

City of Ellsworth
Planning Board & City Council Workshop Minutes
Wednesday, August 14, 2023 6:00 PM

Chair John DeLeo, Vice-Chair Rick Lyles, Member Marc Rich, Member Patrick Lyons, and Alternate Member Mike Hangge attended the workshop. Secretary Nelson Geel and Member Molly Friedland were absent.

Five board members present

City Council Chair Dale Hamilton, Councilor Steven O'Halloran, Councilor Casey Hanson, and Councilor Jon Stein attended the workshop. Members Michelle Beal, Tammy Mote, and Gene Lyons were absent.

Four City Council members present

City Planner Matthew Williams, Assistant Planner Elizabeth Ouellette, and City Manager/Police Chief Glenn Moshier were present.

Three staff members present

1.) Call to Order

Call to Order

City Planner Matthew Williams called the meeting to order at 6:00PM.

2.) Staff Comments

Staff Comments

Williams introduced Benjamin Averill and Hilary Gove from the State's Department of Economic and Community Development (DECD) who were present to give a presentation on LD2003 and answer any questions from the Planning Board of City Council. Williams also introduced Stephen Wagner and his associate who were the City's legal representation and also there to answer any clarifying questions.

3.) Presentation of LD2003 Requirements from Maine Department of Economic and Community Development; Q&A from Planning Board and City Council

State's Presentation

Averill began the presentation by giving an overview of LD2003 and the three parts of the law. He then went in depth into the first part, explaining what situations would afford a developer a density bonus. Then, he went into the second part of the law, explaining what situations would afford a developer additional dwelling units on their property. He then handed the presentation off to Hilary Gove to explain the third part of the law. She explained the situations where a developer or landowner would be allowed to construct an Accessory Dwelling Unit (ADU) on their property. Next, Gove went into the implementation portion of the law, explaining that the date for implementation was January 1, 2024. Gove then went into different funding sources that can assist municipalities with the development of their ordinances as well as explaining the reimbursement program through the State which would reimburse municipalities up to \$10,000 of their expenses regarding the ordinance updates required due to LD2003. She ended the presentation by explaining that the rulemaking guidance for LD2003 would be finalized in October with the summary of comments being made available in late September. She explained that the guidance needed to be updated due to the passing of LD1706 which amended LD2003 slightly.

Presentation

Council Chairman Hamilton asked about the updated rulemaking guidance. Gove said that the update was due to the changes spelled out in LD1706. Hamilton pointed out that since the comment period is still open, there may be a comment that leads them to change the rulemaking guidance. He asked if the implementation date would be extended to allow municipalities to amend their ordinances based on any new guidance coming out in October, noting that it would not give the City a lot of time to implement the ordinances

Question & Answer

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before the required date. Gove said that they are unable to change the implementation date since that is something that was determined in State law. She said that the rulemaking process is statutorily guided so they were required to keep the comment period open for a certain amount of time. She also said that she did not anticipate having to amend the rulemaking guidance to such a degree that would cause substantial changes to Ellsworth's draft ordinances. Hamilton expressed his concerns that it would not be enough time for the City to do their due diligence before the required implementation date. Averill said that he has looked at Ellsworth's draft ordinances and thinks that the City is on the right track. He recommended that Staff look at the changes included in LD1706 to see what will need to be updated. Williams said that the changes have been communicated to him and he is confident that he would be able to make any additional changes once the guidance is sent out in enough time barring any drastic changes in the rulemaking which are not anticipated. Williams said that Staff was getting 90% of the way complete now in anticipation for the quick turnaround once the rulemaking guidance is released. Averill said that any updates could be found through DECD's website.

City Councilor Hanson asked about one of the grant opportunities presented by Gove, the Housing Opportunity Program Service Provider Grant. She asked what a "Service Provider" was. Gove gave her the definition from the grant "Service Provider: Regional planning organizations (councils of governments, regional planning commissions) and regional economic development organizations as referenced in Title 30-A, Chapter 119, county governments, non-profit organizations, academic institutions and cooperative extension programs, and for-profit enterprises. Municipalities are also eligible to apply as a service provider." She explained that they left the definition broad so that it could encompass any entity that does land use planning work. Averill also said that municipalities could be service providers for other smaller municipalities if they wanted.

