

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: December 2, 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 summarizes the status of each amendment.

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 18, Ln 20 **Implementation (done):** 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 (see map): 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: On hold pending multi-unit study.

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

Implementation (done): The Planning Board is recommending that the existing eldercare housing provisions provide adequate density bonus. Another recommendation will consider increasing density for all multi-unit developments.

- 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.

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Implementation (done): In Sec. 19-7-2, Open Space Zoning, the maximum density in the RB District has been increased to 1 unit per 20,000 sq. ft. for developments served by public sewer. In subsection C (4), the mandatory amount of open space to be preserved has been increased from 40% to 45% for developments served by public sewer.

- 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.

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Implementation (done): The Open Space Design standards have been reformatted into three subsections. *The town attorney is reviewing this section and will have comments available at the meeting.*

- 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 4, Ln 13 **Implementation (done):** See draft.

- 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: On hold pending multi-unit study.

- 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:** On hold pending multi-unit study.

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

Implementation (see map)

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

Implementation: The Planning Board is concerned this will have an unreasonable economic impact on small development and is not recommending this amendment.

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 (see map): The map changes include removing TDR sending areas that do not align with open space priorities (in red strike-through on the map) and adding sending areas that reflect agricultural land priorities. The Planning Board found that greenbelt and recreation area open space priorities, based on the 2013 Greenbelt Plan, either were not located in the RA District or were not advanced by a TDR designation. The Planning Board found that wildlife habitat areas were already zoned Resource Protection and therefore had no development rights to transfer, making a TDR designation nonsensical. The Planning Board also reviewed the TDR provisions in the Zoning Ordinance and is recommending clarifying amendments.

Pg 24, Ln 20 In addition to the TDR text amendments, the Planning Board is recommending a TDR amendment that creates an agricultural TDR bonus to encourage agricultural land preservation. The agricultural TDR bonus is a recommendation in the comprehensive plan.

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 (done): The Planning Board recommends that no change to growth areas is required at this time.

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

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

5. **Nonconforming lot frontage clarification.** This is not a recommendation from the Town Council, but a request from the Code Enforcement Officer to add clarifying language to the Zoning Ordinance. Long-standing town practice has been for lots that lack the street frontage required in its zoning district to seek a method of compliance under Sec. 19-7-9, Private accessways. The Code Enforcement Officer has been approached with the position that Sec. 19-4-3 does not require street frontage for nonconforming lots.

Pg 5, Ln 41 **Implementation:** An amendment has been prepared that explicitly references Sec. 19-7-9 and is intended to preserve existing practice.