

Smart Growth, State Policy and Public Process in Maine: *The Dunstan Crossing Experience*

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Sprawling development in Maine's growth areas continues in spite of the state's emphasis on comprehensive planning over the past 20 years. In this article, the authors present some lessons to be learned from Scarborough's Dunstan Crossing project, a planned development which would have incorporated many of the goals of the national "smart growth" movement. The project was approved by the elected town council (one of whom is co-author Sylvia Most), and it was in compliance with Scarborough's town comprehensive plan. Nonetheless, the project for now has effectively been blocked after a lengthy period, described here, that saw a citizen referendum, lawsuits, mediation, and many kinds of public participation. Based on the Dunstan Crossing experience, the authors make recommendations regarding the state's Growth Management Act, about more effective regional planning, and more generally about how to structure public participation in potentially contentious projects. 🐉

Much has been written about the impacts of sprawling development patterns in Maine—on communities and on the costs of services on the state and local levels (O’Hara 1997; NE/EFC 2003). In suburban areas these costs include increased traffic, loss of community character, new infrastructure requirements and loss of open space; in urban areas, they include excess infrastructure, loss of in-town retail and commercial businesses and other urban disinvestment. Some communities in Maine are attempting to avoid sprawl and to find the kind of development patterns that many people see as beneficial and, in fact, quite traditional to New England, but about which actual agreement and consent has been difficult. Much can be learned from each experience. One such case is the Dunstan Crossing “smart growth” project proposed to be built in Scarborough (but still in contention after a citizen referendum, lawsuits, mediated negotiation and many types of public participation). While comprehensive solutions cannot be based on one case, the saga of Dunstan Crossing offers provocative lessons both about challenges specific to the issues of land use and sprawl and more generally about the need for deliberative opportunities among citizens and government in local and regional issues. In the context of the Dunstan Crossing project, we make recommendations in three categories: revising the state’s Growth Management Act; creating mechanisms to foster effective regional planning; and carefully structuring public involvement on projects likely to encounter great differences of perspective.

SCARBOROUGH’S DEVELOPMENT BOOM AND LONG-RANGE PLANS

To understand the local political situation in which this change was being considered, it is illuminating to review growth statistics for the region and Scarborough. According to the Maine State Planning Office (2001), while the population of the state increased 3.8% during the 1990s, the population of Cumberland County increased 9.1% and the town of Scarborough grew 36%. By 2000, the population of the town was slightly less than 17,000 residents, making it the 10th largest community in Maine. This

growth is expected to continue, despite a local growth cap of 135 housing units per year, implemented in 2000.

By 2010, the town of Scarborough anticipates being the sixth largest community in the state, growing 22% to over 20,000 residents, and continuing to outpace the state’s growth rate of 4.6% (Maine State Planning Office 2001). A community attitude survey conducted in 1999 listed maintaining the “small town feeling” as one of the public’s most important imperatives for the future. This sentiment was repeated in a community visioning exercise conducted in 2002, which clarified that town residents were not ready to take their place as a community the size of a “city” by Maine standards.

The growth in residential development in Scarborough, along with corresponding growth in commercial development, resulted in the assessed property valuation of the town of Scarborough rising 94% between 1993 and 2003, from \$1.033 billion to \$2.002 billion (Scarborough 2003). The building cap combined with regional market forces to become factors in the rise of average new home prices from \$230,000 to \$330,000 between 2000 and mid-2003 alone (Risbara 2003). Rapid growth was evident in the school system, with new portable classrooms needed at each school in the district by early 2000. The high school, already among the largest in the state, graduated 180 students in 2003, but that fall’s incoming freshman class of 260 students forced the community to spend \$26.8 million for a fully locally funded school expansion project, the largest ever in the state. The effects of growth also were felt in pressure on public safety and other public

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services, which already had added capacity in the late 1990s. The competing needs of increasing town services and maintaining low yearly tax increases led to divisiveness at budgeting time each year.

In 1988, state-level efforts to address the long-recognized effects of unmanaged growth in Maine culminated with the establishment of the Growth Management Act. For growth management to be effective, it must occur at both the state and the local level. The state's Growth Management Act provided grants

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to municipalities for the creation of comprehensive plans with the goal of designating growth and non-growth areas within individual communities. Scarborough adopted a town comprehensive plan in 1994 in compliance with the act (Scarborough 1994). The plan outlined many new policy initiatives for growth management; however, many of the corresponding necessary zoning changes were never codified. Creation of high-density, "village compact" districts described in the plan was controversial and would have had to be paired with equally unpalatable reductions in allowable zoned housing density in the designated rural areas of the town. The "village compact" resembled a "smart growth" development, combining proximity of uses with functional open space to create a pedestrian-scale neighborhood comfortable for a variety of household types. The Scarborough Comprehensive Plan recommended such a village compact policy in the Dunstan Village area in Scarborough. By 2000, this idea had never been implemented in reality, emphasizing that agreement on long-range development policies does not

represent consensus on concrete changes. What to do about this is a dilemma.

