
**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW COURT DOCKET NO. BCD-25-327

PRESERVATION BATH, LLC d/b/a BATH GOLF CLUB

Plaintiff/Appellant

- v. -

CITY OF BATH

Defendant/Appellee

**ON APPEAL FROM THE
MAINE BUSINESS AND CONSUMER COURT**

BRIEF OF PLAINTIFF/APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
INTRODUCTION	5
STATEMENT OF FACTS	5
STATEMENT OF ISSUES PRESENTED.....	9
I. Is the LUC Amendment Inconsistent with the Comprehensive Plan?	9
ARGUMENT	10
I. The LUC Amendment is Inconsistent with the Comprehensive Plan.	10
a. The Maine Legislature intended comprehensive plans to be binding and enforceable.	10
b. The 2023 Bath Comprehensive Plan and Housing.	11
c. The removal of all housing development from the Golf Course District is inconsistent with the 2023 Comprehensive Plan.	13
CONCLUSION	21
CERTIFICATE OF SERVICE	22

TABLE OF AUTHORITIES

Cases

<i>Adelman v. Town of Baldwin</i> , 2000 ME 91, 750 A.2d 577	11
<i>ALC Dev. Corp. v. Town of Scarborough</i> , No. CIV.A. CV-03-498, 2005 WL 2708349 (Me. Super. Feb. 15, 2005)	15, 18, 21
<i>Blue Sky W., LLC v. Maine Revenue Servs.</i> , 2019 ME 137, 215 A.3d 812.....	9
<i>Blue Yonder, LLC v. State Tax Assessor</i> , 2011 ME 49, 17 A.3d 667.....	16
<i>Bog Lake Co. v. Town of Northfield</i> , 2008 ME 37, 942 A.2d 700	17
<i>Bragdon v. Town of Vassalboro</i> , 2001 ME 137, 780 A.2d 299	10
<i>City of Old Town v. Dimoulas</i> , 2002 ME 133, 803 A.2d 1018	10, 11, 17
<i>Friends of Motherhouse v. City of Portland</i> , 2016 ME 178, 152 A.3d 159.....	16
<i>LaBonta v. City of Waterville</i> , 528 A.2d 1262 (Me. 1987)	16
<i>Nestle Waters N. Amer., Inc. v. Town of Fryeburg</i> , 2009 ME 30, 967 A.2d 702....	19
<i>Rommel v. City of Portland</i> , 2014 ME 114, 102 A.3d 1168.....	19
<i>Stewart v. Town of Durham</i> , 451 A.2d 308 (Me. 1982)	19
<i>Zappia v. Town of Old Orchard Beach</i> , 2022 ME 15, 271 A.3d 753	16

Statutes

30-A M.R.S. § 4301(3)	10
30-A M.R.S. § 4312(2)(A).....	10
30-A M.R.S. § 4314(2)	11, 15
30-A M.R.S. § 4324(1)	10

30-A M.R.S. § 4326(3)	10
30-A M.R.S. § 4352(1)	17
30-A M.R.S. § 4352(2)	11, 15, 20
30-A M.R.S. § 4352(9)	17

Other Authorities

<i>Merriam-Webster Dictionary</i> (online ed. 2025)	15
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INTRODUCTION

The City of Bath is facing a housing crisis. Like its neighboring communities and many across Maine, lowering the barriers to affordable housing and increasing housing stock are key priorities for Bath, as was established in the City's 2023 Comprehensive Plan. Unfortunately, the Comprehensive Plan's housing goals were thwarted by a group of zealous golfers that feared housing construction in the Golf Course District would limit their ability to get in a full 18-holes of golf. Following the City Council's unanimous decision to reject the proposal, the voters of Bath voted to remove the ability to develop any housing in the Golf Course District. This action was inconsistent with the Comprehensive Plan and this Court should find the amendments to Bath's Land Use Code are invalid and no longer in effect.

