RE: Part 2_Population Policies and Strategies_2_7_2022.pdf

The handouts I've provided include the **§4312. Statement of findings, purpose and goals** statute[1] from the Growth Management Program. This is State law and, in my opinion, should be treated as such.

On the reverse side of the first page of **§4312**, note that the first State goal, **A.**, is the State goal listed for this **Chapter 2**; and, as such, in my opinion, should be shown with its precise wording intact and should retain the Growth Management Act reference in parentheses. This would apply to all State goals listed in the Comprehensive Plan.

With respect to this State goal:

§4312.3A. To encourage orderly growth and development in appropriate areas of each community and region while protecting the State's rural character, making efficient use of public services and preventing development sprawl; [PL 2001, c. 578, §9 (AMD).]

townspeople who voted for the Comprehensive Plan Updates ordinance are in favor of renewing the Residential Growth Management ordinance which was in place in Wells from 1986 to 2007. Thus, it is disappointing to see under the Standards for this Chapter, that this rate of growth ordinance item is redlined.

During last month's CPUC meeting, Mike Livingston stated that the town would need a legal reason, almost a condition of emergency, to establish a growth cap.

I believe Mike is likely confusing the **§4360. Rate of growth ordinances** statute[2] with the **§4356. Moratorium** statute[3]**.** Both statutes are in the handouts. Looking at the **§4356 Moratorium** statute, you can note the **1. Necessity** requirement; but looking at the **§4360. Rate of growth ordinances, 3. Ordinance requirements**, there is no such limiting Necessity requirement.

Furthermore, in a lawsuit filed against the town of Eliot's residential growth ordinance cap, the Maine Supreme Judicial Court ruled that Eliot's growth ordinance "…is more accurately described as a growth control ordinance rather than as a moratorium. …(Under the state's Growth Management Act) Municipalities are authorized to enact growth control ordinances."[4] Upon appeal, this judgement was affirmed[5]. Relevant documents are in your handouts.

The State's Growth Management Act's requirement for devising growth management standards and implementation strategies should be the responsibility of this standing CPUC. This responsibility should not be offloaded to the Planning Board and Board of Selectmen (BOS) where they would then establish another standing Growth Management Committee. That's ridiculous and experience shows us is simply a ploy for not implementing growth management.

The 2005 Plan called for such a Growth Management Committee; but, the BOS, instead, decided to "satisfy" the growth management requirement by having the town's attorney write a Chapter 174 Impact Fees ordinance shell which could be used to implement impact fees. However, for

the past fourteen years, the BOS minutes reveal that there has not once been any discussion with regard to imposing such fees, even though there have been perfect opportunities for doing so; for example; the millions of dollars borrowed for the public safety building upgrades and new facilities construction.

Thus, for the past fourteen years, there has been no comprehensive growth management in Wells.

In my opinion, based on this proposed updated Chapter 2 alone, townspeople will not vote in favor of this Plan.

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[1] https://legislature.maine.gov/legis/statutes/30-A/title30-Asec4312.html

[2] https://legislature.maine.gov/legis/statutes/30-A/title30-Asec4360.html

[3] https://legislature.maine.gov/legis/statutes/30-A/title30-Asec4356.html

[4] Judge upholds growth statute, Nicole Gauthier, Seacoastonline.com, posted Feb 2, 1999; updated Dec 15, 2010. - https://www.seacoastonline.com/story/news/1999/02/02/judge-upholds-growth-statute/51314748007/

[5] Home Builders Ass'n v. Town of Eliot, 2000 ME 82, 750 A.2d 566, https://law.justia.com/cases/maine/supreme-court/2000/2000-me-82-0.html

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Title 30-A: MUNICIPALITIES AND COUNTIES
Part 2: MUNICIPALITIES
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Chapter 187: PLANNING AND LAND USE REGULATION
Subchapter 2: GROWTH MANAGEMENT PROGRAM
Article 1: GENERAL PROVISIONS

§4312. Statement of findings, purpose and goals

1. Legislative findings.

[PL 1991, c. 622, Pt. F, §16 (RP).]

2. Legislative purpose. The Legislature declares that it is the purpose of this Act to:

A. Establish, in each municipality of the State, local comprehensive planning and land use management; [PL 1991, c. 622, Pt. F, §17 (AMD).]

