

**STATE OF MAINE**

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

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Law Court Docket No. BCD-25-327

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

*Plaintiff/Appellant*

**v.**

**CITY OF BATH**

*Defendant/Appellee*

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**BRIEF OF APPELLEE**

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

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CITY OF BATH

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## **INTRODUCTION / SUMMARY OF ARGUMENT**

This appeal arises out of a 2024 amendment to the Land Use Code (“LUC” or “Code”) of the City of Bath (the “City”) that was enacted by the City’s voters (the “LUC Amendments”). In 2023, voters of the City of Bath successfully petitioned to place a question on the ballot proposing to amend the City’s LUC to prohibit cluster developments and multi-family dwelling developments in the City’s Golf Course District (“GCD”). Following a municipal election held on June 11, 2024, the City’s voters enacted the LUC Amendments, thereby limiting cluster developments and multi-family developments in the GCD.

Appellant Preservation Bath, LLC (“Preservation Bath” or “Appellant”) is the owner and operator of an 18-hole golf course located in the GCD. Because Preservation Bath desired in the future to convert roughly half of the golf course into cluster developments or multi-family dwelling developments, it sought a declaration from the Business Court that the LUC Amendments that limited such developments in the GCD were not consistent the Comprehensive Plan of the City of Bath (the “2023 Plan”). The Business Court ultimately denied Preservation Bath’s requested relief, holding that the LUC Amendments were “consistent with” the 2023 Plan under 30-A M.R.S. § 4352(2) and applicable authority.

Before the Business Court, Preservation Bath primarily argued that the LUC Amendments were inconsistent with the 2023 Plan based on generalized statements

in the 2023 Plan expressing “big ideas” and goals related to expansion and diversification of the City’s housing stock. Preservation Bath also argued that a present-tense statement from the 2023 Plan that “Cluster Subdivisions *are also allowed* in this district [the GCD]” created a command or edict that such activities must continue or are protected in the future. A. 149 (emphasis added). Finally, Preservation Bath argued that the LUC Amendments were void because there is no evidence in the record that *the voters* casting votes on the LUC Amendments could have concluded that the rezoning was consistent with the 2023 Plan.

The Business Court rejected these arguments, holding “that there is ample support in the Comprehensive [P]lan to say that the LUC Amendment is consistent.” A. 29. The Court noted that under applicable law, an ordinance amendment need only “strike [] a reasonable balancing among the municipality’s various zoning goals” and that it may serve some goals of the comprehensive plan while competing with other goals of the plan. A. 29, citing *Rommel v. City of Portland*, 2014 ME 114, ¶¶ 12-14, 102 A.3d 1168. It also highlighted that the LUC Amendments serve the 2023 Plan’s major goals, including climate resilience, preservation of natural areas, open spaces, and recreational spaces. A. 28. The LUC Amendments also served the express goal of protecting the operation of the Bath Country Club golf course operations in the GDC. A. 28, 149. Addressing the ordinance “consistency” with a municipal plan, the Business Court correctly noted that this requirement may be met

where an ordinance amendment strikes “reasonable balance among the [municipality’s] various zoning goals,” or “overlap[s] considerably” with the concerns of the plan[.]” A. 25 (citing and quoting cases). Because the Business Court did not err in determining that the LUC Amendments were consistent with the 2023 Plan, this Court should affirm its Judgment.

Separately, the Business Court also correctly determined that the 2023 Plan’s present-tense statement that “Cluster Subdivisions are also allowed in this district” did not create an edict or directive as to the future conduct. A. 28, 149. Indeed, the 2023 Plan’s passages describing the GCD also state that this district is designed to maintain the Bath Country Club Course operations and that the district “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.” A. 149. Addressing the GCD, the 2023 Plan expresses a clear goal of protecting and preserving the golf course and open spaces located in the GCD, not a reduction. The Business Court did not err in its construction of the 2023 Plan.