STATEMENT OF FACTS

Preservation Bath, LLC d/b/a Bath Golf Club ("Preservation Bath") owns and operates an eighteen-hole golf course, known as "the Bath Golf Club," located within an area zoned "Golf Course District" pursuant to the City's Land Use Code ("LUC"). *App. I* at 17 (*Stip. R.* ¶ 6). The Bath Golf Club was established in 1932 as a nine-hole golf course and remained a nine-hole golf course under the ownership of the City until the 1990's. *Id.* (*Stip. R.* ¶ 7). In the 1990's, the Bath Golf Club was sold to a private operator, and the course was expanded to 18-holes. *Id.* (*Stip. R.* ¶

8). When the golf course expanded to 18-holes in 1994, the City created the “Golf Course District,” a zoning district that effectively included only one property, the Bath Golf Club. *Id.* (*Stip. R.* ¶ 9). Areas surrounding or in the vicinity of the Golf Course District are zoned Low Density Residential District (R3). *Id.* (*Stip. R.* ¶ 10); *App. I* at 152-54.

Preservation Bath was formed in 2012, and primary ownership of the Bath Golf Club was sold to Preservation Bath via a debt for equity swap in December 2016. *App. I* at 18 (*Stip. R.* ¶ 11). At the time of the purchase in 2016, and in accordance with the then-applicable comprehensive plan, the LUC permitted two forms of residential dwelling within the Golf Course District: cluster development and multi-family dwellings. *Id.* (*Stip. R.* ¶ 12).

In addition to compliance with state and federal authorities, the City regulates land use through applicable land use ordinances and other local regulations. *App. I* at 17 (*Stip. R.* ¶ 3). The City’s LUC was last amended December 25, 2024. *Id.* (*Stip. R.* ¶ 4). Separately, the City also has adopted a Comprehensive Plan, the most recent version having been adopted by the City in 2023. *Id.* (*Stip. R.* ¶ 5); *see App. II*.

Preservation Bath seeks to develop residential housing on the Bath Golf Club property. *App. I* at 18 (*Stip. R.* ¶ 13). However, in the Fall of 2023, Bath residents gathered signatures for a citizen-initiated petition to remove cluster

development and multi-family dwelling uses from the Golf Course District. *Id.* (*Stip. R.* ¶ 14). The petition garnered the requisite signatures and was presented to the Bath City Council for a vote. *Id.* (*Stip. R.* ¶ 15); *see App. I* at 92-133. Also at this time, Bath residents requested the City Council enact a moratorium on any new housing development in the Golf Course District. *Id.* (*Stip. R.* ¶ 16).

On December 6, 2023, the Bath City Council unanimously rejected the proposed moratorium on housing development in the Golf Course District. *Id.* (*Stip. R.* ¶ 17); *see App. I* at 155, 158. Following this, on January 17, 2024, the Bath City Council unanimously rejected the citizen-initiated petition to remove cluster development and multi-family dwelling uses from the Golf Course District. *App. I* at 18-19 (*Stip. R.* ¶ 18); *see App. I* at 161-62. Pursuant to the City Charter and LUC, the citizen petition then went to the voters of Bath as a ballot question that read:

Shall the proposed ordinance be adopted? BE IT ORDAINED that Article 9.02 of the Bath Land Use Code is amended by deleting from the table of uses for the Golf Course District Multi-Family Dwelling on Line 1.03 and Cluster Development on Line 1.4 as uses permitted with site plan approval and making such uses not permitted in the Golf Course District in accordance with the amended table of uses annexed here to.

App. I at 19 (*Stip. R.* ¶ 19).

On June 11, 2024, citizens of the City voted to adopt the amendment to the Bath LUC to remove cluster development and multi-family dwelling uses from the

Golf Course District (“LUC Amendment”). *Id.* (*Stip. R.* ¶ 20); *see App. I* at 134. As a result, multi-family dwellings and cluster developments are no longer permitted in the Golf Course District. *Id.* (*Stip. R.* ¶ 21). In fact, by removing the ability to build multi-family dwellings and cluster developments, no housing in any form is permitted for development in the Golf Course District. *App. I* at 59-60, 168.