B. Encourage municipalities to identify the tools and resources to effectively plan for and manage future development within their jurisdictions with a maximum of local initiative and flexibility; [PL 1991, c. 622, Pt. F, §17 (AMD).]

C. Encourage local land use ordinances, tools and policies based on local comprehensive plans; [PL 1991, c. 622, Pt. F, §17 (AMD).]

D. Incorporate regional considerations into local planning and decision making so as to ensure consideration of regional needs and the regional impact of development; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

E. [PL 1991, c. 622, Pt. F, §18 (RP).]

F. Provide for continued direct state regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital state interests; [PL 2001, c. 578, §7 (AMD).]

G. Encourage the widest possible involvement by the citizens of each municipality in all aspects of the planning and implementation process, in order to ensure that the plans developed by municipalities have had the benefit of citizen input; and [PL 2001, c. 578, §7 (AMD).]

H. [PL 1991, c. 622, Pt. F, §20 (RP).]

I. Encourage the development and implementation of multimunicipal growth management programs. [PL 2001, c. 578, §8 (NEW).]

[PL 2001, c. 578, §§7, 8 (AMD).]

3. State goals. The Legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The Legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the State, it is in the best interests of the State to achieve the following goals:

A. To encourage orderly growth and development in appropriate areas of each community and region while protecting the State's rural character, making efficient use of public services and preventing development sprawl; [PL 2001, c. 578, §9 (AMD).]

B. To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

C. To promote an economic climate which increases job opportunities and overall economic well-being; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

D. To encourage and promote affordable, decent housing opportunities for all Maine citizens; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

E. To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

F. To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

H. To safeguard the State's agricultural and forest resources from development which threatens those resources; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

I. To preserve the State's historic and archeological resources; [PL 2015, c. 349, §1 (AMD).]

J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters; [PL 2019, c. 38, §2 (AMD); PL 2019, c. 145, §2 (AMD); PL 2019, c. 153, §1 (AMD).]

K. To encourage municipalities to develop policies that assess community needs and environmental effects of municipal regulations, lessen the effect of excessive parking requirements for buildings in downtowns and on main streets and provide for alternative approaches for compliance relating to the reuse of upper floors of buildings in downtowns and on main streets; [PL 2021, c. 293, Pt. A, §44 (AMD).]

L. To encourage municipalities to develop policies that accommodate older adults with aging in place and that encourage the creation of age-friendly communities; [RR 2019, c. 1, Pt. A, §37 (COR).]

REVISOR'S NOTE: Subsection 3, paragraph L as enacted by PL 2019, c. 145, §4 is REALLOCATED TO

TITLE 30-A, SECTION 4312, SUBSECTION 3, PARAGRAPH M

REVISOR'S NOTE: Subsection 3, paragraph L as enacted by PL 2019, c. 153, §3 is REALLOCATED TO TITLE 30-A, SECTION 4312, SUBSECTION 3, PARAGRAPH N

M. (REALLOCATED FROM T. 30-A, §4312, sub-§3, ¶L) To encourage municipalities to develop policies that provide for accessory dwelling units; and [PL 2021, c. 293, Pt. A, §45 (AMD).]

N. (REALLOCATED FROM T. 30-A, §4312, sub-§3, ¶L) To plan for the effects of the rise in sea level on buildings, transportation infrastructure, sewage treatment facilities and other relevant state, regional, municipal or privately held infrastructure, property or resources. [PL 2019, c. 153, §3 (NEW); RR 2019, c. 1, Pt. A, §39 (RAL).]

[PL 2021, c. 293, Pt. A, §§44, 45 (AMD).]

4. Limitation on state rule-making authority. The department is authorized to adopt rules necessary to carry out the purposes of this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A (../5/title5ch375sec0.html). This section may not be construed to grant any separate regulatory authority to any state agency beyond that necessary to implement this subchapter.

[PL 2011, c. 655, Pt. JJ, §15 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

SECTION HISTORY
PL 1989, c. 104, §§A45,C10 (NEW). PL 1991, c. 622, §§F16-20 (AMD). PL 2001, c. 406, §2 (AMD). PL 2001, c. 578, §§7-9 (AMD). PL 2011, c. 655, Pt. JJ, §15 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF). PL 2015, c. 349, §§1, 2 (AMD). PL 2019, c. 38, §§2-4 (AMD). PL 2019, c. 145, §§2-4 (AMD). PL 2019, c. 153, §§1-3 (AMD). RR 2019, c. 1, Pt. A, §§37-39 (COR). PL 2021, c. 293, Pt. A, §§44, 45 (AMD).