Alternate Planning Board Member Hangge asked what changes in LD1706 would impact LD2003. Averill said that largest change is the implementation date that they discussed earlier. LD1706 pushed Ellsworth's implementation date to January 1, 2024. Averill also said that there were some changes regarding clarification on what is "affordable." There is also some clarification regarding ADUs and some small tweaks on the language. Averill said that he would send the most current language to Williams. Gove also said that there were some terms changes to accommodate different community's rules and types of government.

Planning Board Chair DeLeo asked if the grants spoken of were different from the reimbursement program. Gove said that they were different. She said that the reimbursement payments go through DECD's office and the grants are approved by a different entity in State government. She also said that there will be additional grants available for municipalities soon and those will be forwarded to City Staff.

DeLeo then asked about the affordability limits on rentals and owned housing. Averill explained that in order to get the bonus in density, the owner or developer would have to prove that 51% of units were rented or sold at an affordable rate as designated by the Department of Housing and Urban Development (HUD). He said that they would have

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to show the maximum sale price or rent that they will be offering. DeLeo asked who would enforce those restrictions. Williams said that the Planning Board will require a deed restriction and require the developer to show the math and prove that the units are affordable. DeLeo asked who would ensure that the developer is following the deed restriction after Planning Board approval. Averill said that they are planning on releasing further guidance on that aspect, noting that some municipalities leave it to the Code Enforcement Officer. He said that some other municipalities work with other organizations to track the sale or rental of the units. Averill said that he has a list of municipalities that have already adopted the LD2003 changes and he will forward it to Williams so he can see what those municipalities are doing for enforcement. Gove said that the Genesis Fund contracts with Maine Housing and they have a lot of resources to help municipalities with issues like this. She said that she will forward the contact information to Williams.

Planning Board Member Lyons asked about deed restrictions and if the Planning Board can approve a development with a restriction that is contrary to LD2003. Gove said that LD2003 would not apply to deed restrictions already in existence at the time of the ordinance adoption. She also said that she would defer to legal counsel on specific situations and hypotheticals. Attorney Wagner clarified that Lyons' question was regarding any future project that would come before Planning Board. Averill said that it was challenging to say definitively without any case law. He said that generally a municipality would need to ensure that LD2003 allowances are adhered to, however everything speculated now was a hypothetical and suggested that any questions like that be deferred to legal counsel.

Hamilton asked about ADUs that will not have to come before Planning Board, mentioning that some of the LD1706 language that he had pulled up makes it seem like that ADUs are not allowed to be determined by Planning Board. Gove said that the language does not require that, however she would look at the statutory language to confirm. Williams said that currently in Ellsworth, most ADUs do not have to come before Planning Board and most of them are handled through the Code Enforcement Office. Attorney Wagner clarified that when the statutory language is read as a whole, it does not require that all ADUs must be approved outside of the Planning Board process. Hamilton then reiterated his first point that there is not enough time for municipalities to handle interpretive issues such as this before the required implementation date.

Lyons asked what would happen if the City does not adopt the new ordinance before the implementation date. Gove said that DECD has no enforcement power, however if the City does not come into compliance with LD2003 it may leave them open to potential legal action should a developer be denied something that would be allowed under the new law. Lyons then asked about ADUs in the Shoreland Zone, noting that there is currently a restriction on where any structure could be built. Averill said that LD1706 clarified that ADUs need to be allowed in the Shoreland Zone where applicable, however all other Shoreland Zoning rules will still apply. Averill noted that DECD was in contact with the DEP regarding Shoreland Zoning and they agree with this clarification.

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City Councilor Stein asked if there were any benchmarks that DECD would look at to see if LD2003 was successful in achieving the purpose of the law. Averill said that was a tough one. The purpose of the law is to try and address the housing shortage and help municipalities with working on their ordinances in order to encourage more housing. Gove said that as a part of this law, they were required to create a set of housing production goals. She said that they are working with consultants on preparing that and it should be ready this fall. She also said that these goals would not be municipality-specific they will be state-wide. She said that as a part of creating those goals, they are going to get a number of how many units are needed in the State which could be a performance benchmark of sorts.