Preservation Bath filed a 5-count complaint on July 10, 2024, challenging the LUC Amendment on the following grounds: Inconsistency with the Comprehensive Plan (Count I); Illegal Spot Zoning (Count II); Taking without Just Compensation (Count III); Violation of Substantive Due Process and Equal Protection Rights (Count IV); and Review of Governmental Action pursuant to M. R. Civ. P 80(B) (Count V). *App. I* at 6-15. On August 21, 2024, the City filed a Motion for Judgment on the Pleadings pursuant to M. R. Civ. P 12(c), seeking the Superior Court dismiss Counts III-V. *Id.* at 3-4. Following briefing and oral argument, on January 15, 2025, the Superior Court issued an order denying the Motion with respect to Count III and granting it with respect to Count V,¹ while the Motion remained under advisement with respect to Count IV (granting the motion as to due process rights but denying it as to equal protection rights). *Id.* at 4.

Following a case management conference, the Parties agreed that the matter be bifurcated for purposes of briefing and adjudication. *Id.* Specifically, Count I

¹ Preservation Bath agreed to dismissing Count V.

(Declaratory Judgment – Comprehensive Plan) and Count II (Declaratory Judgment – Spot Zoning) would be decided via judgment upon a stipulated record.² The Parties then provided a stipulated record in the nature of a numbered appendix and stipulated factual statements to provide context for the Superior Court’s adjudication and decision. *See id.* at 16-20, 31-168; *App. II*.

On July 2, 2025, the Superior Court issued Partial Judgment on a Stipulated Record for Counts I and II in favor of the City.³ On July 11, 2025, Preservation Bath and the City filed a Stipulation of Dismissal as to Counts III and IV of Plaintiff’s Complaint, rendering July 2, 2025 Partial Judgment a final judgment for purposes of appeal. *App. I* at 21-30. Preservation Bath then filed its Notice of Appeal to this Court.

STATEMENT OF ISSUES PRESENTED

I. Is the LUC Amendment Inconsistent with the Comprehensive Plan?

² *See Blue Sky W., LLC v. Maine Revenue Servs.*, 2019 ME 137, ¶ 16 n. 10 215 A.3d 812 (noting that as an alternative to filing cross-motions for summary judgment, parties may prefer to present the court with a stipulated record for decision, which “allow[s] the trial court to draw inferences from the record to reach a final result.”).

³ During oral argument, Preservation Bath’s counsel agreed that Count II was duplicative and subsumed within Count I.

ARGUMENT

I. The LUC Amendment is Inconsistent with the Comprehensive Plan.

a. The Maine Legislature intended comprehensive plans to be binding and enforceable.

The Maine Legislature enacted the growth management program to “[e]stablish, in each municipality of the State, local comprehensive planning and land use management.” 30-A M.R.S. § 4312(2)(A). To accomplish that purpose a municipality must create a comprehensive plan consistent with legislative guidelines. 30-A M.R.S. § 4324(1). The comprehensive plan has mandatory components, one of which is an “implementation strategy” that includes the adoption of land use ordinances. 30-A M.R.S. § 4326(3). Any municipality that enacts a zoning ordinance is required to have, as a prerequisite, a comprehensive plan. *Bragdon v. Town of Vassalboro*, 2001 ME 137 ¶ 7, 780 A.2d 299; *see also City of Old Town v. Dimoulas*, 2002 ME 133, ¶ 17, 803 A.2d 1018 (quoting 30-A M.R.S. § 4301(3)) (“A comprehensive plan is ‘a document or interrelated documents containing the elements established under section 4326, subsections 1 to 4 [‘local growth management program’], including the strategies for an implementation program which are consistent with the goals and guidelines established under subchapter II [‘GROWTH MANAGEMENT PROGRAM’].’”).