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Article 1: GENERAL PROVISIONS

§4314. Transition; savings clause

1. Comprehensive plan. A municipal comprehensive plan adopted or amended by a municipality under former Title 30, chapter 239, subchapter 5 (../30/title30ch239sec0.html) or 6 remains in effect until amended or repealed in accordance with the procedures, goals and guidelines established in this subchapter.

[PL 2003, c. 641, §2 (AMD).]

2. Shoreland and floodplain zoning ordinances. Notwithstanding section 4352, subsection 2 (../30-A/title30-Asec4352.html), any portion of a zoning ordinance that is not consistent with a comprehensive plan adopted in accordance with the procedures, goals and guidelines established in this subchapter is no longer in effect 24 months after adoption of the plan unless the ordinance:

A. Does not regulate land use beyond the area required by Title 38, chapter 3, subchapter 1, article 2-B (../38/title38ch3sec0.html); or [PL 2003, c. 641, §3 (NEW).]

B. Is adopted pursuant to and complies with the provisions of Title 38, section 440 (../38/title38sec440.html) and complies with the requirements of the Federal Flood Insurance Program. [PL 2003, c. 641, §3 (NEW).]

[PL 2003, c. 641, §3 (RPR).]

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 townwide 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 unless:

A. [PL 2001, c. 406, §3 (RP).]

B. [PL 2001, c. 406, §3 (RP).]

C. The ordinance or portion of the ordinance is exempted under subsection 2 (../30-A/title30-Asec4314.html); [PL 2001, c. 406, §3 (NEW).]

D. The municipality or multimunicipal region is under contract with the department to prepare a comprehensive plan or implementation program, in which case the ordinance or portion of the ordinance remains valid for up to 4 years after receipt of the first installment of its first planning assistance grant or for up to 2 years after receipt of the first installment of its first implementation assistance grant, whichever is earlier; [PL 2011, c. 655, Pt. JJ, §16 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

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; [PL 2005, c. 397, Pt. A, §31 (RPR).]

F. The municipality or multimunicipal region applied for and was denied financial assistance for its first planning assistance or implementation assistance grant under this subchapter due to lack of state funds on or before January 1, 2003. If the department subsequently offers the municipality or multimunicipal region its first planning assistance or implementation assistance grant, the municipality or multimunicipal region has up to one year to contract with the department to prepare a comprehensive plan or implementation program, in which case the municipality's or multimunicipal region's ordinances will be subject to paragraph D (../30-A/title30-Asec4314.html); or [PL 2011, c. 655, Pt. JJ, §16 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

G. The ordinance or portion of an ordinance is an adult entertainment establishment ordinance, as defined in section 4352, subsection 2 (../30-A/title30-Asec4352.html), that has been adopted by a municipality that has not adopted a comprehensive plan. [PL 2003, c. 595, §3 (NEW).]

[PL 2011, c. 655, Pt. JJ, §16 (AMD); PL 2011, c. 655, Pt. JJ, §41 (AFF).]

4. Encumbered balances at year-end.

[PL 2003, c. 641, §5 (RP).]

SECTION HISTORY
PL 1991, c. 722, §6 (NEW). PL 1991, c. 722, §11 (AFF). PL 1993, c. 73, §1 (AMD). PL 1993, c. 166, §4 (AMD). PL 1993, c. 721, §A1 (AMD). PL 1993, c. 721, §H1 (AFF). PL 2001, c. 406, §3 (AMD). PL 2001, c. 578, §10 (AMD). PL 2003, c. 595, §§1-3 (AMD). PL 2003, c. 641, §§2-5 (AMD). PL 2005, c. 397, §A31 (AMD). PL 2007, c. 247, §1 (AMD). PL 2011, c. 655, Pt. JJ, §16 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF).

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Subchapter 3: LAND USE REGULATION

§4360. Rate of growth ordinances

1. Ordinance review and update. A municipality that enacts a rate of growth ordinance shall review and update the ordinance at least every 3 years to determine whether the rate of growth ordinance is still necessary and how the rate of growth ordinance may be adjusted to meet current conditions.

