

MATTHEW D. MANAHAN

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1189
F 207.791.1350
C 207.807.4653
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

October 10, 2013

Lowrie Sargent, Vice Chair
Planning Board
Town of Camden
8 Washington St., Suite 104
Camden, ME 04843

Re: F.H.R.E., LLC Ordinance Amendment Proposal

Dear Mr. Sargent:

As you requested, this letter will briefly summarize the legal arguments I will present to the Board at the Board's meeting on October 17.

1. Unintended Consequences. Adopting the proposed ordinance would have the legal consequence of opening the door to all types of substance abuse treatment centers at Fox Hill, and in the CR District generally. See my August 13, 2013 letter to Bill Kelly, my August 27, 2013 letter to you, and my September 16, 2013 letter to you for additional discussion on this point.
2. Conditional Zoning. The proposed amendment is in effect a conditional zoning proposal that does not comply with Maine law governing conditional zoning. See my August 13, 2013 letter to Bill Kelly, Exhibit A of my August 27, 2013 letter to you, and my September 16, 2013 letter to you for additional discussion of this point.
3. No Need for Rezoning. The proposed facility is already allowed in the B-2 and B-3 districts. See my August 13, 2013 letter to Bill Kelly for additional discussion of this point.
4. Inconsistency with Comprehensive Plan. The proposed ordinance is inconsistent with the Camden Comprehensive Plan. See my July 31, 2013 letter to you, Exhibit A of my August 27, 2013 letter to you, and my September 16, 2013 letter to you for additional discussion of this point.
5. No Standing. F.H.R.E., LLC ("FHRE") does not have standing to request an ordinance amendment, because FHRE is not a qualified voter. See my August 27, 2013 letter to you for additional discussion of this point.

The second paragraph of the Fox Hill Schedule circulated by Steve Wilson on September 30, 2013 stated that FHRE must provide the final revised proposal one week prior to the October 17 meeting. The third paragraph of the September 30 Fox Hill Schedule, though, stated that on October 17 FHRE "will be providing new information as well, including the final revised proposal." If the third paragraph controls, it is unfair to allow the applicant to

Lowrie Sargent, Vice Chair
Page 2
October 10, 2013

bring new language and new information to the meeting on October 17, when FHRE has had since September 19 to prepare and submit the revised proposal. We cannot be expected on October 17 to review and provide meaningful comments on a proposal we see for the first time that evening.

We believe the Planning Board has been extremely flexible in working with FHRE, notwithstanding the significant time, effort, and Town resources that have been required to address problems with the language as proposed. That language has already gone through several iterations to address deficiencies. At this point, we believe the Board has gone above and beyond what is required to assist the applicant, and that the Board should let the applicant's proposal proceed on its own merits (or lack thereof). The Board is not obligated to, and should not, devote further time and effort into trying to improve the applicant's proposal. This is particularly true in light of the fact that less than one hour of public comment has been allowed in the 12 to 13 hours of Planning Board meetings on this matter, and virtually all public comment has been in opposition to this proposed amendment except for comments from those who have, or have been promised, some connection to FHRE or McLean Hospital. Neither the Board nor the public should be expected to continue to assist the applicant in addressing the numerous deficiencies with the proposal. The Board should move forward, one way or the other, with FHRE's current version of the proposed amendment, in fairness to all.

The September 30 Fox Hill Schedule also stated that FHRE will bring a speaker to the October 17, 2013 meeting to address its economic analysis. In advance of that meeting, I asked Professor Todd Gabe of the University of Maine to review and comment on FHRE's economic impact report. I attach for your consideration Professor Gabe's report. Ironically, at your September 19 meeting FHRE asked that my comments at your October 17 meeting be limited to "zoning issues only," and that request is repeated in the September 30 Fox Hill Schedule. I agree that the Planning Board's review of FHRE's proposal should be limited to zoning and planning issues associated with the proposed amendment itself, *i.e.*, whether the amendment proposal conforms with state and local laws, and otherwise is consistent with good planning principles. The alleged economic benefits of FHRE's proposed facility are beyond the scope of those considerations and, as such, should not even be considered by the Board. For this reason, I do not intend to discuss Professor Gabe's report at your October 17 meeting, unless you have questions for me, and I do not believe the Board should entertain a presentation touting the alleged economic benefits of FHRE's proposed facility.

