



# Introduction Chapter

## Comprehensive Plan

Amended:

November 3, 2015

November 5, 2013

**Adopted: November 2, 2004**

### ENACTMENT BY THE LEGISLATIVE BODY

Date of Town vote to amend this Chapter of the Comprehensive Plan: 11/3/15.

Certified by the Town Clerk: Mary-Anne Depucinski on 11/10/15.  
(signature) (date)

# INTRODUCTION

This Chapter is the Introduction to the Comprehensive Plan of the Town of York, Maine. Its purpose is to explain what comprehensive planning is all about, and to provide the framework within which other components of this Plan will fit.

The text of this Chapter is organized into 4 sections: comprehensive plans in Maine communities; overview of this Comprehensive Plan; legal requirements; and history of comprehensive plans in York.

## Comprehensive Plans in Maine Communities

The State of Maine regulates the manner in which communities plan for and regulate growth and development through a law entitled the Growth Management Program (Title 30-A §4312 et seq.). This law establishes the State's policies, and establishes the rules by which communities may engage in land use planning and regulation. Through this law, the State overrides each community's home-rule authority and mandates compliance with an overall set of goals, procedures and standards for community comprehensive plans.

Aside from the requirement to have a plan, it just makes sense for towns to plan for the future. The process of preparing a comprehensive plan provides an opportunity for residents, community officials and other stakeholders to share ideas about what is important in the community, to identify issues and desirable responses, and to coordinate a town-wide approach to dealing with change. Ideally the comprehensive plan will reflect consensus views about town policy. As circumstances change and community discusses changes in its local policies, it is important to frame these discussions in terms of the comprehensive plan. New policies must fit within the State requirements and must mesh with other local policies.

A comprehensive plan is not a law that is directly enforceable, but it is still a very powerful public document. A plan, which must be adopted by the voters, establishes the policy directives of the town. State law requires zoning, growth control and impact fee ordinances to be consistent with a comprehensive plan (MRSA Title 30-A §4314.3). As comprehensive plans are revised and updated, there is always a lag in consistency. The town is legally obligated to work towards consistency, and by statute such consistency must be achieved within 2 years (Title 30-A §4314.3.E). Other regulations, most notably the Site Plan and Subdivision Regulations, limit approval of development applications to those that are consistent with the comprehensive plan. Although the plan is not a law in and of itself, it is very close and can have that same effect in certain circumstances.

A comprehensive plan is required to include recommendations about major capital purchases with a goal of gaining cost efficiency for capital spending in the long-term. At the budget referendum the voters may subsequently decide not to follow the plan, but it is

the obligation of the Town officials to pursue capital expenditures that are consistent with the Town’s comprehensive plan.

## Overview of this Plan

This plan is organized in a fashion that will make it useful to the community and satisfy statutory requirements. The document is divided into more than a dozen separate chapters, each of which will be a stand-alone report, but which together will comprise the comprehensive plan. This new format should encourage the Town to keep the Plan up to date and relevant to current issues. It should also encourage more people to use the Plan and access the information it contains.

The organization of this Plan does not follow the organization of the statutes because the sequence of requirements in the statutes is somewhat haphazard. The contents must comply with the State’s requirements, but the design of the plan and the arrangement of its components is a local choice. Further, this Plan is not organized in a manner similar to the 1999 Comprehensive Plan Update. The 1999 Plan is not easy to read, and its organization results in a significant amount of duplication of material. This Plan is an attempt to improve upon the organizational structure of the statutes and former plans.

Upon completion, the outline for the Comprehensive Plan will be as follows, with underlined titles indicating stand-alone reports:

- I. Introduction
- II. Inventory & Analysis
  - A. Population
  - B. Housing
  - C. Land Use
  - D. Economic Base
  - E. Utilities
  - F. Transportation
  - G. Historic & Archaeological Resources
  - H. Natural Resources
  - I. Growth Projections
  - J. Municipal Facilities, Land & Services
  - K. Adaptation to Sea Level Rise
  - L. Stormwater
- III. Policy & Implementation
  - A. Land Use Policies
  - B. Fiscal Policies
  - C. Consistency With State and Regional Policies

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During the transition to a plan comprised of multiple, inter-dependent, technical reports, some degree of overlap of content and information is expected. As each new chapter is adopted, superseded text shall be removed from the existing comprehensive plan documents. In the event there remains conflict between old and new documents, the most current document shall supersede any earlier version or chapter. When the entire set of chapters is adopted, the 1999 Comprehensive Plan Update, as amended, will be completely superseded.