[PL 2003, c. 127, §1 (NEW).]

2. Differential ordinances. A municipality may enact rate of growth ordinances that set different limits on the number of building or development permits that are permitted in designated rural areas and designated growth areas.

[PL 2003, c. 127, §1 (NEW).]

3. Ordinance requirements. A municipality may adopt a rate of growth ordinance only if:

A. The ordinance is consistent with section 4314, subsection 3 (../30-A/title30-Asec4314.html); [PL 2005, c. 597, §3 (NEW); PL 2005, c. 597, §4 (AFF).]

B. The ordinance sets the number of building or development permits for new residential dwellings, not including permits for affordable housing, at 105% or more of the mean number of permits issued for new residential dwellings within the municipality during the 10 years immediately prior to the year in which the number is calculated. The mean is determined by adding together the total number of permits issued, excluding permits issued for affordable housing, for new residential dwellings for each year in the prior 10 years and then dividing by 10; [PL 2007, c. 155, §1 (AMD); PL 2007, c. 466, Pt. B, §20,21 (AFF).]

C. In addition to the permits established pursuant to paragraph B, the ordinance sets the number of building or development permits for affordable housing at no less than 10% of the number of permits set in the ordinance pursuant to paragraph B; and [PL 2005, c. 597, §3 (NEW); PL 2005, c. 597, §4 (AFF).]

D. The number of building or development permits for new residential dwellings allowed under the ordinance is recalculated every 3 years. [PL 2007, c. 77, §2 (AMD).]

[PL 2007, c. 77, §§1, 2 (AMD); PL 2007, c. 155, §1 (AMD); PL 2007, c. 466, Pt. B, §20,21 (AFF).]

SECTION HISTORY

PL 2001, c. 591, §1 (NEW). PL 2003, c. 127, §1 (RPR). PL 2005, c. 597, §3 (AMD). PL 2005, c. 597, §4 (AFF). PL 2007, c. 77, §§1, 2 (AMD). PL 2007, c. 155, §1 (AMD). PL 2007, c. 466, Pt. B, §20,21 (AFF).

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§4356. Moratoria

Any moratorium adopted by a municipality on the processing or issuance of development permits or licenses must meet the following requirements. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

1. Necessity. The moratorium must be needed:

A. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

2. Definite term. The moratorium must be of a definite term of not more than 180 days. The moratorium may be extended for additional 180-day periods if the municipality adopting the moratorium finds that:

A. The problem giving rise to the need for the moratorium still exists; and [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. Reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

3. Extension by select board. In municipalities where the municipal legislative body is the town meeting, the select board may extend the moratorium in compliance with subsection 2 (../30-A/title30-Asec4356.html) after notice and hearing.

[PL 2021, c. 275, §46 (AMD).]

SECTION HISTORY
PL 1989, c. 104, §§A45,C10 (NEW). PL 2021, c. 275, §46 (AMD).

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Seacoastonline.com

Judge upholds growth statute

By Nicole Gauthier,Staff Writer

Posted Feb 2, 1999 at 2:00 AM
Updated Dec 15, 2010 at 7:15 PM

YORK -- Growth control just got a whole lot easier.

In a momentous court decision, Superior Court Judge Arthur G. Brennan upheld the legality of the town of Eliot's growth management ordinance, which caps growth to 48 dwelling units per year.

"This decision was a big one," Eliot Selectman Paul Rousseau said. "Many other municipalities were probably watching this closely."

Southern Maine communities are facing a boom in residential growth as the area becomes more attractive as a bedroom community to Boston and Portland. Faced with this building boom, many communities have sought ways to control it.

For Eliot, control had always come in the form of its growth cap. But at the end of 1996, the cap caught the attention of the Home Builders Association of Maine when for only the fifth time in 19 years, the number of building permits issued in Eliot reached the annual limit, causing a disturbance in the building community.

The HBA of Maine sued Eliot, claiming its cap violated a state statute banning permanent moratoriums on growth. Eliot's growth ordinance

had been on the books since 1978, while moratoriums are only allowed for six-month periods.

In his argument before the court on Dec. 1, 1998, Town Attorney Chris Vaniotis argued that Eliot's growth ordinance is not a moratorium and therefore does not violate state law.

