



AGC MAINE

THE CONSTRUCTION ASSOCIATION

Testimony of Matthew Marks in Support of LD 772

“An Act to Establish a Process to Vest Rights for Land Use Permit Applicants”

Joint Standing Committee on Appropriations and Financial Affairs

November 14, 2023

Senator Pierce, Representative Gere, and distinguished members of the Joint Standing Committee Housing, my name is Matthew Marks, I am a Principal at Cornerstone Government Affairs, and here today to speak on behalf of my client The Associated General Contractors of Maine. AGC Maine is a statewide commercial construction trade association and a Chapter of AGC America.

Maine’s vested rights in the use of a property is one of the many barriers that add to the risk housing developers encounter during project development. During my 14 years with AGC Maine, some communities were known as easier to build while others were more complicated. In recent years, resistance to any kind of development, including housing, has unfortunately become a routine part of the investment risk. Where much of the pushback used to be related to larger projects, even smaller housing developments have encountered resistance.

The unpredictability associated with moratoriums and land use ordinance changes is adding to the cost of housing and in some cases long delays or cancelation of projects. This bill clarifies, and rightfully so, that the vested rights of the landowner occur at the time of the submission date of the application. The developer who invests in a property under the municipality's current land use ordinance should be afforded the rights under the existing ordinance. To be clear, it doesn't modify the public process, the public engagement can and should still occur, but it follows the intent of the ordinance under the existing classification.

The added cost under the current process is compounded by the engagement of the services that are required by the development and for an unknown period. At a minimum, the developer hires design consultants, environmental consultants, land surveyors, soil scientists, financing partners, and attorneys as they assemble a team to prepare for an application. In addition, they may have to hire specialists, such as traffic engineers, depending on the potential impacts and location. As the construction industry has increased pressure with a growing workforce and short supply of materials developers often engage early.

The result of delays, particularly because of a change in the property’s existing land use or debate on the proposed housing project increases the costs for retaining those services, re-design, and the possibility of project cancelation the underlying expenses result in rising costs due to the risk. The timeline delays are extremely problematic for contractors who might have limited resources and plan for their seasonal workload. In addition, delays cause significant disruption in the ability to secure the materials and do so on time. When a delay happens, everything from windows to water service materials may require changes to the design, costs, and project delivery timelines. It’s not uncommon for project estimates to be inflated because of the delay in purchases and product availability.

This bill recognizes one of the risks that has increased for housing investment in recent years. The contractor's workflow is critical. When a project encounters resistance, especially when it happens right before the busy season, it creates a chaotic decision-making process. They are forced to make the decision to bid additional work, and an entire season can be missed for a housing project or slowed by the contractor resources. Unfortunately, this occurs more often than might be expected.

I applaud the sponsors for recognizing the barrier in the housing development process and encourage the Committee to pass this bill. I am happy to answer any questions and thank you for considering my comments.