

**TOWN OF YARMOUTH
AFFORDABLE HOUSING COMMITTEE
REGULAR MEETING**

May 2, 2022

7:00 PM, Town Hall Community Room and Remote Meeting

AGENDA

- I. CALL TO ORDER**
- II. ROLL CALL OF MEMBERS**
Meghan Casey, Chair
Margaret Downing
Cecilia Guecia
Deborah Keefe
Leigh Kirchner
Steve Morris
Jay Waterman

Michelle Cromarty, Council Liaison
Julie Dubovsky, Assistant Planner
Erin Zwirko, Planning Director
- III. Review and approval of April meeting summary (5 minutes)**
- IV. Reports on Last Meeting Action Items (20 minutes)**
 - a. Yarmouth and the QAP**
 - b. Housing Metrics**
 - c. LD 2003**
- V. Report from Zoning Subcommittee and Discussion (40 minutes)**
- VI. Discussion on Listening Sessions (20 minutes)**
- VII. Planning for June Meeting (10 minutes)**
- VIII. Adjournment**

Yarmouth Affordable Housing Committee
April 4, 2022
7:00PM
Meeting Summary

Name	Roll Call
Meghan Casey	Y
Margaret Downing	Y
Cecilia Guecia	Y
Deborah Keefe	N
Leigh Kirchner	Y
Steve Morris	N
Jay Waterman	Y
Michelle Cromarty, Council Liaison	N
Julie Dubovsky, Assistant Planner	Y
Erin Zwirko, Planning Director	Y

Review and approval of previous meeting notes

The meeting summary from February and March were approved unanimously.

Prepare for Joint Meeting with EDAB

Erin noted that meeting materials for the joint meeting with EDAB had been circulated including some discussion questions that the two committees could use to focus the conversation.

The Committee discussed bringing a sense of urgency to the joint meeting with EDAB as available affordable housing affects economic development at all levels. The Committee discussed wanting clarity from EDAB regarding their role in developing affordable housing, beyond the creation of the Local Development Corporation. The roles of EDAB and the future LDC were clarified. EDAB manages the tax increment finance districts on behalf of the town and makes policy recommendations around economic development. The LDC is quasi-public with the ability to make decisions outside of the regular decision making process of the town. The Committee discussed that having EDAB's support of any initiatives would be beneficial when policy recommendations are made to the Council.

The Committee discussed the following goals; request that TIF funds could be used for affordable housing requiring an amendment to the purposes; request EDAB advocate on zoning decisions and funding applications; and request whether employer-sponsored housing is a tool that could be used in Yarmouth.

The Committee also discussed that it would be important for the two committees to have a common understanding on the spectrum of households that need affordable housing and the goals for Yarmouth. The Committee discussed that EDAB may be looking at households earning more income than the households identified in the Committee's charter. The Committee discussed the continuum of housing needs.

The Committee also discussed the intersection of housing, economic development, and sustainability. The Committee discussed how affordable housing is often leaders on sustainability as a way to reduce costs in the long-term for the households living in new units. The Committee discussed how the location of new affordable housing in Yarmouth should be in the TIF districts (Main Street and Route) as services are available and transportation is available.

The Committee discussed the potential of creating a new non-profit to develop affordable housing in Yarmouth, which would be separate from the Committee and the LDC. The Committee discussed how a development consultant could work with a nonprofit to identify opportunities and secure funding.

Planning for May Meeting and Updates

The Committee requested that draft zoning language be developed. Erin noted that the EDAB funding could be used to complete a nexus study in order to present zoning language, especially for inclusionary zoning, that would actually pencil out unlike some of the current language in Portland.

The Committee also discussed understanding LD 2003 in more detail should be approved by the legislature. The Committee also discussed the timing of the listening sessions.

Public comment included notes from two realtors who indicated that there are very few listings on the market in Yarmouth.

Adjournment at 8:30 pm

###

Memo

To: Yarmouth Affordable Housing Committee (YAHC)
From: Juliana Dubovsky
CC: Erin Zwirko and Scott LaFlamme
Date: April 26, 2022
Re: Regional Service Center criteria for the QAP

Background

At the joint YAHC and Economic Development Advisory Board (EDAB) meeting on April 5, 2022, the Committee discussed becoming “application ready” for the Low-Income Housing Tax Credit (LIHTC) from Maine Housing. The LIHTC is essentially the only remaining program through which to use private, capital investment in the development of affordable rental housing in the country. As the designated housing credit agency for the State, Maine Housing is required to adopt a Qualified Action Plan (QAP) for allocating and administering LIHTC. An affordable housing project must undergo a mandatory Pre-Application review to assess its feasibility, suitability for housing and eligibility for Credit. According to members of the committee experienced in these applications, the Town consistently loses points in the QAP because it is not a “Service Center Community.”