"Growth is like a river," he said. "It is a good thing unless it becomes out of control. Towns can either do nothing until it floods and then put up a temporary system of sandbags (moratoriums) to meet immediate danger, or they can plan ahead and put up a permanent structure like a dam ... In times of severe flow, water is blocked and then later allowed to flow through ... that is a growth timing or a growth management mechanism.

"We believe (Eliot's growth ordinance) is not a moratorium because it doesn't stop growth," Vaniotis added. "It slows growth."

Justice Brennan agreed with Vaniotis's remarks. As he wrote in his judgment dated Jan. 27, 1999, "The ordinance in question is more accurately described as a growth control ordinance rather than as a moratorium. ... (Under the state's Growth Management Act) Municipalities are authorized to enact growth control ordinances."

Despite the ruling, the Home Builders' case is not necessarily over. The association can appeal the court decision or continue to challenge the ordinance on other grounds, such as it being "unreasonable."

"But this (moratorium claim) was probably the most significant issue for their case," Vaniotis said.

Attempts to reach the Home Builders Association for comment yesterday were unsuccessful, as were attempts to reach local contractor Ken Zamarchi, who played a leading role in involving the HBA in the first place.

Eliot is not the first town in Maine to have a growth management ordinance, but it is the first to have one upheld in court.

Kittery Town Manager Phil McCarthy said the ruling leaves an effective option in growth control alive and well for other communities.

Southern Maine Regional Planning director Paul Schumacher said yesterday Maine may see a push to take a more serious look at the growth cap option. However, SMRP encourages towns to link growth control to a comprehensive plan.

“If you’re going to institute something along those lines, that’s the way to do it,” Schumacher said.

Home Builders Ass'n v. Town of Eliot

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MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2000 ME 82
Docket: Yor-99-231
Argued: October 6, 1999
Decided: May 10, 2000

Panel:WATHEN, C.J., and CLIFFORD, DANA, SAUFLEY, ALEXANDER, and CALKINS, JJ.

HOME BUILDERS ASSOCIATION OF MAINE, INC., et al.

v.

TOWN OF ELIOT

CLIFFORD, J.

[¶1] Home Builders Association of Maine, Inc., E. Kenneth Zamarchi, and K/Z Enterprises, Inc. (collectively Home Builders) appeal from a grant of a summary judgment in the Superior Court (York County, Brennan, J.) in favor of the Town of Eliot in a suit challenging the Town's Growth Management Ordinance. Home Builders contends that the court erred when it concluded that the provision of the ordinance that limits permits was not a moratorium within the meaning of 30-A M.R.S.A. § 4301(11) (1996){1} and, accordingly, did not violate 30-A M.R.S.A. § 4356 (1996).{2} We disagree and affirm the judgment.

[¶2] The Town of Eliot adopted a "Permit Limitation Ordinance" that, in part, was designed to limit development in the Town to accommodate its "fair share" of the population growth of the surrounding area. The ordinance was adopted in 1978, amended in 1987, and again amended in 1998 under the new title "Growth Management Ordinance." Among the stated purposes of the ordinance was to allow for development consistent with "orderly and gradual expansion of community services" and to encourage residential development in compatible locations. As part of its scheme, the Town required submission and approval of a growth permit application, without which the applicant could not obtain a building permit to begin residential construction. The ordinance placed a cap on growth permits, allowing forty-eight in a calendar year, essentially on a first-come, first-served basis.{3} In the twenty years since the original ordinance was passed, the permit cap has been reached only five times. Recent years have been at or close to the limit. The Town's estimated total population in 1997 was 5787.

[¶3] Zamarchi, the owner of K/Z Enterprises, Inc., a Maine corporation performing residential and commercial construction and remodeling, together with Home Builders, an organization of building contractors of which K/Z Enterprises is a member, filed a complaint seeking a declaratory judgment that the ordinance violated 30-A M.R.S.A. § 4356 and was unconstitutionally vague. They requested an injunction against enforcement of the ordinance.{4} The parties stipulated to a statement of material facts. Following the denial of Home Builders's motion for a summary judgment, summary judgment was entered in favor of the Town. This appeal followed.

[¶4] Because there is no dispute as to the facts, the only issue for us to address is the meaning of the statute. Statutory construction is a matter of law, and decisions regarding the meaning of a statute are reviewed de novo. See Estate of Jacobs, 1998 ME 233, ¶ 4, 719 A.2d 523, 524. When reviewing the construction of a statute, "[w]e look first to the plain meaning

of the statutory language as a means of effecting the legislative intent." Coker v. City of Lewiston, 1998 ME 93, ¶ 7, 710 A.2d 909, 910. Only if the statutory language is ambiguous will "we examine other indicia of legislative intent, such as legislative history." See id.

