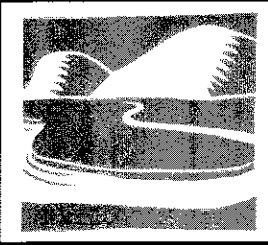


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SOUTHERN MAINE REGIONAL PLANNING COMMISSION

# Regional Newsletter

## **SMRPC Discusses Casino Transportation Issues**

By Tom Reinauer, Transportation Director

In early June, SMRPC staff met with representatives from the Town of Sanford, the Maine Department of Transportation, the Maine Turnpike Authority, the Northern New England Passenger Rail Authority, York County Community Action Corporation (YCCAC) and others to discuss potential transportation impacts and opportunities of a major gaming/resort facility in southern Maine.

With the project just a possibility at this point, the group discussed current capacity and congestion spots on the region's roadways, and also reviewed available public transportation in the area. SMRPC staff also generated some preliminary estimates of vehicle traffic based on the proposed size of the facility and the services that may be located on the site. Information was also provided on present transportation to and from the Mohegan Sun casino in Connecticut, showing maps of available tour bus locations and travel radius.

The transportation group is planning to meet again in August, and will be inviting representatives from other municipalities as well as those representing the Penobscot and Passamaquoddy tribes. Future tasks may include assisting municipalities with reviewing transportation plans, and working on future transportation projects to alleviate impacts and improve transportation connections.

SMRPC staff will be closely monitoring the casino proposal as it unfolds during the coming months, and will be looking at other aspects of it, including housing, economic development, public safety, and public service impacts. For more information on the transportation aspects of the casino issue, please contact Tom Reinauer at: [treinauer@smrpc.org](mailto:treinauer@smrpc.org).

## **Kids and Transportation Wins MAP Award!!**

By David Carpenter, Kids and Transportation Coordinator

We are happy to announce that the Kids and Transportation Program of York County's Map Kit was honored with the Project of the Year award from the Maine Association of Planners at its annual meeting on June 6, 2003. The Map Kit is a teaching resource that we offer to schools, which provides a variety of maps including maps of the local community and includes teaching tools to assist with learning activities. The Map Kit can be used to teach not only mapping and trip planning skills but to augment history, geography and math units. The Map Kit is a good example of the synergy that can be created between the worlds of planning and education.

In other news, we are partnering with the Cumberland County Kids and Transportation Program and the University of New England for our Transportation Institute for Educators. The Institute is a one-week summer class that exposes the teachers to various transportation themes that they can transfer to the classroom.

Finally, over the now completed 2002-2003 school year we were able to provide over 100 presentations to students, 12 after-school classes for teachers and two separate one-week classes for teachers during the summer. We have launched our web site ([www.katyc.org](http://www.katyc.org)) and hope to use this medium to provide information to educators.

We look forward to working with all of you in the coming year.

## **!!Staff Changes!!**

After 10 years of service, Kate Albert said goodbye to SMRPC in April 2003 and has taken a position with the Sacopee Valley Health Center in Kezar Falls. Kate has been replaced by David Versel, who joined the staff in May. David comes to SMRPC from the planning consulting world—please see his bio on Page 5 for more information. Please join us in wishing Kate and David the best of luck in their new positions.

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## **Executive Director's Column**

By Paul Schumacher

As we approach November the issue of the Casino Referendum will become more and more prominent. So too will the information flying back and forth. Though SMRPC has not taken a position on this issue, we do see ourselves playing a critical role as decisions near. While it is not entirely clear whether or not this project will move forward, November is too late to begin a regional discussion. The fact that the tribe has recently stated they would possibly submit an application in July has added a little more urgency to these thoughts.