While comprehensive plans on their own lack regulatory authority, the Maine Legislature made clear that zoning ordinances “*must* be pursuant to and

consistent with a comprehensive plan adopted by the municipal legislative body.” 30-A M.R.S. § 4352(2) (emphasis added). Further, to ensure consistency with this essential planning document, when any portion of an ordinance falls short of the consistency requirement, it “is no longer in effect 24 months after adoption of the plan.” 30-A M.R.S. § 4314(2). It is here that a comprehensive plan asserts its authority.

The question of whether an ordinance is consistent with a comprehensive plan is a question of law and the burden is on the party challenging a zoning ordinance to prove that the ordinance is inconsistent with the comprehensive plan. *City of Old Town v. Dimoulas*, 2002 ME 133, ¶ 17, 803 A.2d 1018. When considering whether a rezoning action is “consistent with” a municipality’s comprehensive plan, a court must determine whether the legislative body could have, “from the evidence before it, found that the rezoning was in basic harmony with the comprehensive plan.” *Id*; *Adelman v. Town of Baldwin*, 2000 ME 91, ¶ 22, 750 A.2d 577.

b. The 2023 Bath Comprehensive Plan and Housing.

The 2023 Bath Comprehensive Plan (“the 2023 Plan”) identifies the creation of housing in Bath as a key goal. Under the four “Big Ideas” – the overarching themes and strategies that define the 2023 Plan – “lowering barriers to housing” is

listed first for the “Big Idea” to keep Bath “welcoming, diverse, and livable.” *App.*

I at 136. The 2023 Plan goes on to hold:

In part because of housing affordability, 55% of BIW employees commute an average of 70 miles per day. Maine has recently experienced its greatest population growth in 20 years, and BIW has played a positive role in attracting hundreds of new hires to Maine helping reverse the demographic trend of an aging workforce. However, the cost of housing has increased 40% and housing is a challenge across America, but there are aspects of this state which make it more acute.

Id. at 139.⁴

Bath has seen a lower rate of housing growth than Maine, Sagadahoc County, and many nearby communities in the Midcoast region. *Id.* at 143; *see also Id.* at 144 (“In the past two decades, Bath has seen a decrease in the proportion of renter-occupied housing, and in the estimated number of rental units.”). Considering this, it makes sense a major focus and strategy of the 2023 Plan is to “[e]ncourage housing development different than what exists: for example, housing attractive to young professionals, loft space, and senior housing, and allow and encourage mixed-use, mixed-income, and mixed-age housing developments.” *Id.* at 140.

Under the 2023 Plan’s Implementation Matrix, the first policy identified for “Housing” is “[t]o encourage and promote adequate housing to support the

⁴ *See also App. I* at 137 (“Since the last Comprehensive Plan, Bath has seen some growth in seasonal residences and rentals, along with growing affordability issues for both renters and homeowners. The number of people commuting into the City each day for work continues to grow, while the number of residents who both live and work in Bath has declined.”).

community's and region's economic development – anyone who works in Bath should have an affordable option to live in Bath.”⁵ *Id.* at 141. One strategy to advance this policy is to “[s]upport diversification of allowed housing types,” while another is to “[c]reate a housing production goal for Bath of new units and/or number of units to improve and bring up to code every year. Goal should include a variety of home sizes, from studio to 3+ bedroom.”⁶ *Id.*

c. The removal of all housing development from the Golf Course District is inconsistent with the 2023 Comprehensive Plan.

With new housing development one of the major goals of the 2023 Plan, it is not surprising housing development is specifically called out as permitted within the Golf Course District (“GCD”):

This district is designed to maintain the Bath Golf Club Golf Course operation. It will protect the golf course from incompatible neighboring land uses and protect the surrounding Low-density Residential District from encroachment by incompatible uses at the golf course. This district allows the golf course to expand and allows accessory facilities at the golf course. Cluster Subdivisions are also allowed in this district.