Methodology

A “Service Center Community” is defined as a municipality that provides jobs and retail to surrounding areas and is a center for education, healthcare, cultural, recreational and social services. These are designated pursuant to the [Municipal Planning Assistance Program of the State’s Department of Agriculture, Conservation and Forestry \(DACF\)](#) as a Regional Service Center (RSC) as of January 2013. According to the DACF website, the list of RSCs is required to be updated decennially to correspond with the Census Bureau’s Decennial update.ⁱ

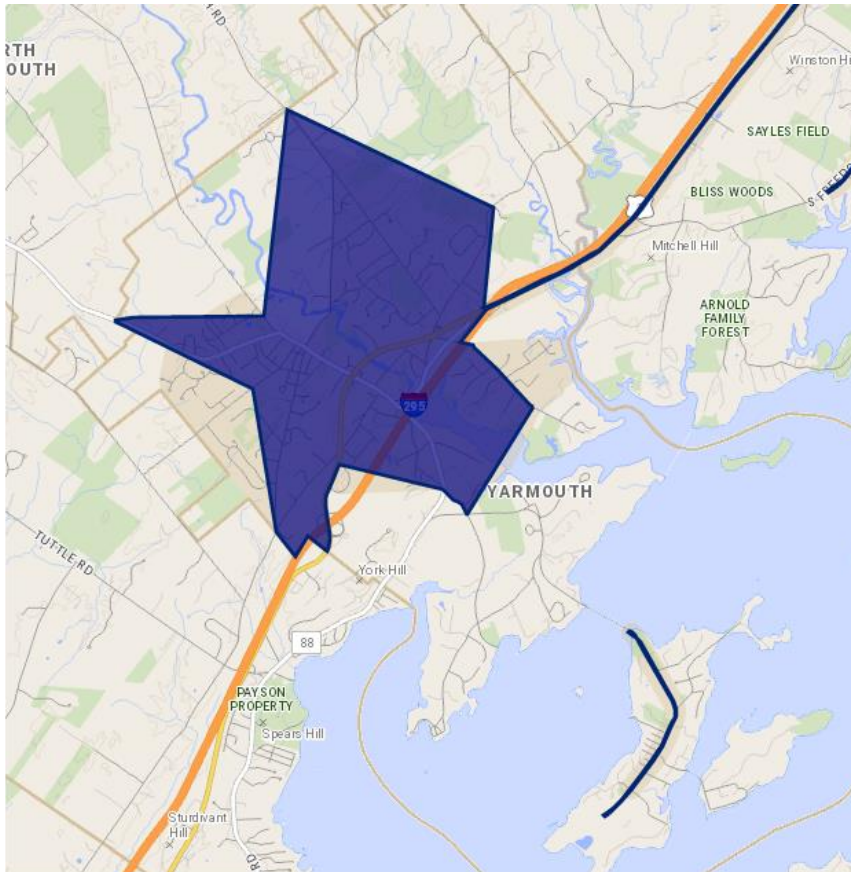
The DACF identifies municipalities or parts of municipalities that serve as regional service centers based on [three criteria](#):

1. Indices of Economic Impact
 - Employment center index
 - Trade center index
 - Service center index
 - Housing services index

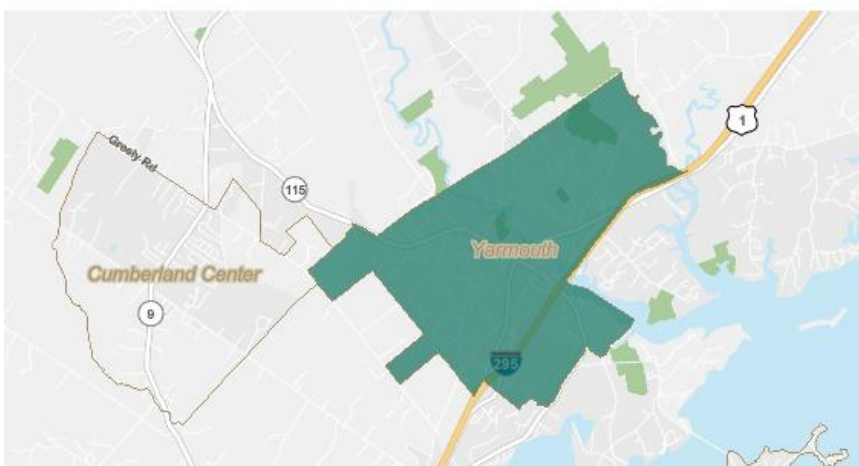
The employment center index or trade center index must be of 1.0 or greater, another index must be 1.0 or greater, and a third index must be 0.5 or greater.

2. A portion of any adjacent municipality that is a Census Designated Place (CDP) or an Urban Compact Area (UCA), as defined by the Maine Department of Transportation, and is adjacent to an RSC (see Map 1 and Map 2 below)ⁱⁱ.

Map 1. Yarmouth Urban Compact Area



Map 2. Yarmouth Census Designated Place



3. The municipality with one or more adjacent CDPs/UCAs identified as an RSC must also enter into an agreement with its neighboring RSCs to “work in a cooperative manner on any project for which the municipality seeks financial or other support as a regional service center.”

Findings

According to 2010 data, the Town of Yarmouth does not meet several of the criteria:

1. Although Yarmouth has a portion of the town that is a CDP and the Town is a UCA, Yarmouth’s CDP is adjacent to Cumberland, which is not a RSC.
2. Although the Town is a UCA, it is adjacent to Cumberland, North Yarmouth, and Pownal, which are not RSCs. However, the town is also adjacent to Freeport, which is a UCA and an RSC, so maybe an agreement could be explored with them if other qualifying criteria are met.
3. Neither the Employment Center Index nor the Trade Center Index are of 1.0 or greater. Only the Service Sector Index is above a 1.0, at 2.295. If updated data shows that Yarmouth now meets those indices, and the others have remained above a 0.5, then Yarmouth may now meet the criteria for a RSC.

