

WASHINGTON COUNTY COUNCIL OF GOVERNMENTS

P . O . B O X 6 3 1 , C A L A I S M E 0 4 6 1 9
(207) 454-0465 * (888) 287-3006 * FAX: (207) 454-2568

Helping Washington County
Communities Plan for Tomorrow

Judy East, AICP
Executive Director

Jody Harris, Liz Hertz, Tom Miragliuolo
State Planning Office
38 State House Station
Augusta ME 04333

March 31, 2011

Dear Jody, Liz and Tom,

Please accept the following comments regarding the proposed revisions to 07-105 CMR Chapter 208, Maine's Comprehensive Planning Review Criteria Rule (hereafter "the Criteria Rule").

As Executive Director of a small rural planning agency I have a considerable amount of hands-on experience with Maine's Comprehensive Planning and Land Use Regulation Act, AKA the Growth Management Law (GM Law). In the past 9 years I have prepared 18 Comprehensive Plans for rural municipalities including the 5 largest towns and cities in Washington County. My staff person and Senior Planner, Jeremy Gabrielson, has prepared an additional 3 Comprehensive Plans and is currently working on 2 more. These have included first time plans and updates to plans prepared in the 1990s.

My office has also assisted 21 of those municipalities with the review of their Comprehensive Plan by the State Planning Office. These reviews have been conducted according to the last 3 iterations of Chapter 208, the Criteria Rule.

In the proposed revisions to 07-105 CMR Chapter 208 under consideration today there are a great many improvements to the Criteria Rule. **I would like to express my sincere appreciation for the following revisions:**

First and foremost – I heartily endorse the elimination of the checklist. I provided my comments on it to SPO staff over the past 4 years and will not repeat them at length. To summarize, the checklist:

- Contained multiple redundancies (asking the Plan to address the same issue in multiple chapters and page references).
- Had internal inconsistencies (confusing analyses with trends or conditions; confusing policy with implementation; even confusing analysis with policy), and
- Created repetitive busy work that required the preparer to assemble page number references from the Comp Plan in response to repetitive questions about data, analysis, trends, conditions, policies, and implementation strategies. Many of the necessary page references were the same but had to be referenced and responded to in multiple different questions. None of this work could be done until the plan was complete so that the final page references could be included....however some of the responses to the questions changed the pagination necessitating starting the tedious process all over again.

The proposed revisions retain the format in Section 3 of providing essential questions to help local Comprehensive Plan committees focus on the issues, analyses, trends and conditions in each Topic Area. This format (providing questions to focus the work) was adopted in the Rule revisions that gave us the checklist in 2006 and I applaud you for keeping them while jettisoning the checklist.

Second, I sincerely appreciate the effort taken to:

- Align the definitions in the Criteria Rule with the definitions in the other statutes and programs that refer to the same resources, topics, infrastructure, etc.
- Remove duplications and redundancies in one topic area so that municipalities do not have to address the same issue in multiple sections of their Comprehensive Plans. I counted no less than 40 incidents (mostly in Sections 3 and 4) where this was done;
- Tighten the language of the rule to consolidate, re-order, and clarify what is required in the Criteria Rule without losing the meaning and intent of the rule.

Third I applaud the removal of certain internal inconsistencies and requirements from the rules. Some examples include:

- Listing of advocacy groups operating in the town and region. As I have noted previously the rules required this for certain types of advocacy groups but not for others, the information becomes out dated, and we have the Internet as a means of finding such information, it does not need to be repeated in a Comprehensive Plan.
- Removing the strategy requiring an update to the Capital Investment Plan annually or biannually. The Comp Plan is a document that projects out for 10-15 years and the CIP provides guidance within that time frame and within the context of the town's fiscal reality. Opportunities and priorities can change with available grant funding, unforeseen circumstances and changes in political administration. A municipality may change its CIP under any of these circumstances or it may not; it is not necessary to require that it be changed every year.

And finally I am absolutely delighted by the specific allowance in Section 2, part 5 (Topic Area Components) for regional data and regional planning elements to replace Topic Area Components. This will significantly reduce the burden of re-creating or repeating the creation of this material in local town Comprehensive Plans. The new definition for an "Adopted Region Plan" will both recognize their creation and encourage municipal participation in drafting them. I believe this will be **a far more efficient and cost effective way to assemble, review and use data for individual towns.** It will be of particular assistance in rural municipalities with limited resources and over-taxed volunteer capital.

There is however some lack of clarity in the consideration of what is "most current data" (see Section 2 – Required Elements, #5 Topic Area Components, C. Conditions and Trends – page 2-15 of the proposed rule). The rule states that data will be considered current for three (3) years and that if a community takes longer than 3 years to prepare their plan they should request a new data set. Yet, the Criteria Rule allows a Regional Plan that is no less than 10 years old to be an acceptable substitute for data in Topic area 5. If you parse out the language think you can interpret that the clause "*so long as the regional plan*

meets the minimum required analyses, conditions and trend data, policies, and strategies from Section 3” intends that the data in a regional plan be updated if it is older than 3 years...but it does not really say that. I think this issue could be misinterpreted or be a subject of argument in the review process. Therefore I think it would be clearer to establish some criteria for when data in a regional planning element be updated. Updates to data in regional plans could be required for varying regional plan elements if/when:

- Decennial census data is released and affects the regional planning element.
- 5 year American Community Survey data is released and affects the regional planning element.
- There is significant new development in the town or region; significant could also be defined eg. greater than 100-250 jobs created by new development; greater than 200 acres of land preserved or developed.
- There were major substantive rule changes in statutes affecting land use like Mandatory Shoreland Zoning or Subdivision Law.
- Etc.