Because this Plan is a legal document, a policy of separability is hereby established. If any portion of this Plan is found to be invalid by the courts, it shall not affect the validity of any other portion of this Plan.

## **Legal Requirements**

State requirements pertaining to comprehensive plans are contained primarily in Maine Revised Statutes Annotated (MRSA) Title 30-A, a series of laws pertaining to municipal and county government. While there are a multitude of issue-specific laws addressing select policies (housing, coastal resources, etc.), the legal framework for planning is established in Title 30-A, and this section is limited accordingly. Citations of State law are provided to facilitate further research by readers. Such citations are given by Title and Section (“§”) number of the relevant law.

### **1. State Goals**

The Legislature established 10 state goals for state agencies and municipalities with respect to natural resources, land use and development (Title 30-A §4312.3). These goals establish the policies that must be followed by each community in its comprehensive plan. The 10 State goals are listed, along with supplemental guidance from latter provisions of the same statute.

- A. “To encourage orderly growth and development in appropriate areas of each community and region while protecting the State’s rural character, making efficient use of public services and preventing development sprawl” (Title 30-A §4312.3.A). The plan must address growth areas, and most communities are required to designate growth areas and rural areas (Title 30-A §4326.3-A.A).
- B. “To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development” (Title 30-A §4312.3.B). This must include a plan for major public expenditures (Title 30-A §4326.3-A.B).
- C. “To promote an economic climate which increases job opportunities and overall economic well-being” (Title 30-A §4312.3.C).
- D. “To encourage and promote affordable, decent housing opportunities for all Maine citizens” (Title 30-A §4312.3.D). Each community is required to adopt policies that encourage provision of affordable housing, and to comply with the State laws regarding mobile homes and mobile home parks.

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Communities are expressly required to attempt to achieve 10% of all new housing to be affordable (Title 30-A §4326.3-A.G).

- E. “To protect the quality and manage the quantity of the State’s water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas” (Title 30-A §4312.3.E). Each community must develop policies to keep water quality from declining, and, where already degraded, to improve water quality (see Title 38 §464 et seq, for water quality classifications). Additionally, great pond watersheds must be managed to prevent phosphorous loading caused by development (Title 30-A §4326.3-A.C). There is also a requirement to develop management goals for great ponds to control the character of the shorelines, to manage the intensity of use of the water, and to protect resources of statewide importance (Title 30-A §4326.3-A.J).
- F. “To protect the State’s other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas” (Title 30-A §4312.3.F). Municipal policies regarding critical natural resources must be consistent with state law, and may be more stringent (Title 30-A §4326.3-A.D).
- G. “To protect the State’s marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public” (Title 30-A §4312.3.G). The Town is required to preserve access to waters for commercial marine uses (Title 30-A §4326.3-A.E).
- H. “To safeguard the State’s agricultural and forest resources from development which threatens those resources” (Title 30-A §4312.3.H). The Town is required to protect agricultural and forestry resources, and to prevent incompatible development (Title 30-A §4326.3-A.F).
- I. “To preserve the State’s historic and archeological resources” (Title 30-A §4312.3.I). This is a requirement to understand the archeological and historic values in the community, and to protect these important resources (Title 30-A §4326.3-A.H).
- J. “To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters” (Title 30-A §4312.3.J). This is a requirement to encourage continued availability to traditional outdoor activities such as hunting, boating, fishing and hiking, and to encourage land management practices and restrictions to facilitate these activities (Title 30-A §4326.3-A.I).