Next Steps

1. The MPAP anticipates that the 2022 update will occur and will be released January 2023.
2. Clarify if Yarmouth can enter into a cooperative agreement with Freeport RSC. Per the [Methodology for Identification of Regional Service Centers](#), *“Cooperative planning for development and implementation of projects may be facilitated by regional councils, as defined by, and is encouraged.”*

ⁱ Details on the [data](#) used to identify the Regional Service Centers is available on the Municipal Planning Assistance Program (MPAP) website: [Service Centers: Municipal Planning Assistance Program: Maine DACF](#)

ⁱⁱ A “Census Designated Place” is defined as a a portion of a municipality that the United States Bureau of the Census defined as a census designated place based on the most recent decennial census; has a densely settled population center with a definite residential core with a density of 1,000 or more persons per square mile; and includes commercial, industrial or other urban land uses.

“Urban compact area” means that portion of a municipality that the Maine Department of Transportation has identified as a compact area of an urban compact municipality pursuant to 23 M.R.S.A §754.

“Regional service center” means a “service center community” as defined by 30 A M.R.S.A. §4301, sub-§14-A that is identified by the office pursuant to Section 2 of this chapter.

Memo

To: Yarmouth Affordable Housing Committee (YAHC)
From: Juliana Dubovsky
CC: Erin Zwirko and Scott LaFlamme
Date: April 26, 2022
Re: Regional Housing Benchmarks

Background

At the YAHC meeting on April 4, 2022, the Committee raised the question of setting metrics for annual construction of new affordable housing units. This topic was also raised at the subsequent joint-committee meeting with the Economic Development Advisory Board on April 5, 2022 regarding a “target number” of affordable housing units or a ratio that a Town of Yarmouth’s size should be seeking to achieve. It was explained that the Affordable Housing Overlay District created in the 1990s fell short of its target (up to 70 units within five years), and while any new affordable housing is sorely needed at this point, that new, measurable metrics should be established¹.

Regional Goals

While GPCOG has not set regional benchmarks for its member communities, the Metro Regional Coalition’s (MRC) 2021-2022 Workplan reaffirmed the group’s commitment to the goal of “expanding housing choices and increasing the supply of workforce housing in MRC communities for low- and middle-income households in the region by 10% between 2020 and 2025.” This goal was adopted in 2019; since the initial 2020 annual report on housing production in 2020, there has been an increase in new units but mostly in market rate housing.² The 2020 Census Data showed a total housing count in the MRC communities was 83,801, so 8,380 new units should be built for low and middle-income households by 2025.³

If we relate that same benchmark to Yarmouth for 2025, the numbers would be:

- 2020 Total Housing Units in Yarmouth = 3,819 in 2010 to 3,859 in 2020 (+40 units)

¹ 1997 Affordable Housing Overlay District Zoning Ordinance

² GPCOG Document Center, MRC April 12, 2022 Meeting Minutes and Summary Presentation.

<https://www.gpcog.org/documentcenter>

³ <https://data-hub.gpcog.org/pages/2020-census>

- 10% new by 2025 = 386 new units for low and middle-income households.
- That would be 77 units for low and middle-income households per year between 2020 and 2025. By comparison, according to the US Census Bureau data, Yarmouth added a total of 40 new housing units over the past 10 years.

GPCOG Population and Employment Forecasts for Connect 2045

As part of the federally mandated long-range transportation plan, GPCOG is required to prepare regional population and employment growth forecasts. Earlier in 2022 they purchased 2045 population and employment forecasts at the county level from Woods and Poole Economics.⁴ Projections are a very “tricky art,” made even more so by the complex systemic disruptions of the COVID-19 pandemic.ⁱⁱ

Projections over the next 25 years for Cumberland County showed:

- Population growth = 303,037 in 2019 to 338,029 in 2045 (+34,992 more people)
- Employment growth = 250,829 in 2019 to 341,552 in 2045 (+90,693 new jobs)

GPCOG’s travel demand model requires that they take the countywide figures and distribute them to smaller geographies like municipalities. These are still rough approximations, but for Yarmouth the Town projections were:

- Population growth = 8,990 in 2019 to 10,028 in 2045 (+1,038 more people)
- Employment growth = 6,121 in 2019 to 8,403 in 2045 (+2,282 new jobs)

Using these estimates for 2045, if the average household size in Yarmouth (2016-2020) is 2.59 persons, then roughly 400 new housing units would be needed by 2045 to house 1,038 new persons. Over twenty years, that would be twenty homes a year. According to the Town’s building permits, from 2010 – 2020 there were an average of 20 new homes built a year. This does not include demolition and rebuilds of existing homes.

Setting Benchmarks

Twenty years is a long timeframe and Comprehensive Plans are generally updated every 10 years. A good question is how much of that projected regional growth does Yarmouth want? And at what rate? The Comprehensive Planning process is an opportunity to talk about the future of the Town and set goals for housing growth, like:

- | | |
|---|---|
| ○ how much overall | ○ where does it occur |
| ○ at what rate (e.g. annually or by next Comp Plan (i.e. 10 years) or twenty years) | ○ what does it look like |
| | ○ and what does current zoning allow it to be |

⁴ GPCOG Connect 2045 Population and Employment Forecasts

A useful exercise during the Comprehensive Planning process would be to imagine different “growth scenarios,” and then understand the costs (in terms of new infrastructure) and benefits (jobs, tax revenue, vitality, etc.) of each alternative. From there, setting benchmarks for new housing units could be grounded in community values and sustainable growth goals.