[¶5] This appeal requires us to determine whether the provisions of the Town's Growth Management Ordinance, placing limits on growth and building permits, constitute a moratorium within the meaning of 30-A M.R.S.A. § 4301(11). Both parties agree that if the ordinance does constitute such a moratorium, the ordinance is invalid because provisions of 30-A M.R.S.A. § 4356 setting out criteria for moratoria have not been satisfied. We must answer two questions: (A) whether section 4301(11) can apply to the Town's ordinance even though the ordinance is permanent, in other words, whether the language of section 4301(11) is directed only at "temporary" ordinances; and (B) whether the Town's ordinance, which places limits on but does not prevent *all* development, is a "moratorium" within the meaning of 4301(11). We conclude that, although the application of section 4301(11) is not limited to ordinances that are temporary in duration, the Growth Management Ordinance enacted by the Town in this case does not constitute a moratorium within the meaning of that statute.

I. TEMPORARY ORDINANCES

[¶6] Home Builders contends that, although the Town's Growth Management Ordinance is permanent, section 4301(11) applies to it because the definition of moratorium in section 4301(11) is not limited to ordinances that are temporary. Rather, section 4301(11) defines a moratorium as "a land use ordinance or other regulation approved by a municipal legislative body which *temporarily* defers development by withholding any authorization or approval necessary for development." 30-A M.R.S.A. § 4301(11) (1996) (emphasis added). A comparable moratorium statute governing the Land Use Regulation Commission, on the other hand, defines "moratorium" as " a *temporary* land use regulation or ordinance approved by the commission or a municipal legislative body which prevents development or subdivision by withholding authorization or approval necessary for development." 12 M.R.S.A. § 682(8-A) (1994) (emphasis added). The Town contends that the word "temporary" in section 4301(11) is a "misplaced modifier," pointing out that the word "defers," directly following the word "temporary," itself means "to postpone temporarily." Thus, the Town argues, the word is superfluous unless it is understood to "describe the duration of the ordinance itself, not some possible impact of the ordinance."

[¶7] In Struck v. Hackett, 668 A.2d 411 (Me. 1995), we noted that "it is well established that '[n]othing in a statute may be treated as surplusage if a reasonable construction supplying meaning and force is otherwise possible.'" Id. at 417 (quoting Labbe v. Nissen Corp., 404 A.2d 564, 567 (Me. 1979)), quoted in Handyman Equip. Rental Co. v. City of Portland, 1999 ME 20, ¶ 9, 724 A.2d 605, 607-08.

[¶8] Surplusage occurs when a construction of one provision of a statute renders another provision unnecessary or without meaning or force. See, e.g., Opinion of the Justices, 460 A.2d 1341, 1346 (Me. 1982) (refusing to construe "An Act to Adjust Annually Individual Income Tax Laws to Eliminate Inflation-induced Increases in Individual Income Taxes" in such a way that section 5 of the Act would be superfluous). Other cases involve situations in which a phrase in a statute, arguably with independent meaning in the context of its location in the statute, would be given no effect under a particular construction. See, e.g., Handyman Equip. Rental, 1999 ME 20, ¶ 8, 724 A.2d at 607 (discussing a party's construction of a statute that would render meaningless the phrase "liable to be taxed" in the context of a statute reading, in part, "property *liable to be taxed* in this State") (emphasis added); National Newark & Essex Bank v. Hart, 309 A.2d 512, 520 (Me. 1973) (noting that one party's construction would render the entire last sentence of a statutory provision unnecessary).

[¶9] In cases in which a single word or punctuation has been the subject of an appeal, we have been reluctant to rearrange statutory language to give the statute a substantively different meaning than that which would be reasonably understood from the language as written. See, e.g., Labbe, 404 A.2d at 567-68 (offering an "edited" version of a statutory provision only as an illustration of the Court's construction of the statute based on a reasonable interpretation of the actual text). Instead, we have deferred to the plain meaning of the statute. See, e.g., Struck, 668 A.2d at 417 (finding

the appellant's construction of 30-A M.R.S.A. §§ 381 and 501 would render the term "probationary" in section 381 superfluous).