Finally, the Business Court correctly determined that “the evidence” needed to discern the intent of the voters in the context of a citizen’s initiative seeking to amend an ordinance is adequately shown by the electoral outcome of such initiative. The narrow scope of review for ordinance amendments promulgated by a legislative body (such as City Council) is limited to determining “whether, from the evidence

before it, the legislative body [of the municipality] ...could have determined that the amendments are in basic harmony with the comprehensive plan[.]” *Vella v. Town of Camden*, 677 A.2d 1051, 1053 (Me. 1996). The Business Court correctly determined that in the context of a citizen’s initiative, it simply is not practical or possible to create a record as to the state of mind of participating voters concerning whether they could have determined the LUC Amendments were in basic harmony with the Plan. A. 25, citing *Rommel*, 2014 ME 114, ¶¶ [12]-13, 102 A.3d 1168. As the Law Court stated in *City of Old Town v. Dimoulas*, 2002 ME 133, ¶ 18, 803 A.2d 1018, 1023, “[i]n enacting the ordinance, the voters ...determined that the proposed ordinance was in harmony with the Comprehensive Plan.” For these reasons and those stated below, the Law Court should affirm the Business Court’s Judgment. The City of Bath further states as follows:

### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

The City and Preservation Bath have agreed to and submitted Stipulated Statements of Fact, A. 16-19, and a Stipulated Record in relation to Count I and Count II. The underlying documents for which the parties agreed to their admission were the following: 1) the City’s Land Use Code (“LUC”); 2) the City’s 2023 Comprehensive Plan (“2023 Plan”); 3) the City’s Official Zoning Map; 4) the LUC Amendment Petition addressed to the GCD; 5) Minutes of City Council reflecting rejection of a Moratorium (the “Moratorium Minutes”); 6) Minutes of City Council



reflecting Citizen’s Initiative Petition (the “Citizen’s Initiative Minutes”); 7) Citizen’s Initiative Submitted to City’s voters seeking to amend the LUC (the “Election Results for LUC Amendments”); and 8) Enacted LUC Amendment (the “LUC Amendments”).

The Stipulated Statements of Fact were as follows:

1. Plaintiff, Preservation Bath, LLC, dba “The Bath Golf Club” (hereinafter “Preservation Bath”), is an LLC with a principal place of business in the City of Bath, County of Sagadahoc, State of Maine. (“Stip. ¶ 1”). A. 16.

2. Defendant, City of Bath (the “City”) is a municipality located in the County of Sagadahoc, State of Maine, and organized under and operating pursuant to the authority of the laws of the State of Maine. (“Stip. ¶ 2”). A. 16.

3. In addition to compliance with state and federal authorities, the City regulates land use through applicable land use ordinances and other local regulations. (“Stip. ¶ 3”). A. 17.

4. The City’s most recent Land Use Code (“LUC”) was last amended December 25, 2024. The LUC in effect at the time of key events occurring in this proceeding is attached hereto. The parties stipulate to the admission of the LUC. *See App.* at 1. (“Stip. ¶ 4”). A. 17.

5. Separately, the City also has adopted a Comprehensive Plan. The most recent Comprehensive Plan was adopted by the City in 2023. The parties stipulate

to the admission of the 2023 Comprehensive Plan. *See App.* at 369. (“Stip. ¶ 5”). A. 17.

6. 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 LUC. (“Stip. ¶ 6”). A. 17.

7. 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. (“Stip. ¶ 7”). A. 17.

8. In the 1990’s, the Bath Golf Club was sold to a private operator, and the course was expanded to 18-holes. (“Stip. ¶ 8”). A. 17.

9. 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. (“Stip. ¶ 9”). A. 17.

10. Areas surrounding or in the vicinity of the Golf Course District are zoned Low Density Residential District (R3). The parties stipulate to the admission of the Official Zoning Map. *See App.* at 740. (“Stip. ¶ 10”). A. 17.

11. 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. (“Stip. ¶ 11”). A. 18.

12. 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 dwelling. (“Stip. ¶ 12”). A. 18.

13. Preservation Bath seeks to develop residential housing on the Bath Golf Club property. (“Stip. ¶ 13”). A. 18.

14. 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. (“Stip. ¶ 14”). A. 18.

15. The petition garnered the requisite signatures and was presented to the Bath City Council for a vote. The parties stipulate to the admission of the LUC Amendments Petition. *See App.* at 743 [A. 92]. (“Stip. ¶ 15”). A. 18.

16. Also at this time, Bath residents requested the City Council enact a moratorium on any new housing development in the Golf Course District. (“Stip. ¶ 16”). A. 18.

