

**TESTIMONY OF JAMES ST. PIERRE
REGARDING ZP 707
PLUM CREEK PETITION FOR REZONING
MOOSEHEAD REGION
“CONCEPT PLAN ARCHITECTURE”**

**PRESENTED TO THE
MAINE LAND USE REGULATION COMMISSION**
September 14, 2007

INTRODUCTION

My name is James (Jym) St. Pierre, Maine Director of RESTORE: The North Woods, a regional conservation organization based in Hallowell, Maine. RESTORE has been involved in wildlife, forest, and land use issues in Maine during the past sixteen years. I have been involved in land conservation and economic activities at the local, regional, and state levels in my home state of Maine for over 30 years.

I hold a BA degree from the University of Maine in Philosophy and a Master's in Natural Resource Economics. During the 1970-80s, I served on the staff of the Land Use Regulation Commission for 11 years. I held a variety of positions at LURC, including jobs that involved resource analysis and implementation of the Commission's "permanent" zoning, development review and permitting, enforcement and compliance, planning, and administration. For a number of years, under several directors, I served as deputy director. For a significant period I served as acting LURC director. Since then, over the past 18 years I have worked exclusively for public interest organizations on issues related directly to the areas within LURC jurisdiction.

Also, as a volunteer I have relevant experience with zoning programs having served on my local planning board, board of appeals and comprehensive planning committees, as well as in numerous other public and public interest positions involving land issues.

My full CV has been provided with my earlier pre-filed testimony.

I have reviewed Section 4 of Plum Creek's Concept Plan, the co-called "architecture," to see if it meets the Commission's legal tests, including whether it "strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation." (LURC Rules §10.23,H; P-RP Subdistrict Criteria for Review)

Based on my experience on the LURC staff and more than 30 years of involvement with the Commission's programs, I conclude that the proposed zoning scheme does not meet the legal requirements. Below are my specific comments about the proposed Concept Plan architecture.

COMMENTS

1. Belated, confusing submissions. Plum Creek submitted its Concept Plan for Lands in the Moosehead Lake Region in April 2007. It was deemed complete for processing soon after, which means no significant changes should have been submitted by Plum Creek. However, fundamental changes were submitted in August 2007. That should have restarted the clock for processing of the petition and full red-line and clean versions should have been promptly submitted to all parties.

I have reviewed the original April 2007 Section 4 of the Concept Plan as well as the amended August 2007 version. It is difficult to determine what is now being proposed, but my comments are based on my understanding of what is on the table. There seem to be significant deviations from the LURC normal standards.

The current lack of clarity is also indicative of the confusion that will ensue in the future if Plum Creek's plan is approved. For decades, LURC Commission members, staff, developers, potential lot buyers and the general public will have to interpret an entirely separate set of rules for zones and activities in the Concept Plan area than obtain in the rest of LURC jurisdiction. This has not been a big deal in the relatively small areas covered by previous concept and resource plans approved by LURC. It will be a nightmare in this case.

2. Privatizing decision-making. Plum Creek's rezoning petition proposes to replace

“in its entirety, the existing Chapter 10 of the Rules and Standards promulgated by the Maine Land Use Regulation Commission and shall apply to the Concept Plan for Plum Creek's Lands in the Moosehead Lake Region.” (Concept Plan for Plum Creek's Lands in the Moosehead Lake Region, Section 4, Preface, at i)

Plum Creek has asked LURC, both in its April and August submissions, to lock in an entirely new set of zoning districts and standards for 30 years:

“The approved Concept Plan is a binding contract.” (Concept Plan for Plum Creek's Lands in the Moosehead Lake Region, Section 1, Introduction and Purpose, at 5, and Section 2, Description, at 1 and 2)

“...to the fullest extent allowed by law the[se] provisions would remain fixed throughout the term of the Concept Plan...In the event of an inconsistency between the [Plum Creek] provisions and the provisions of Chapter 10, the [Plum Creek] provisions...shall control.” (Letter from Virginia E. Davis to Agnieszka Pinette RE: Plum Creek – Revised Plan Architecture, August 13, 2007)

Moreover, while Plum Creek has been allowed to make changes months after its petition was supposed to be complete, it appears the proposal still stipulates that the

“Concept Plan may only be amended or extended upon approval of both the Commission and the Landowner.” (Concept Plan for Plum Creek's Lands in the Moosehead Lake Region, Section 4, Preface, at i, and Section 1, Introduction and Purpose, at 5-6)

In other words, the landowner would have veto power over any changes the Commission may determine are necessary during the three decades duration of the plan.