[¶10] Here, the Town contends that we should construe section 4301(11) by changing the word "temporarily," currently placed immediately before and modifying the verb "defers," to "temporary," placing it before the noun phrase "land use ordinance." Although the Town notes correctly that the word "defer" already means "temporarily," what the Town suggests goes beyond a "reasonable construction." We are not persuaded that the word "temporarily" should be applied to modify a wholly separate term in the statute. The plain language of section 4301(11) includes within its definition of "moratorium" *any* ordinance that temporarily defers development, whether the ordinance *itself* is a temporary or a permanent ordinance. Such a plain language reading is reasonable and leaves no words without meaning. Accordingly, section 4301(11) is not inapplicable merely because the ordinance in dispute is permanent.

II. "MORATORIUM" UNDER SECTION 4301(11)

[¶11] Because, however, the Growth Management Ordinance does not prevent all development, but rather allows up to forty-eight new housing starts each year, we do not construe its provisions to amount to a "moratorium" within the meaning of section 4301(11). Home Builders relies on that language in section 4301(11), that defines moratorium as "a land use ordinance . . . which temporarily defers any authorization or approval necessary for development" and contends that, because the ordinance requires applicants over a certain number to wait until the "following year at the soonest" before being issued a development permit, the ordinance temporarily defers development, and accordingly constitutes a moratorium under the statute.

[¶12] We read that phrase to address an ordinance that explicitly or effectively withholds *all* authorizations or approvals necessary for development, and not, as Home builders contends, to mean an ordinance that withholds *any single* authorization or approval. In section 4301(11), the Legislature intended to address those ordinances commonly understood to halt all development of a particular type. Such ordinances, regularly enacted by municipalities over the last decade, traditionally prohibit all development of the type at issue for a period of time and are intended to allow a municipality to catch its breath or develop regulations for the targeted development. See 30-A M.R.S.A. § 4356(1)(A), (B) (1996). In contrast to such an action, the Town of Eliot has not halted development. Rather, it has allowed a significant but finite amount of development and has regulated the speed with which that development may occur in this town of 5787 people.

[¶13] Our interpretation of the moratorium provisions in this context turns on the meaning of "any" in the phrase "by withholding *any* authority or approval necessary for development." 30-A M.R.S.A. § 4301(11) (1996) (emphasis added). In common American usage, the word "any" is susceptible of several accepted meanings, each dependent on context. "Any" may mean "any one," but it may also mean "all" or "every." See The Oxford American Desk Dictionary 24 (rev. ed. 1998); Webster's Seventh New Collegiate Dictionary 40 (1970); Webster's New Twentieth Century Dictionary of the English Language 83 (1968). Because both of those meanings of "any" are acceptable uses, the meaning intended by the Legislature in this case can only be understood in the context of the legislation within which the word is used.

[¶14] The meaning of a statute "must be construed in light of the subject matter, purpose of the statute, and the consequences of a particular interpretation." Church v. McKee, 387 A.2d 754, 756 (Me. 1978). An understanding of context must necessarily begin with the Legislature's stated goals and objectives regarding the statutory provision at issue. The restrictions on zoning moratoria are an integral part of the State's Planning and Land Use Regulation Act. See 30-A M.R.S.A. §§ 4301-4457 (1996 & Supp. 1999). Among the express purposes of the Act are the following:

> A. Establish, in each municipality of the State, local comprehensive planning and land use management;
>
> B. Encourage municipalities to identify the tools and resources to effectively plan for and manage future

> development within their jurisdictions with a maximum of local initiative and flexibility;
>
> C.Encourage local land use ordinances, tools and policies based on local comprehensive plans.

30-A M.R.S.A. § 4312(2) (1996). The Legislature also announced that it is in the State's best interest to achieve the following goals:

> A.To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl;
>
> B.To plan for, finance and develop an efficient system for public facilities and services to accommodate anticipated growth and economic development.

30-A M.R.S.A. § 4312(3) (1996).