Hamilton asked if there were any statistics on how many housing units were prevented by land use ordinances, noting that this may not be a solution to the housing issue. He said that there are other things that impact housing development like construction costs and material delays. Averill said that this legislation is meant to help address the bigger issue. Gove said that this was just one tool to combat the housing crisis and that a full solution would have to be a multi-faceted approach. She said that this was just one piece to the solution. Hangge asked if DECD was working with the State Fire Marshall's office on any of the new regulations. Averill said that the legislators who wrote the language did work with the Marshall and that he specifically contributed on the size requirements for ADUs. He said that the State did the legislative work and that was not DECD.

Attorney Wagner asked if the housing goals would be specific for the community or broader so municipalities can achieve them without having to make significant changes. Averill said that the rulemaking goals will not require a specific amount of units to be built in the community, however municipalities can set an amount for themselves. Williams then opened up the questions to the members of the public that were in attendance.

John Bellis, an Ellsworth resident, asked if the size requirements for ADUs would include Tiny Homes. Gove said that it would depend on how the municipality defines a Tiny Home. If they have a separate definition, that one would apply. However, if the municipality did not have a separate definition, it would apply. Bellis then asked if the water and wastewater requirements would be the same as for a normal dwelling. Gove said that they would defer to the Code Enforcement Office on this question. Lyons said that they would still need to comply with State requirements. Averill confirmed that Lyons was correct and that State requirements would still need to be met. Nancy Smith, an Ellsworth resident, made the group aware that there was additional legislation called LD1934 which is a resolve for recommendations to the Housing Committee to see where their resources should go. She said that they are asking for public comment on the legislation at this point and encouraged everyone to turn in comments. Averill said that this legislation was available on the Housing Committee's website and directed the group on where to find them.

**Review of
Amendments**

4.) Review and Prioritization of Potential Amendments from City Staff and City Attorneys.

Williams started to give a rundown of the changes that have been made in the draft ordinances. He said that he would address each section of LD2003 in turn. He began with

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the density bonus portion, directing the group to Article 14 where the definition of “Affordable Housing” was included. He said that this definition almost exactly mirror the definition from HUD. Lyons asked what the area was that was included in Ellsworth’s “Area Median Income” (AMI). Williams said that the area was designated by HUD and it was Hancock County. Williams then went onto Article 8 where the performance standards are held. He said that the affordable housing density bonus would only apply in Designated Growth Areas which are defined by the 2004 Comprehensive Plan. He said that the areas are the Neighborhood, Urban, Downtown, and Commercial Zones are part of the Designated Growth Area. He said that the Rural and Drinking Water Zones are not in the Growth Areas.

Lyons asked if they were limited to only those areas or if they could be more permissive. Williams said that they could be more permissive if they wanted to, however he thinks that it should stay limited to the Growth Areas. Stein asked if the rents would differ based on household size. Averill said that it does and HUD reviews their AMIs yearly and there is a chart with a breakdown showing what the affordable rates would be depending on the household size. DeLeo asked what would happen if someone were to sell a property while the deed restriction is still in effect. Williams said that the deed restriction would still be enforceable to the next owner and that owner would be required to sell it at an affordable rate. Gove made the comment that this section applies to the Growth Areas and areas that are served by public water and sewer. Williams said that all areas that are served by public water and sewer are in the Growth Areas so the City is covered. Gove said that they should clarify that point anyway in case things should change in the future. DeLeo asked what a “comparable” water and wastewater system is. Gove said that the State has a definition that LD2003 would rely on. Hangge asked if the comparable system would need to be connected to public water and sewer. Williams said that it would not have to connect. Hangge said that there should be regulations which deal with the impacts of these systems on the ground. Lyons said that Ellsworth’s ordinances do address that and developers would still need to follow the subsurface waste rules. Hamilton asked if there was explicit language that says developers would still need to follow all of the other building and development codes. Attorney Wagner said it was implied, however it may be helpful to include an explanatory note which says that so it is clear.

