

The Maine Sportsman

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Jon's Jottings with Jon Lund

National Park: Jon's Up on the Soapbox Again

What have we learned from the Plum Creek fracas?

In April 2005 Plum Creek asked the Land Use Regulation Commission (LURC) to rezone a large tract of land in the Moosehead area. It was the largest residential development in Maine history. The original plan called for construction of residences on 975 subdivision lots, a 3,000-acre resort on Brassua Lake, and a 500-acre resort and development at Lily Bay on Moosehead, among other developments.

Conservation organizations and over a thousand Mainers (including this writer) showed up at hearings and expressed their concerns about the scope and extent of the proposal and its impact on future use of the area by sportsmen.

Ready! Fire! Aim!

LURC had previously taken the position that its comprehensive plan, adopted in 1997 was in need of being updated. A number of individuals (including this writer) petitioned LURC to postpone consideration of Plum Creek's proposal until the comprehensive plan was brought up to date. Without significant debate, LURC rejected the petition. Putting it bluntly, it seemed as if LURC preferred to conform its comprehensive plan to fit Plum Creek's proposal rather than the other way around.

A year later, Plum Creek proposed a second plan. This revision still contained almost 60 subdivisions and the same number of lots and two resorts. This second plan raised as many, or more, concerns as the first.

After yet another year, Plum Creek presented its third plan, which generated more critical comment. Although some of the development was shifted around, it included as many subdivision lots as before, just as many resorts, and more residential units and more acres of development than before with a potential for over 2,300 house lots.

In December and January 2008, LURC held citizen hearings at various sites in the state and more than four weeks of technical hearings. Testimony was taken from hundreds more people and the record swelled by thousands of pages of information.

LURC Provides Road Map

In May 2008, staff and consultants to LURC provided Commission members with an analysis designed to show what changes were needed in the plan to make it acceptable for LURC approval.

In October 2008 LURC in effect told Plum Creek either to accept the changes proposed by LURC or possibly face rejection of its plan. Plum Creek accepted the changes. In September 2009, LURC approved the final rezoning plan.

Some of the intervenors in the case have signaled their intention to appeal the LURC decision to court. One of the grounds for the appeal stems from a novel strategy followed by Plum Creek to enable it to dodge the financial impact of the compensation provisions in the LURC statute. LURC is authorized to require a developer to compensate for the negative environmental results of a development by doing something positive. Providing a new public access or granting a conservation easement allowing public use of a part of the developer's land are typical compensation items. In this case, Plum Creek agreed to donate some easements, but the company also negotiated a much larger deal to sell land and conservation easements to conservation organizations at fair market value as "compensation" for the negative effects of its development. Prior to this case, no developer before LURC had asked to get "compensation credit" for land and easements sold at fair market prices to third parties.

In this instance, the third parties buying the land and easements are charitable organizations that are supported by tax-deductible contributions, so in effect taxpayers are subsidizing Plum Creek's "compensation."

To draw an analogy, in some situations a person before a court who has harmed the public may be required to do a certain number of hours of public service. Should that person get credit for public service if he takes a job providing services to the homeless, and is paid market labor rates for his work?

Traditionally, Maine Courts have been reluctant to second-guess the decisions of administrative agencies, but it will be interesting to see if our Courts approve Plum Creek's plan to get paid tens of millions of dollars for its "compensation."

Lessons Learned

So what have we learned from this tortuous exercise in administrative procedure?

1. The part-time citizen participation type of board that comprises LURC is not adequate to deal with a huge and complex plan such as Plum Creek has put forth, with public hearings extending for weeks at a time, proceedings going on for more than four years and thousands of pages of record.

It remains to be seen whether the legislature will see fit to re-shape LURC. My guess is that conservatives will prefer to keep LURC understaffed and overwhelmed.

2. We cannot count on LURC or perhaps any other administrative agency to provide permanent protection for the remote character of the North Maine Woods, which many hunters and fishermen and other outdoors people have come to expect.

At one time, the land in Maine's Unorganized Territory was mostly held in large blocks by paper companies and other long-term owners whose goal was to provide fiber or lumber for their mills, or for the market. Those blocks of land are being broken up into smaller tracts whose owners have a variety of goals. In some cases, the goal is to make as much money as quickly as possible.

One answer to slow the spread of rural sprawl development has been to acquire conservation easements, in which the owner is paid a sum of money in return for not developing or subdividing the land. By some accounts, as much as 240 million dollars have been spent on conservation easements in Maine in recent years, yet the percentage of public land has hardly increased. It is a fair question to ask, "What do we have to show for nearly a quarter of a billion dollars of expenditure? True, we have forestalled development in some areas, but what else? Have we generated new jobs? Have we significantly boosted the economy?"

A National Park Fan

When Angus King left office after eight years as Governor of Maine, he and his wife and family set out on a six-month, fifteen thousand-mile tour of the country in a forty-foot motor home. They kept a blog of their trip, and it is still accessible on the Internet. Would you guess where they focused much of their time and attention? Was it on wonderful land held in working landscape easements?

No. They focused on visiting a series of national parks including Yosemite, Grand Canyon, Big Bend, and Yellowstone. They became the ultimate tourists, and loved the national parks.

At Yellowstone, Angus King wrote, "I believe setting aside places like this is one of the most far-seeing and important things one generation can do for another..."

Angus King as governor was more visionary than most, but he missed a chance to set in motion a study of the possibilities of a national something in the North Woods. I use the term "something" purposely, because ever since Percy Baxter's day and before, Mainers have been so spooked by the thought of a National Park in Maine that few even want a study of the benefits and costs of a national presence.

There are many varieties of national ownership that might fit well here. For instance, there are national forests, national preserves, national parks, national monuments, and wilderness areas. A combination of such designations could allow for a mix of timber harvesting, outdoor recreation and hunting, fishing and trapping. The right combination could be an economic engine that would give a boost to the economy that is unlikely to happen no matter how many millions of dollars we spend on conservation easements.

All it would take is political leadership willing to call for a study of the possibilities of national ownership in the North Woods.