A PROPOSAL FOR CHANGE

After attending a smart growth workshop, two of the Portland region's experienced and local land developers—brothers John and Elliott Chamberlain—were motivated to attempt a smart growth-style development in Scarborough. Although the Scarborough comprehensive plan envisioned this type of development in the general area chosen, actual development required discretionary approval of a new "contract zone" by the Scarborough town council.

Contract zoning is a provision of Scarborough's zoning ordinance to be used in situations where a proposal is made that does not fit the zoning ordinance and is not suitable for a variance. In these cases, the town council is authorized to establish whether the proposal meets criteria defined by ordinance. If the proposal passes the various stages of the process, it can be approved as a new zone specifically complying with terms of the contract established between the private developer and the town. At the time of the contract proposal, the majority of the 150 acres controlled by the developers remained zoned for a low-density, two-acre minimum lot size, rather than any type of village compact. Scarborough's zoning for the land also did not allow for a mix of residential and commercial land uses, and the setback requirements did not allow for the streetscape design desired by the planners. The proposal for Dunstan Crossing was initially named the "Great American Neighborhood," a term popularized by the State Planning Office during the 1995-2002 King administration.¹

This contract proposal (ALC Development Corporation 2002) incorporated many of the goals of the smart growth movement well underway nationwide, specifically:

1. Development of a previously unsewered set of parcels encompassing 150 acres.
2. Installation of public sewer and water utilities.

3. A mix of uses, including single-family homes, apartments, condominiums, deed-restricted units for seniors, and village commercial storefronts.
4. Pedestrian-oriented streetscapes with homes close to the road, uninterrupted sidewalks and slow speed limits.
5. Planned 397 units (reduced from the original request of 441 units) consisting of a variety of home designs and lot sizes.
6. Recreational facilities (public ballfield and a community center).
7. Parking on street during the day. Driveways located behind houses with access by alleyways designed for service vehicles and local traffic.
8. Up to 60 acres preserved as open space within the development, including local parks and walking trails.
9. One million dollars in a density offset fund to purchase off-site open space within the “traffic shed” of the Dunstan Corner intersection.
10. Project contingent upon \$1.8 million in state transportation money to fix the difficult Dunstan Corner intersections prior to proceeding with the project beyond the first few years.

For project proponents, the development design and public investments promised to address many of the community’s growth issues. Despite its size, the configuration of housing units promised to have a lower per-unit impact on school enrollment than a development of single-family homes on two-acre lots, the standard of the prior decade. New neighborhoods of single-family homes in Scarborough produced 0.92 new enrollments per home on average. If 65 single-family homes were developed with existing zoning, this would result in 60 new school enrollments, which provided the baseline for comparison to the Great American Neighborhood. To establish the impact of the project on school enrollment, the town assembled

figures from similar housing types in Scarborough and in New England. With this information, the developers calculated the additional enrollments from the proposed 441-unit development to be 90 new school children, a dramatically moderate figure compared to the impact of the standard subdivision. The smaller home sizes, condominiums, apartments and senior housing led to a low expectation for school enrollments. During initial stages of the project, developers would contribute \$1 million to an “offset” fund to be used to purchase developable land on the roads directly leading to the Dunstan intersection, to offset the additional school enrollment impact of the higher density development and to help mitigate traffic impacts from additional cars, already a capacity issue in the area.

Perhaps more importantly, the Maine Department of Transportation (MDOT) agreed to provide funding on an accelerated schedule to solve traffic problems at the Dunstan intersections in recognition of the long-term benefits of smart growth development in this growing area. With this assurance, the developers agreed to language in the contract restricting progress of the project to coincide with completion of the traffic improvements. It became significant that the promised actions by MDOT were never clearly ratified. In fact, at one point the MDOT representative stated in a local public meeting that the traffic improvement money was not directly tied to the Dunstan Crossing project. By fall 2002, nearly two years after the pursuit of project approval began, the community’s leadership had lined up largely in support of the proposal. However, residents of the Dunstan neighborhood, not having any formal assurance of the MDOT commitment, were not convinced it was worth the risk. Residents were increasingly vocal that the project was too large, that it would exacerbate an already difficult traffic situation, and that it would overwhelm the community’s already over-burdened schools.