## **2. Procedures**

The Planning Board is responsible for comprehensive planning in York. State law requires designation of a body to prepare growth management plans (Title 30-A §4324.2). The Town of York Home Rule Charter specifically charges the

Planning Board with preparing or supervising the preparation of the comprehensive plan (Article IV §8.B.1). The Planning Board is expressly required to afford the public with ample opportunity to participate in the process (Title 30-A §4312.2.G; Title 30-A §4324.3-8). The Plan must be adopted by the legislative body of the community, in York's case by the voters (Title 30-A §4312.9; and Town of York Home Rule Charter Article II §1.A). In advance of the public vote, the Board of Selectmen is required to place the item on the ballot (Town of York Home Rule Charter Article II §19.A). The Charter and State law do not provide a role for the Board of Selectmen to alter the draft comprehensive plan prepared by the Planning Board. However, it makes sense for the Planning Board to work with the Selectmen to prepare the best possible plan for the Town. Working together, the plan is far more likely to succeed because the plan will represent a consensus view, and because the Board of Selectmen can exert strong influence in plan implementation.

Amendments to the comprehensive plan follow the same procedure as for the original preparation (Title 30-A §4324.10).

### 3. Content

Statutes require a comprehensive plan to address 5 requirements (Title 30-A §4326), as outlined in the following sections.

**A. Inventory & Analysis.** (Title 30-A §4326.1) This statute describes the contents of an inventory and analysis section of the comprehensive plan. By statute, this section must:

1. Be based on information provided by the State, regional councils and other relevant local sources. Obviously, federal data such as Census data is useful as well.
2. Assess the vulnerability of and potential impacts on natural resources.
3. Include economic and demographic data describing the municipality and the surrounding region, including 10-year projections of local and regional growth in population, housing, commercial activity, and industrial activity.
4. Identify significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas, and must assess their vulnerability to degradation.
5. Identify significant or critical natural resources such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, and unique natural areas.
6. Identify marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas.
7. Identify commercial forestry and agricultural land.

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8. Identify existing park, recreation and open space areas and significant points of public access to shorelands.
9. Evaluate existing transportation systems, including the capacity of the road network, pedestrian ways and parking facilities.
10. Evaluate the housing stock, including affordable housing.
11. Identify historic and archeological resources.
12. Identify current land use patterns and evaluate anticipated changes.
13. Evaluate the need for public facilities and to assess capital facilities and public services necessary to support growth and development and to protect the public health, safety and welfare.

**B. Policy Development.** (Title 30-A §4326.2) Policy development is the primary goal of comprehensive planning. In Maine, the Legislature requires this section to “relate the findings contained in the inventory and analysis section to the state goals.” The statute provides further direction on this matter, requiring the policy section to:

1. Promote the state goals;
2. Address any conflicts among state goals as they apply in the community;
3. Address any conflicts between regional and local issues; and
4. Address the State’s coastal policies (see Title 38 §1801 et seq).

This law establishes a top-down approach to public policy development. This requirement, in combination with the State’s mandate for extensive public input, makes it imperative that the mechanism for public involvement be carefully planned. The public must understand that they are not free to choose any direction they wish, but are limited to pursuing local policies consistent with those of the State. Within this confine, the Town is free to decide how and when to accomplish its goals.

**C. Implementation Strategy.** (Title 30-A §4326.3) Perhaps in response to a concern that comprehensive plans would become “shelf documents” that are seldom used, the Legislature mandates implementation. To accomplish this, the law requires a comprehensive plan to explain how the plan will be implemented, along with a timetable for action. This statute concludes with this sentence, “The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances.” The State intends the comprehensive plans to be acted upon.

The ramifications resulting from actions that differ from an adopted comprehensive plan are not expressly clear. What planner wouldn’t love a plan to be implemented without variation—followed perfectly and on schedule. In reality, though, communities tend to stray from plans as the various stakeholders negotiate the details of implementation. How critical is absolute compliance?

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- Would the courts overturn a policy just because it was developed out of sequence in the implementation strategy?
- Would the courts overturn a policy that is generally, but not exactly, consistent with a comprehensive plan?
- Would the courts overturn a zoning rule that is not consistent with a revised comprehensive plan after the 2-year grace period expires?