We anticipate playing a few roles:

1. **An educational role**, by providing factual and unbiased information regarding the impacts of the casino and presenting this in various ways. We plan (with what is currently very limited resources) to examine conditions related to traffic, housing, land use, local economic data and public safety, and to present these baseline conditions to municipal officials and the public. As possible financial resources become available we may be able to move towards defining "what if" scenarios. To date we have scheduled Charlie Colgan from USM to talk about economic issues at our annual meeting, presented data to the York County Municipal Officials group at their quarterly gathering, and plan to meet on a bi-monthly basis with a transportation working group. We hope to have all materials available to the public on our website at [www.smrpc.org](http://www.smrpc.org).
2. **Act as an advocate** for the region to the Town of Sanford, the tribes and the state legislature regarding the infrastructure needs created by this proposal. We are basically in uncharted waters here as we seek to address regional costs of a project without any real statutory guidelines to do so. It will take an extra effort by SMRPC and the region to make a case for addressing those costs.
3. **Facilitating meetings** with Sanford, surrounding towns and other decision makers as this process moves forward.

We hope to bring as many towns as possible into these discussions, so please let us know if you have any interests or concerns. To keep you informed, we will be developing an e-mail list for updates. We will be in touch.

*Paul Schumacher*

## **They Passed *WHAT???* (a.k.a. Legislative Update)**

By J.T. Lockman, Planning Director

At this time of year, it's time to figure out what has happened at the Maine Legislature that will impact the work of Planning Boards and Comprehensive Plan Committees. In the current session, several noteworthy bills have been enacted, and others are pending. Full copies of any bill may be downloaded from: <http://janus.state.me.us/legis/LawMakerWeb/search.asp>, if you know the "LD" (legislative document) number.

### ***Is Our Growth Cap Still OK?***

The short answer is: Yes. About half of the municipalities in York County now have a "growth cap" ordinance (which in state parlance is known as a "Municipal Rate of Growth Ordinance"). In each of the last several legislative sessions, attempts have been made to limit the ability of Towns to enact such ordinances by such groups as the Maine State Housing Authority, the Maine Realtors, the Maine Real Estate and Developers Association, and the State Planning Office, due to concerns that such ordinances promote sprawling development patterns and drive up housing prices. However, the only changes enacted this session, were in the bill **LD 531**. Rather than constraining towns, LD 531 simply adds language expressly stating that municipalities may enact differential growth caps, with separate limits for growth areas and rural (or non-growth) areas. The State Planning Office staff recommends this type of cap as a legitimate planning tool, if it is applied "differentially," to direct growth out of rural areas and into villages or growth areas. Generally speaking, in order to have a defensible cap, a town must either have comprehensive plan support for any rate of growth ordinance, or must be in the middle of a comprehensive plan rewriting process. At this time, in order for the State Planning Office to find that a growth cap is supported by a comprehensive plan, they would require substantial financial justification for the numbers used, with a direct tie-in to capital improvements planning.

### ***A Major New Incentive Almost Passed...Affordable Housing TIF Program***

**LD 858**, which would create a separate tax-increment financing (TIF) law for affordable housing "development districts," has been passed by both the house and senate and is awaiting the governor's signature. In order to qualify, the affordable housing development program must require **ongoing affordability for at least 10 years for owner-occupied units and 30 years for rental units**. Such developments must be primarily residential with at least **33% of the dwelling units qualifying as "affordable."** Captured assessed value located within an affordable housing development district must be excluded from a municipality's state valuation. Our staff has not had the time to extensively study this proposal as of yet.

### ***Transportation and Land Use Planners Can be Friends!***

**LD 463** has been signed by the Governor and requires the Department of Transportation to adopt a major substantive rule that establishes linkage between the Sensible Transportation Policy Act and comprehensive planning and land use regulation laws (Growth Management Act). The rule must also promote investment incentives for communities that adopt and implement land use plans that reduce reliance on the state highway network. This certainly is an idea that all planners should applaud in concept—but we like to think that planners already have been trying to integrate transportation and land use policies in the absence of such a rule. We would encourage those who are particularly interested in the land use-transportation connection to follow the rule-making process closely in the year ahead.