As intervenors in this proceeding, RESTORE-FEN have pointed out in a number of documents that this would be fundamentally inappropriate. (RESTORE-FEN Motion to Dismiss ZP 707 filed with LURC on July 27, 2007; RESTORE-FEN Reply to Plum Creek's Brief in Opposition to Motion to Dismiss filed with LURC on September 7, 2007)

The Commission does not have express statutory authority to, in essence, enter into contract zoning for thirty years in a manner that does not allow the Commission to amend the zones and standards, if that was determined necessary for the public benefit. LURC should not be delegating its public oversight responsibilities to private landowners.

3. Loss of control by LURC. The Concept Plan would set up a planning process that sounds logical in some ways. However, when you look at the fine print, it mandates that "Site-specific resort development phases and implementing subdivisions and development permits consistent with an approved resort master plan shall be approved." (Letter from Virginia E. Davis to Agnieszka Pinette RE: Plum Creek – Revised Plan Architecture, August 13, 2007, Sub-Chapter II, at 12)

The Legislature can direct LURC to do things. Why should Plum Creek or any subsequent landowner be given the authority to direct LURC to approve certain developments?

4. Protection zones. Plum Creek is proposing significant changes to existing protection zones that happen to be within the 20,000 acres of proposed development zones. For instance, the Concept Plan would

- eliminate all protection zones on the edge that overlap development zones
- prohibit LURC for 30 years from adjusting the boundaries of any protection zones within new development zones
- prohibit LURC for 30 years from expanding any protection zones that would overlap development zones
- prohibit LURC for 30 years from removing any roads, water crossings, trails and boat launches in protection zones within new development zones

(Letter from Virginia E. Davis to Agnieszka Pinette RE: Plum Creek – Revised Plan Architecture, August 13, 2007, Sub-Chapter II, at 43.)

Why should LURC allow critical protection zones to be eliminated or frozen in this manner?

5. Deviations from LURC rules. There are significant deviations in the Plum Creek Concept Plan from the existing LURC rules. One example is illustrative.

Plum Creek proposes a definition of huts, which contemplates structures with a footprint of up to 5000 square feet. That exceeds any traditional and common sense definition of a hut. For comparison, remote camps and remote rental cabins are defined as structures of up to 750 square feet.

It is my understanding that under the Concept Plan, a hut in the resort zone could be a 100 ft x 50 ft building (5000 sq ft footprint) six stories (60 ft) tall. The Dimensional Requirements (10.26,F,1,b) in the Concept Plan seem to allow buildings up to 100 feet tall, so in theory a hut elsewhere in the Concept Plan area could be even larger.

To add to the confusion, I have been unable to find any zones where huts are expressly allowed. The Resort Master Plan Application Submission Requirements, have a definition of recreational uses and facilities that refers to “trail huts.” (D-GN2RM, 4, p. 7) Among the uses that would be permitted within a Resort Master Plan are “warming huts.” (D-GN2RM,7,c(4), at 19) And the “Balance Easement” uses the term “backcountry huts.”

However, it is not clear to me where so-called huts would be allowed and how large they could be. In any case, one would normally envision huts as primitive, small, remote structures. Plum Creek seems to have in mind structures that could be elaborate, large and not remote. This sort of confused departure from the normal LURC definitions and rules will present major problems for LURC and undermines public confidence in the Commission’s ability to regulate development to protect the public interest.

6. Resorts and incompatible uses. Plum Creek’s proposed zoning scheme would deviate from the normal LURC rules in significant ways.

For example, compared to the normal LURC General Development (D-GN) zone, the Resort Development (D-GN2RM) zone would allow many forestry and utility uses without a permit (subject to standards), including:

- forestry roads
- mining under 5 acres for forestry
- operation of machinery and buildings for road equipment
- structures up to 20,000 sq ft for utilities

How will inevitable conflicts between resort users and loggers be resolved? Why should utility structures up to 20,000 sq ft be allowed without permits? In April 2007, Plum Creek proposed allowing utility structures up to 2,000 sq ft without permits. Why the change?

