions for aquifer protection in the “Update Plan” were discussed by the CPURC. Adding these provisions were opposed by Ms. Chase, and they are missing from the current plan. Ms. Chase also participated in discussions as to recommending changes to the existing open space provisions in cluster developments (requiring that they be protected in

² Chase & Hamlyn is currently dredging a private lake on top of the aquifer, in close proximity to their cluster division and subdivision, and, is supplying water to Chase Farms on Route 9.

perpetuity) from which she may reasonably be believed could benefit her financially. The committee recommendation on this issue for implementation by ordinance amendment reflects Ms. Chase's position.

Kathleen Chase's participation and voting on matters affecting her real estate interests violated both Wells Charter §13.01, the common law, and statutory rules on conflict of interest, all of which prohibit public officials from participating in matters which create a perception of financial gain.

Sec. 13.01. Financial conflict of interest.

General standard. All Town officials shall attempt to avoid an actual or perceived financial conflict of interest by abstention or disclosure. The Town of Wells establishes these provisions in addition to those set forth in 30-A M.R.S.A. § 2605.

The Charter adopts the Common Law standard for conflicts of interest first articulated in Tuscan v. Smith, 130 Me. 36, 153 A. 289, 294 (1931):

“No definite rule can be given indicating the line of demarcation between that which is proper and that which is unlawful. In the words of this court in the case of Lesieur v. Inhabitants of Rumford, 113 Me. 317, 321, 93 A. 838, 840, the question really is whether the town officer by reason of his interest is placed “in a situation of temptation to serve his own personal interests to the prejudice of the interests of those for whom the law authorized and required him to act in the premises as an official.”

Kathleen Chase should have recused herself from discussions and votes on matters involving regulation of aquifers, mineral extraction, and matters which may affect her cluster development. **Kathleen Chase violated Charter §13.10 and the Common Law Rules against participation in matters before the CPURC where there is the likelihood that reasonable persons could perceive a temptation to place her private gain ahead of her public duty.**

CONCLUSIONS

- **Ms. Chase’s service on the CPURC violated §230-3(G)(7)(b).**
- **Ms. Chase’s service on the CPURC violated §230-3(G)(7)(c).**
- **Ms. Chase’s service on the CPURC violated §230-3(G)(7)(d) and Charter §2.10.**
- **The Failure of the CPURC to elect a Chairman and Vice Chairman, violated Charter §3.06.**
- **Ms. Chase’s participation in CPURC discussions and voting on issues involving her financial interests violated Charter §13.10 and Common Law Rules against potential self-dealing by municipal officials.**

There are additional and serious legal and factual problems with State reliance upon Kathleen Chase’s false certification (1) where she was *never elected Chairman* by the Committee, making her signature as “Chairman” a misrepresentation of fact; where (2) Kathleen Chase was actually *disqualified* from being appointed *even as a member* of the CPURC, let alone its Chairman, under the Wells Town Charter and Ordinances; and where she improperly participated in matters where disqualified by financial interest. These illegalities, and the illegalities detailed above require that the Town withdraw the false certification, conduct the planning committee process anew, and not send the Plan to Town Meeting.

Respectfully submitted:

David A. Lourie

cc: Edmond Paré
Rocky Furman
Carol Simpson
Leah Rachin, esq.
Phil Carey, Senior Planner

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December 5, 2016

Jonathan Carter, Town Manager
Town of Wells
P. O. Box 398
Wells, ME 04090-0398

Re: Legal Significance of the Comprehensive Plan

Dear Jon:

I was requested to write to you by members of the Comprehensive Plan Advisory Committee. They are concerned that their efforts to update the Comprehensive Plan may be undermined by: (1) untrue statements in Seacoast Online (that the Town is not required to have a comprehensive plan¹); (2) misleading statements relating to the legal significance of a comprehensive Plan; and/or (3) misleading assertions that there is no longer a requirement for updating the comprehensive plan of the Town of Wells, are not sufficiently debunked in the "Introduction" to the proposed plan, and may therefore mislead townspeople during the formal adoption process.