### ***The Days of Pulling the Rug Out from Under Developers May Be Over...***

On June 3, 2003, the York County Superior Court ruled on *Town of Kittery v. Kittery Retail Ventures*, in which a citizen-initiated referendum retroactively applied stricter standards to an outlet mall application that had already been found to be complete, thus rendering the application illegal. Though the Town won the case at the superior court level, as the court was sympathetic to the citizen initiative process, legislators are concerned by the chilling effect on development posed by such citizen initiatives. **LD 389** is an attempt by the legislature to pre-empt the ability of towns to reverse land use approvals with retroactive legislation, after an applicant is "vested" by having received final approval. This bill, if passed, would protect future developers from such a setback. Communities with controversial projects "in the pipeline" should watch this bill closely.

For questions about any land use statutes or bills, or if you would like the full text of these bills, please call our Land Use team members any time, or email me at: [jlockman@smrpc.org](mailto:jlockman@smrpc.org).

## Case Notes

By Madge Baker, Esq.

### ***City of Bangor v. Divas*, Maine Supreme Judicial Court, April 15, 2003**

#### **Nude entertainment case**

Facts: Diva's Inc. presents nude entertainment in Bangor. Bangor has adopted ordinances regulating this activity. Diva's had a certificate of occupancy prior to its expiration in June 2001, when the renewal was denied because of Diva's proximity to residences and a church. Thereafter, Diva's applied for and obtained a license to sell alcohol for consumption, and a special amusement permit from the City. The amusement permit prohibited presentation of nude entertainment. Nevertheless Diva's continued to present nude entertainment. The City filed a land use complaint pursuant to Rule 80K and won. Diva's appealed.

Issue: Did the Bangor ordinance constitute a prior restraint on speech, and therefore prohibit the free expression of protected speech in violation of the Maine and U.S. Constitutions?

Ruling: The Maine Court decided that "because the ordinances at issue do not completely ban nude dancing, the appropriate inquiry in this case is whether the Bangor ordinances are content-neutral, are designed to serve a substantial governmental interest, and do allow for reasonable alternative avenues of communication."

The Court examined the ordinance carefully. Bangor allows nude entertainment in certain locations, and in establishments that do not serve liquor. Thus nude entertainment is not a prohibited activity. Bangor says the reason for this limitation is to prevent "the harmful secondary effects of nudity, rather than the suppression of expression." The Court engaged in a more extensive analysis of the law requiring that ordinances restricting nude entertainment be "content-neutral." The analysis, with extensive citations to appropriate case law, is too long to summarize meaningfully. Anyone particularly interested in this topic should read the entire opinion.

The Justices found that most courts that have addressed the issue of prohibiting nude entertainment in places that serve alcohol have upheld such provisions. The Maine Court decided to uphold the Bangor ordinance restrictions as "content-neutral" and therefore constitutional.

### ***Town of Boothbay et al. V. Barbara Jenness et al.*, Maine Supreme Judicial Court, April 15, 2003 and revised May 5, 2003**

#### **Zoning case**

Facts: Barbara Jenness is the owner of property, which had been used as a restaurant. She leased it to Norma Weeks with the proviso that Weeks comply with all zoning ordinances. Weeks added a new alcohol-serving bar. When she applied to renew her liquor license, the Town Code Enforcement Officer found the bar, a violation of the zoning ordinance. Both Weeks and Jenness were served with a notice of violation. The CEO ordered Jenness to require Weeks to discontinue the illegal use. Weeks appealed the CEO decision to the Board of Appeals, but Jenness did not. Weeks lost. She then sought to amend the zoning ordinance. Meanwhile the bar remained open, so the Town initiated a Rule 80K action. When the Town won Jenness filed an appeal.

Issues:

1. Is the landlord liable for a tenant's violation?
2. Was the CEO's letter of violation legally adequate to hold the owner liable?

Ruling: The Court had no trouble holding the landlord liable for the violation. The ordinance provides the owner can be fined for a tenant caused violation; the lease provides Jenness with sufficient control over the property to halt the violation; and the lease agreement states the tenant must comply with local zoning.

The Court also had no trouble deciding that the CEO's letter of violation satisfied notice requirements to the owner. The letter said she was personally in violation as the owner of the property. The CEO sent a copy to Jenness of the notice of violation sent to the tenant, but the owner did nothing about the violation.

