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The Maine Voter vol. 23, no. 5 (March 1976)

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The MAINE VOTER

Dolores Vail
15 Johnson Rd.
Falmouth, Me. 04105

Published by The League of Women Voters of Maine

Dolores Vail, President

Vol. 23, No. 5 March, 1976

Nancy MacLean, Editor

CALL TO COUNCIL

May 26-27, 1976

10 a.m. Wednesday to 2 p.m. Thursday

Memorial Union — University of Maine Orono

The Council is composed of the Board of Directors of the LWV of Maine, the Presidents of local Leagues, and two delegates from each League. Visitors are welcome. It meets in the interim years between State Conventions and provides an opportunity to review program, recommend direction, and adopt a budget.

LEGISLATIVE ACTION

During the Special Session, the League has been observing and testifying on several bills having to do with EG, HR, Taxation, Right to Know, and State Government. State Action Chairman Elaine Goodwin will have complete information in the next VOTER. She and the State Board initiated a legislative newsletter in January. "The Maine Action" has been sent to 95 subscribers around the state.

HELPFUL PUBLICATIONS

PAK Public Action Kit tells you what you need to know to organize a lobbying campaign, testify at hearings, gain public support for goals, and even when to go to court in the public interest. Includes 10 pamphlets describing what to do and how to do it. Order: PAK #629 \$3.00 each from League of Women Voters of the U.S. 1730 M. Street, N.W., Washington, D.C. 20036.

Maine LWV Voters Service publications — many have been reprinted and updated. Excellent for use in finance drives, citizen education plans, new voter information. Write to Dorothy MacLean, 30 Phillips Road, South Portland, 04105, for information.

TAXES

Well, the Legislature passed an educational funding bill. State Tax Chairman Joanne Babcock has reported on it in "The Maine Action" and will have an article in a future "Voter". Several Leagues have had meetings on Taxes and found the Tax Quiz which she devised to be very helpful. We also need to become informed about the recommendations of the Governor's Tax Policy Committee in order to lobby effectively at the next legislative session. Here is a summary — call your tax chairman for more information.

- A. Recommendations for Fundamental Structural Reforms
 - 1. The Property Tax:
 - a. The Municipal Property Tax Should be Reduced
 - b. Nonresidents Should Continue to Pay Their Equitable Share of Property Taxes
 - c. Upon Achieving a Primarily Service Related Municipal Property Tax, Business Inventories Should be Taxed
 - d. A Local, Optional, Income Tax Should be Made Available to Municipalities
 - 2. The Personal Income Tax:
 - a. Increase the Income Tax's Share of the State Tax Mix
 - b. Income Tax Equity Should be Improved
 - 3. The Sales Tax:
 - a. The Sales Tax Base Should be Expanded
 - b. Sales Tax Should become a Levy on Luxury Consumption
- B. Recommendations for Interim Structural Reforms
 - 1. Property Tax:
 - a. Institute a General Property Tax "Circuit Breaker"
 - b. Reimburse Loss of Inventory Taxes through Revenue Sharing Formula
 - 2. Personal Income Tax: Income Tax Equity should be improved (include some Federal provisions)
 - 3. Sales Tax: Sales Tax rate should be lowered and base expanded
- C. Reforms in Administration
 - 1. Property Tax:
 - a. Repeal classifications of Farm Land, Open Space, and "Tree Growth"
 - b. Investigate and adjust "Tree Growth" Formula
 - c. Until the above are repealed, eliminate unfair Tax Breaks from Farm Land, Open Space and "Tree Growth" Classifications
 - 2. Institutional Property Tax Exemptions
 - a. It should be Locally Optional Whether Exempt Properties Pay in Lieu Service Charges
 - b. State Should Pay Municipalities for Services Provided to State Owned Property
 - 3. Inheritance and Estate Taxes: Should be based on Federal system
 - 4. Income Tax: Nonresident Capital Gains should be more efficiently Collected.
 - 5. Tax Shelters: no Tax Shelter adjustments at this time
 - 6. Unorganized Territory: should pay uniform tax for Education; and be Taxed at Rate that pays for Other Services it Receives.

