



**City Council Workshop
September 30, 2019
Agenda**

5:30 P.M. City Council Workshop

5:30 – 6:00 PM – Public Comment

Comments are limited to three minutes. The session will end by 6:00 PM or sooner if no speakers are identified.

6:00 PM - Proposed Amendment to the Agriculture and Resource Protection Zone

- A. Comprehensive Plan – Future Land Use
- B. Ideal outcomes - identified at the September 23, 2019 workshop
 - a. Consider TDR and Cluster Development Standards
 - b. End sunset clause on grandfathered houses built pre-1964 and define enforcement options
 - c. Create Agriculture Advisory Board - define scope and responsibility
 - d. Create multiple AG Zones for different purposes
 - e. Reconsider Ordinance 60-145(b)(17) – Equipment and Industrial use in AG
 - f. Change income and acre standard so current farmers can build a home
 - g. Increase farming opportunities
- C. Outcomes to avoid – identified at the September 23, 2019 workshop
 - a. Creating service costs
 - b. Degradation of resources
 - c. Development rush in first year



**City of Auburn
City Council Information Sheet**

Council Workshop or Meeting Date: September 30, 2019

Author: Peter Crichton, City Manager

Subject: Proposed Amendment to the Agriculture and Resource Protection Zone

Information:

This is a continuation of the workshops held September 16 and September 23rd, 2019 regarding the Agriculture and Resource Protection (AG) Zone. The Workshop will begin with public comments for up to 3 minutes per person from 5:30 – 6:00 pm. This will be followed by a presentation beginning with a review of the recommendations in the 2010 Comprehensive Plan concerning the Ag Zone, including how growth and development should be accommodated over the next few years. Staff will then provide additional information to address Councilors' ideal outcomes and concerns regarding amendments to the zone, as well as what Councilors would like to avoid. Following the staff's presentation there will be continued discussion by the Council on how best to proceed.

City Budgetary Impacts: N/A

Staff Recommended Action: Council Discussion

Previous Meetings and History:

Workshops on September 16 and September 23

City Manager Comments:

I concur with the recommendation. Signature:

A handwritten signature in blue ink that reads "Peter J. Crichton".

Attachment(s):

Draft- Agriculture and Resource Protection Ordinance Amendment
Draft- Farm Definition Amendment
Agricultural Committee Draft
Memo from the Assessor
Legal Opinion- Bernstein Shur
2010 Comprehensive Plan AG Zone Excerpts
Maine Farmland Preservation Ordinances and other Local Communities
1984 Planning Board Alternative Memo
Legality of the Income Test (City Manager, Pat Finnigan July 25, 1996)
IRS Form F

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

DIVISION 2. - AGRICULTURE AND RESOURCE PROTECTION DISTRICT

Sec. 60-144. - Purpose.

The purposes of this district are to allow for conservation of natural resources and open space land, and to encourage agricultural, forestry, and certain types of recreational uses. It is declared to be in the public interest that these areas should be protected and conserved because of their natural, aesthetic and scenic value, the need to retain and preserve open space lands, their economic contribution to the city, and primarily because these areas are so remote from existing centers of development that any added uncontrolled growth could result in an economic burden on the city and its inhabitants. This section shall be construed so as to effectuate the purposes outlined here and to prevent any attempt to establish uses which are inconsistent with these purposes or any attempt to evade the provisions of this division.

(Ord. of 9-21-2009, § 3.31A)

Sec. 60-145. - Use regulations.

(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 a~~Article XII of this chapter, ~~that is~~ accessory to farming operations as defined in Sec. 60-2, Farm. subject to the following restrictions:
 - a. For a period of five years after the effective date of this amendment no person shall divide a parcel of land for the purposes of constructing a dwelling. During the five years following the adoption of this amendment only a single dwelling, accessory to farming operations, under this section may be permitted per parcel existing on January 1, 2018.
 - b. No person shall create by conveyance made after the effective date of this amendment any subdivision as the term "subdivision" is defined in Title 30-A, section 4401 of the Maine Revised Statutes; and 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.
 - bc. The Planning Board shall not grant subdivision approval to any proposed subdivision as defined under the aforesaid statute for the purposes of constructing a dwelling; 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.
 - d. Nothing herein shall prohibit the approval of a subdivision in the Agriculture and Resource Protection Zoning District for one or more permitted uses other than residential use.
 - e-e. ~~Any residence constructed under this article shall not be converted to nonfarm residential use except by permission of the P~~lanning ~~B~~oard following a recommendation by the

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

Agricultural Advisory 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.

f. Siting of residential structures shall avoid prime farmland soils and soils of statewide significance when alternatives exist on the parcel.