⁵ When addressing the issue of housing affordability, the 2023 Plan notes “[t]here are many factors that increase the cost of housing including permitted density, whether multifamily housing is allowed, supply of both housing and land to build housing, demand, and taxes.” *App. I* at 145. Further, the 2023 Plan notes “in 2022, 81% of Bath households were unable to afford the median home price. This is a sharp increase from 2010, when 52% of households were unable to afford the median home price. Bath’s affordability data mirrors that of Sagadahoc County and Maine, but Bath has seen a steeper rise in the percent of households unable to afford the median home price.” *Id.* at 146.

⁶ Increased access to housing is also identified to help support economic development. *App. I* at 142 (“Engage in efforts to lower and eliminate barriers for workforce growth and development, such as the high costs of housing, childcare, and transportation.”).

App. I at 149. This permitted use was not new to the 2023 Plan; at the time Preservation Bath purchased the Bath Golf Club in 2016, and in accordance with the then-applicable comprehensive plan, the LUC permitted two forms of residential dwelling within the Golf Course District: cluster development and multi-family dwellings. *Id.* at 18 (*Stip. R.* ¶ 12).

The entire area surrounding the GCD is zoned Low Density Residential District (R3). *Id.* (*Stip. R.* ¶ 10); *App. I* at 152-54. The R3 District allows for numerous types of housing, including cluster developments. *Id.* at 57-60. Much like the GCD, the R3 District also prohibits most commercial and manufacturing uses while permitting a variety of recreational uses. *Id.* at 61-65. Both districts are in the “Rural Area” as defined by the 2023 Plan. *Id.* at 137. For Rural Areas, “[f]uture land use in these areas should be limited. Only low-impact uses that maintain the integrity of land and habitat should be allowed. Residential development should be clustered, with conservation subdivisions required and habitat blocks preserved.” *Id.* at 138.

The 2023 Plan clearly intended for the Golf Course District to allow cluster developments and similar housing uses – both explicitly in the District and for the broader Rural Area – as such housing preserves the rural character and open space of the surrounding area while promoting the 2023 Plan’s major goal of developing a diversity of new housing in Bath. Removing cluster developments from the

GCD in no way “protect[s] the golf course from incompatible neighboring land uses,” nor does it “protect the surrounding Low-density Residential District from encroachment by incompatible uses at the golf course.” *App. I* at 149.

The Superior Court found that the statement “Cluster Subdivisions are also allowed” is not binding on the City. *Id.* at 28 (*citing App.* at 149) (“the comprehensive plan’s statement of the golf course district allowing cluster housing is just a statement of the zoning at the time the comprehensive plan was written, not an edict for the future.”). But comprehensive plans *are* an edict for the future. Zoning ordinance *must* be pursuant to and consistent with a comprehensive plan. 30-A M.R.S. § 4352(2). By the Superior Court’s reasoning, the voters of Bath are free to amend the LUC and the Golf Course District to discontinue the golf course operation, allow encroachment of uses incompatible with a golf course, and prohibit the expansion the golf course. *See App. I* at 149.

The 2023 Plan explicitly identifies cluster subdivisions as an allowed use in the Golf Course District. “Allow” is defined as to “permit; to fail to restrain or prevent.” *Merriam-Webster Dictionary* (online ed. 2025). To read this language as anything other than mandatory renders this language “toothless-notwithstanding the legislature’s evident intention that comprehensive plans be binding and enforceable.” *ALC Dev. Corp. v. Town of Scarborough*, No. CIV.A. CV-03-498, 2005 WL 2708349, at *5 n. 5 (Me. Super. Feb. 15, 2005) (citing 30-A M.R.S. §

4314(2)). A court must not interpret a statute or ordinance “in a manner that would render some of the language superfluous and meaningless.” *Blue Yonder, LLC v. State Tax Assessor*, 2011 ME 49, ¶ 13, 17 A.3d 667; *see also Zappia v. Town of Old Orchard Beach*, 2022 ME 15, ¶ 10, 271 A.3d 753 (all words in an ordinance must be given meaning and cannot be treated as mere surplusage). The 2023 Plan states cluster developments are allowed in the GCD. The LUC Amendment made it so cluster developments are not permitted in the GCD. This makes the 2023 Plan’s language allowing cluster developments superfluous and meaningless.

