

City of Auburn, Maine

"Maine's City of Opportunity"

Office of Planning & Permitting

PLANNING BOARD REPORT

To: Auburn Planning Board

From: Douglas M. Greene, A.I.C.P., City Planner

Re: **Citizen Initiated Zoning Text Amendment (ZOMA-1180-2013)**- Public Hearing for a recommendation to the City Council on a proposal to amend the City Of Auburn Zoning Ordinance, Chapter 60, Section 60-172.a (1) to modify the restriction on residential homes in the Agriculture and Resource Protection District pursuant to Article IV, Division 3- Use Regulations of the City of Auburn Ordinances.

Date: December 10, 2013

STAFF REPORT:

1. **Text Amendment Overview-** The Staff received a citizen petition from over 25 registered voters requesting to amend the City of Auburn's zoning ordinance to allow for a residential unit to be transferred from the residentially zoned portion of a parcel to the Agricultural and Resource Protection portion of the property. The proposed change would apply to properties that contain either Low Density Country Residential District or Low Density Rural Residential District zoning along road frontage and Agricultural and Resource Protection District Zoning on the rear portion of the property.
2. **Relation to Comprehensive Plan-** The City of Auburn Comprehensive Plan 2010 Update contains numerous references to the importance designating areas for development and areas to limit or prohibit development. The most relevant language that relates to the proposed text amendment is found in Chapter 2- Future Land Use Plan as follows:

"This Future Land Use Plan reaffirms the basic objective of land use planning, that development in Auburn should grow out from the core and from older established neighborhoods. This policy was originally set forth in the City's first comprehensive plan over a half century ago, and has continued to guide the City's land use planning ever since." (pg. 73)

"The boundaries shown on the Future Land Use Plan are general. They are intended to reflect the general pattern of desired future land use. The allowed uses and development standards set out for each land use designation are intended to serve as guidelines as the zoning ordinance is reviewed and revised. The lists of uses and the discussion of potential development standards are not intended to be all-inclusive. Rather, they are intended to outline the basic character and types of development desired in each land use area to guide the revision of the City's zoning ordinance and other land use regulations." (pg. 73)

Page 74 of the plan describes how the Comprehensive Plan's future land use plan is organized:

1. Growth Areas
2. Limited Growth Areas and
3. Restricted or No-Growth Areas

The zones affected by the text amendment petition would be found in the Limited Growth (#2), and the Restricted or No-Growth Areas (#3). Any change to these growth area types and zones should not allow any increase in development or density.

Additional guidance from the 2010 Comprehensive Plan Update is found in the future land use descriptions. On pages 107-110, are the following recommendations that relate to the text amendment.

RESTRICTED/NON-GROWTH AREAS- (pg. 107)

TYPE D- PROTECTION/RESERVE AREAS (pg. 108)

Agricultural/Rural District (AG) (pg. 108)

Objective– Preserve and enhance the agricultural heritage of Auburn and protect the City's natural resources and scenic open space while maintaining the economic value of the land (see Figure 2.3). The district is characterized by a rural, very low density development pattern that limits sprawl and minimizes the City's service costs. The District maintains the current rural development pattern allowing for a broad range of agriculture and natural resource-related uses, while restricting residential development. Recreational development is encouraged both as a means of protecting open space, and as a means to provide reasonable public access to outdoor destinations such as Lake Auburn and the Androscoggin River. The Agriculture/Rural District is intended to serve as a land reserve, protecting valued community open space and rural landscapes, while maintaining the potential for appropriate future development.

Allowed Uses – The Agriculture/Rural District should continue to include the uses allowed in the existing AG/RP zoning district. In addition, a broader range of rural uses should be allowed. Agriculturally-related businesses including retail and service activities and natural resource industries should be permitted. The reuse of existing agricultural buildings should be allowed for low intensity non-agriculture related uses.

Residential uses should continue to be limited to accessory residential development as part of a commercial agriculture or natural resource use, not just traditional farms. The criteria for determining when an accessory residential use is permitted should be based on updated standards that take into account the economic realities of today's commercial agricultural activities, including outside sources of income and part-time and small-scale commercial operations. Residential development may also be part of a commercial recreational use as part of a planned development in which the recreational open space is permanently preserved.