At the Board's September 19, 2013 meeting Mr. Bernhard asked whether prior owners had obtained all required permits for the construction that has taken place on the property over the years. I believe Steve Wilson is investigating that issue. If all required permits were not obtained, then it would be inappropriate to allow FHRE to use the illegal structures for the proposed substance abuse treatment facility. What is the status of Mr. Wilson's investigation?

Finally, at the Board's September 19 meeting Ms. MacKinnon stated that she has a friend whose husband is an investor in FHRE. Because she said she could objectively consider FHRE's application, I did not object to her participation in this matter. However, we believe it is important, to address similar potential conflicts and to provide accountability to the

Lowrie Sargent, Vice Chair
Page 3
October 10, 2013

applicant in this process, for the Planning Board members and the public to know the identities of all of FHRE's investors, who, as noted above ("No Standing"), should be the applicants for this amendment proposal. For this reason, we request that you require FHRE to identify its investors at the earliest opportunity.

+++++

We remain very concerned about the potential impacts of the proposed amendment, which will undoubtedly subject the Town to legal action challenging its validity and open the door to other substance abuse treatment facilities in the CR District. On the other hand, by rejecting the proposed amendment the Town will not subject itself to legal action, because the Town currently allows substance abuse treatment facilities in the B-2 and B-3 districts. Regardless of any perceived inability of Fox Hill to be used for its intended residential purposes (and that perception is at best subject to debate), the Town should not adopt a proposed ordinance amendment that penalizes so many for the benefit of so few.

The applicant has been given sufficient opportunity to address concerns that have been raised, and has failed to do so. For these reasons, and the others I have discussed, we believe the Planning Board should reject the proposed amendment.

I look forward to discussing these issues with you on October 17. Please let me know if you have any questions.

Sincerely,



Matthew D. Manahan

Enclosure

cc: Steve Wilson (for distribution to Planning Board and Select Board members)
William Kelly, Esq.
Leonard and Madlyn Abramson
John J. Sanford, Esq.
Paul L. Gibbons, Esq.

Review of Economic Impact Report: Todd Gabe, October 7, 2013

**Review of Economic Impact Report of Proposed
Alcohol Rehabilitation Facility in Camden, Maine**

Todd Gabe, Ph.D.¹
(todd.gabe@yahoo.com)

October 7, 2013

Report prepared for: Pierce Atwood LLP

¹ Todd Gabe is a Professor of Economics at the University of Maine. This work was completed as a private consulting project for Pierce Atwood LLP.

**Review of Economic Impact Report of Proposed
Alcohol Rehabilitation Facility in Camden, Maine**

The purpose of this project is to review and provide comments on the report, titled “The Economic & Fiscal Impact of a Proposed Alcohol Rehabilitation Facility on the Town of Camden, Maine,” prepared by Planning Decisions, Inc., dated August 22, 2013. The report is referred to below as the “Economic Impact Report,” or the “report.” The comments presented in this review are organized around a set of questions covering key aspects of the report.

1. Is the economic impact analysis sound and do the results seem plausible?

Short answer: The results are very unlikely to be achieved.

The analysis in the Economic Impact Report takes a nonstandard approach of combining the temporary construction impacts and the permanent impacts related to the proposed facility’s operations. In economic impact studies, it is customary to show temporary construction impacts separate from any permanent impacts. Although the Economic Impact Report notes that 29 of the 46 jobs counted in the direct impact are permanent (thus, 17 of the jobs are temporary), it does not show the number of “indirect” and “induced” jobs that are supported by the proposed facility’s operations. That is, the multiplier (*i.e.*, indirect and induced) effects of 16.5 jobs are a combination of temporary and permanent jobs.