Comment: The case describes in detail what the CEO's notice consisted of. Therefore, it may be of interest to CEO's to look at the content of this case for specific guidance with respect to landlord/tenant violation notifications. Boothbay's ordinance language might also be useful to compare to your own ordinance language.

### ***Smith v. Town of Pittston*, Maine Supreme Judicial Court, April 7, 2003**

#### **Septage spreading case**

Facts: In May 1999 Smith applied to the Town selectmen to spread septage on property he was purchasing. In June the municipal officers placed a 180-day moratorium on septage spreading on the warrant. The moratorium passed in July. Between then and the next March the town passed two septage spreading ordinances, and Smith's application

## Case Notes, Continued

went to DEP for review. At the March meeting the town appropriated \$10,000 “to reimburse the Town residents who expended funds to draft and defend the first septage ordinance, and to enter into a septage disposal contract with Interstate Septic Systems to comply with 38 M.R.S.A. sec. 1305(6)(2001).” In October the town passed a third ordinance; it replaced the two previous ones *and* contained a retroactive provision making it effective as of July 1999.

In May 2001 DEP approved Smith’s application. Smith went back to the Town for a permit. The Town said it was illegal to spread septage under the Town ordinance. Smith went to court.

Issue: There were several issues raised, but the important one for this note is whether the Town ordinance is preempted by state statute?

Ruling: M.R.S.A. 1305(6) requires municipalities to provide for the disposal of all septic tank and cesspool septage located within the municipality. And the same act prohibits municipalities from enacting stricter standards than contained in state law. In this instance the Court followed its ruling in *Tisei v. Town of Ogunquit*, which involved sewers and septage, not solid waste disposal. In *Tisei* “we held that, in the absence of a local septage ordinance, Town officials could not expand upon the siting and design requirements” of state law. But in this instance there is a local septage ordinance, an ordinance which does not prohibit *all* methods of septage disposal, just spreading of septage. DEP regs and the Town ordinance still allow composting and disposal at wastewater treatment facilities. Therefore, the Court reasoned that “The Town of Pittston’s ban on land application may have the effect of making septage disposal within the Town more difficult and expensive, but it does not frustrate the purposes of section 1305(6). . . .”

Comments: I found Pittston’s decision to reimburse people who had opposed Smith’s venture noteworthy. The Court upheld this. The justification was the money had gone to hiring experts, paying legal fees, and mailings in connection with enacting the first ordinance prohibiting land spreading. Smith apparently did not dispute the money was appropriated for a public purpose, so the Court let it stand.

There was a strong dissent in this case submitted by 3 Justices, an unusual event to say the least. This quote from the dissenting opinion makes their position very clear: “The Legislature spoke clearly when it declared the policy behind the waste management statute. Recognizing that ‘environmentally suitable sites for waste disposal are in limited supply and represent a critical natural resource’ and that ‘municipal waste recycling and disposal facilities have not been developed in a timely and environmentally sound manner because of diffused responsibility for municipal waste planning, processing and disposal among numerous an overlapping units of local government,’ 38 M.R.S.A. sec. 1302 (2001), the Legislature provided that ‘any person may provide a site for disposal of septage,’ *id.* Sec.1305(6). While the Legislature clearly intended municipalities to have a meaningful role in regulating those facilities, it did not intend to allow them to ban all practical septage disposal options. The Court substantially understates the impact of the Pittston ordinance when it concludes that it makes private septage disposal ‘more difficult and expensive.’ Pittston has thwarted the Legislature’s intent to foster the creation of adequate, affordable, environmentally suitable, private septage disposal sites. Its ordinance is, therefore, *ultra vires* (beyond its authority).”

## SMRPC Family Welcomes Two New Members

Two new people have joined the SMRPC family since May. The first is David Versel, our new Senior Planner, who came aboard in May. David brings a broad-based background in planning, economic development, urban design, real estate market analysis, and public policy. Prior to moving to Maine at the end of 2001, he spent five years working as a planning consultant for firms in Georgia and Washington, DC. Once in Maine, David settled in Saco, his wife Jennie’s hometown, and founded a planning consulting firm called Community Current, which he left behind to join SMRPC. When he is not at work, David can be found playing soccer or basketball, restoring antique furniture, walking on the beach, hiking in the woods, or writing.