17. On December 7, 2023, the Bath City Council unanimously rejected the proposed moratorium on housing development in the Golf Course District. The parties stipulate to the admission of the Minutes from the meeting where the action described in this paragraph took place. *See App.* at 785. [A. 155] (“Stip. ¶ 17”). A. 18.

18. 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. The parties stipulate to the admission of the Minutes from the meeting where the action described in this paragraph took place. *See App.* at 791. (“Stip. ¶ 18”). A. 18-19.

19. 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.

(“Stip. ¶ 19”). A. 19.

20. On June 11, 2024, citizens of the City of Bath voted to adopt the amendment to the Bath LUC to remove cluster development and multi-family dwelling uses from the Golf Course District. The parties stipulate to the admission of the Official Vote Results described in this paragraph. *See App.* at 794. [A. 131] (“Stip. ¶ 20”). A. 19.

21. As a result, Multi-Family Dwelling and Cluster Development are no longer permitted in the Golf Course District. The parties stipulate to the admission

of the Enacted LUC Amendments. *See App.* at 797 [A. 134]; *see also App.* at 123 [A. 60]. (“Stip. ¶ 21”). A. 19.

The City agrees with Preservation Bath’s description of the procedural history for this matter set forth on pages 8-9 of Appellant’s Brief. The sole remaining claims before the Law Court are Preservation Bath’s requests for declaratory relief on Count I (Inconsistency with the Comprehensive Plan) and Count II (Illegal Spot Zoning). Before the trial court and here, Preservation Bath has conceded that these two Counts effectively address the same standards and ultimate issue of whether the LUC Amendments are consistent with the Plan. *See Blue Brief*, n. 3 (conceding that Count II is duplicative of Count I).

### **STANDARD OF REVIEW**

The Law Court has stated that “the question of whether the ordinance is consistent with the Comprehensive Plan is a question of law[.]” *Dimoulas*, 2002 ME 133, ¶ 18, 803 A.2d 1018, 1023. The Law Court reviews legal questions de novo. *15 Langsford Owner LLC v. Town of Kennebunkport*, 2024 ME 79, ¶ 23, 327 A.3d 1093, 1100; *Town of Vassalboro v. Barnett*, 2011 ME 21, ¶ 6, 13 A.3d 784 (stating that the interpretation of statutes and ordinances concern legal questions and are reviewed de novo); *Rommel*, 2014 ME 114, ¶ 21, 102 A.3d 1168, 1173.

The Law Court has also noted the “fundamental point” that “zoning is a legislative act.” *Golder v. City of Saco*, 2012 ME 76, ¶¶ 10-11, 45 A.3d 697, 700. To

preserve separation of powers, the Law Court has stated that significant deference is given to the judgment of a legislative body, including legislative action taken through direct citizen's initiative. *Id.*

The burden is on the party challenging an ordinance to “prov[e] that the challenged amendment [ ]is inconsistent with the ... comprehensive plan.” *Vella v. Town of Camden*, 677 A.2d 1051, 1053 (Me.1996); *Adelman v. Town of Baldwin*, 2000 ME 91, ¶¶ 22–24, 750 A.2d 577 (noting the challenger's burden to prove inconsistency); *Dimoulas*, 2002 ME 133, ¶ 18, 803 A.2d 1018, 1023.

### **ISSUES PRESENTED**

1) Whether Appellant has met its burden to demonstrate the 2024 LUC Amendments are inconsistent with the City of Bath's 2023 Comprehensive Plan.

2) Whether the 2023 Comprehensive Plan's statement that “Cluster Subdivisions also are allowed in this district” serves as an edict as to future uses in the Golf Course District, rendering the LUC Amendments void.

3) Whether the trial court correctly determined that the voters' enactment of the LUC Amendments evidenced that the City's voters found the LUC Amendments were consistent with the 2023 Plan.