1. **The Town of Wells is Required to have a Comprehensive Plan.**

While the generalized statement is true of many other municipalities, the Town of Wells *is required* to have a comprehensive plan by the Growth Management Act, because it has a zoning ordinance. The comprehensive plan

¹ "There's a misconception that a comprehensive plan is required by state law, but according to Elizabeth Hertz, director of the municipal planning assistance program for the state of Maine, the comprehensive, or master plan, is simply recommended as a guiding document. "There's no mandate for a town to develop a comprehensive plan," Hertz said. "I like to describe it as a community-based process to develop a business plan to guide the growth of the town or city into the future."
<http://www.seacoastonline.com/article/20150802/NEWS/150809940/0/SEARCH?template=printart>

is a statutory predicate to the enactment of any zoning ordinance.² As the Town of Wells has a zoning ordinance, it must have a comprehensive plan, and its zoning ordinance must be consistent with that comprehensive plan.³

2. **A Comprehensive Plan has Legal as well as Practical Significance.**

The statutory requirements for a comprehensive plan⁴, and an “implementation plan”⁵ provide a *constitution-like* framework for the zoning and other land use ordinances enacted from time to time by the Town.⁶ The Plan has legal significance because it provides guidance to the Town, and a basis for courts to determine the proper exercise of the zoning power.

I understand that the Town wants the Planning Board to be able to tell any abutter with standing “that the Plan is “only a vision” to “guide” the Town; and, has no legal import whatever.” Such a statement goes too far, and is untrue.

It is fair to say that the Planning Board cannot rely upon the

² “A municipality that enacts a zoning ordinance is considered to be engaged in the implementation strategy phase of a growth management program for which the creation of a comprehensive plan is a mandatory prerequisite.” Bragdon v. Town of Vassalboro 2001 ME 137 [7], 780 A.2d 299.

³ 30-A, §4352 requires that every rezoning be consistent with the municipality’s comprehensive plan.

⁴ 30-A, § 4326: “A growth management program must include at least a comprehensive plan, as described in subsections 1 to 4, and an implementation program as described in subsection 5.”

⁵ 30-A, §4326.3. Implementation strategy. “A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ... The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances and periodic review of the comprehensive plan.”

⁶ Professor Charles Haar wrote in his seminal discussion in 68 Harv. L. Rev. 1156 that: “A city undertaking to exercise the land regulatory powers granted to it by state enabling legislation should be required initially to formulate a master plan, upon which regulatory ordinances, of which the zoning ordinance is but one, would then be based. Such ordinances could be judicially tested not only by constitutional standards of due process and equal protection, but also by their fidelity to the specific criteria of the master plan.”

comprehensive plan *as if it were an ordinance* in its adjudicatory proceedings. However, the comprehensive plan is legally significant in two areas: (1) even in adjudicatory proceedings, the planning board and appeals board can look to the comprehensive plan for guidance in the interpretation of an ambiguous provision in the zoning ordinance⁷, and (2) when the planning board approves a development plan that is inconsistent with the comprehensive plan (pursuant to an ordinance which is itself inconsistent with the Plan), persons with standing can bring an action in the Superior Court for a declaratory judgment that the zoning ordinance is invalid.

3. **Assertions that the Town of Wells is Not Required to Update its Comprehensive Plan are Misleading.**

It is true that the State no longer requires the Town's comprehensive plan to be certified or re certified periodically by the State.⁸ While the periodic re certification is abolished, the statement is misleading with respect to the effect of inconsistencies between comprehensive plans and ordinances that pre-date the Growth Management Act. Inconsistent ordinances are only grandfathered during the (now expired) transitional period in §4314.⁹as in the

⁷ Where an ordinance is ambiguous as to a particular issue, an administrative body or a court may apply the rule of construction that it would use in the case of any ambiguous statute, ordinance, will, or deed, and consider extrinsic evidence. Such extrinsic evidence may include the zoning implementation strategy stated in the comprehensive plan.