LAND USE JURISDICTIONS AND AUTHORITIES

DIFFUSION AND CONFUSION?

On the land we domicile, walk and ride, play, go to school, work, grow crops, harvest trees, extract minerals and shellfish, hunt and trap, and dump wastes. Although the "my home is my castle" philosophy is still firmly entrenched, there is growing recognition of the need for comprehensive planning and land use regulation in order that multiple use of the land may continue, and that everyone's private rights may be protected. So we devise a land use management system, which balances private rights against the public right to health, welfare and safety; balances one level of government's prerogatives against those of another; and which, through legislative enactment, assigns jurisdiction and authority to governmental agencies.

Since legislative process is fluid — laws being continuously adopted, amended, and repealed — the land use management system tends to be fluid too. And its effectiveness depends as much upon an informed and supportive citizenry as it does upon the officials who enforce it.

The Land Use Management System in Maine

The land use management system in Maine, like Topsy, just grew. It may be characterized as diffused. It is really *two* systems — horizontal and vertical. In both there is considerable co-jurisdiction and overlapping of responsibility. The horizontal system, which consists of state agencies, is charted on p. 2.

The Vertical System of Planning

The vertical system concerns itself primarily with comprehensive planning, and consists of local, regional and state agencies.

Local planning was practically unheard of in Maine before legislation was passed in 1943, enabling any municipality to appoint a five-member planning board whose duty was to prepare, adopt, and amend a comprehensive plan. Only a municipality with a planning board could enact a zoning ordinance. A home rule law passed in 1971 repealed the enabling legislation, leaving the size, composition, and terms of the planning board up to the local legislative body. Whether or not to adopt a plan and zoning ordinance is still a local decision. The Mandatory Shoreland Zoning Act, which required towns to zone 250 feet of shorelands under state guidelines, hastened the formation of planning boards in many municipalities. Between 1972 and 1974, out of a total 496 municipalities, the number of towns with planning boards grew from 296 to 401; the number of towns with zoning ordinances grew from 87 to 129.

The *State Planning Office* was established by the Legislature in 1968 as an "advisory, consultative, coordinating, administrative and research agency"¹ directly under the Governor. It is part of the horizontal system in that it coordinates plans of other state agencies — for example, those of the Departments of Inland Fisheries and Wildlife and Marine Resources for continued abundance and utilization of species and preservation of habitats. SPO provides a state system for uniform codification of inventories and other data, and computerization as a basis for planning and decision-making. It played a coordinating staff role in the reorganization of Maine state government in the

early 70's. 16 major departments were created, with Commissioners functioning as a cabinet under the Governor. One of the purposes of reorganization was to integrate the functioning of many autonomous state agencies and to unify policy under the Governor.

SPO assisted in the formation of regional planning and development districts throughout the state, and 11 regional planning commissions to coordinate local planning on a watershed basis. The Office provides planning assistance to both local and regional planning agencies. It coordinated the formulation of shoreland zoning guidelines by LURC and BEP, and files the shoreland ordinances after they have been approved by LURC and BEP.

State comprehensive planning for "human and physical resources development and utilization",² among other elements, is a statutory duty of SPO. Its approach to a land use system is that "an acceptable state policy and program for land use control should be decentralized and as simple and direct as possible."³ Of prime concern is "to balance the need for expanded state participation in the control of land use with the objective of limiting this participation to those land use decisions which involve only state or regional interests while retaining local control over the smaller, community issues of only local concern."⁴

SPO issued a "tentative" land use policy in 1974. It is not a statement of land use goals for the state, rather a methodology for establishing them.

SOME OBSERVATIONS ON THE SYSTEM

Policy-making

There is no *one* "official" state land use policy in Maine as, for example, was enacted by the Legislature in Vermont. In Maine there are *many* policies scattered throughout the statutes ("It is the policy of the State . . .") adopted on an *ad hoc* basis. Departmental policy is made by department and bureau heads, sometimes with the assistance of citizen advisory boards. The Commission on Maine's Future, composed of citizens, legislators and the Director of SPO, is preparing a growth and development policy by 1977. Presumably it will contain land use policy. In addition, the Governor, through his cabinet, is in a position to coordinate and develop state policy; and the Governor is able to make policy official through the Executive Order.