- (2) Buildings, equipment and machinery accessory to the principal use including, but not limited to: barns silos, storage buildings and farm automobile garages.
 - (3) Forest products raised for harvest.
 - (4) Field crop farms.
 - (5) Row crop farms.
 - (6) Orchard farms.
 - (7) Truck gardens.
 - (8) Plant and tree nurseries.
 - (9) Greenhouses.
 - (10) Handling, storage and sale of agriculture produce and processed agricultural products derived from produce grown on the premises.
 - (11) Livestock operations including poultry farms, cattle farms, dairy farms, stud farms, hog farms, sheep ranches, other animal farms, including farms for raising fur-bearing animals.
 - (12) Wayside stands.
 - (13) Two-family dwellings which are created from the conversion of a one-family dwelling structure which was constructed prior to 1900.
- (b) *Special exception uses.* The following uses are permitted by special exception after approval by the planning board in accordance with the provisions of division 3 of article XVII of this chapter:
- (1) Sawmills and their customary accessory land uses and buildings incidental to the harvesting of forest products, subject to the following conditions:
 - a. Sawmill and accessory activity shall not be detrimental to the neighborhood or the city by reason of special danger of fire or explosion, pollution of rivers or perennial streams or accumulation of refuse.
 - b. Wood processing operation shall be located no closer than 75 feet from any river or perennial stream, 250 feet from any zoning district boundary or residential dwelling and shall be limited to four persons employed.
 - c. Where natural vegetation is removed, it shall be replaced within six months with other vegetation which will be equally effective in retarding erosion and will preserve natural beauty.
 - (2) Veterinary hospitals, where operated by licensed veterinarians, including offices and facilities for temporarily boarding animals.
 - (3) Handling, storage and sale of agricultural services, equipment, and supplies accessory to the farming use.
 - (4) Bona fide residences required for farm labor. Any residence constructed for farm labor shall not be converted to nonfarm residential use except by permission of the Planning Board following a recommendation by the Agricultural Advisory 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 division. The findings and the

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

conditions upon which such altered use may be continued shall be made a part of the permanent records.

- (5) Recreational uses of land intended or designed for public use subject to the following conditions:
 - a. No such recreational use shall be expanded or extended so as to occupy additional land area greater than 20 percent of the original area or one acre, whichever is less; or by the construction of a structure or an addition to an existing structure by more than 900 square feet of additional floor space unless the owner or occupant first obtains approval of the planning board in the manner and upon the same terms as approvals of initial recreational uses.
 - b. Any proposed new or expanded recreational use shall be completed on or before the estimated completion date except that the planning board may grant reasonable extension of time where good cause for the failure to complete is shown.
- (6) Any legally nonconforming summer camp or cottage may be rebuilt if destroyed by fire or other casualty, subject to the following conditions:
 - a. Such reconstruction shall comply with all ordinances applicable to new construction. Such reconstruction need not, however, comply with zoning provisions which would otherwise be applicable except for the provisions of article XII of this chapter.
 - b. In cases where no minimum setback is established by division 5 of article XII of this chapter an open yard space of at least ten feet between the building as reconstructed and each of the property lines shall be maintained.
- ~~(7) Rifle, pistol, skeet or trap shooting ranges, public or private.~~
- ~~(8)~~ Cemeteries, subject to the following conditions:
 - a. At least 20 acres in area.
 - b. Not located in any environmental overlay district or over any known aquifer.
- ~~(9)~~ Municipal sanitary landfills, subject to the following conditions:
 - a. Not located in any environmental overlay district or over any known aquifer.
 - b. Provisions shall be made to avoid surface water and groundwater pollution.
 - c. Provisions shall be made for frequent covering of deposited wastes with earth to counteract vermin, insects, odors, and windblown debris.
- ~~(10)~~ Radio, radar, television and radio telephone transmitting or broadcasting towers, but not studios or offices for such transmitting or broadcasting, provided that:
 - a. Every such tower shall be installed in a location and manner that ensures its safe operation and the safety of the surrounding residents, building occupants, land uses and properties.
 - b. In no case shall such tower be located less than one and one-half times its height from the nearest property line.
- ~~(11)~~ Wholesale nurseries, subject to the following conditions:
 - a. At least one-half of the area of the lot (up to a maximum of three acres) is in active nursery production in a husband type manner.
 - b. The plants and trees propagated, grown and nurtured in the nursery are used as the primary products by the owner/operator of the landscape service.
- ~~(12)~~ Processing and storage of compost and bulking agents from the municipal wastewater sewerage sludge facilities provided that:

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

- a. All compost and amendments are to be stored undercover or screened from the public way and abutting property as determined by the planning board.
- b. All federal, state and local ordinances and laws relating to the processing and storage of waste are complied with.
- c. An end-use plan must be filed as part of the planning board process.
- (~~43~~12) Licensed hospice care facility provided that it shall be licensed by the state as a Medicare certificate hospice.
- (~~44~~13) Slaughterhouse, stockyard, abattoir, dressing plant in compliance with state and federal regulations subject to the following conditions:
 - a. The facility shall not be located within the Lake Auburn Watershed Overlay District, the Watershed of Taylor Pond, the Shoreland Overlay District or the Floodplain Overlay District.
 - b. The proposed use shall not occupy more than 10,000 square feet of building area.
 - c. The number of employees shall be limited to not more than 15.
 - d. Accessory retail sales shall be limited to 10 percent of building area or 1,000 square feet, whichever is smaller.
 - e. Hours of operation shall limited to between 6 a.m. and 8 p.m.
- (~~45~~14) Compost operations, excluding municipal and industrial waste, to process products such as manure, bedding, animal mortalities, waste feed, produce, forestry by-products, leaves and yard trimmings in compliance with state and federal regulations, subject to the following conditions:
 - a. All compost sites shall be evaluated for suitability by a properly qualified professional, including benchmark water testing prior to approval.
 - b. Provisions shall be made to avoid surface and groundwater pollution.
 - c. Provisions shall be made to counteract vermin, insects and odors.
 - d. Must comply with all applicable state department of environmental protection and state department of agriculture rules and regulations and best management practices.
 - e. Shall not be located within the Lake Auburn Watershed Overlay District.
- (~~46~~15) Adaptive reuse of structures of community significance.
- (~~47~~16) Assembly, sale, research and development, distribution, instruction, training, demonstration or maintenance of recreational or agricultural equipment, including buildings as accessory structures used in the assembly, sale, distribution, instruction, training, demonstration, or maintenance of recreational or agricultural equipment, subject to the following conditions:
 - a. The proposed use is accessory, complementary, or otherwise related to a recreational or agricultural use;
 - b. The recreational or agricultural use has been in existence for at least five years prior to the date of the application for the special exception; and
 - c. The recreational or agricultural use is located on the parcel for which the special exception is requested or is adjacent to the property for which the special exception is requested.