Development Standards – All new development, redevelopment, and expanded uses in the Agriculture/Rural District should be required to meet "best management practices" for stormwater management and environmental protection to ensure adequate protection of natural resources. All development activities in the Agricultural/Rural District should be subject to low impact development (LID) standards such as limiting impervious surfaces, minimizing lot

disturbances, creating natural buffers, and capturing and treating runoff through filtration measures.

The City should continue to encourage a very low density development pattern as a means of protecting natural resources and preserving the rural character. The basic residential density standard for the current AG/RP zoning district should be maintained. The standards for the development of accessory residential units should provide greater flexibility in the siting of those units. In an effort to place accessory residential development in areas where it will have the least impact on natural resource and/or the agricultural value of the land, the standards should allow for a waiver or elimination of road frontage requirements and access from a private driveway.

Residential development that is proposed as part of a master planned commercial recreational development should be limited to the same density standard (one unit per 10 acres) as other accessory residential uses. A recreational master plan should be required outlining the scope, scale, and location of residential units and ensuring a cluster development pattern in which the majority of the land is retained as recreation/open space. A conservation easement, or other legally binding preservation measure, should be required to permanently conserve the recreation/open space areas.

Where a parcel that is located in the Agriculture/Rural District land also includes residentially zoned land, a residential unit should be allowed to be transferred from the residentially zoned portion of the parcel to the Agriculture/Rural portion as long as the relocation does not negatively impact natural resources or the agricultural potential of the land. As with other residential development in the Agriculture/Rural District, the development standards should encourage flexibility in the location and size of the lot, allow for a waiver of road frontage requirements, and allow access from a private driveway. When a transfer occurs, the land in the residential zone from which a residential unit is transferred must be permanently protected from development through a legally binding preservation measure, such as a conservation easement.

Staff Conclusion on the Comprehensive Plan's (CP) relation to the petition's request-

1. The CP continues to limit residential development in the Agricultural/Rural District.
2. The CP does suggest greater flexibility in the siting of residential units in the Agricultural/Rural District.
3. The CP recommends the transfer of residential units from the residentially zoned portion of a parcel to the Agricultural/Resource portion as long as the relocation does not impact natural resources or the agricultural potential of the land.
4. The CP recommends that if a transfer is allowed, the land in the residential zone from which a residential unit is transferred from must be permanently protected through a legally binding preservation measure, such as a conservation easement.
5. The 2010 Comprehensive Plan is in general agreement with the petition's request.

3. Relation of the Petition's Request to Existing Zoning-

The petition's request involves 3 zones.

- A. Agriculture and Resource Protection District- (very stringent restrictions on new residential units),
- B. Low Density County Residential District- (new residential units allowed, 3 ac. Min. lot size w/ 325' frontage) and
- C. Low Density Rural Residential District- (new residential units allowed, 1 ac. Min. lot size w/ 250' frontage)

As you can see, the Ag and Resource Protection District is the most restrictive, followed by the Low Density Country Residential District then the Low Density Rural Residential District being the least restrictive.

A. Agriculture and Resource Protection District-

The basis of the restriction on residential units in the Agricultural/Resource is found in the definition of Farm: (Auburn Zoning Ordinance, Chapter 60, Article I, Section 60-2, pg. 5)

Farm means any parcel of land containing more than ten acres which is used in the raising of agricultural products, livestock or poultry, or for dairying. The term "farm," under the Agricultural and Resource Protection District, shall be further defined as meeting the following criteria:

- (1) At least 50 percent of the total annual income of the farm occupant and his spouse living in the farm residence will be derived from such uses; and
- (2) At least ten acres of the farm will be devoted to the production by the occupant of field crops or to the grazing of the occupant's livestock. For purposes of this definition, the term "poultry" means no fewer than 100 fowl and the term "livestock" means no fewer than 20 cattle or other animals being raised for commercial purposes.