Compared to the normal LURC General Development (D-GN) zone, the Resort Development (D-GN2RM) zone would also allow many new uses by permit, including:

- public safety buildings
- Nordic trails facilities
- resorts
- wastewater plants
- maple sugar operations
- portable mineral processing equipment
- trailered ramps and beach related facilities
- railways
- hot tubs, pools, etc
- resort accommodations and subdivisions
- employee housing
- clubhouses, artificial fish ponds, skateboard parks, etc
- truck and equipment storage

What are the implications of allowing all these new uses and creating built-in conflicts between recreationists and forestry activities?

The Rural Mixed Use Development (D-GN3M) zone would also allow news uses (by permit), including

- commercial recreational facilities larger than 8000 sq ft floor area
- general commercial facilities up to 2500 sq ft floor area per building
- clubhouses, etc. for social functions

It would also allow this zone to be moved up to 1 mile away.

What are the implications of LURC allowing these expanded uses and allowing zones to float to locations we cannot know or predict today?

7. General Management zones. The Concept Plan now pegs the General Management (M-GNM) zone to LURC's normal General Management (M-GN) zone.

If LURC makes significant changes at any time during the 30 years of the Concept Plan to its M-GN zoning, does the Plum Creek zone overrule the LURC zone? How will LURC keep track of let another set of rules for hundreds of thousands of acres?

8. Diluted standards. Plum Creek is proposing deviations to the normal LURC Development Standards. For instance, the Concept Plan exempts noise from ATVs, snowmobiles, trucks, outdoor concerts, fireworks, etc. (10.25,F,b(4) and (5))

Plum Creek is also proposing deviations to the normal LURC Dimensional Requirements. The Concept Plan drops the minimum lot size for all residential uses to 20,000 sq ft (10.26,A,1,a) and drops the minimum frontage on rivers and great ponds from 200 to 150 ft/dwelling. (10.26,B,2,a)

Why should LURC allow its standards to be downgraded in this manner?

9. Scenic impacts. The Concept Plan stipulates that “Opening view corridors for resort accommodations and recreational uses and facilities shall be allowed.” (Letter from Virginia E. Davis to Agnieszka Pinette RE: Plum Creek – Revised Plan Architecture, August 13, 2007, Sub-Chapter II, at 13) The proposed Development Standards likewise would add a provision allowing opening of view corridors (10.25,E,1,d)

This is at odds with LURC’s Comprehensive Land Use Plan and normal review criteria. Why should LURC downgrade its standards to protect scenic resources?

The Commission’s Comprehensive Land Use Plan has a number of references to scenic resources. For example, there is a goal to:

Protect scenic character and natural values by fitting proposed land use activities harmoniously into the natural environment and by minimizing adverse aesthetic effects on existing uses, scenic beauty, and natural and cultural resources. (CLUP, Chapter 5, Section 1, M, p. 139)

The Commission’s policies on scenic resources (CLUP, Chapter 5, Section 1, M, p. 139-140) include to:

1. Encourage concentrated patterns of growth to minimize impacts on natural values and scenic character.
2. Regulate land uses generally in order to protect natural aesthetic values and prevent incompatibility of land uses.
3. Protect the scenic values of coastal, shoreland, mountain, recreation, and other scenic areas.

The Comprehensive Land Use Plan also talks about protecting the resource values identified as significant or outstanding in the Wildland Lakes Assessment. Moosehead Lake was rated outstanding in all categories in that study, including for scenic quality and shoreline character. Other lakes and ponds in the area also got high marks.

The LURC Review Standards for Structures Adjacent to Lakes (Section 10.25,A), say that

These standards must also be considered in applying the criteria for adoption or amendment of land use district boundaries, as provided in Section 10.08, to proposed changes in subdistrict boundaries adjacent to lakes.

1. Natural and cultural resource values: The proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildland Lakes Assessment.
5. Natural character: Adequate provision has been made to maintain the natural character of shoreland.

6. Lake management goals: The proposal is consistent with the management intent of the affected lake's classification.

Why should LURC allow openings for views for Plum Creek, when other landowners have to adhere to policies and standards that are more protective of scenic values?

CONCLUSION

Based on my experience on the LURC staff and more than 30 years of involvement with the Commission's programs, I believe that the zoning scheme proposed by Plum Creek in ZP 707 does not meet the legal requirements for approval and should be denied.

James A. St. Pierre
Readfield, Maine

September _____, 2007

COUNTY OF KENNEBEC
STATE OF MAINE, ss

On this day personally appeared the above James A. St. Pierre and made oath that the above statements are true and correct to the best of his knowledge, information and belief.

Before me,

Notary Public/Attorney

Dated: _____

Print Name: _____

Commission expires: _____