

DRAFT

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Planning Board
DATE: September 20, 2011
SUBJECT: Open Space Impact Fee

Introduction

The Cape Elizabeth Town Council adopted an Open Space Impact Fee to replace an existing requirement for preservation of open space as part of new development in 1995. The impact fee was revised in 2002 to reflect the new U.S. Census population numbers for the town. The Planning Board notes that the Subdivision Ordinance requires that it be determined in accordance with “the most recent U.S. Census” and that the fee be determined based on the “average fair market value of one acre of vacant land as determined by the Town Assessor. Therefore, the Planning Board is recommending that the open space impact fee be updated again with the most current 2010 U.S. Census numbers and new updated property value based on the recently completed revaluation by the Town Assessor.

Background

The Town of Cape Elizabeth has been obtaining open space through development review since the 1980's. At that time, the Subdivision Ordinance required that 10% of the gross area of a subdivision should be set aside as open space. This requirement was unevenly applied.

In the early 1990's, two U.S. Supreme Court decisions established a more stringent standard for requiring set asides as part of development review. The 10% standard used by Cape Elizabeth was very vulnerable if challenged in court. In order to continue the town's practice of preserving open space through development review, the 10% set aside requirement was converted to an impact fee that is crafted to meet the U. S. Supreme Court standard.

In order to comply with U.S. Supreme Court standard, the fee must be based on a community standard and proportional to the burden placed on town services by new development. The fee calculation must also be kept up-to date. The Town Council can set a fee that is less than the recommended amount, but could be legally vulnerable if the fee is set at a higher amount that calculated below.

Subdivision Ordinance

The impact fee was established as a standard of subdivision review and located in Sec. 16-3-1 (q) of the Subdivision Ordinance. This section lays out the method of calculating the impact fee. Specifically, it states that the "Community Standard of public open space shall be defined as the total acreage of open space divided by the Town's population, as of the most recent U.S. Census. The open space inventory shall include open space "for which there is legal public access."

The standard describes the method of calculating both the land donation and the fee amount. The Planning Board decides if a land donation or fee will be provided.

Relationship to the Comprehensive Plan

The Comprehensive Plan recognizes the value of open space in the vision statement. Further, in the Recreation and Open Space Chapter, Goal 1 and Implementation Step #48 have been adopted as follows:

Goal 1: The amount of publicly accessible open space should be increased in order to preserve the current local standard of open space of 118 acres per 1,000 population.

A major reason residents choose to live in Cape Elizabeth is the open space and physical beauty of the community. In the last decade, the Town, in cooperation with the Cape Elizabeth Land Trust, has increased the local standard of open space from 24 acres per 1,000 population to 118 acres per 1,000 population. The Town should take steps to preserve this standard as the population slowly increases and to increase the standard as resources allow.

Implementation Steps

48. Continue the Open Space Zoning and Open Space Impact Fee requirements for new development that require that open space be set aside.

Updated Fee Calculation

Total open space available for public access (town records): 1191 acres
Cape Elizabeth population (2010 U.S. Census): 9015
Average household size (2000 U.S. Census): 2.57 (no change)

Deleted: 1,013.04

Deleted: 2000

Deleted: 9,068

Average value of 1 acre undeveloped land (Town Assessor): \$19,850

Deleted: 15,000

1191 acres/9015 persons = .132 acres per person

.132 acres per person x 2.57 persons per household = .339 acres per household (lot)

Deleted: 1,013.14 acres / 9,068 persons = .112 acres per person¶
.112 acres per person x 2.57 persons per household = .288 acres per household (lot)

.339 acres = 14,767 sq. ft.

Deleted: Note: .288 acres = 12,545 sq. ft.

.339 acres per lot/unit x 19,850 per acre = \$6,729 dollars per lot/unit

Planning Board Recommendation

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BE IT ORDERED that the Planning Board recommends to the Town Council that the Open Space Impact Fee calculation, established in Sec. 16-3-1(q) of the Subdivision Ordinance, be updated to remain in compliance with the Subdivision Ordinance standard and that the Town Fee Schedule be amended to reflect new open space square footage and fee amounts.