Legislative bodies are only afforded deference if there is actual evidence before it supporting a rezoning that is in basic harmony with the comprehensive plan. *See LaBonta v. City of Waterville*, 528 A.2d 1262, 1265 (Me. 1987) (“From the transcript of the hearings conducted by the city council, it is clear that the council recognized and acted upon its responsibility to amend the zoning ordinance only in a way consistent with the comprehensive plan and the multiple goals stated therein”); *Friends of Motherhouse v. City of Portland*, 2016 ME 178, ¶ 11, 152 A.3d 159 (evidence before city council included planning board report that rezoning was consistent with the comprehensive plan). Here, the Bath City Council unanimously rejected both the proposed moratorium on housing development in the Golf Course District and the citizen-initiated petition to remove cluster development and multi-family dwelling uses from the Golf Course District. It was

only because of the Bath City Charter and LUC that the citizen petition went to the voters of Bath after its unanimous rejection by the City Council. *App. I* at 19 (*Stip. R.* ¶ 19).

In issuing its decision, the Superior Court held:

In another case where an amendment was adopted by a citizen initiative, the law court determined that “[i]n enacting the ordinance the voters . . . determined that the proposed ordinance was in harmony with the Comprehensive Plan. *City of Old Town [v. Dimoulas]*, 2002 ME 133, ¶ 18, 803 A.2d 1018. Practically, there is no other approach. It would be impossible to discern what evidence the voting public weighed. To require a record would render zoning changes by referendum impossible.

App. I at 25. However, the Court previously noted that in *Dimoulas*, “the matter went to trial before a jury, which found the [comprehensive plan] amendment to be invalid,” and that “the Superior Court entered judgment accordingly. We reviewed the judgment, not the legislative act of the voters. . . .” *Bog Lake Co. v. Town of Northfield*, 2008 ME 37, ¶ 18 n.6, 942 A.2d 700.

Moreover, it is not “impossible” to discern what evidence the voting public may weigh in determining whether a proposed ordinance amendment is consistent with the comprehensive plan. Amendments to existing zoning ordinances are subject to notice and hearing requirements where the public can review the amendments and provide comments. 30-A M.R.S. §§ 4352(1), (9). Indeed, here the voting public had the opportunity to discuss these proposed changes before the Bath City Council. *App. I* at 161-62. However, there is no evidence that the voters

of Bath considered whether removing cluster development and multi-family dwelling uses from the Golf Course District was consistent with the 2023 Plan.

This is not the first time the citizen-petition process has been abused by amending zoning ordinances to stop housing development in a way that is inconsistent with a comprehensive plan. *See ALC Dev. Corp. v. Town of Scarborough*, No. CIV.A. CV-03-498, 2005 WL 2708349 (Me. Super. Feb. 15, 2005). In *ALC Dev. Corp.*, plaintiffs entered into a contract zoning agreement with the Scarborough Town Council to build a housing development incorporating open space set asides. *Id.* at *1. The area at issue was identified by the comprehensive plan as a village compact area appropriate to host significant residential and commercial growth. *Id.* at *2-3. However, the Town failed to implement its comprehensive plan to zone the area to accept such growth. *Id.* at *3. This forced the plaintiffs to seek the contract zoning agreement with the Town Council to zone the area as consistent with the comprehensive plan, only to have the rezoning challenged and repealed by referendum. *Id.* at *1. While there was some language in the comprehensive plan that could have supported not rezoning the area, ultimately the clear requirements of the document caused the Superior Court to find the citizen-led repeal of the rezoning to be inconsistent with the comprehensive plan. *Id.* at *5.