ⁱ MRC member communities include Cape Elizabeth, Falmouth, Gorham, Portland, South Portland, Scarborough and Westbrook. The minutes reflect that the 2021 MRC Housing Choice Progress Report will be published shortly, but a summary presentation on the 2021 data is available in GPCOG’s document archives under “Housing Studies”: <https://www.gpcog.org/documentcenter>

ⁱⁱ On the methodology of the 2045 Population and Employment Forecasts, per GPCOG, many municipalities are finding these forecasts to be on the low side. There are numerous ways to make the local calculations, and the chosen method was to distribute the population to the towns based on the town’s percent share of the overall county population. Yarmouth accounts for 3% of the County’s population growth from 2010-2020, according to [GPCOG’s 2020 Census Data Map](#). So another way to estimate would be to take Yarmouth’s 2020 US Census population count of 8,990 persons and multiple that by 3%, yielding an estimated additional 270 persons in ten years. This gives us more of a range for population growth over 20 to 25 years (540 – 1,038 persons).

The “modest” forecasts may also be due in part to the historic trends of minimal housing production and commuting patterns. Prior research by GPCOG for the MRC found that due to the lack of affordable housing in Cumberland County and its job centers, employees are forced to move further out to places beyond the county ([Expanding Housing Choices in the Greater Portland Region, 2019](#)). So while more people may be working in the Town in the future, fewer will be able to afford to live there too. The modesty of the forecast may include the continuation of this workforce trend.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
H.P. 1489 - L.D. 2003

**An Act To Implement the Recommendations of the Commission To Increase
Housing Opportunities in Maine by Studying Zoning and Land Use
Restrictions**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §13056, sub-§7, as amended by PL 2003, c. 159, §3, is further amended to read:

7. Contract for services. When contracting for services, to the maximum extent feasible, seek to use the State's private sector resources in conducting studies, providing services and preparing publications; ~~and~~

Sec. 2. 5 MRSA §13056, sub-§8, as enacted by PL 2003, c. 159, §4, is amended to read:

8. Lead agency for business assistance in response to certain events. Be the lead agency for the State to provide information and business assistance to employers and businesses as part of the State's response to an event that causes the Department of Labor to carry out rapid-response activities as described in 29 United States Code, Sections 2801 to 2872 (2002); ~~and~~

Sec. 3. 5 MRSA §13056, sub-§9 is enacted to read:

9. Establish statewide housing production goals. Establish, in coordination with the Maine State Housing Authority, a statewide housing production goal that increases the availability and affordability of all types of housing in all parts of the State. The department shall establish regional housing production goals based on the statewide housing production goal. In establishing these goals, the department shall:

- A. Establish measurable standards and benchmarks for success of the goals;
- B. Consider information submitted to the department from municipalities about current or prospective housing developments and permits issued for the construction of housing; and
- C. Consider any other information as necessary to meet the goals pursuant to this subsection.

Sec. 4. 30-A MRSA §4364 is enacted to read:

§4364. Affordable housing density

For an affordable housing development approved on or after July 1, 2023, a municipality with density requirements shall apply density requirements in accordance with this section.

1. Definition. For the purposes of this section, "affordable housing development" means:

A. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and

B. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.

2. Density requirements. A municipality shall allow an affordable housing development where multifamily dwellings are allowed to have a dwelling unit density of at least 2 1/2 times the base density that is otherwise allowed in that location and may not require more than 2 off-street parking spaces for every 3 units. The development must be in a designated growth area of a municipality consistent with section 4349-A, subsection 1, paragraph A or B or the development must be served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system. The development must comply with minimum lot size requirements in accordance with Title 12, chapter 423- A, as applicable.

3. Long-term affordability. Before approving an affordable housing development, a municipality shall require that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

A. For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

B. For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

4. Shoreland zoning. An affordable housing development must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

5. Water and wastewater. The owner of an affordable housing development shall provide written verification to the municipality that each unit of the housing development is connected to adequate water and wastewater services before the municipality may certify the development for occupancy. Written verification under this subsection must include:

A. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

B. If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

C. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

D. If a housing unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

6. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.

7. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

8. Rules. The Department of Economic and Community Development shall adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. The rules must include criteria for a municipality to use in calculating housing costs. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 30-A MRSA §4364-A is enacted to read:

§4364-A. Residential areas, generally; up to 4 dwelling units allowed

1. Use allowed. Notwithstanding any provision of law to the contrary, except as provided in Title 12, chapter 423-A, for any area in which housing is allowed, a municipality shall allow structures with up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit, except that a municipality shall allow up to 4 dwelling units per lot if that lot does not contain an existing dwelling unit and the lot is located in a designated growth area within a municipality consistent with section 4349-A, subsection 1, paragraph A or B or if the lot is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.

A municipality shall allow on a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each.

A municipality may allow more units than the number required to be allowed by this subsection.

2. Zoning requirements. With respect to dwelling units allowed under this section, municipal zoning ordinances must comply with the following conditions.

A. If more than one dwelling unit has been constructed on a lot as a result of the allowance under this section or section 4364-B, the lot is not eligible for any additional increases in density except as allowed by the municipality.

B. A municipal zoning ordinance may establish a prohibition or an allowance for lots where a dwelling unit in existence after July 1, 2023 is torn down and an empty lot results.

3. General requirements. A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed under this section that are greater than dimensional requirements or setback requirements for single-family housing units, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.