## **GENERAL LEGAL FRAMEWORK**

**“Basic Harmony” with Plan.** Pursuant to 30-A M.R.S. § 4352(2), “[a] zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body[.]” 30-A M.R.S. § 4352(2).<sup>1</sup> The Law Court has held that “a zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it ‘strikes a reasonable balance among the municipality’s various zoning goals’ or ‘overlap[s] considerably’ with the plan”. *Nestle Waters N. Am., Inc. v. Town of Fryeburg* (“*Nestle*”), 2009 ME 30, ¶ 23, 967 A.2d 702; *Stewart v. Town of Durham* (“*Stewart*”), 451 A.2d 308, 312 (Me.1982); *Rommel*, 2014 ME 114, ¶¶ 12-14, 102 A.3d 1168, 1171-72.

In addition, a comprehensive plan is considered as a whole; a municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with some provisions of the plan, even if the action appears inconsistent with other provisions of the plan. *See Adelman v. Town of Baldwin*, 2000

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<sup>1</sup> Importantly, this section expressly states that the term “zoning ordinance” does *not* include a “cluster development ordinance or a design ordinance prescribing the color, shape, height, landscaping, amount of open space or other comparable physical characteristics of development.” 30-A M.R.S. § 4352(2). The LUC Amendments in part institutes limitations on cluster developments in the GCD. Based on the language of 30-A M.R.S. § 4352(2), Preservation Bath’s challenge to limitations addressed to cluster developments are outside the scope of this statute.

ME 91, ¶¶ 23-24, 750 A.2d 577; *LaBonta v. City of Waterville*, 528 A.2d 1262, 1265 (Me.1987); *Rommel*, 2014 ME 114, ¶¶ 12-14, 102 A.3d 1168, 1171–72.

**No Regulatory Teeth Or Weight.** The Law Court has made clear that a municipality’s comprehensive plan does *not* carry any regulatory weight or “teeth” and instead is a generalized expression of goals. *Nestle*, 2009 ME 30, ¶ 19, 967 A.2d 702, 709 (“[T]he comprehensive plan is just that—a plan—and the ordinances adopted pursuant to the plan are its regulatory teeth.”).

**Deference to Legislative Body.** The Law Court has stated that the Superior Court must act with appropriate deference to the actions of a legislative body in relation to zoning enactments and amendments because they are legislative acts. When reviewing a zoning amendment by a City Council or similar legislative body, the Court’s deferential review is narrowly confined to determining whether the legislative body could have rationally adopted the amendment in light of the evidence presented before it, the various policies articulated in the comprehensive plan, and the mandate of 30–A M.R.S. § 4352 that a “zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body.” *Rommel*, 2014 ME 114, ¶¶ 12-14, 102 A.3d 1168, 1171–72; *Vella*, 677 A.2d at 1053 (Me. 1996) (“In reviewing the record to determine whether, from the evidence before it, the legislative body of the Town could have determined that the amendments are in basic harmony with the comprehensive plan, we will not



substitute our judgment for that of the legislative body.”); *Golder v. City of Saco*, 2012 ME 76, ¶ 9, 45 A.3d 697.

The Law Court has stated that where ordinance amendments are made by citizen’s initiative, rather than by a representative legislative body, the outcome of the vote on the citizen’s initiative is determinative regarding the intent of the voters. *Dimoulas*, 2002 ME 133, ¶18, 803 A.2d 1018, 1023 (addressing similar ordinance amendment by citizens’ initiative and holding that “[i]n enacting the ordinance, the voters of Old Town determined that the proposed ordinance was in harmony with the Comprehensive Plan.”); *see also Stiff v. Town of Belgrade*, 2024 ME 68, ¶ 12, 322 A.3d 1167, 1171 (noting that the role of a court in construing ordinances and statutes is to discern the intent of the body that enacts the legislation).

## **LEGAL ARGUMENT**

### **I. Preservation Bath has not met its burden of establishing that the LUC Amendments are inconsistent with the City’s 2023 Plan.**

Preservation Bath argues that the LUC Amendments are inconsistent with the 2023 Plan. Blue Brief at 11-13. In support of this argument, it points to the first of four “Big Ideas” included in the 2023 Plan describing the goal of keeping Bath “welcoming, diverse, and livable,.” It also relies upon 2023 Plan statements noting challenges concerning housing affordability, long commutes for BIW employees, decreased renter-occupied housing and rental units. It points to a major focus in the 2023 Plan to “encourage housing development different from what exists[,]

“including housing attractive to young professionals, loft space, senior housing, mixed-use, mixed-income, and mixed-age housing developments.” *Id.*, citing A. 139-140.<sup>2</sup>