(Ord. of 9-21-2009, § 3.31B; Ord. No. 32-02072011-07, 2-7-2011; Ord. No. 06-08012011-07, 8-1-2011; Ord. No. 05-04032017, § 2, 4-24-2017; Ord. No. 06-06052017, 6-19-2017)

Sec. 60-146. - Dimensional regulations.

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 2/11/19 MAGARP Committee Meeting

All structures in this district, except as noted shall be subject to the following dimensional regulations:

- (1) *Minimum lot area, width and depth.* No lot shall be created containing less than 10 acres and measuring less than 250 feet in width at the street frontage, and 200 feet in depth. and/or a No building shall be erected on a lot containing less than ~~ten-three~~ acres, exclusive of any bodies of water having a surface area of one-fourth of an acre or more, and measuring ~~not~~ less than 250 feet in width at the street frontage, and 200 feet in depth. Lots greater than 3 acres in area, but less than 10 acres, in existence as of January 1, 2018 shall not be subject to the minimum width, street frontage, depth and density requirements.
 - a. A building may be erected on a lot containing not less than 50,000 square feet and possessing the required minimum frontage width provided it is contiguous with other lots or parcels of land in the same ownership containing an aggregate of not less than ten acres; notwithstanding the separation of the said other lots or parcels of land by a road, stream, private right-of-way or other natural boundary from the lot on which the building is to be constructed. This section shall not be construed to prevent the construction of nonresidential accessory farm buildings on any such lot.
 - b. On legally nonconforming undersized lots, the keeping of horses, mules, cows, goats, sheep, hogs, and similar sized animals for domestic use of the residents of the lot is permitted provided that the land area required per animal unit conforms to the definition of animal farm contained in section 60-2.
- (2) *Density.* The density of year-round dwelling units shall not exceed an average of one dwelling per ten acres.
- (3) *Yard requirements.*
 - a. *Rear.* There shall be behind every building a rear yard having a minimum depth of 25 feet.
 - b. *Side.* There shall be a minimum distance of 15 feet between any building and the side property line.
 - c. *Front.* There shall be in front of every building a front yard having a minimum depth of 25 feet or 25 percent of the average depth of the lot whichever is less.
- (4) *Height.* The height of all dwelling structures shall be limited to two and one-half stories of 35 feet in height. Accessory buildings and structures may have a maximum height of 65 feet from grade, provided that the front yard, rear yard and each of the side yards shall be increased by one foot for each foot in height in excess of 35 feet.
- (5) *Off-street parking.* Off-street parking spaces shall be provided in accordance with the requirements for specific uses as set forth in articles V through XI of this chapter.

(Ord. of 9-21-2009, § 3.31C)

Draft Agriculture and Resource Protection Ordinance Amendments proposed at the 11/29/18 MAGARP Committee Meeting

Secs. 60-147—60-199. - Reserved.

Sec. 60-2. - Definitions.

~~The term "farm," under the Agricultural and Resource Protection District, shall be further defined as meeting the following criteria:~~

~~Accessory structure or building means an uninhabited building, at least five feet in distance from the principal building, used for a purpose which is customarily subordinate and incidental to that of the principal building or to the principal use of the land and which is located on the same lot as the principal building use. The term "accessory buildings," in residential districts, includes tool sheds, wood sheds, detached garages and swimming pools. No accessory building shall house a home occupation or professional office or be used as a sales outlet in a residential district. ***Except that in the Ag Zone an accessory structure is permitted for farm use and may be constructed without the precondition of any Primary or Principal structure existing on the Farm if the land is in productive use or preserved open space.***~~

~~Agricultural Advisory Board means a member board appointed for a term by whose primary functions are to review, monitor or document agricultural, conservation and residential activity in the Agriculture and Resource Protection zoning district of the City of Auburn.~~

~~Farm means A farm is means an area of land that is devoted primarily to agricultural products as those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products, manure and compost and fruits, berries, vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur. "Agricultural products" does not include trees grown and harvested for forest products.. processes with the primary objective of producing food and other crops; it is the basic facility in food production.[1] The name is used for specialisedspecialized units such as arable farms, vegetable farms, fruit farms, dairy, pig and poultry farms, and land used for the production of natural fibresfibers, biofuel and other commodities. It includes ranches, feedlots, orchards, plantations and estates, smallholdings and hobby farms, and includes the farmhouse and agricultural buildings as well as the land. In modern times the term has been extended so as to include such industrial operations as wind farms and fish farms, both of which can operate on land or sea. any parcel of land containing more than ten acres which is used in the raising of agricultural products, livestock or poultry, or for dairying.~~

~~A farmer[1] (also called an agriculturer) is a person engaged in agriculture, raising living organisms for food or raw materials. The term usually applies to people who do some combination of raising field~~

crops, orchards, vineyards, poultry, or other livestock. A farmer might own the farmed land or might work as a laborer on land owned by others, but in advanced economies, a farmer is usually a farm owner, while employees of the farm are known as farm workers, or farmhands. However, in the not so distant past, a farmer was a person who promotes or improves the growth of (a plant, crop, etc.) by labor and attention, land or crops or raises animals (as livestock or fish).

