

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: August 5, 2014  
SUBJECT: Land Use Zoning Amendments

### Introduction

At the February 11, 2013 meeting, the Town Council referred recommendations from the Future Open Space Preservation Committee (FOSP) to the Planning Board for implementation. This memo contains the list of recommendations with draft text to implement the recommendation. Below is a "blended" list of Comprehensive Plan/Future Open Space Preservation Committee items referred to the Planning Board.

### Referred to the Planning Board

Below is a list of the FOSP recommendations (#.), annotated with Comprehensive Plan recommendations(•).

1. **Land Use Chapter Recommendations.** The town council requests the planning board should restart its implementation of the Land Use Chapter recommendations in the 2007 Comprehensive Plan, with emphasis on the [above] recommendation (which follows).

*FOSP recommended that the current regulations promoting clustering be retained. More work should be done to investigate the potential for increasing the amount of open space that is preserved while maintaining the density allowed that makes this a desirable option for property owners. More emphasis should also be put on preserving contiguous open space and connectors and less on open space as buffer strips.*

Pg 14, Ln 37 **Implementation:** The cluster regulations are located in Sec. 19-7-2, Open Space Zoning, in the Zoning Ordinance. There is no proposal to delete or reduce the Open Space Zoning regulations. Subsection D (1) in the Open Space Zoning provisions establishes priorities for what land is preserved as open space. Amendments to this section are proposed that make contiguous open space a higher priority and do not specifically emphasize buffer strips. It should be noted that open space zoning developments must also comply with the Subdivision Ordinance, which includes a buffer provision.

Buffering is still required, but more emphasis is placed on contiguous open space.

- 9. Designate BB Districts as Sewer Service Areas.

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**Implementation:** Sewer Service Areas are shown on the town sewer map. The attached map proposes to add the areas zoned Business B (BB) to the sewer service area. The town currently has 2 BB zones, one located at the Inn by the Sea and a newer one located immediately south of the Town Center Zone on the Murray Earthworks contractor facility on Fowler Rd.

- 14. Review the minimum lot size and setback requirements for multi-family and attached single family dwellings (condominiums) to determine if they are creating obstacles to developing a variety of housing types.

**Implementation:** The Comprehensive Plan includes a goal that “The Town should promote a diversity of housing types to accommodate residents of all age groups and household sizes.” The plan notes that the overwhelming majority of housing in Cape Elizabeth is single family housing and population trends indicate a growing senior population. The Planning Board is tasked to review multi-unit housing regulations with an eye to making multi-unit housing a bigger part of the mix of development that would normally occur.

Below is a chart comparing current single family and multi-unit zoning requirements.

Multi-unit dimensional standards comparison with single family development									
Zoning District	Use Permitted	Minimum Lot Area		Density (sq. ft.)		Maximum units/building	Setbacks (ft) <sup>4</sup>		Height
		Single family	Multi-unit	Single family	Multi-unit		Single family	Multi-unit	
RA	Multiplex housing	none	10 acres	80,000	66,000	5	30/30/30	75	35'
RB <sup>3</sup>	Multiplex housing	none	80,000 sq. ft.	60,000	60,000	5	30/30/30	75	35'
RC	Multiplex housing	none	5 acres	20,000	15,000	5	20/20/20	75	35'
TC <sup>2</sup>	Multifamily dwelling unit <sup>1</sup>	none	7,500 sq. ft.	80,000	3,000	none	25-35/15/15	25-35/15/15	35'
BA <sup>5</sup>	Multifamily dwelling unit <sup>1</sup>	none	15,000 sq. ft.	80,000	7,500	none	10-25/5/5	10-25/5/5	35'

<sup>1</sup> Only allowed as accessory to a nonresidential use

<sup>2</sup> Design requirements also apply; side/rear setback is 50' abutting residential district

<sup>3</sup> See Sec. 19-7-2, Open Space Zoning

<sup>4</sup> Setbacks are shown as front/side/rear. Front setback is shown based on local street classification.

<sup>5</sup> Design requirements also apply; side/rear setback is 20' abutting residential district

The Planning Board should have a general discussion about this policy. Potential items for discussion may include:

- A general discussion about how multi-unit development should be a part of residential housing in Cape Elizabeth
- What should be the relationship, if any, between single family and multi-family development regulations?
- Agreement that multi-unit development in residential and business zones be regulated differently

As a start, the minimum lot size for multi-family developments is proposed to be reduced to 5 acres in the RA District. (Page 3).

- 15. Evaluate establishing a density bonus for 55 and older restricted developments.

**Implementation:** The current zoning ordinance permits a higher density for eldercare facilities. An eldercare facility is defined as “a facility defined herein as congregate housing, long-term care or residential care facility, or a continuing care retirement community. All attached or detached housing projects that do not fall within this definition shall be classified and treated as multiplex housing or single-family housing under this ordinance and the Subdivision Ordinance.” The table below compares existing eldercare densities with multi-unit and single family densities. Staff will need direction from the Planning Board on next steps.