DELIBERATING ON A COMPLEX CHANGE

Problems that are more difficult to resolve and which call forth unfamiliar proposed solutions are likely to require more resources and/or political

agreement than those that are more straightforward with accepted responses (Bryson and Delbecq 1979). Such problems, from the beginning, demand thorough consideration of the approach leaders will take.

In the case of Dunstan Crossing, the offset fund for open space and traffic improvements were public benefits that aimed at managing impacts of sprawling development in other parts of the community. However, many voters in the area surrounding the project were new to Scarborough, and living in those very sprawling developments that the smart growth movement rails against. It therefore became politically difficult to send a message to these residents that their new \$350,000 homes were somehow “bad” for Scarborough.

Public discourse on the project spanned more than two years and incorporated conscious and innovative steps to anticipate complexity and differences. At the outset, before submission of an actual project plan, the developers organized public design meetings and utilized an interactive process to elicit ideas from and gain public support of residents in the Dunstan neighborhood. For example, in March 2001, the developers sent more than 500 meeting notices to residents of the Dunstan area to initiate the first major local discussions of a Great American Neighborhood concept. More than 50 people turned out to participate in the first meeting, and as many as 25 continued through the initial planning process (Chamberlain 2002). By the time the proposal was presented to the town, it included a plan demonstrated to have been designed with the direct input of these neighbors and area residents, who came to be advocates for incorporating smart growth ideas into the development.

The resulting Dunstan Crossing project, eventually reduced from 441 to 397 residential units of several types, was the largest comprehensive residential project ever presented to Scarborough. Although the developers had worked with a core of committed citizen participants, initial general public opinion on the project in the town was guarded or negative. While many neighbors turned out at the outset to contribute to the design and were engaged as valued collaborators by the developers’ team, many more citizens had not participated. When the contract zoning process proceeded, members of the public who were opposed became increasingly vocal.

Some opponents claimed that because initial design meetings were convened and facilitated by the developers’ consultants, outcomes were not representative of public opinion, but were instead predetermined to represent the applicant’s interests.

The contract zoning process was conducted by the town council with project review and advice from the planning board and entailed numerous public hearings. However, it was clear that this form of public engagement, with its inherent formality and strategic nature as a prelude to “up or down” decisions, had become increasingly frustrating for the public. In response, the town council held a public forum at a church in the Dunstan neighborhood in late winter 2003. While a dialogue between residents and the council finally occurred, councilors were defensive in the face of an audience predominantly hostile to the project.

Perhaps because of economic uncertainty and the prospect of rising taxes, citizens were reluctant to trust public officials’ analysis of the projected impacts of Dunstan Crossing. While staff analysis indicated that school and public service impacts would be completely offset by the tax revenues from the increased valuation, most residents remained unconvinced. Additionally, there was little public belief that the traffic congestion in the area could be resolved. Although the project was anticipated to “build out” at a modest pace over the course of 10-15 years, due in part to Scarborough’s annual building permit cap, public outcry appeared to discount the long time horizon and assume all impacts would be felt immediately. Over time, positive environmental impacts of the project lost public recognition in the face of perceived infrastructure and fiscal impacts.

The state, the town, and the developers were unable to obtain an ally in, or a positive endorsement from, the media, which may have contributed to the project’s political failure. The project was routinely derided in the well-read local weekly newspapers. The predominantly negative headlines and editorials cited issues of the project’s size, its impact on traffic, and the lack of public support. In fall 2002, this negative public opinion crystallized with presentation by an opposition group of a petition against the project with over 1,000 signatures. The town council accepted the petition and scheduled a neighborhood meeting, yet

did not halt the contract zoning process, a decision which in hindsight appears to have been a critical juncture and perhaps a lost opportunity.

The town council's insistence on focusing on specific concerns of the public, rather than the overwhelming message of general dissatisfaction, was not ill-intended. The elected officials felt the project was in the best interests of the community, based on a reasoned analysis of available data and policies in the town's comprehensive plan (which, after all, called for such new development patterns for the Dunstan area). The public was viewed as becoming increasingly unreasonable, and communication and opportunities for beneficial agreement broke down with neither skeptical public nor citizen officials elected by them able to act on or even recognize value in the other side's concerns.

