

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Ordinance Committee
DATE: July 25, 2017
SUBJECT: Agricultural Easement Amendment

Introduction

The Town Council referred to the Ordinance Committee review of the Agricultural Easement Amendment to the Zoning Ordinance. (See attached draft amendment) The Ordinance Committee reviewed the amendment at the July 11, 2017 meeting. The map amendment was item 4 on the Ordinance Committee agenda, which noted that the item would only be considered if it was referred by the Town Council. The Ordinance Committee agenda was posted to the town website a week before the meeting.

Public Comment

Five people spoke in opposition to the proposed amendment.

Review

Carol Anne Jordan, Planning Board Chair, attended the Ordinance Committee meeting and introduced the amendment. She was a member of FOSP (Future Open Space Preservation Committee) and explained that the Planning Board was surprised with the suggestion that the open space definition could be interpreted to required that an agricultural easement must be a minimum of 5 acres in size. The amendment clarifies that the 5 acre minimum applies to the farm that the easement originates from. She personally believes 5 acres is too large a minimum, but this was a compromise.

The Ordinance Committee agreed that applying a new ordinance provision to a real world example sometimes reveals a need for clarification. The committee noted that the amendment would not impact the design of the proposed Maxwell Woods project. The committee agreed that agricultural land preservation was consistent with town policy goals and that clarifying existing language in case a legal challenge will be made is prudent.

Recommendation

The Ordinance Committee voted 3-0 to send the amendment to the Town Council for consideration.

**Draft
Agricultural Easement
Zoning Ordinance Amendment**

SEC. 19-7-2. OPEN SPACE ZONING

D. Open Space Design Standards

In addition to other standards of this Ordinance and of the Town's Subdivision Ordinance, the following design standards shall apply.

1. Land to be preserved as open space

- c. Preservation priorities. Consistent with the standards set forth above, the land within the residential development to be preserved as open space shall be determined using the following priorities, in the order that they appear. To the extent priorities that are higher on this list are met by the proposed open space provisions in a residential development, the landowner shall have satisfied the requirements of this subsection even if the proposed open space design does not preserve lower priorities.
- ii. Agriculture. In a manner that preserves active agricultural fields for agricultural use. The agricultural land to be preserved as open space must meet the requirements of "farmland" as that term is defined in the Farm and Open Space Tax Law, 36 Farm Land under 36-M.R.S.A. Sections 1101-1121, Farmland Tax Law; but does not need to be registered under this state program. The agricultural land to be preserved under this subsection shall be deemed to meet the requirements of "farmland" if it is part of a parcel or parcels that meet the farmland definition referenced above, even though the agricultural land to be preserved does not independently meet all the criteria in the definition.

4. Other Design Elements

6. Density Bonus for additional Public Benefit

- b. Density Bonus. The total density bonus allowed under the provisions in Sec. 19-7-2 (E), shall not exceed thirty percent (30%) of the base density determined for each zoning district. The base density for subdivisions and multiplex housing in the RB District is determined in Sec. 19-7-2 (C)(1). Any combination of the following density bonuses may be proposed.
- i. Agricultural land. When agricultural land is permanently preserved in compliance with Sec. 19-7-2 (D), Open Space Design Standards, a density bonus of one (1) unit per thirty-thousand (30,000) square feet of agricultural land preserved may be applied to the development. The

agricultural land to be preserved as open space may be located on the development parcel or anywhere in the Town and must meet the requirements of "farmland" as that term is defined in the Farm and Open Space Tax Law, 36 Farm Land under 36 M.R.S.A Sections 1101-1121, Farmland Tax Law, but does not need to be registered under this state program. The agricultural land to be preserved under this subsection shall be deemed to meet the requirements of "farmland" if it is part of a parcel or parcels that meet the farmland definition referenced above, even though the agricultural land to be preserved does not independently meet all the criteria in the definition.