After the temporary construction project is completed, the long-term impact of the proposed facility would be considerably lower than the 62.5 jobs projected in the Economic Impact Report. Rather, the direct impact would be 29 jobs (and not 46) and the multiplier effects supported by the ongoing operations would be lower than 16.5 jobs.

To this point, I have reported the multiplier effects as presented in the Economic Impact Report. It is likely, however, that the multiplier effects on the Camden economy would be smaller than those discussed in the report, for the reasons explained below.

Focusing on employment impacts, the multiplier effects can be thought of as the additional jobs in Camden that would be supported by the local spending of businesses (*e.g.*, suppliers) that are related to the proposed facility, and their workers. Thus, lower amounts of spending in the Town of Camden would lead to smaller multiplier effects.

The IMPLAN model—the economic impact model used in the report—is available at the zip code level (which would cover the Town of Camden), but the approach taken in the Economic Impact Report is to use the IMPLAN model for Knox County and to reduce “indirectly generated sales by 20% to reflect spending outside Camden” (but occurring elsewhere in Knox County).

Review of Economic Impact Report: Todd Gabe, October 7, 2013

The small size of the economy in Camden relative to all of Knox County suggests that a considerable amount of the in-county spending (probably more than the 20 percent assumed in the report) would take place outside of Camden.

As shown in Table 1, the Camden ESA accounts for only 17 percent of total taxable retail sales in Knox County. In other words, over 80 percent of the county's taxable retail sales take place outside of the Camden ESA. For the retail categories of General Merchandise and Food Stores, which often figure prominently in the induced effects supported by the spending of workers, close to 90 percent of the taxable sales in Knox County occur outside of the Camden ESA. Thus, it seems unlikely that the Town of Camden would lose only 20 percent (as assumed in the report) of the spending taking place in Knox County.

Table 1. Percentage of Taxable Retail Sales in Knox County Accounted for by the Camden ESA, 2012

Retail Category	Taxable Sales in Knox County	Taxable Sales in Camden ESA	% of Sales in Camden ESA
Total Retail Sales	491,982,200	83,451,400	17%
Building Supply	84,756,800	7,231,000	9%
Food Stores	53,431,600	7,200,400	13%
General Merchandise	75,308,000	9,177,200	12%
Other Retail	52,244,900	15,904,900	30%
Auto	68,146,600	2,858,500	4%
Restaurant	69,280,200	17,340,900	25%
Lodging	34,880,900	11,265,500	32%
Restaurant & Lodging	104,161,100	28,606,400	27%

Notes: All figures were downloaded from the Maine State Data Center website. Taxable retail sales data are from Maine Revenue Services. Retail categories are defined by Maine Revenue Services. For food stores, the values represent taxable "snacks" and non-food items. The "other retail" category includes (among other store types) jewelry stores, antique dealers and gift shops.

Table 2 presents further evidence suggesting that the Town of Camden would be unlikely to capture 80 percent of the spending estimated to take place in Knox County. Camden accounts for only 18 percent of the total businesses in Knox County—including less than one-third of the professional services providers, and less than 25 percent of the County's businesses in finance and insurance.

To summarize:

The employment impacts presented in the Economic Impact Report include a combination of temporary and permanent jobs, which inflates the employment projections. Furthermore, the multiplier effects would be much lower than projected, because less than 80 percent of the estimated in-county spending takes place in Camden. In fact, the Camden area accounts for less than 20 percent of Knox County's taxable retail sales and total businesses.

Review of Economic Impact Report: Todd Gabe, October 7, 2013

Table 2. Percentage of Businesses in Knox County Accounted for by Camden, 2011

Industrial Category	Businesses in Knox County	Businesses in Camden	% of Businesses In Camden
Total for all sectors	1,681	306	18%
Forestry, fishing, hunting, & Agriculture Support	101	1	1%
Utilities	7	0	0%
Construction	191	13	7%
Manufacturing	98	10	10%
Wholesale trade	54	2	4%
Retail trade	258	46	18%
Transportation & warehousing	45	10	22%
Information	40	6	15%
Finance & insurance	61	14	23%
Real estate & rental & leasing	63	27	43%
Professional, scientific, & technical services	127	40	31%
Management of companies & enterprises	3	1	33%
Administrative & Support & Waste Mgmt & Remediation services	72	14	19%
Educational services	27	7	26%
Health care & social assistance	156	26	17%
Arts, entertainment, & recreation	55	10	18%
Accommodation & food services	164	49	30%
Other services (except public administration)	156	30	19%

Notes: Business counts are from County Business Patterns and Zip Code Business Patterns of the U.S. Census Bureau.