Planning

Similarly, there is no *one* state comprehensive plan. The planning process is deliberately (and perhaps necessarily) decentralized. LURC plans for the unorganized territory. In the organized area of the state, municipalities may or may not plan, although shoreland zoning is mandatory. At best local planning is uneven and directed towards local interests. State agencies inventory land uses and resources and plan according to their particular responsibilities. But who chooses between conflicting plans, and on what basis?

Municipal membership in regional planning commissions is voluntary. Representatives from towns are not necessarily elected officials. RPC budgets depend on contributions from member towns and federal and state

MAJOR STATE AGENCIES OF THE STATE LAND USE MANAGEMENT SYSTEM

<u>STATE AGENCY</u>	<u>LAND USE JURISDICTION</u>	<u>LAND USE AUTHORITY</u>
State Planning Office	State-wide	Comprehensive planning through coordination.
Department of Environmental Protection, and Board	State waters, air regions, wetlands, shorelands (review), and sites substantially affecting environment	Sets water and air quality standards; regulates liquid discharge and emissions, wetland and great pond alterations, Site Location of Development; approves shoreland zoning of towns.
Dept. of Conservation LURC	Unorganized territory	Plans, zones, and regulates.
Bureau of Forestry	Public and private forests	Fire, insect, and disease control; advises on cutting practices; manages state forests; promotes wood industry; regulates roadside cutting.
Bureau of Parks and Recreation	State parks, trails, memorials	Plans, establishes, maintains, and regulates sites.
Bureau of Public Lands	Public lots and other state-owned lands, unconveyed islands, submerged lands	Plans management of and manages public lots; oversees management of other state lands; permits utilization of public lots.
Bureau of Geology Maine Mining Bureau	Statewide State-owned lands, seabed	State Geological Survey, mapping. Permits prospecting and mining.
Department of Agriculture Soil & Water Conservation Commission	Statewide Soils, watersheds	Promotes agriculture, regulates products. Coordinates program of voluntary conservation plans and management by private landowners.
Pesticides Control Board	State-wide	Regulates pesticide application.
Department of Inland Fisheries and Wildlife	Inland waters, fishways, uplands	Regulates fishing, hunting, enforces laws; manages wildlife preserves and hatcheries.
Department of Marine Resources	Territorial waters and bed, intertidal zone	Closes flats (polluted), regulates commercial harvesting of marine species; research; permits experimental cultivation, harvesting.
Department of Transportation	State highways, state-aid roads, ports, airports (for safety)	Plans integrated transportation system; locates, designs, constructs highways; operates ferries; Regulates signs, junkyards along highways.
Maine Port Authority	State-owned facilities, specifically in Portland for oil dev.	Buys, sells, operates port facilities
Public Utilities Commission	All public utilities, common carriers	Approves location of permanent power-generating facilities and construction; licenses utilities; inventories water resources; may recommend dam construction.
Maine Turnpike Authority	Turnpike, Kittery-Augusta	Operates and maintains with toll revenue.
State Development Office	State-wide	Promotes new, expanding industry; marketing.
Office of Energy Resources	State-wide	Comprehensive energy plan and policy on resources.
Baxter State Park Authority	Baxter State Park	Manages park and maintains park facilities.
Maine Housing Authority	State-wide	Administers federal funds to increase housing.
Historic Preservation Commission	State-wide	Inventories buildings and sites of historic interests; proposes for National Register; advises towns on historic districts
Critical Areas Advisory Board	State-wide	Advises SPO on inclusion of critical areas into Registry.

grants for special purposes. Comprehensive planning has not been done; a regional plan is a patch-work of local plans. As with SPO, RPCs and even the Council of Governments is strictly advisory. In the light of these facts, a proposal to strengthen county government to include planning and perhaps even regulatory authority, may be a viable answer to the need for an intermediate level in the land use system.