The term "farm," under tThe Agricultural and Resource Protection District further, ~~shall be further defines agriculture and resource conservation land use d-as meeting at least two of the the following criteria:~~

- (1) At least the minimum required farm income for the filing of an IRS Form-F, as adjusted by the IRS, of the farmer occupant living in the farm residence will be derived from such uses; or,
- (2) At least minimum required income from forestry products equivalent to that required of a farm for the filing of an IRS Form-F, as adjusted by the IRS, of the occupant living in the farm residence will be derived from such uses; or
- (3) At least two and one half acres (2.5 acres) devoted to the production of crops, grazing of livestock, or to the long-term resource conservation such as forestry, wildlife habitat or other specific protected natural resource; or,
- 3) At least 50% of land area enrolled in the state Farm, Open Space or Forest Management preservation and State Farmland, Open Space or Treegrowth tax assessment programs (§§.36-1102-1120); or
- 4) A minimum investment of \$1000 or more in crops, livestock, reforestation, or other farm or resource conservation effort as defined herein or by the Agricultural Advisory Board.

Verification of the above may be completed by a mutually agreeable third party if not available as a public record or if confidential information is needed to make the determination. If a dwelling is proposed prior to meeting the above a farm plan demonstrating the intent to meet the requirements must be provided with the building permit application. Compliance with the farm plan must be achieved within 24 months of the issuance of a certificate of occupancy and continued for XXX yearsverified annually. Relief from the requirement to comply after the 24 month period must be obtained from the Agricultural Advisory Board pursuant to Section 60-145(1)æ.

~~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.~~

Farm, Livestock (,at least 2 cattle or other animals being raised for commercial purposes) means any parcel of land that contains at least the following land area used for the keeping of horses, mules, donkeys, cattle, goats, sheep, swine and similar sized animals for the agricultural use of the residents of the lot, provided that there is a minimum of 1 acre of land as required by Chapter 8 Animals, and adequate land area is provided for each animal unit, excluding water bodies of one-quarter acre surface area or larger, **with standards as follows:**

(1) Cattle: One bovine animal unit per acre of cleared hay-pasture land.

(2) Horse: 1.5 animal units per acre of cleared hay/pasture land.

(3) Sheep: Three animal units per acre of cleared hay/pasture land.

(4) Swine: Two animal units per acre of cleared land.

(5) poultry: a minimum of 10 fow~~u~~

Other livestock farms: ~~The required~~ lot size shall be determined by municipal officer charged with enforcement and shall conform to the lot size for similar sized animals

Forested land. means land that is used in the growth of trees but does not include ledge, marsh, open swamp, bog, water and similar areas that are unsuitable for growing trees

~~Accessory structure or building means an uninhabited building, at least five feet in distance from the principal building, used for a purpose which is customarily subordinate and incidental to that of the principal building or to the principal use of the land and which is located on the same lot as the principal building use. The term "accessory buildings," in residential districts, includes tool sheds, wood sheds, detached garages and swimming pools. No accessory building shall house a home occupation or professional office or be used as a sales outlet in a residential district. Except that in the Ag Zone an accessory structure is permitted for farm use and may be constructed without the precondition of any Primary or Principal structure existing on the Farm.~~

Open space land. means any area of land, including state wildlife and management areas, sanctuaries and preserves designated as such in Title 12, the preservation or restriction of the use of which provides a public benefit in any of the following areas: A. Conserving scenic resources; B. Enhancing public recreation opportunities; C. Promoting game management; or D. Preserving wildlife or wildlife habitat

Open Space, Usable. means an otherwise buildable area that can be used for recreation or other passive or active outdoor activity.

~~Except that in the Ag Zone an accessory structure is permitted for farm use and may be constructed without the precondition of any Primary or Principal structure existing on the Farm.~~

~~Accessory use means a subordinate use of land or building which is customarily incidental and subordinate to the principal building or to the principal use of the land and which is located on the same lot with the principal building or use.~~

Division 8. – Agriculture Committee

Section 2-485.1 – Purpose

The purpose of the Agricultural Committee shall be to proactively review city policies, practices, and ordinances to build a stronger food, agricultural, and resource economy in Auburn and to address the ongoing needs of protecting farms, farmland, natural resources, forestry businesses, and woodlots.

Section 2-485.2 – Committee established

An Agriculture Advisory Committee is hereby established to consist of nine members appointed by the City Council, two thirds of whom shall be residents of the city with highest priority given to selecting 5 or more members who own land or are actively engaged in agriculture or forestry in the Agriculture and Resource Protection Zoning District.

The terms of office shall be three years except that initial appointments after the date of adoption of the ordinance from which this division derives shall be such that the terms of no more than three members shall expire in any single year. For that purpose, the city council shall initially appoint three members for terms of one year, three members for terms of two years, and three members for terms of three years, such that the terms of approximately one-third of the members shall expire each year. Subsequent appointments shall be for a term of three years.