⁸ Since the State has abolished the re-certification requirement the statement that the Town is no longer required to update its comprehensive plan *periodically* is correct. This is misleading however as applied to the zoning ordinance in the Town of Wells, in light of the requirement of action on a new Plan pursuant to §4314.

⁹ **“1. Comprehensive plan.** A municipal comprehensive plan adopted or amended by a municipality under former Title 30, chapter 239, subchapter 5 or 6 remains in effect until amended or repealed in accordance with the procedures, goals and guidelines established in this subchapter. **3. Rate of growth, zoning and impact fee ordinances.** After January 1, 2003, any portion of a municipality's or multimunicipal region's rate of growth, zoning or impact fee ordinance must be consistent with a comprehensive plan adopted in accordance with the procedures, goals and guidelines established in this subchapter. The portion of a rate of growth, zoning or impact fee ordinance not directly related to an inconsistency identified by a court or during a comprehensive plan review by the department in accordance with section 4347-A, subsection 3-A remains in effect. For purposes of this subsection, “zoning ordinance” does not include an ordinance that applies town-wide that is a cluster development ordinance or a design ordinance prescribing the color, shape, height, landscaping, amount of open space or other comparable physical characteristics of development. **The portion of a rate of growth, zoning or impact fee ordinance that is not consistent with a comprehensive plan is no longer in effect**

case of the Town of Wells. Since the two years of grandfathering have passed, it would be wise to amend the Plan at this time, which will buy the Town an additional 24 months to enact a new ordinance, per §4314.3.E.

It is my understanding that various elements and restrictions in the Town's Comprehensive Plan never made it into the Town's zoning ordinance. If this is correct, it is past time to ensure that inconsistencies between the Town's comprehensive plan and its zoning ordinance are minimized or eliminated, lest portions of the Town's zoning regulations may be successfully challenged as invalid by either developers or abutters, if found to not be in basic harmony with the zoning strategies in the Implementation Plan. Although the Law Court has not declared any municipal rezoning to be invalid (by reason of inconsistency with the Plan), this may occur shortly¹⁰, so caution is warranted.

My clients are most concerned about the Seacoast misstatements, and the assertions that there is no need to update the Plan despite the expiration of the statutory transition period. My clients have directed my attention to pages 1 and 3 of the Introduction (the Comprehensive Plan Update Summary.) They question whether the 2nd sentence of the first paragraph¹¹, and the last sentence of the 3rd paragraph¹² do not go far enough to debunk the misinformation circulating concerning this matter. They also request further clarification concerning inconsistency between the Plan and the zoning

unless ... E. The ordinance or portion of the ordinance conflicts with a newly adopted comprehensive plan or plan amendment adopted in accordance with the procedures, goals and guidelines established in this subchapter, in which case the ordinance or portion of the ordinance remains in effect for a period of up to 24 months immediately following adoption of the comprehensive plan or plan amendment;" §4314

¹⁰ The Law Court has Friends of the Motherhouse v. City of Portland (Docket #CUM-16-225) under advisement. During oral argument on November 10, 2016 the Court appeared receptive to argument that the requirement of consistency with the Portland Comprehensive Plan precluded rezoning from R-5 to R-5A (for a massive increase in density and change of use) under the Growth Management Act.

¹¹ "This Plan update is no longer required per state statute but is recommended as a guiding document to help manage the Town's growth into the future."

¹² Suggested changes to this sentence: (1) to conform it to the mandatory nature of the applicable statute, and (2) to eliminate the misleading statement that the only way to eliminate any inconsistency is by amending the Plan rather than the ordinance are as follows: "While the Comprehensive Plan is not a zoning ordinance, ~~land use~~ zoning regulations and impact fees shall must be consistent with ~~the vision of the Plan~~, or else either the plan or the ordinance shall must be amended."

ordinance. (That the inconsistency between the Plan and the Ordinance can be resolved through changes to the ordinance, and not only by changes in the Plan, as implied by the existing language.) They also note the omission of the required Inventory, and the zoning implementation strategy that is required by Section 4326 to be in the final Plan.¹³

Please advise if you have any questions concerning the above.