In the Dunstan Crossing contract zoning process, the two parties were the town council and the applicant; the public was only party to the contract through its elected officials. Elected officials were unwilling (and, perhaps, unable by virtue of there being no suitable process) to open up the contract negotiations to the public to allow major reformulations of interests, solutions and performance guarantees about project details. Indeed, this would have been a ceding of authority not really permitted by the process. Because elected officials felt they were serving the public will by implementing an aspect of the comprehensive plan, there was little attempt to stop the process and incorporate new information in the form of new public opinion about the fundamental issues of how to grow.

DIFFICULT LESSONS ABOUT LOCAL COMPREHENSIVE PLANNING

There is an important lesson embedded here for Maine communities, one that has received growing attention elsewhere as communities founder before landing stable agreements about how to grow. Despite a community's best intentions, as argued four decades ago by Alan Altshuler in his classic critique of city planning, it is difficult, if not impossible, to get genuine public debate on a comprehensive plan. It is fair to say that the public is ill-prepared to debate the abstract notion of a

“plan” (Innes 1996). Until the plan is implemented and the public can observe the impacts or perceived impacts of a proposal, it is incomprehensible. In Scarborough, regardless of whether the zoning ordinance was updated to be consistent with the plan (as Oregon and only a few other states' legal doctrines require more faithfully), the town council began deliberations with the assumption that the 1994 comprehensive plan—a fundamental town policy document—remained valid and accepted by the community.



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Against this assumption, the town council never really debated whether smart growth was good for Scarborough, or even more importantly, what the balance or distribution of solutions to satisfy varied community interests should be. When opposition mounted, councilors focused on specific concerns being raised—traffic, school enrollment, crime, and health. There was a general unwillingness among councilors who endorsed the plan to consider the complaint that it was “just too big,” a fundamental question that would have required a renegotiation of basic policy commitments in the plan. Opposed citizens greeted every attempt by both town and developers to discuss solutions to specific problems with the charge, “You're just not listening to us.” Complicating matters, by the time the project's opposition was organized, the developers had invested a significant amount of time and money in the project. The political fray and resulting uncertainty became a business risk that few developers would be able to endure. For the town, the cumulative impact of these issues was that addressing any party's concerns individually seemed counterproductive. In fact, much advice from the public policy alternative

dispute resolution (ADR) field suggests that one-issue-at-a-time decisions can frustrate the need to package possible multi-issue solutions. This situation was indeed experienced in Scarborough.

Effective negotiation of differences (as an alternative to the planning dilemma) also suggests that consent grows from processes of collective criticism, not from silence or a strategic party line (Innes 1996; Forester 1980). Yet once positions were established (in this case as with many others), criticism tended to polarize rather than bring the parties toward consensus—another dilemma. Significantly, there was no mechanism to resolve differences between leadership and public opinion once this stylized positioning encouraged by the process took hold.



The community clearly did not share a common vision for the importance of incorporating smart growth into Scarborough's Dunstan neighborhood.

The public process involved with contract zoning is somewhat to blame for this failing, as is the formal procedure—the public hearing—more generally. The goal of consensus building is deliberation that is informed, takes into account the interests of all, including the weakest, and uses only “good reasons,” such as protecting each others’ interests, and promoting what is good for the community (Susskind and Cruikshank 1987; Innes 1996). Steps in Scarborough’s contract zoning process are intended to meet these needs. However, the process cedes all power in deliberation to the town council and to the applicant—it is a negotiated contract that ultimately becomes ordinance, but the table is too limited. The public’s only avenue for involvement comes in the public hearing, a one-way mechanism, not a deliberative one, and thus a design for trouble. To get the attention of councilors when this forum failed to do so, citizens attempted a petition

drive and attended the public forum held outside of council chambers. The town council had no formal mechanism to incorporate this input (the petition was not “official” by legal standards); therefore, the input appeared to be largely discounted.

The result? After the town council and the developers reached an agreement and signed a contract early in summer 2003, a legal petition drive was mounted to force a local referendum vote to rescind the zoning action. The drive was successful, resulting in a record local election turnout in July 2003, which ultimately rejected the project by a 4:1 margin, overruling the town council’s decision.

Subsequent events, still unfolding at the time of this writing, include a lawsuit by the developers against the town of Scarborough, citing a failure to follow the state’s Growth Management Act by implementing village compact zoning in the Dunstan area consistent with the comprehensive plan. A court-encouraged, 60-day mediated negotiation was held soon after the filing of the suit in late 2003, between the town, developer-plaintiffs, and representatives of the citizen petition-referendum drive. This produced an agreement on a smaller 200-unit compromise project, which retained many of the original design features, including a mix of housing, walkability, a reduced offset fund and public trails. But the resulting consent decree failed in large part because MDOT pulled the funding for the intersection improvements when the project’s size no longer seemed to qualify as “smart growth.” Without traffic improvements, councilors required any new contract zoning agreement to go to the voters for approval, a deal-killer for the developers.