Section 2-485.3 – Qualifications

All members of the Committee shall be selected upon the basis of their involvement, skill or expertise in agriculture, forestry, wildlife protection or preservation, conservation of natural resources, food system economics, public policy or related fields. Two thirds of the members of the Committee shall be residents of the City.

Section 2-485.4 – Powers and Duties

The Committee shall:

1. Make recommendations to the Planning Board and City Council and consult with the Conservation Commission regarding the ongoing needs of protecting farms, forestry businesses, farmland, woodlots and building a stronger food, agricultural and resource economy in Auburn.
2. Adjudicate special permission consistent with its authority pursuant to Section 60-145(a,1.,e) (NOTE to be deleted when reference is finalized: intended to reference residential use standards in AG zone, location TBD) consistent with the purpose set forth in Section 60-144 AGRP District Purpose);

3. Monitor trends in residential permitting activity within the Agriculture and Resource Protection Zoning District, promote enforcement of ordinances by city staff, and recommend changes to the City Council to protect the purposes of the District for agriculture, forestry and natural resources.
4. Promote opportunities for farm financing and farm, forestry or natural resource business development proposals, conservation and preservation of agricultural lands and encourage the marketing of Auburn's agricultural and forestry products;
5. Seek to coordinate the activities of local, State and regional organizations of similar purposes and collaborate to assist with education of the community regarding food systems, agriculture and forestry;
6. Research methods, best practices and successful policies that other communities are using to strengthen and support agriculture and forestry, and share information and ideas with community leaders.
7. Periodically review the Auburn Comprehensive Plan and land use ordinances for provisions that relate to agriculture and forestry in order to identify potential barriers and opportunities to modify Auburn's policies and ordinances to better support agriculture and forestry.
8. Support broad public participation in changes to municipal policies and ordinances that affect agriculture and forestry and provide opportunities for public input as changes are proposed.
9. Review applications for the Voluntary Municipal Farm Support Program and perform related duties as requested by the Auburn City Council.
10. Keep records of its meetings and activities and make an annual report to the city council;
11. Undertake any other agricultural or forestry related activity referred to it by the city council;
12. Adopt by-laws to govern the internal affairs of the Committee including meeting frequency;
13. May perform such other functions as are permitted by this Code.

Section 2-485.5—Officers, meetings and records.

1. The members shall elect from their membership a chairperson, a vice-chairperson and a secretary. Officers shall serve two-year terms.
2. All meetings of the Committee shall be open to the public, and notice, shall be provided to the public about such meetings.
3. The Committee may request that testimony provided during public hearings in front of the Committee be provided under oath.
4. Minutes shall be kept of all meetings.

Section 2-485.6 – Committees

The Committee may vote to create subcommittees and appoint members of such subcommittees to work on specific projects.

Section 2-485.7 – Quorum and necessary vote

As to any matter requiring a public hearing, no business shall be transacted by the Committee without a quorum, consisting of at least half of the voting members of the committee. If less than a quorum is present, the hearing shall be rescheduled, and the members and other interested parties shall be notified of the rescheduling.

Section 2-485.8 — Appeals

An appeal from any final decision of the Committee as to any matter over which it has final authority may be taken by any party to the Board of Appeals. (NOTE to be deleted when finalized: this needs more specificity and may apply only to quasi-judicial decisions, not recommendations. Reference to any duties of the BOA will need to be added to the BOA ordinance sections if the BOA is deemed the appropriate body. This would give someone that is dissatisfied with the decision of the Committee access to a Board that lacks agriculture and forestry expertise to overturn a decision.)LEGAL QUESTION



City of Auburn, Maine

Office of the Assessor

www.auburnmaine.gov | 60 Court Street

Auburn, Maine 04210

207.333.6601

To: Mayor Jason Levesque

From: Karen Scammon, Assessor

Date: September 11, 2019

Subject: Land valuation

In Maine, real estate is assessed according to Just Value. "All taxes upon real and personal estate, assessed by the authority of this State, shall be apportioned and assessed equally according to the just value thereof." (Constitution of the State of Maine, Article IX §8) Just value has been interpreted to be synonymous with market value. As agents of the State, Assessors are tasked with maintaining market value by evaluating sales of similar properties over a period of time and developing a mass appraisal model for each group of properties.

The time required for collecting and analyzing market data will vary depending on the number of usable sales for a specific type of property. If there are a sufficient number of sales of similar properties in a similar area over a sufficient time period that support an adjustment to value, changes will be made. The sufficient number and sufficient time both fluctuate depending on the market and the sales themselves.

The Assessing Department receives Declarations of Value from the State monthly that provide information on all sales throughout the City. Staff tracks the sales and compares the sale prices to the current assessed values. Over time staff is able to establish market trends for similar categories of properties. When staff has collected solid market data determining one category of properties is trending outside the parameters of the others it is time to reevaluate those properties and possibly make adjustments either up or down to maintain fair and equitable assessments among all categories of properties.

The land tables currently in place for valuing land throughout the City were originally established as part of the citywide revaluation that began in late 2002 and was completed in 2004. The values established through the revaluation were phased in over a two year period beginning in the 2006-2007 tax year. Market data collected since the revaluation has warranted some downward adjustments to existing land tables to reflect just value and maintain equity.