Consistency and timeliness are the safest course, but may not always be achievable. To the extent a community is actively pursuing implementation of its plan and is actively involving the public in this process, it is less at risk. Major new initiatives that deviate significantly from the comprehensive plan would probably be at greatest risk.

To avoid problems, the comprehensive plan should be carefully designed and written. It should be based on consensus of all stakeholders wherever possible. It should establish broad policy directions, and should defer most details to the time when the implementation policies are developed—leaving room for negotiation. It should not contain hollow promises for action, or policies the Town has no intention of pursuing. Finally, it should establish a clear order of priority for implementation.

- D. Guidelines for Policy Development and Implementation Strategies.** (Title 30-A §4326.3-A) The general organization of the comprehensive plan statute is unclear because of this section. This section contains 10 guidelines, comprised of both detailed policy directives and procedural requirements. These 10 guidelines do not cleanly correspond with the 10 State goals, though they are close. In an attempt to present statutory requirements more clearly, these guidelines were included with the State goals, listed earlier in this Chapter. Note the State goal that promotes a healthy economy and job opportunities is not supported by any guidelines, while protection of water quality is supported by two guidelines.
- E. Regional Coordination Program.** (Title 30-A §4326.4) The Legislature recognized the fact that each community exists in the context of a broader region, and that communities must work together with neighboring communities to address shared resources and facilities. Shared resources would include any natural resource or man-made facility that crosses municipal boundaries. The York River and the Atlantic Ocean are examples of shared resources. Kittery’s water reservoirs, the Ogunquit sewer lines under Shore Road, and U.S. Route One are examples of shared facilities. The actions of one community can needlessly harm another community. The comprehensive plan must identify these resources and facilities, and the communities are expressly required to prepare and adopt plans that are mutually consistent.

#### **4. State Review**

In a departure from earlier policy, the State is not required to review a comprehensive plan unless the community accepts a grant to help fund the preparation of their comprehensive plan (Title 30-A §4347-A.1). This Comprehensive Plan is not being prepared with State grant funds, so state review is strictly optional. The community may voluntarily choose to ask for state review, but it is strictly optional (Title 30-A §4347.2 and §4347.4). As an incentive to encourage communities to subject themselves to this review, state agencies are authorized to give certain preferential treatment to communities with comprehensive plans found to be consistent with the Growth Management Program (Title 30-A §4349-A).

#### **5. Regional Review**

Draft comprehensive plans and amendments to comprehensive plans must be reviewed prior to adoption by the regional planning commission (Title 30-A §2342.4). The Southern Maine Regional Planning Commission (SMRPC) has jurisdiction in this part of Maine. Although not expressly established in the statutory language, the purpose of this requirement is so the Commission can consider potential impacts on other communities and the region at large, and can evaluate consistency with statutory requirements. The Commission is authorized to conduct a public hearing of its own if it believes that action to be in the best interest of the region.

The statute requires that, “No action may be taken to institute any such plan or part of a plan until 30 days after all the relevant information has been submitted to the regional council for review and comment” (Title 30-A §2342.4.A). Since the Town is required to post amendments 30 days in advance of its own public hearings, it would be appropriate to simply transmit a copy of any proposed amendments to SMRPC at the time the final public hearing is posted.

### **History of Comprehensive Plans in York**

This section is provided to document the sequence of comprehensive plans in York through the years. It is by no means an exhaustive coverage of the subject, but it is intended to provide an overview of the major documents and the sequence in which they were developed in hopes that archiving this information may prove useful in the future.

#### **1. Comprehensive Plan Report 1970**

Work on the Town’s first comprehensive plan began shortly after October 27, 1969, when the Chairman of the York Planning Board announced a contract with the State had been signed, and that work on the new plan would begin at a Planning Board meeting on November 10, 1969. The plan was drafted by John Atwood of Community Planning Services, who completed the document with the help of a working group and the Planning Board. A letter filed in the York Planning Board minutes, from York Planning Board Secretary Elizabeth S.

