



Town of Harpswell

P.O. Box 39
Harpswell, ME 04079

March 4, 2022

Labor and Housing Committee
Maine Legislature

Dear Members of the Committee:

RE: Public Hearing LD 2003

The Select Board of the Town of Harpswell has reviewed LD 2003 and has analyzed the implications of the provisions of the bill for the Town. This analysis identified a number of concerns with the bill as currently drafted. A copy of the Town's analysis is attached. The Board submits the following comments and observations for consideration as you review and refine LD 2003. In reviewing this bill our hope is that you will carefully consider the impact of the provisions on small coastal communities like Harpswell that rely entirely on on-site water supply and sewage disposal.

- The Town of Harpswell is concerned about affordable housing and is working to determine what it can do to promote affordable housing in the community. The 2022 Town Meeting warrant includes an article to expend up to \$25,000 on a project to develop ways to foster the development of affordable housing that is appropriate to our community.
- LD 2003 does not take into account existing regulations addressing the development of affordable housing. Harpswell has workforce housing provisions in its Basic Land Use Ordinance that provide density bonuses for affordable housing. The community developed a workforce housing subdivision in conjunction with the Brunswick Housing Authority using these standards. The proposed 2.5 times density bonus on top of the existing workforce housing bonus would create a situation where the allowed density of development is simply inappropriate and unsupportable with on-site water supply and sewage disposal. Any density bonus provision should take into account any existing regulations dealing with affordable housing.
- Harpswell is dependent on wells for its entire supply of potable drinking water. The Town has been concerned about the long-term sustainability of this

water source for over thirty years. The Town has undertaken a number of professional groundwater studies over that period all of which have recommended the need to manage the density of new development to provide for adequate groundwater recharge. This is a critical issue in areas that are already densely built-up some of which are experiencing problems such as reduced well yields and saltwater intrusion. Requiring the Town to allow significantly higher density of development and reuse of property in these areas for any type of housing is simply short-sighted. Any provision for establishing the allowed density of development including affordable housing has to include consideration of groundwater issues and supportable densities.

- The provision for Priority Development Zones does not make sense in a community such as Harpswell which lacks a town center or an area with a concentration of “community resources”. If this requirement is included in the final bill it should only apply in communities where there is an identifiable concentration of community resources.
- The provision in the Human Rights revisions for excluding or prohibiting consideration of the character of the location is a mistake and will potentially lead to protracted legal battles. A key to providing quality affordable housing is assuring that it is in fact in character with the location where it is proposed. The Town of Harpswell’s workforce housing provisions include a requirement that the affordable housing be compatible with other housing in the area. This requirement is a key for community acceptability.
- Allowing for appeal of housing decisions to a state review board without requiring that the applicant exhaust existing local legal remedies is a mistake. And if such a review process is created it needs to be clear as to what types of projects can be appealed to the Board and what the basis for the review will be. Will the review be limited to whether the local body correctly applied the local ordinance? If so, a Boards of Appeals already exists in the community to do this as an “administrative appeal”. If the proposed state board is allowed to second guess the local legislative body with respect to housing policies then this is a problem. Policy making or review should not be addressed on a project-by-project basis.

Respectfully Submitted by the Harpswell Select Board



Kevin Johnson, Chair

Analysis of the Implication of LD 2003 for the Town of Harpswell

This analysis reviews the potential implications of LD 2003 as currently drafted and identifies issues with the proposed bill:

A. IMPLICATIONS OF THE BILL

Housing as a Human Right – This amendment adds protections for the development of housing. The considerations in the bill dealing with character, population density, and the density of housing go to the heart of many of the issues that have been raised for updating the comprehensive plan. Prohibiting consideration of these factors could be used to challenge efforts to limit development in some areas or have increased lot sizes to address groundwater considerations. They could also be used to challenge design requirements aimed at addressing the character of a neighborhood, village or the town. Another section of the bill calls for a state review board and this provision might be a consideration in any appeals of Town decisions with respect to housing.

Housing Caps – This revision prohibiting caps on residential development does not currently impact Harpswell. In background discussions relating to the update of the Comprehensive Plan, there has been mention about the need to limit the amount of residential development in certain areas to deal with groundwater concerns such as saltwater intrusion or the need to drill deeper wells to have adequate supply.

Technical Assistance and Grant Program – This program could provide funding to hire consultants or MidCoast COG or pay for staff to develop ordinances to meet the new requirements. This could potentially provide a source of funding for implementing the update of the comprehensive plan.

Municipal Incentive Program – This program provides financial assistance of up to \$25,000 for communities to commit to a three year program of reviewing and updating its housing policies and regulations. This could also be a source of funding for the implementation of the update of the comprehensive plan.