Currently vacant land in the AG Zone, other than that in a special land use classification or land locked parcels, is assessed at a flat \$800 per acre. The assessment of improved land in the AG Zone is dependent on permitted uses and the location of the property within the Zone. Market data established different base house lot values for different areas within the AG Zone using the same methodology throughout the City. "Excess" land beyond the initial house lot is assessed on a sliding scale and the price per acre diminishes as the lot size increases. In the case of a property being located in a split zone with the house lot located in the LDCR or RR Zone the property is assessed using the same methodology as the improved property in the AG Zone except that the land located in the AG Zone portion is assessed at \$800 per acre. Currently the value of a 1 acre base house lot for improved properties in the AG Zone is between 30,500 and 56,000.

Any proposed changes to the use and/or zoning of land in the Agricultural Zone may warrant adjustments to the land values depending on what changes are made. For instance, if formerly vacant land located in the Agricultural Zone meets the criteria as a buildable house lot and a permit is issued for a dwelling or the parcel is marketed as a house lot, etc., the parcel will be reassessed using the methodology currently in place for other buildable parcels. It should be noted that even if the proposed changes are not made in the Agricultural Zone adjustments to land value may be necessary to maintain fairness and equity. Assessing staff will continue to track sales and if trends are established through market data indicating adjustments are warranted to the land value they will be made regardless of any use or zoning change.

The changes to the Agricultural Zone are at this point speculation. It is impossible from an assessing standpoint to predict what will happen in the market if the Agricultural Zone is opened up to development. Only with market data derived from future sales of property over time will we be able to develop a solid model for land values. Until that time we must depend on the tables in place for similar properties.



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Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200

F (207) 774 - 1127

Memorandum

To: City of Auburn, City Manager Peter Crichton
City of Auburn City Council & City of Auburn Planning Board

From: Mary E. Costigan

Date: June 10, 2019

Re: Agricultural Zone Amendments

I have reviewed the draft amendments to the Agricultural and Resource Protection Ordinance provisions and have the following comments and concerns.

Beginning with the amendments to Section 60-145, the attempt to limit the ability to subdivide land is legally problematic. Subdivision is the division of land for any purpose and is governed at both the state and local level. The amendments to this section attempt to limit the division of land if it is for a particular purpose. The reason this is problematic is that the proposed use for the land is not a review criterion in subdivision. Thus, limiting the ability of someone to subdivide their property based on use cannot be accomplished. Prohibiting the construction of a dwelling on a particular parcel can be accomplished through different means other than limiting the ability to subdivide.

Amendments to Section 60-146 attempt to modify the minimum lot area. This proposal presents a couple of challenges. First, the language is inconsistent. It first says the area is ten acres and then it says three acres for buildings. It is unclear what the ten-acre limitation would apply to and why. Most property divisions contemplate the erection of a building at some point in the future. In addition, this change in density could be seen as inconsistent with the Comprehensive Plan which specifically states that the basic residential density standard of ten acres should be maintained.

Regarding the amendments to the definitions, in removing the 50% requirement that was within the definition of farm, the definition section now includes a separate review criteria provision. If this format change is desired, the review criteria should be moved

to the body of the ordinance and removed from the definitions section. The list of individual criteria also presents some challenges. Broadly, any income-based requirements in land use codes are difficult to administer. Here, the first two criteria are income-based, in accordance with IRS reporting. This requirement is tied to whether the dwelling on the property is accessory to the farm and triggers some questions that should also be addressed in the code. Is this the requirement for only the year when the dwelling is built? Do property owners have to report annually? What happens if they have a year when they do not meet the income requirements?

In addition, the current requirement is 50% of the income and the first two provisions change that requirement to 66 2/3 %. The Internal Revenue Code defines an individual as a farmer/fisherman if: “(A) the individual’s gross income from farming or fishing (including oyster farming) for the taxable year is at least 66 2/3 percent of the total gross income from all sources for the taxable year, or (B) such individual’s gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least 66 2/3 percent of the total gross income from all sources shown on such return.” 26 U.S.C. 6654(i)(2).

The third provision requires 2.5 acres to be devoted to a particular purpose but does not include a mechanism for guaranteeing such land use. The fourth provision includes a mechanism for preserving 50% of the property. Each of the programs mentioned have their own requirements for land that is enrolled in their program. For example, the Farmland program requires five acres and Tree Growth requires ten acres of land. The fifth provision regarding a \$1000 investment is not clear and should be further explained.

The foregoing are my initial, broader observations regarding the proposed amendments. I am happy to assist with a more detailed review of the language, following a review by the Planning Board and a broader discussion of what the proposed amendments are trying to accomplish. I recommend that the Planning Board’s review include an analysis of the Comprehensive Plan, which includes specific analysis of the Agricultural Zone and changes that should be made.

This summary is intended to give the Ad-Hoc Committee on Auburn's Agriculture and Natural Resource Economy a quick reference guide to sections of the Comprehensive plan related to agriculture and housing in Auburn's rural areas that are currently used or zoned for agriculture. The full plan is available at:

http://www.auburnmaine.gov/CMSContent/Planning/Comprehensive_Plan_FINAL_Approved_4_19_11.pdf

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Natural Resources Vision – continue to protect Auburn's rivers and lakes in balance with allowing public access to such resources. Auburn continues to protect the water quality in Lake Auburn and Taylor Pond, as well as the Androscoggin and Little Androscoggin Rivers. Programs support agricultural activities, protect natural features such as wetlands, and ensure the continued preservation of rural open spaces. Rural land preservation is balanced with the continued protection of landowner rights. Access to urban open space is increased through the expansion of the city tree program, the development of lot gardens, and the preservation of rural and river viewsheds.