Winton to the Board of Selectmen dated January 14, 1972, states that the Planning Boards from York, York Beach and York Harbor jointly conducted a public hearing for this plan on November 8, 1971, and subsequently they adopted the plan. The first plan is a single publication with 136 pages. The plan is traditional and simple, utilizing a format still prevalent in smaller communities to this day.

## **2. Comprehensive Plan 1982**

The Town's second Comprehensive Plan was adopted by the voters at the Annual Town Meeting on March 5, 1983. (The document cover indicates 1982, but it was not adopted until 1983.) The document was prepared by a Comprehensive Plan Committee and the Planning Board. It is not readily apparent whether or not any outside technical assistance from consultants was used for development of this plan, but the maps and graphics hint at some professional involvement.

This Plan is comprised of 3 documents. The introduction printed on the inside cover of the report explains, "This volume, Part I, describes change in York since the first Comprehensive Plan was written in 1970, and discusses the implication of past practice and current trends. Where appropriate, recommendations are made with regard to serious matters which require urgent attention. 'Part I therefore forms a basis for the 'Planning Principles and Policies' contained in Part II, a much slimmer and more readable volume. A third volume, also very slender, called 'Capital Improvement Program', contains guidelines for reviewing, projecting and managing municipal income to help town officials anticipate and prepare for future expenses."

## **3. Draft Comprehensive Plan 1991**

This Plan was completed and was reviewed by the State, but was never adopted by the Town. The plan was prepared in two stages. First, a Preliminary Plan was prepared by the Planning Board Subcommittee and York Tomorrow, with technical assistance from IEP, Inc., and Land Plan Associates, Inc.. This draft was a single document with a format and contents similar to York's first two plans. The Final Draft was largely a new document, distinctly different from the Preliminary Plan. It was prepared by the Planning Board Subcommittee and the Comprehensive Plan Task Force. This Plan was comprised of two documents: "Volume I: Action Plan," and "Volume II: Resource Inventory and Analysis." The organization of the Final Draft was far more complex than the earlier Draft.

The Final Plan was submitted to the State Planning Office for review and comment pursuant to the Comprehensive Planning and Land Use Regulation Act then in effect. The State review, sent to the Town on November 27, 1991, indicates the Plan was largely, though not completely consistent, with State requirements. Jim Bartlett, then Chairman of the Board of Selectmen, recalled that the State requirement for a new comprehensive plan was repealed and the project lost momentum before it was finalized and sent to the voters. Although the plan was never adopted, it has influenced subsequent efforts. The 1999 Plan reflects many aspects of this plan, including both content and organization.

#### **4. Comprehensive Plan Update 1999**

The Town's third Comprehensive Plan was adopted by voters at a Special General Referendum on May 22, 1999. This Plan is comprised of 2 documents: a policy section, and an inventory and analysis section. The policy section contains policies, timelines, capital plans and a regional coordination program. This section was prepared by Town Planner Wayne Marshall and a Comprehensive Plan Committee, and followed the complex format of the 1991 Final Plan. The Committee used the 1991 inventory and analysis as the base of information for its work, but with the help of a contract planner an updated inventory and analysis section was prepared just prior to posting for the May 1999 vote. This section was very roughly compiled, being pieced together at the last minute from the draft 1991 inventory and analysis and scattered updates where data was readily available.

Pursuant to the Growth Management Laws in effect in 1999, the Town submitted its Plan to the State Planning Office for review and comment on September 29, 1999. The State review was received by the Town on November 27, 2000. Despite the requirement for the State to complete its review in 3 months, it took 14 months. The State questioned 8 aspects of the Plan. Subsequent amendments to the Growth Management Laws have removed the requirement for State review of comprehensive plans, and the State's advisory opinion has not been solicited since the original review.

In November 2000 the Town amended the policy section of this Plan. This was the first time one of York's plans was amended rather than replaced in its entirety. The idea a plan would be left static for a decade or two has now passed, and a more dynamic approach has taken hold. The policy section of the Plan was amended two additional times in 2001. The amendments addressed policy concerns raised by the State, as well as shifts in Town policy—notably the passage of the growth cap.