Eldercare Facility density comparison			
Zoning District	Eldercare	Density (sq. ft.)	
		Multi-unit	Single family
RA	6,000/unit 3,500/bed	66,000/unit	80,000/lot
RB	3,500/unit 2,500/bed	30,000/unit <sup>1</sup>	30,000/lot <sup>1</sup>
RC	2,500/unit <sup>2</sup> 2,100/bed <sup>2</sup>	15,000/unit	20,000/lot
TC	-	3,000/unit	80,000/lot
BA	-	7,500/unit	80,000/lot <sup>3</sup> 20,000/lot <sup>4</sup>
<sup>1</sup> Based on Open Space Zoning, with public sewer			
<sup>2</sup> Amended 4/2007 from 3,500 /unit and 2,500/bed to accommodate redevelopment at 126 Scott Dyer Rd			
<sup>3</sup> lot adjacent to the RA District			
<sup>4</sup> lot adjacent to the RC District			

- 82. Increase the density of the RB District, which includes 7% of the acreage of the town, with Open Space zoning, where public sewer is available, from 30,000 sq. ft. to 20,000 sq. ft per lot, and increase the Open Space Zoning open space requirement from 40% to 45% in the RB District.

Pg 13, Ln 1 **Implementation:** In Sec. 19-7-2, Open Space Zoning, the maximum

Pg 13, Ln 17 density in the RB District has been increased to 1 unit per 20,000 sq. ft. In subsection C (4), the mandatory amount of open space to be preserved has been increased from 40% to 45%. At 45%, the existing RB district densities can still be achieved, which continues to make the Open Space Zoning provisions feasible. It is important to maintain the balance between density allowed and open space preserved to keep cluster development a desirable option for developers.

- 83. Review the design of open space in the Open Space Zoning provisions to maximize the amount of open space in a single contiguous parcel and discourage narrow strips, except when strips are necessary for trail connections.

Pg 14, Ln 37 **Implementation:** See #1 above. The Board may also want to reorder the list of *Priorities* in subsection D.1.

- 84. Make the Open Space Impact Fee not applicable when a subdivision is designed in compliance with the Open Space Zoning Regulations, which include a separate open space requirement.

Pg x, Ln x **Implementation:** The Open Space Impact Fee is part of the Subdivision Ordinance and a proposed amendment allows compliance with the Open Space Zoning Regulations as a method of meeting the impact fee requirement. To be drafted.

- 85. Eliminate the cap on the number of units per building allowed for multiplex developments located in the RC and RB Districts. Create design standards for buildings exceeding 5 units and a maximum height limit that is greater than the current 35' height limit. This will be available only in conjunction with the Agricultural TDR (# 85), developments targeted to 55 and older (# 15) or an affordable housing overlay district (#19).

**Implementation:** Staff is soliciting a proposal to do a feasibility study of a multi-unit building option.

- 86. Reduce the minimum lot size required for multiplex housing in the RC District from 5 acres to 3 acres and eliminate the minimum lot size for multiplex housing in the RB District.

Pg 7, Ln 29 **Implementation:** Text amendments are proposed to make these changes.

- 90. Designate the RB Districts as Sewer Service Areas.

Pg 20 **Implementation:** A map change to the Sewer Service areas map is proposed to add the RB Districts.

- 91. Require new subdivision development in the RB District to be served by public sewer.

Pg 12, Ln 9 **Implementation:** When new development is served by public sewer, greater densities can be achieved. The RB District is the town's growth area, where development can be best absorbed with the least impact on the town's community character. If more of the town's expected growth can be accommodated on less land, then less total acres of land will be developed to accommodate growth. The 2007 Comprehensive Plan did not include a recommendation to create new growth areas because the existing growth areas had sufficient land to absorb growth anticipated through 2020. With more efficient use of RB zoned land, the need to identify new growth areas can be pushed further into the future. Compact development can be more cost-effectively served by public sewer, as well as other public services.

In Sec. 19-7-2, Open Space Zoning, text has been added to subsection A (1) specifying public sewer. In subsection C (1), the density table has also been revised to eliminate the on-site sewerage option.

2. **TDR.** *FOSP recommended that the town retain the current TDR regulations. The Planning Board should be tasked with reviewing the TDR sending areas map to align it with Open Space criteria priorities.* The town council requests that the planning board include this recommendation in its comprehensive plan Land Use Chapter recommendations.

**Implementation:** The current TDR map was adopted as part of the 1997 Zoning Ordinance. There has been no change to that map since that time and FOSP recommended that the map be updated/revised so that the TDR sending areas align with the town's open space priorities. From the FOSP report, below are the open space priorities:

**1. Agriculture**

Undeveloped lands used for agriculture.

**2. Greenbelt trails and recreation areas**

Land identified in the 2001 Greenbelt Plan.

**3. Wildlife Habitat**

Undeveloped lands that provide a habitat for wildlife as identified by State of Maine data such as the Beginning with Habitat information and field verified.

**4. Other**

Significantly scenic, cultural and/or unique properties identified by the Town Council using a public process.

The enclosed map depicts the current TDR areas. Farmland areas (FOSP generated), open space (2013 Greenbelt Plan), and wildlife habitat (Resource Protection Districts) have been added.

Staff has reviewed the map and marked parcels for possible inclusion in a TDR sending zone. As a next step, property owners should be sent a letter explaining potential inclusion as a TDR sending area and solicit feedback. Existing TDR areas may also be appropriate to remove.

3. **Growth Areas.** *FOSP recommended that the review of growth areas be referred to the Planning Board as part of the resumption of the Planning Board's comprehensive plan implementation work. The Planning Board's comprehensive planning implementation work should include public outreach about the benefits of open space zoning. The Planning Board should also recommend ordinance amendments that make preservation of agricultural land a higher open space priority when preserving open space as part of new development.* The town council requests the planning board to do so.

**Implementation:** Staff will provide a review of existing residential growth areas.

4. **New Subdivision Ordinance consistency.** This is not a recommendation from the Town Council, but could be included in this amendment package.

**Implementation:** Proposed amendments to the Zoning Ordinance to update references to public notice and performance guarantee requirements have been added.