2. Do the estimated impacts depend on where the proposed facility is located in Camden?

Short answer: The report does not provide any basis for locating the facility in the Coastal Residential Zone, as opposed to a commercial zone that already allows for such use.

The number of jobs and income supported by the proposed facility are related to the amount of overall spending and the percentage of this spending that takes place in the Town of Camden. The economic impacts presented in the report are based on \$1.5 million in expenditures to renovate the proposed site, and \$3.5 million in annual operational expenditures.

If the facility were to be located elsewhere in Camden, the temporary construction expenditures could be different than the \$1.5 million used in the Economic Impact Report—depending on the level of renovations required (for existing structures) and/or the cost of new construction. The proposed facility's operational expenditures would likely be the same regardless of where the facility is located in the Camden area, provided that it is able to accommodate the same number of residents.

To summarize:

The temporary economic impacts associated with a similar facility could be even greater than those presented in the Economic Impact Report if a building that is more expensive were built (or renovated) elsewhere in Camden. The permanent impacts are based on the proposed facility's operational expenditures, which depend more on the number of residents than on where in the town it is located.

3. Are there factors that could offset the local tax impacts?

Short answer: Yes, but these factors were not discussed in the Economic Impact Report.

The Economic Impact Report shows the gross state and local fiscal impact (*i.e.*, taxes and fees) associated with the proposed facility. In the IMPLAN model used in the analysis, the state and local tax (and fees) figures are estimated based on the projected economic impact. Thus, the limitations of the economic impact analysis discussed above (*e.g.*, combining the temporary and permanent impacts, multiplier effects based on the assumption that 80 percent of the estimated in-county spending takes place in Camden) would apply to the estimated fiscal impacts as well.

The net fiscal impact, which is not discussed in the report, would be the change in taxes and fees—and, potentially, local government spending—relative to the current status. It appears that the fiscal impact of \$105,000 in property taxes related to the proposed facility (discussed in the report) includes taxes that are already being paid. According to Camden's 2013 *Real Estate Tax Commitment Book*, the property located at 235 Bay View Street has an assessment of \$6.5 million and annual property taxes of \$88,472.66. The proposed \$1.5 million in improvements planned for the facility could raise the assessment to a value for which the property taxes would reach about \$105,000, as presented in the Economic Impact Report. The net change—that is, additional property taxes compared to the current status—would be less than \$17,000.

The net fiscal impact could be reduced further if the facility were to require a greater scope or level of municipal services (*e.g.*, law enforcement, code enforcement, road improvements, fire protection) than

Review of Economic Impact Report: Todd Gabe, October 7, 2013

are currently being provided to the property.² Likewise, property taxes collected in Camden could decline if the facility were to reduce the values of other residential properties. Although numerous academic studies have examined the effects of zoning and surrounding land uses on residential property values, an article by Donald Jud (in the journal *Land Economics*) puts it best with the quote, “purchasers of residential housing seek a uniformity in neighborhood land use” and, when “this uniformity is provided by a residential zoning classification, consumers are willing to pay a premium for it.”

To summarize:

The fiscal impacts presented in the Economic Impact Report include a combination of temporary and permanent impacts, and the fiscal impact of \$105,000 in property taxes related to the proposed facility appears to include \$88,472.66 in property taxes that are already being paid. Also, the report does not address or deduct for any increases in municipal spending caused by the proposed change in the property’s use. Thus, the net fiscal impact of the proposed facility would be considerably lower than what is projected in the Economic Impact Report.

4. Does the report paint a fair and accurate picture of Camden and its economic condition?

Short answer: No.