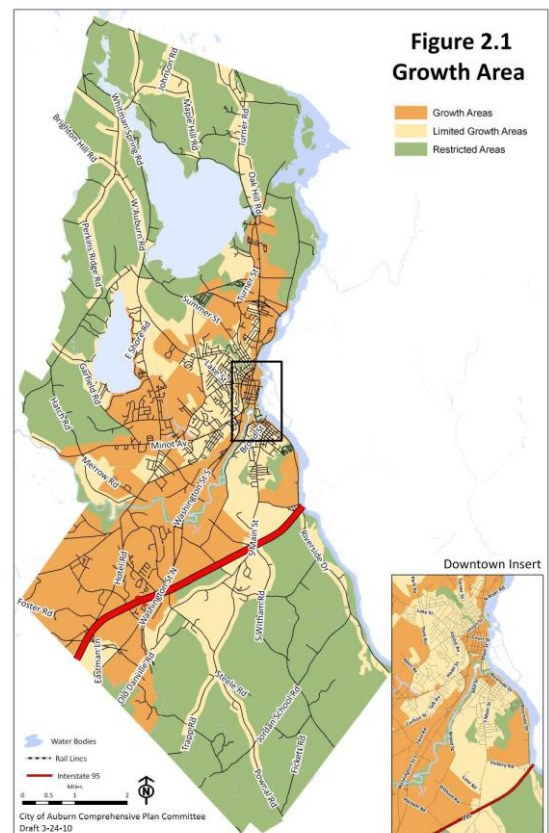
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B. LAND USE POLICIES

Chapter 2 of the 2010 Update of the Comprehensive Plan sets out a Future Land Use Plan to guide where and how growth and development should be accommodated over the next decade. The Future Land Use Plan shows, in a general sense, the desired pattern of future land use and development in the City.

The Future Land Use Plan reaffirms a central policy of prior of land use planning in the City, namely, 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 since then. It is based on the fact that growth out from the downtown core and older established neighborhoods allows for the most efficient utilization of city services. This plan discourages "leapfrog" development in the outlying sections of the city where city services are not now available. The effect of continuing this longstanding policy is to guide most new development into the area south of Lake Auburn and Taylor Pond, and north of the Maine Turnpike.

To manage development and redevelopment in accordance with this basic principle, the Future Land Use Plan designates Growth Areas, Limited Growth Areas, and Restricted or Non-Growth Areas:



1. GROWTH AREAS – Areas where the City wants growth and development to occur. The anticipation is that most residential and nonresidential development over the next ten years will occur in these growth areas.

2. LIMITED GROWTH AREAS – Areas that are either mostly developed, and therefore have limited development potential; or that have vacant or under-utilized land where the City desires a limited amount of growth and development over the next ten years.

3. RESTRICTED OR NONGROWTH AREAS — Areas that are unsuitable or are otherwise undesirable for development; in these areas, the City desires to see little or no growth and development over the next ten years. The general location of these areas is shown on the adjacent map (previous page).

The Future Land Use Plan divides each of these areas into a series of land use designations (See Chapter 2). The following highlights the major policy directions incorporated into those designations:

1. Rural

- Continue to protect undeveloped rural areas including North River Road, the Lake Auburn and Taylor Pond watersheds, and South Auburn from development
- Continue to allow low density residential development along some rural roads in accordance with defined criteria
- Allow flexibility for where and how rural residential development occurs to minimize its impact on the rural character and agricultural uses

2. Residential

- Allow new residential development at varying densities on the fringe of the built-up area where municipal services and utilities can be provided
- Consider using “density-based” requirements for residential development in development districts rather than the current lot size requirements

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5. Resource Protection/Open Space

- Include significant resources along the rivers, streams and high value wetlands in a Resource Protection designation
- Designate land preserved as conservation land/open space
- Expand access to the rivers by creating a Riverfront Transition designation around the confluence of the Androscoggin and Little Androscoggin Rivers

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Objective C.2.3: Support the public works department’s efforts to maintain Auburn’s road and sidewalk infrastructure in the most cost-effective manner, with a focus on quality and durable construction.

Strategies to achieve this objective:

Strategy C.2.3.a: Limit the need for new roads by encouraging development along existing roadways, and within the designated Growth Area (See Chapter 2).

Comprehensive Plan Page 64 – Economic Development Strategies

In its largest job center, the industrial parks, the City expands infrastructure to ensure the availability of additional land for development. The area continues to grow as a regional job center with the expansion of good-quality employment in the vicinity of the airport and multi-modal center. To assure that there is an adequate supply of land for future economic growth, Auburn uses its Agriculture/Rural Zone as a “holding zone” -- promoting limited development and reduced tax rates on properties until such a time as the area is made viable for commercial and/or industrial development.

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Objective I.2.3:

Ensure availability of land for appropriate business/industrial development in designated areas.

Strategies to achieve this objective:

Strategy I.2.3.a: Attract investment to designated industrial and commercial growth areas through the development of TIF districts and other financial incentives.