[¶15] It is against the backdrop of those goals that we must determine what the Legislature intended when it addressed ordinances that "temporarily defer[] development by withholding *any* authorization or approval necessary for development." 30-A M.R.S.A. § 4301(11) (1996) (emphasis added). The Town's Growth Management Ordinance certainly does not defer development by withholding *all* authorizations. Indeed, it allows up to 48 new starts each year and requests for authorizations beyond that cap have had to be deferred only five times in 20 years. Indeed the ordinance would appear to be the very kind of municipal planning tool that the Legislature had in mind when it set forth its goals for the Planning and Land Use Regulation Act. It signifies the Town's attempt to "effectively plan for and manage future development," 30-A M.R.S.A. § 4312(2)(B) (1996), and satisfies the State's goal for allowing "orderly growth and development," 30-A M.R.S.A. § 4312(3)(A) (1996). The stated goal of allowing municipalities flexibility in establishing comprehensive plans is intended to encompass growth limitation ordinances of this sort.

[¶16] Nonetheless, Home Builders would have us interpret section 4301(11) to sweep into the limitations of the moratoria provision any ordinance that has as an effect the deferral of *any single* authorization, thus restricting municipalities from placing a cap on development of any kind unless that cap met the restriction of the moratoria provisions, most notably, a maximum effective duration of 180 days. See 30-A M.R.S.A. § 4356(2) (1996).{5} That construction would have an effect on communities across this State that currently use reasonable growth management ordinances to manage-but not to halt-development.

[¶17] While an unreasonable limit on development could, in certain circumstances, constitute a de facto moratorium, that is not the case here.{6} The cap has only been reached five times in 20 years. The Town has amended the ordinance twice, increasing the cap as the Town's growth permitted. The Town's actions have complied with the legislative mandate to "encourage *orderly* growth and development." 30-A M.R.S.A. § 4312(3)(A) (1996) (emphasis added). The Town's growth limit ordinance does not constitute a moratorium either as defined by the statute or de facto.

The entry is:

Judgment affirmed.

Attorney for plaintiffs:

John C. Bannon, Esq., (orally)
Murray Plumb & Murray
P O Box 9785
Portland, ME 04104-5085

Attorney for defendant:

Christopher L. Vaniotis, Esq., (orally)
Bernstein, Shur, Sawyer & Nelson, P.A.
P O Box 9729
Portland, ME 04014-5029

FOOTNOTES********** {1} . Section 4301(11) defines "moratorium" as "a land use ordinance or other regulation approved by a municipal legislative body which temporarily defers development by withholding any authorization or approval necessary for development." 30-A M.R.S.A. § 4301(11) (1996). {2} . Section 4356 governs when moratoria are lawful: Any moratorium adopted by a municipality on the processing or issuance of development permits or licenses must meet the following requirements. 1. Necessity. The moratorium must be needed: A. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or B. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area. 2. Definite term. The moratorium must be of a definite term of not more than 180 days. The moratorium may be extended for additional 180-day periods if the municipality adopting the moratorium finds that: A. The problem giving rise to the need for the moratorium still exists; and B. Reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium. 3. Extension by selectmen. In municipalities where the municipal legislative body is the town meeting, the selectmen may extend the moratorium in compliance with subsection 2 after notice and hearing. 30-A M.R.S.A. § 4356. {3} . This reflects a recent change in the ordinance. The 1978 ordinance, as revised in 1987, set up a point system by which applications were rated for suitability, and allowed four permits a month, with a "carry-over" to the next month, but not to the next year. The available permits were split evenly among proposed developments within a subdivision and proposed developments not within a subdivision. In addition, in months where there were fewer than two "subdivision" permit applications, for example, the Town's Code Enforcement Officer (CEO) was authorized to allow additional "non-subdivision" permits so long as no more than four permits total, plus "carry-overs," were issued in a given month. Under the 1998 "Growth Management Ordinance," the point system and the four-per-month scheme was abolished in favor of a yearly, first-come, first-served system. "Subdivision" and "non-subdivision" permits were still split (i.e., 24 of each were allowed), but the CEO is authorized, under certain circumstances, to issue permits in excess of 24 so long as the total in a given year does not exceed 48. These additional permits can only be issued during roughly the last two weeks of December. Both the original and current ordinances allow for periodic review of the number of allowed permits. {4} . Four other counts included in the original complaint were dismissed pursuant to a stipulated order. {5} . The 180 day limit may be extended only upon certain findings by the municipality and only after notice and hearing. See 30-A M.R.S.A. § 4356(2) (1996). {6} . Home Builders does not allege that the permits have been granted in a discriminatory or unfair manner.