It is not hard to point to possible reasons (well known in the public alternative dispute resolution field) why the mediation produced disappointing results. These include the failure to coordinate proposed settlements with key regulators like MDOT; using “red flag procedures”; and the lack of implementation provisions and call-back opportunities (Kartez and Bowman 1993). But the fundamental source of failure is that these supplements to the conventional process simply came too late. Like alternative dispute resolution (ADR), successful public policy formulation requires that differences be confronted at the earliest

stages possible, rather than merely applying a negotiation band-aid late in the game.

It is this larger issue of public process that should be the focus here. At a first-time Sustainable Communities Conference held in Portland as a result of activism by a new coalition of neighborhood associations in that city, Richard Berman, a local real-estate developer responsible for numerous innovative projects (some built and some blocked in different communities), presented his model of successful local planning. In his framework, the developer, the local officials and the jurisdiction's citizens all work together to collaborate for the best interests of the community. He proposes that each party has interests in a particular development, but at their core, each party wants to do what is best for the community (Berman 2003). In the case of Dunstan Crossing, one could argue that the process started out, in the spring of 2001, as a collaboration of all three parties. At some point, it failed to be recognized in Scarborough that the citizens, a critical element of the triangle at the beginning (putting aside issues about the developer-convened process), began to be left behind as the contract zoning process proceeded. With only two parties left working together, the process was doomed to failure.

Had the council in fall 2002 managed to stop the contract zoning process long enough to absorb the community's concerns and possibly make substantive changes to reflect these interests, it is likewise possible the referendum could have been avoided. Yet the types of changes the public demanded might then have gutted the project of features critical to smart growth. When opposition to the project grew, there was little desire to go back to the drawing board and dramatically change its size or scope. A significant size reduction seemed the only way to get public approval, yet it defied the goal of building a high-density, mixed-use development.

What to do? This situation, not unique, raises questions about whether attempting projects of Dunstan Crossing's size is wise for the smart growth movement in the New England context. It can be argued that for the purposes of making smart growth developments more common, incremental change is the best option; and that the number of people who feel a

project is "just too big" will always block large departures from the status quo. To address this, comprehensive planning processes could include an element of public education on costs and benefits of sprawl in hopes that eventually enough people will reach the Duke of Wellington's conclusion that "we have run out of money; now it is time to think." Many environmental and planning experts insist that if we do not take dramatic leaps toward significantly higher density projects (where they should occur, coupled with corresponding safeguards on low density where it should occur), including providing more state incentives for towns to innovate, standard density residential development will surely cost more than we are able to pay, economically, environmentally and socially.

The community clearly did not share a common vision for the importance of incorporating smart growth into Scarborough's Dunstan neighborhood. Creating a common vision was part of the early development of Dunstan Crossing. The flaw here was the lack of further steps providing a means for dialogue with the public, to continue the process of creating this common vision. The initial participatory design meetings were not successful as "one-time" events, especially with the limited percentage of the population who participated, compared to the population that would be party to the later process. Because the contract zoning process took several years and the participatory design meetings between developers and neighbors were not repeated, the element of community support for the project's goals was lost, never expanded to a wider public. The eventual referendum was less the cause of the project's failure than a manifestation of the failings in the contract zoning process as a means of new residential design.

Put another way, the public's inability to accept the rhetoric about the benefits of increased density soon became synonymous with NIMBYism ("Not in My Backyard" opposition). Opposition could either be dismissed as uninformed about the facts, or as a rational coping measure, given that no process was readily available to the town's staff and leadership to rectify it. Besides the contract zoning process, closed by its legal form to reinitiated deliberation among all sides, the other engagement methods available were

inadequate at this stage. Testimony at hearings, letters to the editor, and other opinion-shaping efforts had already moved simply to trying to convince the other side of its deficient understanding or to defeat it, not to resolve the issues. The dialogue necessary to craft solutions was not possible.

Based on earlier experiences, however, foresight might have been possible; as Bruce Clary has argued in this journal (1997: 6), citizen NIMBY response should not be “labeled” merely as “uninformed, overly emotional and unwilling to compromise” but as an alert about needs for a better process of public deliberation, conducted at the best time (i.e., not too late).

Ideally, as described by influential smart growth designer Peter Calthorpe (1993: 52), “each level of planning codes needs revision and updating, but the sequence is key to the result. First, broad-based community support for the alternatives to sprawl must be developed. Common understanding that there are significant alternatives to sprawl and that they are bound by specific principles must be understood by everyone in the community. All segments of society must participate in an effort to redefine the quality and form of growth in their region.”