Economists use a variety of indicators to measure the health and performance of a region’s economy. These indicators are often related to income, employment and the amount of commerce taking place in a region. Given that all places have their strengths and weaknesses, it is not uncommon for regions to perform well according to some indicators and fare relatively poorly according to others.

The Economic Impact Report focuses on indicators for which the area performed relatively poorly, but the region demonstrated very positive changes according to other key economic indicators. Table 3 presents three examples of regional economic indicators showing favorable changes in Camden.

Per capita income is perhaps the most important indicator of local economic development. In the academic textbook, *Local Economic Development*, John Blair notes that “Economic development implies that the welfare of residents is improving. Increases in per capita income (adjusted for inflation) is one important indicator of welfare improvements.” As shown in Table 3, the Town of Camden experienced considerably higher growth than Knox County and the State of Maine in real per capita income between 2000 and 2011.

Furthermore, Camden saw a significant decrease in the percentage of households with incomes under the poverty line, while Knox County and the State of Maine actually experienced increases in this poverty measure. A third example presented in Table 3 shows that the Camden Economic Summary Area (ESA) had stronger growth than Knox County and the State of Maine in hospitality (*i.e.*, restaurant and lodging) sales between 2004 and 2012. The amount of hospitality sales is a key indicator for the

² A newspaper article published in *USA Today* on September 23, 2013, discusses the drug use that takes place in rehab facilities, which could increase the amount spent on law enforcement in the Town of Camden.

Review of Economic Impact Report: Todd Gabe, October 7, 2013

Camden area, given its coastal location and the importance of tourism to the local economy. These features of the Camden area explain the high levels of seasonality, which are common along the Maine coast, discussed in the Economic Impact Report.

Table 3. Examples of Economic Indicators Showing “Favorable” Changes in Camden

Indicator / Region	Beginning Year	Ending Year	Percentage Change
Per Capita Income, Real (2011) \$s			
	2000	2011	
Camden	34,128	40,707	19%
Knox County	26,101	26,504	2%
Maine	25,515	26,195	3%
% Households Under Poverty Line			
	2000	2011	
Camden	9.4	4.3	-54%
Knox County	10.2	11.5	13%
Maine	11.5	13.1	14%
Taxable Restaurant & Lodging Sales, Current \$s			
	2004	2012	
Camden ESA	20,005,500	28,606,400	43%
Knox County	74,157,300	104,161,100	40%
Maine	2,240,992,100	2,925,689,200	31%

Notes: These indicators were downloaded from the Maine State Data Center website. Information on per capita income (measured over the previous 12 months) and the percentage of households living under the poverty line is from the U.S. Census Bureau. Taxable restaurant and lodging sales data are from Maine Revenue Services. The time periods analyzed cover the earliest (e.g., 2000 and 2004) and most recent (complete) (e.g., 2011 and 2012) years included for the selected indicators. The Consumer Price Index (U.S. Bureau of Labor Statistics) was used to adjust the 2000 per capita income figures for inflation, and convert them into 2011 dollars.

To summarize:

The Economic Impact Report focuses on the “economic challenges” facing Camden, yet the area is performing quite well according to some important regional economic indicators.

5. Overall Summary

The Economic Impact Report discusses some economic challenges facing the Camden area, and presents estimates of the local jobs and taxes that would be supported by the proposed facility. Contrary to the grim economic picture portrayed by the report, the Camden area is performing quite well according to some important regional economic indicators (e.g., per capita income, poverty rate, hospitality sales). The actual impact of the proposed substance abuse rehabilitation facility on local jobs would be lower than what is projected in the report because the (temporary) construction activities would end after the

Review of Economic Impact Report: Todd Gabe, October 7, 2013

renovations are completed, and the facility (and its suppliers and workers) would make fewer local purchases than what is assumed in the report. The local property taxes projected in the Economic Impact Report do not account for the taxes that are currently being paid on the property, and the net fiscal impact could be reduced further if the facility were to require a greater scope or level of municipal services, or if the facility were to decrease the values of other residential properties.