Sincerely,

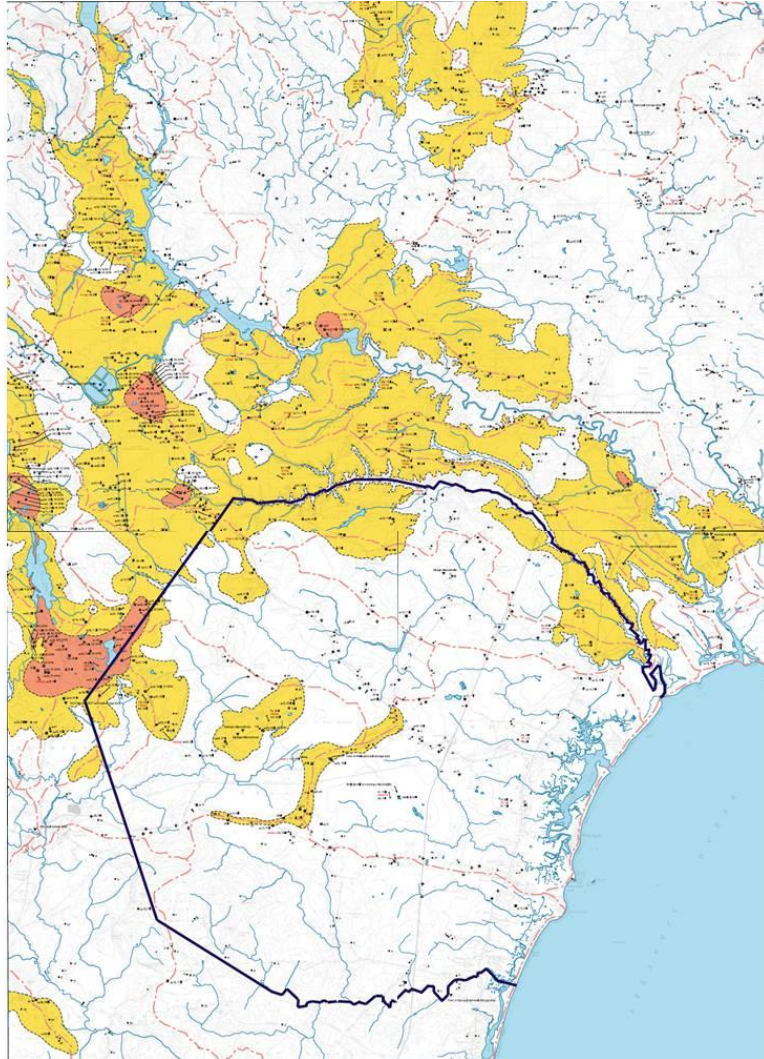


David A. Lourie

cc: Edmond Paré
Rocky Furman
Carol Simpson
Leah Rachin, esq.

¹³ “A growth management program must include at least a comprehensive plan, as described in subsections 1 to 4, and an implementation program as described in subsection 5” of §4326.

Town of Wells Significant Sand and Gravel Aquifers



The map above was constructed from the Maine Geological Survey's maps that are available online.¹ The heavy, purple line is the boundary of the Town of Wells.

The Yellow and Red areas indicate known Sand & Gravel aquifers. The Yellow areas are known to have produced 10 or more gallons per minute. The Red areas are known to have produced 70 or more gallons per minute. The rest of the white area of the map is where one would most often expect to have to drill bedrock wells that would likely produce less than 10 gallons per minute.

¹ Maine Geological Survey, Online Significant Sand and Gravel Aquifers Maps, <https://www.maine.gov/dacf/mgs/pubs/online/aquifers/aquifers.htm> , For finer detailed viewing, consult the maps for Alfred, Kennebunk, Wells, and North Berwick.