Absent broad public support for the goals of a smart growth program, the Dunstan Crossing project came to be perceived as a threat to the well-being of the community. The residents felt that their own understanding of the facts of increased density—traffic, school enrollment pressure, and loss of the small town environment—was more credible than the project proponents’ assurances. The lack of a regional program for growth management left open the question of whether the project would result in a long-term benefit to the community. Certainly no regional process was available either to substitute for local ones in allowing dialogue leading to confidence about potential benefits and understood costs.

WHERE NEXT? SOME PROPOSITIONS

Maine’s Growth Management Act

As Scarborough demonstrates, there can be a wide chasm between the comprehensive plan and what ends

up happening on the ground. For this reason, if the Growth Management Act is to be effective, it needs to do more than mandate and provide limited incentives for creation of a comprehensive plan. It needs additionally to require that for a plan to be approved by the state, concrete implementation details of the plan first must be reflected in the town’s ordinances (a feature of Oregon’s original statewide planning mandate in 1973). That achievement of such a requirement may be politically infeasible is a separate issue. The first goal of the Growth Management Act is “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.” Such aims will not be possible to achieve until the plan-vs.-implementation gap is bridged.

Since 2001, the state political process has included several legislative committees that have suggested a range of solutions. The legislature’s new standing working group on these issues, the Community Preservation Advisory Committee, now works on a diversity of growth management issues between sessions. So far, there have been no fundamental changes proposed that would more assertively require towns to work toward goals set forth in their state-approved comprehensive plans. Until such changes are made, more difficulties such as those encountered in Scarborough can be expected. One could argue that even now, the law requires town ordinances to be brought into consistency with their comprehensive plans within 24 months of plan approval; and that, therefore, fundamental state policy change is not necessary. However, according to Evan Richert, State Planning Director from 1995-2001 (personal communication), this requirement is not observed in most cases; without a self-executing mechanism, such as loss of state funds following the 24-month period, the gap between plan and reality will remain large. This is not to endorse categorically a particular state mandate but to show that the current one has an inherent tendency to encourage local governments to set themselves up for unproductive planning dilemmas.

To be effective, a better mechanism likely will need to entail a combination of incentives and regulations. At

Dunstan Crossing, for example, had the MDOT public improvements incentives been more clearly solidified, the town's interest in complying with its state-approved comprehensive plan might have been greater. However, new funding from the legislature for smart growth projects is not likely to be readily forthcoming. This suggests the need for studies in Maine that clearly demonstrate the financial costs of continued sprawl in contrast to the cost of smart growth.

Regionalism

Even bridging the gap, though, will not be enough. Forces driving sprawl in Scarborough, and elsewhere, are regional in nature and larger than the community effectively can solve through local ordinance. Policy is living in denial of the reality of our transportation networks, which have rendered town-specific planning anachronistic and costly in certain respects. Theoretically, for the higher density of a Great American Neighborhood to have its optimum value, it would have to be offset by lower density in outlying areas. But without an effective regional planning mechanism, this would, of course, not occur, and standard sprawl development would continue in the remainder of Scarborough and the neighboring towns.

The first Dunstan project package, including the developer-financed offset fund to preserve off-site lands from further growth and the MDOT-financed improvements, was a creative attempt to manage impacts beyond even a large single project. But impacts span towns as well, and other tools are needed. One proposed in Maine and responsive to the New England context is the Municipal Service District (MSD) concept, which represents a new way of achieving regional planning goals, while maintaining local control (NE/EFC 2003). A MSD would include between eight and 15 municipalities and have a popularly elected council with representation from each municipality. The council would have exclusive authority over K-12 education, taxation and assessment, and land use decisions such as where affordable housing will be located in the district. By providing regional solutions to regional land use problems, MSDs would help to reduce sprawl. However, the initial proposal for MSDs, presented to the legislature

in the summer of 2003, did not garner immediate acceptance. Regionalizing education remains a legislative focus that includes some elements of the earlier Municipal Service District proposal. This form of regionalization may indeed lessen the property tax burden, but other benefits of regionalism would be foregone, and land use conundrums such as the one at Dunstan Crossing would remain. For this reason, Municipal Service Districts and other proposals for more efficient regional planning appear to remain important options for the legislature to consider.



Forces driving sprawl in Scarborough, and elsewhere, are regional in nature and larger than the community effectively can solve through local ordinance.