4. Water and wastewater. The owner of a housing structure must provide written verification to the municipality that the structure is connected to adequate water and wastewater services before the municipality may certify the structure for occupancy. Written verification under this subsection must include:

A. If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the structure and proof of payment for the connection to the sewer system;

B. If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

C. If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the structure, proof of payment for the connection and the volume and supply of water required for the structure; and

D. If a housing structure is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

5. Municipal implementation. In adopting an ordinance, a municipality may:

A. Establish an application and permitting process for housing structures;

B. Impose fines for violations of building, zoning and utility requirements for housing structures; and

C. Establish alternative criteria that are less restrictive than the requirements of subsection 4 for the approval of a housing structure only in circumstances in which the municipality would be able to provide a variance under section 4353, subsection 4, 4-A, 4-B or 4-C.

6. Shoreland zoning. A housing structure must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

7. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.

8. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

9. Rules. The Department of Economic and Community Development may adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

10. Implementation. A municipality is not required to implement the requirements of this section until July 1, 2023.

Sec. 6. 30-A MRSA §4364-B is enacted to read:

§4364-B. Accessory dwelling units

1. Use permitted. Except as provided in Title 12, chapter 423-A, a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is permitted.

2. Restrictions. An accessory dwelling unit may be constructed only:

A. Within an existing dwelling unit on the lot;

B. Attached to or sharing a wall with a single-family dwelling unit; or

C. As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

This subsection does not restrict the construction or permitting of accessory dwelling units constructed and certified for occupancy prior to July 1, 2023.

3. Zoning requirements. With respect to accessory dwelling units, municipal zoning ordinances must comply with the following conditions:

A. At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; and

B. If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance under this section or section 4364-A, the lot is not eligible for any additional increases in density except as allowed by the municipality.

4. General requirements. With respect to accessory dwelling units, municipalities shall comply with the following conditions.

A. A municipality shall exempt an accessory dwelling unit from any density requirements or calculations related to the area in which the accessory dwelling unit is constructed.

B. For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit, except for an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, in which case the requisite setback requirements for such a structure apply. A municipality may establish more permissive dimensional and set back requirements for an accessory dwelling unit.

C. An accessory dwelling unit may not be subject to any additional parking requirements beyond the parking requirements of the single-family dwelling unit on the lot where the accessory dwelling unit is located.

5. Shoreland zoning. An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

6. Size requirements. An accessory dwelling unit must meet a minimum size of 190 square feet. If the Technical Building Codes and Standards Board under Title 10, section 9722 adopts a different minimum size, that standard applies. A municipality may impose a maximum size for an accessory dwelling unit.

7. Water and wastewater. The owner of an accessory dwelling unit must provide written verification to the municipality that the accessory dwelling unit is connected to adequate water and wastewater services before the municipality may certify the accessory dwelling unit for occupancy. Written verification under this subsection must include:

A. If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the accessory dwelling unit and proof of payment for the connection to the sewer system;

B. If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

C. If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the accessory dwelling unit, proof of payment for the connection and the volume and supply of water required for the accessory dwelling unit; and

D. If an accessory dwelling unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

8. Municipal implementation. In adopting an ordinance under this section, a municipality may:

- A. Establish an application and permitting process for accessory dwelling units;
- B. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and
- C. Establish alternative criteria that are less restrictive than the requirements of subsections 4, 5, 6 and 7 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance under section 4353, subsection 4, 4-A, 4-B or 4-C.

9. Rate of growth ordinance. A permit issued by a municipality for an accessory dwelling unit does not count as a permit issued toward a municipality's rate of growth ordinance as described in section 4360.

10. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.

11. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid or enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

12. Rules. The Department of Economic and Community Development may adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

13. Implementation. A municipality is not required to implement the requirements of this section until July 1, 2023.

Sec. 7. 30-A MRSA §4364-C is enacted to read:

§4364-C. Municipal role in statewide housing production goals

This section governs the responsibilities and roles of municipalities in achieving the statewide and regional housing production goals set by the Department of Economic and Community Development in Title 5, section 13056, subsection 9.

1. Fair housing and nondiscrimination. A municipality shall ensure that ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act, 42 United States Code, Chapter 45, as amended, and the Maine Human Rights Act to achieve the statewide or regional housing production goal.

2. Municipalities may regulate short-term rentals. A municipality may establish and enforce regulations regarding short-term rental units in order to achieve the statewide or regional housing production goal. For the purposes of this subsection, "short-term rental unit" means living quarters offered for rental through a transient rental platform as defined by Title 36, section 1752, subsection 20-C.

In House of Representatives,20__

Read twice and passed to be enacted.

..... Speaker

In Senate,20__

Read twice and passed to be enacted.

..... President

Approved20__

..... Governor



Erin Zwirko, AICP, LEED AP
E-mail: ezwirko@yarmouth.me.us

Tel: 207-846-2401
Fax: 207-846-2438

TOWN OF YARMOUTH
200 Main Street, Yarmouth, Maine 04096
www.yarmouth.me.us

At the last YAHC meeting, the zoning subcommittee planned to meet in between the April and May meetings, but due to availability the subcommittee did not meet, but reviewed the attached *rough* outlines of an inclusionary zoning and affordable housing overlay and provided comments to me.