While a zoning ordinance does not need to “perfectly fulfill the goals of a comprehensive plan”, it is only consistent with its governing comprehensive plan if it strikes “a reasonable balance among the [municipality's] various zoning goals,” or “overlap[s] considerably” with the plan. *Rommel v. City of Portland*, 2014 ME 114, ¶¶ 12-14, 102 A.3d 1168 (citing *Nestle Waters N. Amer., Inc. v. Town of Fryeburg*, 2009 ME 30, ¶ 23, 967 A.2d 702; *Stewart v. Town of Durham*, 451 A.2d 308, 312 (Me. 1982)). The Superior Court accepted the arguments of the City in issuing its decision that restricting all housing development in the GCD somehow advances the 2023 Plan’s goal of climate resilience. How removing all housing uses from the GCD and allegedly protecting a golf course – far from a “natural area” – advances climate resilience is not explained by the Superior Court beyond the unsupported assertion that doing so “preserves open, natural spaces and recreation areas.” The Superior Court failed to consider, however, that a cluster development is a form of subdivision that “allows a developer to create smaller lots in return for setting aside a portion of the tract of land as permanent, undeveloped open space.”⁷ *App. I* at 35.

Cluster developments require a variety of measures to mitigate impacts on the environment, including that buildings must be oriented with respect to scenic

⁷ The purpose of cluster developments is to “encourage the preservation of [] rural character . . . by preserving undeveloped land . . . and to allow innovative development layouts” by allowing “homes to be built on lots that are smaller than normally allowed, but requires undeveloped land to be preserved.” *App. I* at 75. There is no such requirement in the LUC if Preservation Bath seeks to expand the golf course from 18 to 36 holes.

vistas, natural landscape, topography, solar energy, and natural drainage areas and undeveloped land may not be further subdivided and can be used only for agriculture, forestry, conservation, or noncommercial recreation. *App. I* at 175-78. This is in addition to the performance standards for all subdivisions in Bath, including: mitigating water and air pollution; preventing soil erosion; ensuring stormwater management; and limiting impacts on natural areas. *Id.* at 79-91. Despite this, the Superior Court found that the removal of cluster developments somehow supports the 2023 Plan’s desire to “implement sustainable landscape and stormwater management practices.” If anything, the rigorous standards for cluster developments would mitigate impacts of non-point source pollution in the GCD.⁸

It is anticipated the City will argue that the Bath voters were free to amend the LUC because the language of the 2023 Plan cannot bind future legislative bodies. This argument is a red herring: while laws cannot be enacted to bind future legislatures, zoning ordinances and subsequent rezoning actions “*must be* pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body.” 30-A M.R.S. § 4352(2) (emphasis added). The City’s legislative body is not bound by the language of the 2023 Plan. However, if it wants to remove cluster developments as allowed in the GCD from the LUC, it must also amend the 2023

⁸ The Superior Court also references to the 2023 Plan’s statement that “there *may* be some waterflow from the Bath Country Club (golf course) property . . . to a wetlands at the head of the New Meadows, however, *it is not certain if this is the case.*” *App. I* at 147 (emphasis added). Such speculation cannot be the premise for removing all housing uses from the GCD.

Plan to remove the allowed use. Unless and until that is done, the LUC Amendment remains inconsistent with the 2023 Plan. *See ALC Dev. Corp. v. Town of Scarborough*, No. CIV.A. CV-03-498, 2005 WL 2708349, at *4 (Me. Super. Feb. 15, 2005) (“To the extent that the Town’s attitudes may have changed and its officials might wish to take the Town in a different direction, it would have been incumbent on the Town to amend its Comprehensive Plan.”).

CONCLUSION

Removing the ability to build multi-family dwellings and cluster developments from the Golf Course District – and as a result, removing the ability to build *any* housing in the District – is entirely inconsistent with the 2023 Plan. Preservation Bath requests the Court find the LUC Amendment is inconsistent with Bath’s 2023 Comprehensive Plan and no longer in effect.

Dated at Ellsworth, Maine, this 8th day of October, 2025.

**PLAINTIFF/APPELLANT,
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CERTIFICATE OF SERVICE

I, Patrick W. Lyons, hereby certify that an electronic copy of the Brief of Plaintiff/Appellant and an electronic copy of the Appendix Volumes I and II were served on the following counsel at the address set forth below by email on the 8th day of October, 2025:

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