The Role of Petition Referendum

Another important lesson emerging from the Dunstan Crossing experience is about the impact and use of citizen referendum as a tool supported by state policy. As University of Maine Law School Professor Orlando Delogu, a nationally respected land-use law authority, has observed:

There is a nice legal question that these developers might wind up putting to the state's highest court. Stated most simply, it is whether individual projects such as this one, once validly approved by planning officials (even if the approval requires a contract rezoning to embody the details of that approval) should be subject to being overriden by referendum. Notwithstanding Maine's long use of initiative and referendum procedures, I am unaware of any Maine case that has answered this precise question.

Most other jurisdictions that have considered this precise question have said, NO. They have

held that initiative and referendum procedures are reserved to put in place (or overturn) legislative acts, broad, generally applicable policies and/or principles of the government. They have held that individual project approvals are quasi-judicial (administrative) in character, and not subject to being overturned via referendum by disgruntled citizens who are not raising or seeking to overturn some broad principle or policy, but simply want a different outcome with respect to a particular project... . While initiative and referendum procedures have proven useful in raising (or defeating) broad policy questions confronting a society, it has become too easy for committed opponents of a particular project to use these same tools (often mixed with a little misinformation) to overturn safe, well-designed, economically sound, and often necessary development activities and/or projects (2003: 22).



...dissent needs to be confronted early and with sustained engagement when major change in the physical character of the community is contemplated.

Legislation was proposed to deal with this issue during the 2003 legislative session, sponsored in part by a lawmaker who had previously worked with the developers to facilitate the initial public design meetings. This created a political dilemma for the Scarborough town council, because it appeared aimed directly at the town in an attempt to take away the right of citizens to speak in opposition to the project. Scarborough town councilors were vocal in their support of the right to initiative, as given in the town charter. Councilors had hoped to reach a successful conclusion and avoid years of complaints that the

council had approved a project despite citizens' wishes. Further to Delogu's point, the town considered the contract zoning process to be both a legislative act and a statement of policy (smart growth), and therefore an appropriate use of the referendum process. Legislation that aims to clarify when use of referenda is appropriate, according to the reasoning by Delogu (above), has been drafted but not brought to the legislature (NE/EFC 2003, Section 4, Provision X).

More useful to this discussion is to note that in Scarborough, the use of a referendum to override the contract zone, while it may resemble the NIMBY response Delogu describes, was first a symptom of the need for a more effective public engagement process.

Public Process

Finally, bridging the plan-vs.-implementation gap also requires better efforts to successfully engage different interests on concrete matters of consensus. Dunstan Crossing provides rich lessons about how (and how not) to structure public engagement and deliberation processes on complex, multi-interest issues like smart growth projects. Specific and concrete lessons can be drawn, such as the need for two-way communication. Clearly, the public hearing in which one party presents, others comment, and no one is allowed direct interaction, meets statutory requirements but fails to encourage creative solutions or address doubts. Other specific lessons include the need to repeat an exercise such as the initial participatory design meetings beyond the pre-application stage of a project. Additionally, towns should convene such processes to avoid the criticism that arises from having developers themselves convene them. However, neither of the latter two lessons about those design sessions in Scarborough negates the fact that such deliberation with citizens who showed up was a useful, if limited, step to take in each instance. Much more useful would be to place these issues in the context of broader principles of building deliberative processes for public decision problems such as smart growth. Building confidence in these processes, Clary pointed out in this publication (1997: 7), does not hinge on choosing "one best method for...citizen input, but to us(ing) multiple strategies over time."

In fact, a well-developed body of practical principles has been developed about promoting consensus-building in growth and environmental management as an antidote to the planning dilemma (Innes 1996, Susskind and Gensberg 2002). This consensus-building approach draws on techniques and strategies of direct negotiation from the alternative dispute resolution field's experience with environment and development issues, as well as reforms to citizen participation approaches over time.

The key principles are to embrace the need to acknowledge and address differences over concrete issues, and to create opportunities to convene well-represented, deliberative processes among key proponents and opponents. The aim is to overcome dilemmas in conventional policy processes by allowing ideas about how to satisfy each set of interests to be freely explored. Other key aspects of the approach include (but are not limited to) looking for gains for all interests through the open exploration process; using neutrals to help design and conduct the process and to promote a focus on interest-satisfaction; and creating ways to carry out and monitor agreed actions that build confidence. These principles are well understood in the public policy ADR field. The steps involved in either consensus-building or effective negotiation can be summarized as: convening, clarifying responsibilities, framing the issues, deliberating, deciding to maximize the interests satisfied, and implementing.