For background, I looked at Portland's inclusionary zoning ordinance and what was proposed in Rockland, plus ordinances that I am familiar with from previous municipal positions. For the overlay, I did look at the previous Yarmouth overlay district, but upon reflection, found it very convoluted and process heavy to the point of questioning its usability. I also looked at Cambridge's (MA) overlay district as I'm familiar with it but it is not an apples-to-apples comparison.

I had mentioned previously at a meeting that the funds in the EDAB budget for the next fiscal year could help the committee round out these two zoning ordinances with additional research and knowledge. In particular, I want to make sure that these ordinances actually help projects pencil out, so we don't fall into the trap of where Portland is with their inclusionary zoning ordinance. Regardless of looking to consultant help, we (Committee and staff) will need to do more research on thresholds and incentives. The challenge here is in the details.

On the ADU ordinance and more expansive housing production, LD 2003 was only signed by the Governor on April 27, and there may be applicable requirements that the Town would need to address while also meeting goals that this Committee has discussed in the past. Additional work is necessary to review and apply to the Yarmouth ordinances.

"Our Latchstring Always Out"

Outline of Potential Inclusionary Zoning Ordinance

The discussion draft outline below provides the general parameters and elements of an inclusionary zoning ordinance. Definitions are included below.

A. Inclusionary Zoning

1. Purpose: It is within the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section is to ensure that developments over a certain size provide a portion of affordable units and by doing so promote the health, safety, and welfare.

Alternative language for purpose: The purposes of this section are to promote the public health, safety and welfare by encouraging the expansion and upgrading of Yarmouth's housing stock; to provide for a full range of housing choices throughout Yarmouth for households of all incomes, ages and sizes in order to meet Yarmouth's goal of preserving economic diversity; to increase the production of affordable housing units to meet existing and anticipated housing and employment needs within Yarmouth; to provide a mechanism by which residential development contributes in a direct way to increasing the supply of affordable housing; and to establish standards and guidelines for such contributions.

Commented [EZ1]: Should this language be more specific?

2. Applicability: This ordinance shall apply to development projects that create XXX or more net new dwelling units for rent or for sale through new construction, substantial rehabilitation or existing structures, adaptive reuse or conversion of nonresidential use to residential use, or any combination of these elements, with the exception that projects using public financing requiring affordability restrictions, as defined by tax increment financing, U.S. Department of Housing and Urban Development funds such as HOME or CDBG, other federal, state, or local housing program, or the Low-Income Housing Tax Credit program, shall be considered exempt.

Commented [2]: Up for Discussion

3. Standards: Development projects subject to this ordinance are subject to the following standards:

- a. At least XXX percent of the units in the project shall meet the definition of affordable housing unit for rent or sale to an eligible household. The project shall have the option of paying a partial fee-in-lieu or providing an additional unit onsite for any fractional value.
- b. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.
- c. Affordable units shall be dispersed throughout the development and shall be comparable in size, number of bedrooms, materials, interior finishes, amenities and parking to dwelling units in the neighborhood and in the development in which they are located. Exteriors of affordable units shall be consistent with and indistinguishable from the exteriors of other units in the project.

Commented [3]: Up for discussion

Commented [EZ4]: Does the Committee want to include an option of fee-in-lieu?

- d. Offsite units do not fulfill the purposes of this ordinance.
 - e. As an alternative to providing affordable housing units, projects may pay a fee-in-lieu of some or all of the units. In-lieu fees shall be deposited into a municipal account dedicated to creating and maintaining affordable housing within Yarmouth. The fee for affordable units not provided shall be XXX per unit.
 - f. Affordable housing units, whether for sale or for rent, shall not be used for short term rentals
4. Development Incentives for eligible projects: To facilitate the objectives of this section, the following modifications to the dimensional and parking requirements in any zoning district may be permitted.
- a. Parking?
 - b. Density?
5. Administration and Enforcement:
- a. The affordable units shall be subject to proper deed restrictions and covenants such as those used by MaineHousing. The deed restriction shall outline sales prices, resale prices, initial rents and rent increases, and income verification processes, for affordable units to ensure affordability for the entire affordability term to the extent legally possible. The deed restriction shall also outline marketing and tenant selection for the affordable units consistent with state and federal fair housing laws. The deed restriction shall also identify a monitoring agent for the deed restriction.
 - b. The term of affordability for affordable units provided shall be in perpetuity.
 - c. Affordable housing units for sale, if converted to affordable housing units for rent, or vice versa, shall become subject to the income limits and other requirements of such units.
 - d. The Planning Authority may adopt administrative rules and regulations to implement this ordinance.
6. Effective Date: The effective date of this ordinance is January 1, 2023.

Commented [5]: Could be the reserve account, could be a trust fund that is set up in the future, could be to the LDC (unlikely) or to a quasi public organization in Yarmouth dedicated to affordable housing. See also comment about in lieu fee.

Commented [6]: Up for discussion

Commented [7]: Up for discussion

Commented [8]: The Portland Ordinance and the draft Rockland Ordinance uses the following language: The term of affordability for the affordable units provided shall be the longest term permitted under federal, state, and local laws and ordinances.

Question whether perpetuity is appropriate. Perpetuity often means 99 years. Note that the sunsetted affordable housing overlay district required 99 years. LD 2003 requires at least 30 years.

Commented [E29]: Seeking additional guidance about when projects may be required to comply with this ordinance if adopted.