Conservation-Development Dichotomy

One of the consequences of lack of a state land use policy is lack of consciously formulated priorities. There is no way of resolving conflicts between departments as they carry out their individual policies. Conservation policy often gets in the way of development or utilization policy. Most departments involved with land use experience this same dichotomy within their own organizations. Should Inland Fisheries and Wildlife promote more fishing and hunting to increase its dedicated revenue so that it can better enforce fish and game laws? Or should it discourage increased fishing and hunting for conservation purposes? The same dichotomy exists in Marine Resources, Bureau of Forestry, and Bureau of Public Lands. Even the Board of Environmental Protection may consider economic factors in reviewing applications under the recent Site Location of Development amendment.

Voluntary Management

90% of Maine is timberland and a third of Maine's jobs are in the forest products industry. Yet there are no mandatory cutting-practice regulations for conservation purposes. The program of woodlot management conducted by the Bureau of Forestry is advisory to owners of *small* woodlots only.

Similarly, Maine is blessed with large acreages of prime agricultural land. The only program for managing this resource is again a voluntary one, under the Soil and Water Conservation Commission and districts.

Only 2-3% of Maine land, it should be noted, is owned by the state and under the management supervision of the Bureau of Public Lands.

Overlapping and Co-Jurisdictions

Overlapping and co-jurisdictions can result in conflict among agencies. BEP, Bureau of Public Lands, and the Maine Mining Bureau all have regulatory authority over submerged lands. The BEP and LURC both issue permits for site location of developments and wetland alterations. Municipalities may share the responsibility for issuing permits for certain developments under the Site Location law and permits for wetland alteration, if the authority has been delegated to them by BEP and on final review of BEP. (Since this amendment went into effect last October, only a handful of communities have applied for this authority.) Intertidal zones which are otherwise under the jurisdiction of Marine Resources, may, in towns with shellfish ordinances, be regulated by towns. In any case, MR may close a flat because of pollution.

Enforcement

Maine has some strict land use regulations, but the question always arises as to how strict enforcement is. The state subdivision law, which must be observed by local planning boards in subdivision review, is not enforced by the

BEP, which administers the law. Cooperation of agency enforcement officials is the key to the enforcement of many state land use regulations. Wardens of Marine Resources and Inland Fisheries and Wildlife may issue citations of violation of the Coastal Wetland Alteration and Great Pond Acts, respectively. Other field personnel, such as park and forest rangers, may report violations to DEP and LURC. DEP and LURC enforcement staffs are small, and reliance upon other agency personnel with their own duties and priorities is a necessary, but perhaps inadequate, means of enforcement.

Citizen Participation

To what extent do citizens participate in the decision-making process regarding land use management? They may advise on departmental policy through advisory boards, and decisions on regulations through public hearings. Requirements for public notification of new legislation or regulations and permit hearings are widespread in the statutes, although in fact such notices are buried in newspaper advertisement pages.

Except for the Commission on Maine's Future, there is little opportunity for public participation in the *formulation* of comprehensive policy or plans. The Coastal Zone Management and the "208" water quality programs, both under *Federal* requirements and grants, are using local and regional citizen advisory committees in the planning phase. The programs may well be a planning model for Maine. "208" is actually dealing with institutional arrangements for regulating land use in five critically polluted watersheds in the state.

There is no doubt the land management system in Maine is in flux and is diffused. Is it unnecessarily confused? Is it working? Is there a better way?

Nancy Masterton

Endnotes

1. *M.R.S.A.*, T. 5, Section 3302.
2. *M.R.S.A.*, T. 5, Section 3302.
3. *Maine State Policies Plan*, State Planning Office May 1974.
4. *IBID*.

Notice of Error. The January 1976 *Maine Voter* carried a chart entitled "How Many Fingers in the Land Use Pie?" The check mark appearing under Land Acquisition Authority for LURC is erroneous. Its former authority to acquire easements has been repealed.

THE MAINE VOTER

VOLUME 23

NUMBER 5

Published six times a year in August, October, November, January, March, April by the League of Women Voters of Maine.

Second class postage paid at Lewiston, Maine 04240

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Subscription price 50¢ per year as part of membership dues.