Williams then went on to discuss the second portion of LD2003 which addresses dwelling unit density. Williams gave his interpretation of that section. Averill said that the minimum lot size requirements and the units per acre requirements would still be in play. He pointed out that Ellsworth’s current ordinances do not seem to fully match up with LD2003. He suggested that the table of uses in Article 3 be looked at to make sure the math matches on both columns. He also reiterated that Ellsworth could be even more permissive if they would like. Williams said that he would take another look at that section. Averill also said that Ellsworth should ensure that duplexes and triplexes are allowed structures in these areas. Williams said that they are allowed, they are just referred to in a different name. Gove said that it was okay to have them called something different as long as they are allowed.

Williams then moved to the third portion of LD2003 which addresses ADU allowances. Williams said that in Article 14 they have tweaked the definition of ADU and Dwelling

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Unit. He also said that Staff has added a definition for “Cooking Facility” which was a topic that came up several times over the past few months. Lyons asked why Ellsworth’s maximum size for ADU is set at 50% of the principal dwelling. Williams said that he was not sure and that provision was existing at the time he joined the Planning Department. Lyons expressed his opinion that the maximum size should be larger. Hamilton asked if a property owner could build an ADU on their property and then subdivide the land and sell them as two single-family homes. Lyons said that they would be able to only if both of the newly created lots still comply with the minimum lot size requirements. Lyons said that a property owner is not allowed to subdivide land into a non-conforming lot. Williams agreed with Lyons and added that there would be a lot of review that would go along with a situation like that and the Planning Board and Code Enforcement Office would not allow a non-conforming lot to be created. Williams also added that the ADU would need to meet the requirements of a dwelling unit if a land owner wanted to sell it as a single family home.

Williams then went through the changes to Article 8 in regards to ADUs. He pointed out the provision that if a property owner were to be allowed to build an ADU through LD2003 that they could not use that ADU as a short-term rental for 10 years after construction. Williams said that this would be a part of the Certificate of Occupancy and the Code Enforcement Office would be responsible for enforcement of that provision. Averill asked if he intended to allow ADUs on single family detached dwellings only or if they would also be allowed for a duplex. Williams said that it was the intent to allow both and he will tighten up the language so that is clearer. Hamilton asked if the ADUs would be required to have a separate septic system. Williams said that that would be part of the building permit process and they would be required to install a septic if there was no way for them to attach to any existing septic while staying within the Code. Williams said that it was based on how many bedrooms the septic was approved for and the Code Enforcement Office would handle those situations. Stein asked if there was a definition of “Short-Term Rental.” Williams said that he has put in a basic definition for the purposes of the ADU provision. He said that “Short-Term Rental” was defined as 28 days or less. He said that this would be a sufficient definition for the purposes of LD2003, however there would need to be a more detailed definition when Short-Term Rentals are mentioned in other parts of the ordinance. He reiterated that this would only impact ADUs that were only constructed because of the allowances of LD2003. DeLeo asked about why Williams had chosen 28 days. Williams said that it was so a Short-Term Rental would be for under one month no matter which month it was. DeLeo suggested changing it to 27 days if that was the case since February lasts 28 days. Williams said that he would make the change.

Williams went through some miscellaneous definitions that were revised. He said that he merged some definitions that were duplicative and separated the definitions of “Hotel” and “Motel.”

5.) Questions & Next Steps

Williams said that the next steps were to bring the draft ordinances to the Planning Board for deliberation and to vote on it. The Planning Board vote would be to recommend that City Council adopt the changes. Once Planning Board votes, Williams will take the ordinances to the City Council for them to vote on adoption. Williams said that he will

Questions and Next Steps

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bring the ordinances to the Planning Board at their next meeting and give them September and October to review and workshop more. After that, he will bring it to the City Council for them to review and workshop in November and December if needed. That way, Williams said, they would be able to make the January 1, 2024 implementation deadline.

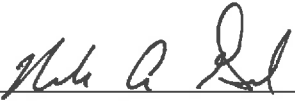
6.) Adjournment

Williams adjourned the meeting at 7:59PM.

**Vote to adjourn at
7:59 PM**

Minutes prepared by: Elizabeth Ouellette, Assistant City Planner.

Sept 6, 2023
Date


Nelson Geel, Secretary
Ellsworth Planning Board

*Agendas and minutes
posted on the City of
Ellsworth's website:
ellsworthmaine.gov
A video transcript of
this meeting is also
available on
YouTube.*