Our other new addition is Phineas Albert Cook, who was born to Suzanne LePage and Jonathan Cook on Saturday, June 7. Phineas weighed in at 9 pounds 4 ounces and was 21.5 inches long at birth. Suzanne will be spending the summer with her new son and will return to SMRPC in the fall. We hope you all will get to meet both of our new arrivals very soon.

## **STATE PLANNING OFFICE NEWS UPDATE**

This section summarizes news from SPO as of June 1, 2003.

### **Planning Grant Awards for FY 2003**

The State Planning Office is pleased to announce awards for the FY 03 Winter/Spring Grant Program for comprehensive planning. From 32 applicants, SPO offered 15 awards, comprised of nine Comprehensive Planning Grants and six Comprehensive Plan Update Grants. The total award amount was \$219,033. Award recipients are geographically dispersed across the state.

Two of the award recipients are multi-municipal groups, both in Aroostook County. These towns have chosen to work and plan together to address common issues and economies, and shared resources and infrastructure that do not stop at municipal borders.

A special congratulations goes out to the Town of Acton, which received a Comprehensive Plan Update Grant from SPO. Acton is now actively undertaking this update with assistance from SMRPC.

### **Maine Working Waterfront Coalition Update**

The Maine Coastal Program hosted the second meeting of the Maine Working Waterfront Coalition, a statewide group of industry associations, non-profits, state agencies, and individuals dedicated to supporting and enhancing Maine's working waterfronts through policy, planning, investment, and education.

The Coalition has provided testimony on property tax reform to the Legislative Committee on Taxation, and is planning to work with the Administration on a tax reform package that recognizes the unique requirement of commercial fishermen and other water-dependent users for secure and affordable access to the ocean waters. The Coalition is also working on public education materials and awareness programs, as well as organizing educational training sessions on topics and techniques of interest to coastal communities engaged in comprehensive planning activities. Coalition members are organizing a press event in the Hall of Flags on May 27<sup>th</sup> to present the organization and its agenda. The Maine Coastal Program at SPO is a supporting member of the Coalition. For more information contact Jim Connors at 287-8938 or [jim.connors@maine.gov](mailto:jim.connors@maine.gov).

### **Conference on Stormwater Management in Cold Climates**

The Maine Coastal Program at the State Planning Office and its partners the Casco Bay Estuary Project and the Cumberland County Soil and Water Conservation District, in cooperation with the Center for Watershed Protection and US EPA Region 1, are organizing a national conference to be held this fall in Portland. This first-of-its-kind conference will focus on the challenge of managing stormwater in cold climates.

The conference will bring together engineers, planners, stormwater managers, natural resource professionals, contractors, developers, and municipal, state, and federal officials to share approaches to and experiences with the effective management of stormwater in cold climates. Special attention will be given to the NPDES Phase II stormwater regulations and the challenges that communities face in implementing them. Exhibitors and vendors offering stormwater-related products and services will be featured in an exhibit area. The conference will include two days of plenary and concurrent breakout sessions for moderated presentations and panel discussions, field trips, pre-conference training, and ample time for exhibitor interaction and networking.

Conference co-chairs are Karen Young, Executive Director of the Casco Bay Estuary Project, and Todd Janeski, Maine Coastal Program. For more information, contact Todd Janeski of SPO at 287-1482 or [todd.janeski@maine.gov](mailto:todd.janeski@maine.gov).

## STATE PLANNING OFFICE NEWS UPDATE (CONTINUED)

### Maine NEMO Program: Linking Land Use to Water Quality

#### What is Maine NEMO?

- Maine NEMO (Nonpoint Education for Municipal Officials) is an educational program for land use decision makers that addresses the relationship between land use and natural resource protection, with a focus on water resources.
- Maine NEMO starts with the basic presentation that explains the links between land use, water quality, and community character. The program then offers follow-up presentations and materials to help communities get started on natural resource-based planning.
- These programs assist communities in moving forward on two major aspects of natural-resource based planning: planning for areas to be preserved, and those suitable for development.

