

MEMORANDUM

TO: Maureen O'Meara
FROM: John Wall
DATE: 12.22.14
RE: Proposed Open Space Amendments

Maureen,

Following our meeting you asked me to perform a further review of the proposed amendments to certain open space provisions and to draft some proposed language if I deemed that advisable. My comments are below:

- I would combine D.1 and D.2 to make one contiguous set of standards. One way to do this would be to make D.2 part of D.1 (organizing it as D.1.c) and prefacing what you have there currently under D.2 with: “Consistent with the standards set forth above, the land within the subdivision to be preserved”
- Moreover, the second sentence of D.2 might be more clear if expressed as follows: “If priorities that are higher on this list are met by the proposed open space provisions in a subdivision, the landowner shall have satisfied the requirements of this subsection even if the proposed open space provisions do not address lower priorities.”
- I would swap subsections “a” and “b” of D.3. In addition, I would augment the “new” D.2.a (since the old D.2 section would be, under my suggestion above, combined with D.1) with the following:

Permanent legal protection. Deeds or any other documents necessary to permanently protect the land within the subdivision to be preserved as open space shall be prepared and recorded. Documentation that reflects how the applicant intends to ensure legally that the land within the subdivision to be preserved as open space will be protected shall be submitted to the Planning Board as part of the application review. In particular, the documentation shall specify the ownership structure of the open space. For example, land within the subdivision to be preserved as open space (or an easement interest therein) may be dedicated or deeded to the Town of Cape Elizabeth, the land may be deeded to a subdivision homeowners association, the land may be deeded to a third party conservation organization, or the land may be retained by the applicant. The documentation shall specify, at a minimum, restricted activities and vegetation preservation. Access to the open space must be made available to the homeowners of the subdivision and is strongly encouraged to be made available to the public, and such access may be limited consistent with the open space priorities.

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- I would make the following changes to the “new” D.2.c:

Maintenance: If the land in the subdivision to be preserved as open space is not deeded to the Town of Cape Elizabeth, documentation shall be submitted identifying the party responsible for maintaining the open space and describing the methods to be employed to maintain the open space.

I have suggested revisions to the existing language that attempt to retain as much of that existing language as possible. I still think there may be a more elegant way of expressing the “legal requirement” provision, but I think the substance of what the Town needs is all there.

Let me know if I can provide you with further assistance.