This approach explicitly depends on the idea that such processes should be consciously designed. Some tailoring may be needed in each situation. Neither effective participation nor consensus-seeking efforts can occur from merely stringing together activities and interactions that are not carefully tied to key decision-making steps and to each other. In the Dunstan case, the initial design sessions with citizens could have benefited from direct recruitment of key neighborhood and opinion leaders and others who might have been expected to have a stake in a consequential change. Such identification, as well as recruitment, is routinely done in consensus-building processes by neutrals, for example. The town could have beneficially acted as the convener, in fact, although this requires careful effort to avoid conflicting with any due process requirements.

More to the point, the town could have reconvened such interactive design deliberations at a slightly later but still midterm point. While such a need may not have been practically apparent at the beginning of the Dunstan Crossing process, it is in the nature of a lesson to require that the rigors of learning be used to anticipate new situations later if it is to have any value at all. Ultimately, town staff, rather than elected officials, must be charged with keeping track of emerging issues needing a more involved public process.

Indeed, a broad lesson here is that dissent needs to be confronted early and with sustained engagement when major change in the physical character of the community is contemplated. Because no one knows the long-term consequences of change, this requires more than conflict resolution, though it entails similar processes. In particular, it requires a search for a consensual vision for change. Conventional long-range planning processes often fail to meet this need because they focus on the lowest common denominator of consent, exporting genuine resolution of issues to the future.

Yet another lesson from Dunstan for the effective implementation of smart growth initiatives lies in the question of "Who is driving? Private or public interests?" In this case, the public clearly believed that private interest—the developer—was driving this major policy decision, and therefore it was suspect. Concerns over how much the developer would profit from the project at the public's expense clouded discussion of the public benefits of denser development. Had the zoning provisions been made independent of and prior to a particular proposal—the sequence Calthorpe (1993) points out is desirable—the discussion over density could have been blind to the profit motive and focused instead on environmental impact.

Finally, for effective leadership in a controversial political environment, the public must have opportunities to interact with their government before decisions are made. Once the contract zoning document was on the table, the public was unable to sway the Scarborough town council from implementing it. While most councilors still believe the project was in the best interests of the town, it is debatable whether the town council can retain public trust and defy the vocalized concerns of a portion of its citizens at the same

time. In the end, lack of ability to halt the process for successful two-way dialogue may have been the project's primary undoing. Public hearings are thus an insufficient method of citizen-government interaction. New statutory guidelines for public participation must be designed that allow legitimate use of these time-outs for direct engagement that are the heart of the consensus-building approach. Further, such processes must be repeated in a community more than once, else the social capital necessary to grapple with the future in a healthy manner is not likely to develop.

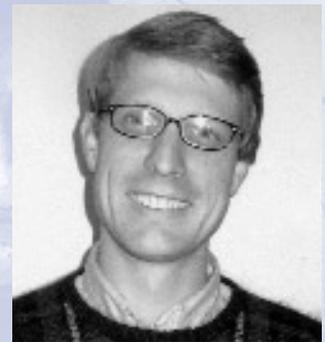
CONCLUSION

The Dunstan Crossing experience reminds us that 20 years of emphasis on comprehensive planning by the state have failed to get alternatives to sprawl to be implemented in growth areas of the state. This raises serious questions about the nature of our representative democracy and how we respond to public input concerning development patterns. What kinds of public involvement processes most effectively capture citizens' visions for how Maine should be developed? Is anybody in Maine paying attention to what works and what does not in this regard? These questions lead to bigger ones: Who are we as a community and how do we communicate with our government? What do we want Maine to look like in 20 years? What kind of transportation networks are we going to have around our service centers? Dunstan Crossing doesn't have answers to these questions, but it begs us to ask them.

If we look at Maine as a whole, we can basically divide it into three regions: the majority geographic area of the state, where few people live; the service



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centers, where many people both live and work; and the rural areas adjacent to service centers, where many live, but fewer work. Right now the biggest trend is for people to live in rural areas and commute longer and longer distances into service areas. Unless we want this trend to continue until sprawl development and all its associated costs have spoiled what makes Maine special, now is the time to ask and answer the tough questions about how best to respond to pressures of growth. If there is any hope that developers like the ones who so boldly extended themselves with Dunstan Crossing might be willing to come forward with similar proposals, Maine communities owe it to themselves and their citizens to convene processes that will allow effective and fruitful deliberation over these challenging and important choices. 🐟



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ENDNOTE

1. A description of the Great American Neighborhood may be found on the Maine State Planning Office's Web site, <http://www.state.me.us/spo/landuse/pubs/gandesc.php>.

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