#### Maine NEMO's Programs

Maine NEMO can present educational programs that will be customized to your community's location and knowledge base. The type of information that these programs can include are:

- Basic principals of nonpoint source pollution and increased flows due to stormwater.
- The relationship between land use, natural resource protection, and water quality.
- Planning and site design options to reduce the impacts from development.

#### Why Should You Contact Maine NEMO?

- Is your town going through the Comprehensive Planning process?
- Are you interested in Natural Resource Inventories or developing an Open Space Plan?
- Is your town concerned about water quality within the town and/or watershed?
- Is stormwater run-off a concern?

#### Contact Information

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South Portland, Maine 04106

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### Pine Tree Development Zones Program on the Way

By Chuck Morgan, Economic and Community Development Director

The Maine Legislature recently passed L.D. 1385, An Act To Establish the Pine Tree Development Zones Program. This program will create eight special investment zones throughout the state, four of which were identified in the legislation: Aroostook County, Androscoggin Valley Region, Penobscot Valley Region, and Washington County-Downeast Region. The remaining four zones will be chosen based on a competitive application process.

Under this program, qualifying businesses in the manufacturing, technology and financial services sectors will receive the following benefits for 10 years: (1) Financing assistance equal to 100% of taxes paid on real property improvements; (2) Exemption of personal property from taxation; (3) Employment tax-increment financing equal to 100% of qualified employees' state income taxes; and (4) A tax credit equal to 100% of the state income tax due and attributable to operations within the zones for each of the first 5 years, followed by a 50 % credit for years 6-10.

One of the qualifying factors for a town to be eligible for the Pine Tree Development Zone program is for it to be located in a county with an average weekly wage below that of the state as a whole. According to Maine Department of Labor statistics, both York and Oxford Counties' average weekly wage figures are lower than the State average of \$524. It would appear as if, presently, properties in both counties are eligible for this program. It is anticipated that DECD will begin the rulemaking process for this program in June. Please contact Chuck Morgan at [cmorgan@smrpe.org](mailto:cmorgan@smrpe.org) for additional information or updates.

## Transportation News Update

By Tom Reinauer, Transportation Director

### SMRPC Receives Transportation Grant

SMRPC has been awarded a grant from the Federal Highway Administration under its Technology and Innovation Funding Program. Our proposal ranked #15 out of 265 nationwide. The project is officially known as "Identification of Rural Intersections to Benefit from the Installation of Intersection Collision Avoidance Warning Systems". Basically, the work will involve the analysis of rural intersections in the region with severe sight distance problems; places where it is impossible to see if a vehicle is approaching an intersection from one or both directions.

The Maine Department of Transportation (MDOT) has installed a device known as a vehicle-actuated warning device at an intersection in Norridgewock. The system uses loops in the roadway to detect approaching vehicles at a "T" intersection. There is a sign directly across from someone waiting to enter the intersection. Lights on the sign indicate an approaching vehicle, and from which direction. Our project will take a look at intersections in this region where this device may be beneficial, and narrow the list down for consideration by MDOT for installation.

### SMRPC Enters the PACTS Process

As a result of the 2000 U.S. Census, Biddeford, Saco, and Old Orchard Beach are now part of the Portland Urbanized Area. This means some changes for these communities in terms of how transportation projects are funded, and how transportation planning is accomplished. The Portland Area Comprehensive Transportation Committee, or PACTS, is responsible for planning and programming Federal transportation funds in the Portland area. These three York County municipalities are now a part of PACTS, and will be participating fully in the process.

As for SMRPC, we are also going to be working closely with PACTS on both the committee and staff level. We have a non-voting seat on the Policy Committee, and voting seats on both the Technical and Planning Committees. SMRPC will also be receiving PACTS planning funds to assist in technical assistance and specific planning projects.

For more information on transportation issues, please contact Tom Reinauer at [treinauer@smrpc.org](mailto:treinauer@smrpc.org).



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