Commented [10]: Up for discussion

Definitions (may want others)

- Affordable:** The percentage of income an eligible household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance, condominium or association fees, real estate taxes, mortgage insurance, and utilities) does not exceed 30% of a household's gross income.
- Affordable Unit:** A designated unit that is affordable to Eligible Households.
- Eligible Household:** A household whose total gross annual income is less than or equal to 80% but greater than or equal to 50% of the Median Family Income for the Greater Portland Metropolitan FMR Area, adjusted for household size, published annually by the U.S. Department of Housing and Urban Development (HUD).

Commented [11]: https://www.huduser.gov/portal/data/sets/ii/2021/2021summary.odn?states=23.0&data=2021&inputname=METRO38860MM6400*2300587845%2BYarmouth+town&stname=Maine&statefp=23&year=2021&selection_type=county

Outline of Potential Affordable Housing Overlay District

The discussion draft outline of an affordable housing overlay district provides the general parameters and elements of such an over district.

A. Affordable Housing Overlay District

1. Purpose: The purpose of this Section is to promote the public good by supporting the development of housing that is affordable to households earning up to 80% of area median income. The intent of this Section is to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential and mixed-use developments in which all residential units are made permanently affordable to households earning up to 80% of area median income (referred to as "AHO Projects,"); to incentivize the reuse of existing buildings in order to create AHO Projects that are more compatible with established neighborhood character; and to promote planning goals of achieving greater economic diversity and a more equitable distribution of affordable housing throughout Yarmouth.
2. Applicability.
 - a. The provisions set forth in this ordinance shall apply to AHO projects in the MDR zoning district and the character districts identified in Chapter 703.
 - b. An AHO Project shall be permitted if it meets all of the standards set forth in this section. In addition, applications are subject to other Federal, State, or local regulations.
3. Standards for Affordability.
 - a. Regardless of tenure, AHO dwelling units shall meet the definition of affordable housing unit for rent or sale to an eligible household.
 - b. AHO dwelling units shall be subject to proper deed restrictions and covenants such as those used by MaineHousing. The deed restriction shall outline sales prices, resale prices, initial rents and rent increases, and income verification processes, for affordable units to ensure affordability for the entire affordability term to the extent legally possible. The deed restriction shall also outline marketing and tenant selection for the affordable units consistent with state and federal fair housing laws. The deed restriction shall also identify a monitoring agent for the deed restriction.
 - c. The term of affordability for affordable units provided shall be in perpetuity.
 - d. Affordable housing units for sale, if converted to affordable housing units for rent, or vice versa, shall become subject to the income limits and other requirements of such units.
4. Use.
 - a. An AHO Project may contain the residential uses allowed in the underlying zoning.
 - b. An AHO Project may contain active non-residential uses on the ground floor as allowed in the underlying zoning.

Commented [1]: May be worth considering this ordinance as a vehicle to create different levels of affordability.

Commented [2]: Up for discussion

Commented [3]: There is an opportunity here to create deeper affordability by requiring a mix of affordability in these projects.

Commented [4]: The Portland Ordinance and the draft Rockland Ordinance uses the following language: The term of affordability for the affordable units provided shall be the longest term permitted under federal, state, and local laws and ordinances.

Question whether perpetuity is appropriate. Perpetuity often means 99 years. Note that the unsetting affordable housing overlay district required 99 years.

5. Development Standards.

This section will need a lot more thought, but consideration may be warranted for the relaxation of the following standards: height, density, setbacks (very forgiving in the CBDC), open space, and parking.

Additionally, this section should consider requiring TDM plans, green standards, and applying the architectural standards of the CBDC.

6. Administration. The Planning Authority may adopt administrative rules and regulations to implement this ordinance.

Definitions (may want others)

Affordable: The percentage of income an eligible household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance, condominium or association fees, real estate taxes, mortgage insurance, and utilities) does not exceed 30% of a household's gross income.

Affordable Housing Overlay (AHO) Dwelling Unit: A dwelling unit within an AHO project for which occupancy is restricted to an eligible household and whose rent or initial sale price is affordable.

Affordable Housing Overlay (AHO) Project: A residential or mixed-use project in which all dwelling units are made permanently affordable to eligible households.

Affordable Unit: A designated unit that is affordable to Eligible Households.

Eligible Household: A household whose total gross annual income is less than or equal to 80% but greater than or equal to 50% of the Median Family Income for the Greater Portland Metropolitan FMR Area, adjusted for household size, published annually by the U.S. Department of Housing and Urban Development (HUD).

Commented [5]: https://www.huduser.gov/portal/datasets/il/2021/2021summary.odn?states=23.0&data=2021&inputname=METRO38860MM6400*2300587845%2BYarmouth+town&stname=Maine&statefp=23&year=2021&selection_type=county

Memo

Yarmouth Affordable Housing Committee

To: Listening Session Subcommittee
From: Julie Dubovsky
CC: Erin Zwirko
Date: 3/2/2022
Re: Guides for committee to develop listening sessions

Comments: Potential Listening Session:

- A. Definition: unlike a targeted focus group, listening sessions are a type of facilitated discussion with a broad group of people, aimed at collecting information about their experiences or thoughts on a topic.
- B. Key questions for the committee to consider before starting:
 1. What is the committee hoping to achieve through the listening session? When the input is received, will we be able to act on it?
 2. Is it critical that we collect this input right now? Could some input gathering be postponed one week? One month? Several months? How will postponing engagements affect the long-term project goals?
 3. Do the engagements we want to host and the questions we want to ask reflect the current situation? How can we adapt our questions to acknowledge what is going on and offer space for community members to talk about how they're doing during this pandemic?
 4. Will anyone respond to our questions right now?
 5. Can we engage a representative sample of our community, or would we miss some people if we proceeded with engagement right now?
 6. How will community members receive our request (i.e., will they be accommodating, frustrated, or bothered)?
 7. Do we have mechanisms in place to avoid overburdening our community members with requests for input? (Answering this question will require an awareness of what other outreach community groups are doing and of what resources and budget are available.)
 8. Are there other things we can be doing now to advance our goals or support community members that don't involve hosting community engagement events or conducting surveys? If so, are these options

we can easily implement and that fit within our budget and capabilities?