The generalized statements contained in the 2023 Plan expressing justified concerns and goals concerning housing challenges in the City of Bath are insufficient to demonstrate that the LUC Amendments are inconsistent with, or not in basic harmony with, the 2023 Plan. These generalized statements -- which lack regulatory force or teeth -- do not evidence any specific plan, directive, or goal for the City to develop, expand, or protect the ability to create cluster developments or multi-family developments in the GCD. Because the statement relied upon are not inconsistent with the 2023 Plan, they cannot be used to nullify “the people’s exercise of their sovereign power to legislate.” *Portland Regional Chamber of Commerce v. City of Portland*, 2021 ME 34, ¶ 8, 253 A.3d 586, 591 (citing and quoting *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, ¶ 15, 237 A. 3d 882).

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<sup>2</sup> Among other things, Preservation Bath specifically highlights the following 2023 Plan language as supportive of its arguments: 1) the first policy identified for “Housing” is to “encourage and promote adequate housing to support the community’s and region’s economic development[.]”; 2) a strategy to advance this policy of supporting “diversification of allowed housing types,” as well as “create a housing production goals Bath of new units and/or new number of units to improve bring up to code each year.” Blue Brief at 11-13, citing A. 141.

**LUC Amendments’ Consistency With 2023 Plan.** The limitations on cluster developments and multi-family developments in LUC Amendments are consistent with, and in basic harmony with, numerous policies and goals contained in the 2023 Plan. First, the 2023 Plan states an additional “Big Idea” of making “Bath climate resilient.” A. 136. Toward that end, Bath “will steward valuable natural areas and take bold, proactive steps to prepare for the challenge posed by a changing climate.” A. 136. To accomplish this, “we plan to ...[i]dentify and conserve important natural areas that provide benefits for open space, and recreation, and climate resilience.” A. 136. The action of the City’s voters in enacting the LUC Amendments serves these goals because the enacted limitations preserve open, natural spaces and recreation areas that would be otherwise severely reduced or altered if cluster developments and multi-family housing were allowed in the GCD. As discussed in more detail below, these statements are separate from other 2023 Plan statements that expressly state a goal of preserving the golf course and golf course operations in the GCD. A. 149.

Separately, the 2023 Plan states that the City plans to “[i]mplement sustainable landscape and stormwater management practices.” A. 136. The 2023 Plan specifically calls out areas in the GCD as being potentially vulnerable in relation to the “headwaters” of the New Meadows River, with only one percent of the watershed located in Bath. A. 147. The 2023 Plan specifically calls out “residential land use”

and “roads” in Bath as potential non-point pollution sources in Bath that threaten the “headwaters” of the New Meadows River. A. 147. The 2023 Plan also states that “there may be some waterflow from the Bath Country Club (golf course) property along Whiskeag Road under Ridge Road to a wetlands at the head of the New Meadows, however, it is not certain if this is the case.” A. 147. Restricting residential land development and roads -- non-point pollution sources -- in the GCD serves the aim of maintaining sustainable stormwater management practices to protect the “headwaters” of the New Meadows River. A. 147.

The LUC Amendments serve important policies and goals contained in the 2023 Plan, including serving climate resiliency by taking bold, proactive steps to “[i]dentify and conserve important natural areas that provide benefits for open space, and recreation, and climate resilience.” A. 136. Protecting spaces for recreation, natural open spaces, conservation and viewsheds are among the important aims or goals set forth in the 2023 Plan. *See also* 2023 Plan, A. 150 (Land Use Policy).<sup>3</sup> The LUC Amendments also serve sustainable landscape and stormwater management practices by limiting future non-point pollution sources such as “residential land use” and “roads” in areas that border and serve as the headwaters of the New

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<sup>3</sup> Policy and Strategy - Land Use includes: “Develop a comprehensive Open Space Plan for the City that identifies locally valued natural areas, assesses long-term needs for recreation and open space, and prioritizes land to conserve, access needs, and viewsheds.” A. 150.