The definition of *Farm* is then is applied in the Agricultural and Resource Protection Zone by allowing One-family, detached dwellings in the Permitted Uses but only as accessory to farming operations. (Article IV- District Regulations, Division 3- Use Regulations, Section 60-172- Permitted Uses a, 1, a)

Sec. 60-172. Permitted uses; exceptions. (For Agriculture and Resource Protection District)

(a) *Permitted uses. The following uses are permitted:*

(1) **One-family detached dwellings**, including manufactured housing subject to all the design standards, except the siting requirements of section 60-173, as set forth in article XII of this chapter, **accessory to farming operations** subject to the following restrictions:

- a. No certificate of occupancy shall be issued for any such farm residence until the barns, livestock pens, silos, or other such buildings or structures which are to be erected in connection with the proposed agricultural use as shown on the plans and specifications presented to the municipal officer charged with enforcement are substantially completed.
- b. In no case shall any farm residence constructed under the provisions of this section after the effective date of the amended ordinance from which this section is derived continue to be occupied as a residence if the principal agricultural use has been abandoned or reduced in scope below the minimum requirements as shown on the plans and specifications presented to the municipal officer charged with enforcement.
- c. Any residence constructed under this article shall not be converted to nonfarm residential use except by permission of the planning board based upon a finding that the abandonment or reduction in such use resulted from causes beyond the control of the applicant and not from any intention to circumvent the requirements of this article.

The restriction and limitation of a one family residence as accessory to farming operations is the key element to implementing the City's Comprehensive Plan's future land use policy and the Zoning Ordinance's regulation in restricting growth in the Agricultural/Resource Protection District.

B. Low Density County Residential District- (Sec. 60-200)

“Purpose- The purpose of this zone is to maintain and promote the rural/agricultural character of the land within this zone. This zone is composed of those areas in the city whose predominant land use is rural, wooded and agricultural. The regulations for this zone are designed to protect and stabilize these predominant land uses which are the essential characteristics of these areas and to minimize conflicting land uses detrimental to agricultural enterprises. Since residences are only incidental to this zone's development, the densities which require improved roads and

expanded municipal services, in excess of those required by the present agricultural-oriented uses, shall not be permitted.”

C. Low Density Rural Residential District- (Sec. 60-228)

“**Purpose-** This district is intended to provide for low density rural residential areas while protecting adjacent agriculture and resource protection districts, allowing a degree of residential development compatible with maintenance of environmental quality and preservation of the open character of the area.”

4. Agricultural Text Amendment to the Zoning Ordinance Issues to Consider-

- a. The Comprehensive Plan supports the proposed text amendment.
- b. What specific standard(s) would be needed to qualify for the transference of the residential development right from the road frontage area to the Agricultural and Resource Protection area?
- c. Would the text amendment apply to existing lots of record that meet these standards or could newly created qualified lots be allowable.
- d. How will siting of the residential unit in the Ag and Resource Protection be reviewed and administrated?
- e. If the text amendment is successful, what options are there to meet the intent of the Comprehensive Plan’s for permanent protection of the property? Conservation Easements, deed restrictions? Conservation easements, if done in perpetuity, would prevent any development from ever happening on the property for example.

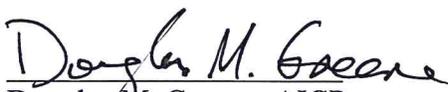
5. Possible Options for the Text Amendment-

- a. Allow single family dwellings, limited exclusively to parcels that are split by residential and agricultural/resource protection zoning, subject to specific conditions as a **Permitted Use**.
- b. Allow single family dwellings, limited exclusively to parcels that are split by residential and agricultural/resource protection zoning, subject to specific conditions, site plan review as a **Special Exception**.
- c. Other methods?

STAFF RECOMMENDATION: While the 2010 Comprehensive Plan supports the concept contained in the Text Amendment Petition, the petition did not contain suggested language or text on how to implement the proposal. If the City Planning Board supports the concept of Text Amendment Petition, they should direct staff to:

- Explore what “best management practices” and siting criteria would be applied to locating the transferred residential unit.
- Research different methods of protecting and/or conserving the agricultural and natural resource assets of the property.
- Research and report how many properties, total acres and number of units would be eligible under the proposed text amendment.
- Evaluate who would hold the conservation easement if used.
- Work with the applicant to develop specific language for a text amendment for each possible option.
- Any other items desired by the Planning Board.

The Staff will then report back to the Planning Board in a month or two.


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