- Source: "Community Engagement for COVID-19 Pandemic and Beyond," Urban Institute, September 2020.
<https://www.urban.org/policy-centers/cross-center-initiatives/community-engaged-methods/cem-toolkit>

C. Develop a Framework for Implementation:

1. Define the purpose of the listening session and how the input will be used
2. Set clear roles and expectations for the committee members, town staff, council members, etc.
3. Identify the desired audiences and associated communication strategies
4. Always consider who may be missing
5. Develop and present community-oriented questions and information, such as:
 - What are Yarmouth's general housing priorities?
 - Is there a common agreement on values relative to housing?
 - Have participants think about the life cycle of housing (i.e., does Yarmouth have housing to support all stages of your life)
 - How can Yarmouth support families and individuals who are struggling with housing stability?
 - Is there a problem with Yarmouth becoming a wealthy community (i.e. losing the economic diversity valued in past Comprehensive Plans)?
6. Establish and analyze benchmarks for success

D. Resources:

- [AARP Roadmap to Livability 6 session guide](#)
 - [GPCOG "Inclusive & Accessible Virtual Engagement: Lessons From the Field" Guide](#)
 - [Urban Institute's guidebook "Community Engagement During the Pandemic and Beyond"](#)
-

Yarmouth Affordable Housing Committee
May 2, 2022
7:00PM
Meeting Summary

Name	Roll Call
Meghan Casey	Y
Margaret Downing	Y
Cecilia Guecia	Y
Deborah Keefe	Y
Leigh Kirchner	Y
Steve Morris	N
Jay Waterman	Y
Michelle Cromarty, Council Liaison	N
Julie Dubovsky, Assistant Planner	Y
Erin Zwirko, Planning Director	Y

Review and approval of previous meeting notes

The meeting summary from April was approved by those in attendance with Deborah abstaining.

Reports on Last Meeting Action Items

Yarmouth and the QAP

Julie presented a memo regarding the regional service center criteria for the QAP. Yarmouth is not a regional service center and does not score points on the QAP in this category. She noted that the methodology would be updated by January 2023 with the processing of the decennial census, so it is uncertain if Yarmouth would qualify in the future. Julie also noted that communities that do not qualify as a regional service center could partner with a community that does.

The Committee discussed how it would be unlikely that the update in the methodology would change Yarmouth's status. The Committee also asked for additional details where policy could be recommended to receive additional QAP points, such as type of project, approvals in place, and partnerships with municipalities. MaineHousing has some flexibility in the way the QAP is designed and is seeking input currently.

Housing Metrics

Julie presented a memo on housing benchmarks that have been developed for the region as a way for Yarmouth to start thinking about housing goals. She

presented benchmarks that have been developed by the Greater Portland Council of Governments for the Metro Regional Commission and forecasts used in its long range transportation plan. Julie noted that the recently signed legislation, LD 2003, requires the state to development housing benchmarks. She also noted that the community will want to have a larger conversation on how much and at what rate.

Report on Zoning Subcommittee and Discussion LD 2003

Erin presented rough outlines for an inclusionary zoning ordinance and an affordable housing overlay district. She mentioned that LD 2003 may be informative in particular for the affordable housing overlay district.

Beginning with the inclusionary zoning ordinance, Erin mentioned that it may be helpful to have consultant guidance to develop some of the particular threshold questions, but that the Committee may also want to just start somewhere as it is not one size fits all. It was noted that wherever a threshold is established, the Town may see projects developed just under the threshold. Erin indicated that the staff could start by surveying local developers to understand the tolerances.

The Committee discussed whether an in-lieu fee should be included. The Committee discussed how it needs to be large enough that there is no incentive to just pay the fee. The Committee also discussed how the accumulated money could be used to subsidize other projects that may have a funding gap.

The Committee discussed incentives and found that parking may not be an appropriate incentive. The Committee asked for more assistance in understanding what the density would look like.

Looking briefly at the affordable housing overlay district, Erin mentioned that there may be the possibility to provide deeper affordability through this tool which would require projects to be entirely affordable. The Committee discussed whether wrap around services for households on the lowest end of income exist in Yarmouth and whether that would be something a developer would bring to the table.

The Committee heard from a local realtor that LD 2003 may not apply to Yarmouth due to the changes made as part of the legislative process. There appears to be nuance in the language used in the legislation that does not match language used in Yarmouth's land use ordinances. The Committee discussed growth areas identified by the 2010 Comprehensive Plan, and Erin noted that efforts may see resistance in applying those growth areas moving forward.

Listening Sessions

The Committee agreed to defer this discussion to the first item on the June agenda.

Public comment included notes from a local realtor who provided data on the Yarmouth real estate market over the last year.

Adjournment at 9:00 pm

###