Meadows River, including the GCD. Maintenance of natural open spaces, recreational areas and viewsheds also are important aims or goals set forth in the 2023 Plan. *See also* App. 151 (Natural Resources Policy).<sup>4</sup>

In sum, these and other statements and goals from the 2023 Plan demonstrate that the LUC Amendments are consistent and harmonious with the 2023 Plan. Legislative action may “be consistent with a comprehensive plan when it is in harmony with some provisions of the plan, even if the action appears inconsistent with other provisions of the plan.” *Id.*; *Bog Lake Co. v. Town of Northfield*, 2008 ME 37, ¶ 11, 942 A.2d 700, 704 (stating legislative action by voters “is entitled to great deference from the courts” and therefore limiting judicial review of zoning amendments to “a determination of whether the ordinance itself is constitutional, and whether the zoning ...is in basic harmony with the Town's comprehensive plan.”); *Rommel*, 2014 ME 114, ¶ 14, 102 A.3d 1168, 1172 (requiring only that a plan “strikes a reasonable balance among the municipality’s various zoning goals.”).

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<sup>4</sup> Policy and Strategy – Natural Resources includes: ““Develop a comprehensive Open Space Plan for the City that identifies locally valued natural areas, assesses long-term needs for recreation and open space, and prioritizes land to conserve, access needs, and viewsheds.” A. 151.

**II. The 2023 Plan’s statement that “Cluster Subdivisions also are allowed in this district” does not serve as an edict as to future uses in the Golf Course District.**

Preservation Bath separately argues that specific language describing the GCD contained in the 2023 Plan compels the conclusion that the LUC Amendments’ limitation on cluster developments and multi-family developments is inconsistent with the 2023 Plan. Blue Brief at 12-15. Appellant’s argument is misplaced. The language that Appellant relies upon actually favors the City’s position that the LUC Amendments serve the 2023 Plan policy or goals of “[m]aintain[ing] the Bath Golf Club Golf Course operation” and “protect[ing] the golf course[.]” A. 149.

The 2023 Plan’s description of the GCD is as follows:

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 allowed in this district. A. 149 (with emphasis).

Preservation Bath argues that the last sentence of this passage amounts to an edict that binds future legislative bodies and offers protection for cluster developments in the GCD in perpetuity. Examining the plain language of the 2023

Plan,<sup>5</sup> the sentence “Cluster subdivisions are allowed in the District” conspicuously does not use any mandatory language (such as “shall”) or permissive language (such as “may”). Further, a present-tense statement of an existing *state of facts* cannot be transformed into a future regulatory *command* that binds future legislative bodies. *SC Testing Tech., Inc. v. Dep't of Env't Prot.*, 688 A.2d 421, 425 (Me. 1996) (“The Legislature may not enact a law that purports to bind a future Legislature.”) (citing *Opinion of the Justices*, 673 A.2d 693, 695 (Me.1996)); *Wagner v. Sec’y of State*, 663 A.2d 564, 566 (Me. 1995) (“Maine’s Constitution affords any Maine citizen the right to propose legislative enactments[]” and citing the purpose of Me. Const. art. IV, pt. 3, § 18 as encouraging participatory democracy).<sup>6</sup> This means that the

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<sup>5</sup> When reviewing legal documents, such as statutes and ordinances, courts first look to the plain language of the statute to determine its meaning if they can do so while avoiding absurd, illogical, or inconsistent results. *In re Child of Nicholas P.*, 2019 ME 152, ¶ 32, 218 A.3d 247. “All words in a statute are to be given meaning, and no words are to be treated as surplusage if they can be reasonably construed.” *Cent. Me. Power Co. v. Devereux Marine, Inc.*, 2013 ME 37, ¶ 8, 68 A.3d 1262 (quotation marks omitted). “Surplusage occurs when a construction of one provision of a statute renders another provision unnecessary or without meaning or force.” *Home Builders Ass’n of Me., Inc. v. Town of Eliot*, 2000 ME 82, ¶ 8, 750 A.2d 566; *Howard v. White*, 2024 ME 9, ¶ 11, 308 A.3d 213, 217.