Affordable Housing Density – The provision that requires affordable housing to be allowed at 2.5 times the density of other housing could have implications for the Town especially in areas not subject to shoreland zoning. It appears that this requirement does not trump the minimum lot size provisions mandated by shoreland zoning. The state shoreland zoning guidelines require a minimum lot area per dwelling unit of 30,000 sf adjacent to tidal waters and 40,000 sf adjacent to non-tidal waters. The Town currently requires 40,000 sf for non-subdivision lots and 80,000 sf

for lots that are part of a subdivision. So this provision would appear to allow affordable housing in the shoreland area at 30,000 sf per unit whether it is within a subdivision or not. In the Interior District under the Basic Land Use Ordinance this would reduce the basic lot area per unit from 40,000/80,000 sf to 16,000/32,000 sf for non-subdivision and subdivision lots. However there are existing workforce housing provisions that apply in the Interior District. The Town definition of workforce housing matches the state definition of affordable housing somewhat but would need to be tweaked if the bill passes. The workforce housing provisions provide a density bonus for workforce subdivisions that reduces the required lot size for affordable lots to as little as 20,000 sf depending on the mix of workforce and market rate units. It appears that the 2.5 times density requirement would apply on top of the town provisions for workforce housing subdivisions. The workforce housing provisions also include a neighborhood compatibility requirement that could be subject to challenge under the Human Rights provisions. If the bill passes, the Town would probably need to look at removing the workforce housing provisions to avoid a double density bonus situation that could potentially allow lots as small as 6,667 sf with on-site water and sewage disposal. Realistically lots this small are not feasible given the septic and well separation requirements with on-site facilities but could be allowed with shared or common systems.

Single-Family Zones – Multifamily housing is allowed in the Interior District under the Basic Land Use Ordinance. The Shoreland Zoning Ordinance allows only one and two unit residential structures. Under the bill, the Town would have to allow multifamily structures with up to 4 units anywhere in the shoreland area. There are no special requirements for multifamily housing in the current BLUO.

Accessory Dwelling Units – ADUs are allowed in the Interior District and In-Law Apartments are allowed in the shoreland area. The Town's requirements for ADUs appear to be generally consistent with the bill's provisions but may require some tweaking if the bill is adopted as currently written. It appears that ADUs (or In-Law Apartments) that are subject to shoreland zoning continue to be regulated under those rules.

Permit Review Board - This would allow for state review of all decisions denying an application for a housing development. Obviously, this is an entirely new concept.

Priority Development Zones – This would require the Town to create a new zone probably in the part of the town outside of the shoreland area where higher density multifamily residential housing would be allowed. The creation of this district would be subject to state review. If this passes, it would need to be addressed in the update

of the comprehensive plan. As with other proposals for increased density, it raises questions about the impact on groundwater and well water supplies in the long term. This zone would probably need to be located in an area that has been identified in the various groundwater studies as being able to support more dense development. The bill does not address whether this special district would be subject to the 2.5 times density bonus.

AREAS OF CONCERN WITH LD 2003

Here are the significant concerns with the bill:

1. **Groundwater** - The provisions dealing with Human Rights, Density Bonuses and the Priority Development Zones potentially are at odds with renewed efforts by the Town to address the implications of development/redevelopment on groundwater recharge and the ability to continue to support private wells as the primary source of potable drinking water for the community. The Human Rights provision and the required density bonus appear to apply town-wide including in areas where there are existing or potential groundwater issues. Mandating higher density affordable housing in these areas is shortsighted.
2. **Compatibility** – The provisions in the bill are essentially one dimensional in which affordable housing is the only consideration. The provisions exclude consideration of any local provisions addressing how affordable housing or any housing fits into the community or is compatible with the natural capabilities of the site.
3. **Existing Affordable Housing Provisions** – The bill fails to take into account existing provisions that address affordable housing and/or create density bonuses. The bill essentially creates overlapping density bonuses for workforce housing developments that result in densities that are inappropriate and unsupportable with on-site water supply and sewage disposal.
4. **Permit Review Board** – The provision for a state level review board of local decisions ignores the establish process for the review of decisions of a CEO or Planning Board through a local appeals process. Creating state review of local decisions without exhausting local appeals requirements with no standards simply creates an end-run around established processes. The bill does not

clearly identify which types of decisions are subject to state review. Is a denial of a building permit subject to state review?

5. **Multifamily Housing in Shoreland Areas** – The bill requires the Town to allow small multi-family affordable housing through-out the area subject to the Shoreland Zoning Ordinance. In addition affordable housing would need to be allowed at a higher density than provided under the current ordinance. While financial consideration probably preclude the development of affordable multifamily housing in the shoreland area, the bill's provisions with respect to allowing up to four units on any residential lot would apply to all housing no matter the price point. This could put additional pressure for residential development in shoreland areas.