There is one item that is proposed for removal in the revised Criteria Rule that I think is unwise:

- On pages 3-41 and 3-42 (Conditions and Trends for Fiscal Capacity and Capital Investment Plan) the Criteria Rule proposes to eliminate the requirement to include
 - Community revenues and expenditures by category for the previous 5 years, and
 - A description of the community’s tax base including state valuation and mil rates for the last 5 years.

I think it is instructive for the public and planners to see the historical mil rate and valuation base as well as the previous 5 years of revenues and expenditures. It shows trends in where they are spending their money and the relative impacts of different items in the budget. Residents see this information at town meeting but rarely in trend format. While I understand that any town can go further than what is required in the rule I think we have lost something here that informs the potential sharing of regional services, the amount of debt service relative to the annual budget, and the relative expense or savings that different polices have or can make.

I have three recommendations for changing the data requirements in the revised Criteria Rule. These include:

- On page 3-40 (Public Facilities Conditions and Trends for Emergency Response System) the Criteria Rule requires the inclusion of “average call response times for different services and the dispatch location with number of communities served”. While this information is available in County Emergency Response Plans its location in the Criteria Rule seems to assume that dispatch locations are fixed. My experience is that they are not. Their location depends on time of day, repeater services, back-up dispatch and response networks that route calls behind the scenes all over the state. While this kind of information could be useful for capital investment decision making at a regional level it goes beyond the scope of a local Comprehensive Plan and strikes me as unnecessary extra work.

- Also on page 3-40 (Public Facilities Conditions and Trends for Education) the Criteria Rule requires the inclusion of primary/secondary system enrollment for the most recent year that information is available and for the ten (10) years *after* the anticipated adoption of the plan. In small towns enrollment can fluctuate a great deal and in regional centers enrollment is not predictable given the on-going reorganization of school administrative units and the closure of rural schools. Significant changes in development activity or population will have an effect on school enrollment, many of which are unpredictable. For instance the increases in personnel along the border since 9-11 have had a significant impact on population and school enrollment in eastern Washington County. Such changes were completely unpredictable on September 10, 2001. Again, the level of detail required in a 10 year enrollment projection is very difficult to achieve. A review of enrollment and school consolidation trends would be sufficient to inform the discussion of capital investment needs.
- On page 3-48 (Required Elements in the Future Land Use Plan) the Criteria Rule requires that “Given current regulations, development trends, and population projections, how many new residential units and how much commercial, institutional, and/or industrial development will likely occur in the planning period? Where is this development likely to go?” As I have commented during the review periods in the past you can really only guess at the answer to these questions or base your projection on past trends. Severe economic downturns, like we are currently experiencing, or large increases in the cost of fuel (in 2008 and again in 2011) will change projections a lot. One large commercial or industrial development can also have a huge impact (in both amount and location of development) and can take years to come to fruition. The three LNG proposals in eastern Washington County have been going through the regulatory, rumor and public debate mill for 6 years now. None have yet come to fruition but the projections of their development impact have been the subject of acrimonious debate for the entire time. Consultants are hired on both sides to debate the development benefits and impacts. The Comprehensive Plan does not have the resources to jump into the debate with its projections.

If the question is how many units of residential, commercial, institutional or industrial development “could” occur in the planning period then that is essentially a build-out analysis...and beyond the scope of a comp plan given budget issues. I think the more important issue here is growth pressure and what a community will do about it. One response to significant growth pressure (based on past trends and several pending, feasible, or already permitted development proposals) is to perform a build out analysis. That could be a policy/implementation response proposed by the comp plan to a qualitative analysis of observable growth pressure. Then you could do a proper job of it and answer the question with sufficient time and resources. I really don't think it is possible to do a meaningful job in response to this Required Element as it is written.

Finally, I would like to comment on the time that it takes to have a Comprehensive Plan reviewed by the State Planning Office. In years past some have complained both about the time that review took and the

demands placed on municipalities during those reviews. I would like to share my experience of assisting 20 municipalities through the review process in the last 9 years. The statistics speak for themselves:

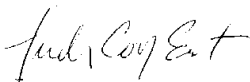
- 13 out of 20 Comprehensive Plans were found consistent upon 1st submission and then adopted locally with very minor or no revisions.
- 5 out of 20 Comprehensive Plans were found inconsistent upon 1st submission with very minor changes required by the SPO review. Local adoption of 2 out of these 5 Comp Plans was delayed for several years as changes were debated by town residents but all of these changes were acceptable to SPO.
- Only 2 out of 20 Comprehensive Plans were found inconsistent upon 1st submission due to major substantive changes:
 - The first was because the Comprehensive Plan was prepared entirely by volunteers; once they hired the WCCOG to address the inconsistencies the Comprehensive Plan was found consistent on first submission.
 - The second was because the town sought to not include the Future Land Use plan in the Comprehensive Plan.

While some reviews took a long time and made multiple demands on municipalities (several years ago in other parts of the state), the actions of SPO staff in recent years are very different. In my experience the primary cause of delays in the review process stems from a vocal minority in individual towns who do not like or want any form of land use regulation (or Comprehensive Plans upon which future regulations will be founded) in their town.

The Growth Management Act, by definition, affects private property and almost every land use and public expenditure decision of civic life. It should come as no surprise that it engenders passion and often extreme views from people from across the political spectrum. In my experience the Land Use staff at SPO are responsive, respectful, helpful and attentive to their duties in administering this most controversial of statutes.

Thanks for your time.

Sincerely,



Judy East