<sup>6</sup> See also generally *Greaves v. Houlton Water Co.*, 143 Me. 207, 213, 59 A.2d 217, 220 (1948) (“No matter what words the legislature uses, or what attempts it makes to pass an exemption statute without the right to change or repeal it, it cannot bind itself so as to prevent a future change or repeal.”); *Casa DiMario, Inc. v. Richardson*, 763 A.2d 607, 610 (R.I. 2000) (noting the general rule that city councils do not have the power to bind future city councils by promising not to enforce yet-to-be enacted ordinances).

statement that cluster developments “are allowed” in the GCD cannot be reasonably read as creating any right to be free from future regulation, including legislative amendments such as the LUC Amendments. In all other respects, the “consistency” requirement set forth in 30-A M.R.S. § 4352(2) actually appears to expressly exclude zoning ordinances addressed to “cluster developments,” severely undermining Preservation Bath’s core arguments on appeal. 30-A M.R.S. § § 4352(2).

**2023 Plan Statements Regarding The GCD.** Where the 2023 Plan specifically addresses the GCD, it clearly and explicitly sets forth a policy or goal of preserving existing golf course operations and the golf course in the GCD, not shrinking or eliminating such items. The 2023 Plan states that the GCD is designed to “*maintain the Bath Golf Club Golf Course operation.*” App. 507 (emphasis added). This description also cites to the need to protect golf course operations from incompatible uses and encroachments. Although such statements lack “regulatory teeth,” *Nestle*, 2009 ME 30, ¶ 19, 967 A.2d 702, 709, they still demonstrate harmony between the LUC Amendments and the 2023 Plan. Restricting cluster developments and multi-family dwelling developments in the GCD serves the goal protecting, and not shrinking, golf course operations and the golf course located in the GCD.<sup>7</sup> In this

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<sup>7</sup> As the operator of the Bath Golf Club golf course, Preservation Bath is not precluded from engaging in a wide range of business and recreational uses and activities in the GCD. App. 59, 65-66. These include the operation of the golf course, swimming pools, tennis courts, a golf range, a club house restaurant, mountain



manner, the LUC Amendments are consistent with the 2023 Plan. *See Remmel*, 2014 ME 114, ¶¶ 12-14, 102 A.3d 1168, 1171-72 (noting that a zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it “strikes a reasonable balance among the municipality’s various zoning goals” or “overlap[s] considerably” with the plan) (citing *Nestle*, 2009 ME 30, ¶ 23, 967 A.2d 702 and *Stewart*, 451 A.2d 308, 312 (Me. 1982)); 30-A M.R.S. § 4352(2) (requiring that ordinances must be “pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body.”). Because the LUC Amendments and 2023 Plan strike a reasonable balance among the City’s various zoning goals and are in basic harmony, judgment should enter in favor of Defendant and against Plaintiff on Count I. *Id.*<sup>8</sup>

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biking, paintball, horseback riding, skiing, and other uses. App. 59, 65-66, Section 9.02 Table of Uses for the LUC, including for GCD.

<sup>8</sup> The case *ALC Development Corp. (“ALC”) v. Town of Scarborough*, 2005 WL 2708349 (Me. Super. Feb. 15, 2005) does not warrant the conclusion that the LUC Amendments are inconsistent with the 2023 Plan. Blue Brief at 18. In that case, a developer with a prior contract zoning agreement with the Town sought to institute developments consistent with a comprehensive plan that designated proposed areas for development and also required the enactment of a consistent zoning ordinance within two years. Under 30-A M.R.S. § 4314(2) (shoreland and floodplain ordinances), “any portion of a zoning ordinance that is not consistent with a comprehensive plan adopted in accordance with the procedures, goals and guidelines established in this subchapter is no longer in effect 24 months after adoption of the plan.” *ALC*, 2005 WL 2708349 at \*5. However, in *ALC*, a citizen’s initiative was presented to the voters of the Town to invalidate the contract zoning agreement, thereby transforming the proposed development areas as rural and largely undevelopable. *Id.* at \*4-5. Holding that the direct legislative nullification of the

**III. The trial court correctly determined that the voters' enactment of the LUC Amendments evidenced that the City's voters found the LUC Amendments were consistent with the 2023 Plan.**

Preservation Bath argues that there is an insufficient record as to voter intent in relation to the LUC Amendments, arguing that the narrow scope of review applicable to representative legislative bodies applies to legislation adopted by voters through citizen's initiatives. Where zoning amendments are enacted by legislative bodies, courts employ the following narrow scope of review: "whether, from the evidence before it, the legislative body [of the municipality] ...could have determined that the amendments are in basic harmony with the comprehensive plan[.]" *Vella*, 677 A.2d 1051, 1053 (Me. 1996). Preservation Bath points to the absence of an evidentiary record as to voters' state of mind proving that the considered whether the LUC Amendments were in harmony with the 2023 Plan. As such, it argues that the LUC Amendments are void. Blue Brief at 16. Preservation Bath is wrong.

As an initial matter, Preservation Bath is not arguing that the public was not heard concerning the proposal for the LUC Amendments. Citing to the minutes for

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contract zoning agreement could not be enforced, the Superior Court noted that the municipality took no action for more than 8.5 years to either amend its comprehensive plan or enact consistent zoning ordinances allowing for development. The Court found that the legislative enactment by the voters was inconsistent with the Town's comprehensive plan. *Id.* at \*6. The same facts and procedural posture are lacking in this case.

the City Council Meeting of January 17, 2024, A. 161-162, Appellant concedes that “the voting public had the opportunity to discuss these proposed changes before the Bath City Council.” Blue Brief at 17-18, citing A. 161-162. However, Preservation Bath asserts that there is no evidence that concerning the individual intent of each voter casting a vote on LUC Amendments concerning whether they considered whether removing cluster development and multi-family dwelling uses from the GCD was consistent with the 2023 Plan.

Under applicable precedent, it is not necessary or advisable to create a record concerning the post-vote state of mind of voters casting votes on citizen’s initiative concerning the extent to which they considered consistency between the proposed amendment and the municipal plan. In the context of review of legislative rezoning action by citizen’s initiative, the Law Court in *Dimoulas* stated that “[i]n enacting the ordinance, the voters ...determined that the proposed ordinance was in harmony with the Comprehensive Plan.” *Dimoulas*, 2002 ME 133, ¶ 18, 803 A.2d 1018, 1023. The outcome of the vote on the proposed amendment is sufficient for purpose of review for consistency. Any attempt to create a record as to the intent or understanding of actual voters would not only be unruly and unworkable, but also would fall foul of the right of voters to cast their votes on proposed ordinances by secret ballot. 30-A M.R.S. § 3002(3). This Court should reject Preservation Bath’s argument requiring more.

Apart from this, evidence exists of a public hearing and municipal debate regarding the LUC Amendments where consistency of the LUC Amendments and the 2023 Plan were addressed exhaustively. While acknowledging the existence of this public hearing and meeting, Blue Brief at 17-18, citing A. 161-162, Preservation Bath declined to include a transcript or link for January 17, 2024 City Council meeting in the record for this matter.<sup>9</sup> Appellants decision to exclude certain materials from the record does not mean that such evidence does not exist. A. 161-162 (minutes reflecting public proceedings); *see also* 30-A M.R.S. § 4352(1) (“The public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance.”). The City rejects the Preservation Bath’s assertion that “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.” Blue Brief at 18.

Ultimately, the Business Court correctly determined requiring evidence concerning the state of mind of voters would be unworkable and that only evidence of the outcome of enactment of the proposed ordinance is required. A. 25. As the

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<sup>9</sup> The video of this meeting is available online on the City of Bath’s website and is a public record. Unless the Court is inclined to take judicial notice of the January 17, 2024 City Council meeting, the City will limit its argument here to note that consistency between the LUC Amendments and 2023 Plan was extensively discussed at the public hearing concerning presentation of the LUC Amendments to the City’s voters.

Business Court noted, there is no other practical approach because it is not possible to weigh what evidence the voting public considered when casting their votes. A. 25. Because the Business Court did not err, this Court should affirm the Judgment.

### **CONCLUSION**

For the foregoing reasons, the Court should deny the appeal of Plaintiff Preservation Bath, LLC d/b/a Bath Golf Club, affirm the Judgment of the Business Court, and grant such other and further relief as the Court deems just.

Dated: November 12, 2025

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

Counsel for Appellee hereby certifies that this Brief, in the required quantity and manner, after Clerk approval, shall be filed with the Law Court (1 original and 9 copies to the Law Court, plus electronic copy) and served on counsel for the Appellant (2 copies, plus electronic copy) in accordance with the Maine Rules of Appellate Procedure.

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Dated: November 12, 2025

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