Strategy I.2.3.b: Use the Agriculture/Rural Zone designation as a means of holding select areas for future commercial and/or industrial development.

i. Educate prospective developers and current landowners on the goals of the AG/Rural Zone within certain areas on the City’s long-range plans. Help them to understand that the properties in question are held within the AG/Rural Zone to limit development and reduce the tax burden until such a time as the appropriate infrastructure and/or development projects are made available to support the conversion to an industrial or commercial zoning designation.

ii. Rezone the New Auburn’s Witham Road Area as an Agriculture/Rural District to hold the land until infrastructure improvements are made to support the development of business/industrial parks. (See Chapter 2. Future Land Use Plan)

iii. Rezone the other areas designated as Industrial Transition Districts in Chapter 2. Future Land Use Plan on a case-by-case basis, when there is either an active development proposal, or a need for additional industrially zoned land.

iv. Maintain AG/Rural Zone designation of the Delekto Farm property until such a time as the area can be rezoned to support limited access residential, office, and business park development – either when agricultural use ceases, or as part of plans to establish a turnpike interchange. (See Chapter 2. Future Land Use Plan)

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3. RURAL RESIDENTIAL ROAD STRIPS

The City has historically zoned narrow strips of land along some rural roads for low density residential development. These strips represent a compromise between the City’s goal of limiting residential

development in rural areas, and existing conditions along these rural roads. As part of the development of the Future Land Use Plan (see Chapter 2), the City conducted a comprehensive review of where residential strips should and should not be created based upon the following set of criteria. The considerations outlined below apply sequentially – first to identify where strips are appropriate based on current land use patterns, and then to work through where residential strips are inappropriate based on a variety of considerations.

Consideration #1 – Established Residential Pattern

A residential strip **may be provided** along a rural road where there is an established pattern of residential uses along the road. An established residential pattern means at least 6-8 homes per half mile counting both sides of the road. In general, both sides of a road should have a residential strip unless there is a significant reason not to allow residential development based on the following considerations.

Consideration #2 – Reserve Area Adjacency

A residential strip **should not be provided** along a rural road if the area adjacent to the road is a “reserve area” where the objective is to maintain the land as undeveloped to allow for its conversion to a different use in the foreseeable future. There should be some realistic expectation that something will occur that will change the desired land use for the area in the future.

Consideration #3 – Natural Resource Adjacency

A residential strip **should not be provided** along a rural road if the area adjacent to the road has significant natural resource value. Areas with significant natural value include areas that are zoned Resource Protection or are high value wetlands, 100 Year floodplains, significant wildlife habitats, and areas with steep slopes (>25%).

Consideration #4 – Conservation/Open Space Adjacency

A residential strip **should not be provided** along a rural road where the adjacent land is protected open space, or where there is a reasonable expectation that the land will be preserved as open space in the foreseeable future, and residential development is inconsistent with that open space use.

Consideration #5 -- Ability to Provide Public Services

A residential strip **should not be provided** along a rural road if residential development will tax the City’s ability to provide municipal services as indicated by the following:

- The road is a gravel or dirt road
- The road is a poorly maintained paved road that will need to be improved to support residential development along it

Consideration #6 – Water Quality Protection

A residential strip **should not be provided** along rural roads with undeveloped frontage that are located in the watershed of Lake Auburn, unless such development will not have an adverse impact on the lake’s water quality.

The Future Land Use Plan (see Chapter 2) shows the areas where low density residential development is proposed to be allowed along rural roads based on these criteria. These criteria should be used in the

future to review the areas designated as residential strips as conditions change, or to review property owner-initiated requests for rezoning.

Comprehensive Plan Page 73-Future Land Use Plan

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. We continue to believe that growth out from the downtown core and older established neighborhoods provides the most efficient utilization of city services. This plan does not favor "leapfrog" development in the outlying sections of the City where city services are not now available. This pattern is often referred to as "suburban sprawl," and is not considered desirable for Auburn. The effect of continuing this long standing principle is to guide most new development into the area south of Lake Auburn and Taylor Pond and north of the Maine Turnpike. Figure 2.1 identifies these areas as the City's Growth Area and Limited Growth Area; they are depicted in the brown and tan colors.

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Industrial Expansion Transition District (INT)

Objective – Allow for the orderly expansion of the City's industrial district over time by zoning additional land Industrial (see Figure 2.3). The Industrial Expansion Transition District includes two different types of areas. One type of area is characterized by developed residential properties or neighborhoods on the fringe of an existing industrial zone (see Figure 2.6). In these areas that are currently developed, the City should rezone properties Industrial on a caseby- case basis in an orderly manner, while maintaining the livability of the remaining residential properties as well as protecting adjacent residential neighborhoods.

The second type of area is undeveloped or lightly developed areas that are currently zoned Ag/RP or low density residential and are essentially "in reserve" for future industrial use (see Figure 2.7). These undeveloped or lightly developed areas that are "reserved" for future industrial use should be zoned Ag/RP or its equivalent in the short term; the area should be rezoned to Industrial only when there is a development proposal that includes the provision of public water and sewerage.

Allowed Uses – The allowed uses of the current zone or the Ag/RP District or its equivalent should remain in force until these areas are rezoned.

Development Standards – The current development standards or Ag/RP standards should remain in force until these areas are rezoned.

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TYPE D: PROTECTION/RESERVE AREAS

DESIGNATION: OPEN SPACE/CONSERVATION

Resource Protection District (RP)

Objective – Retain areas with significant natural resource value in an undeveloped, natural state (see Figure 2.3). This includes undeveloped 100-year floodplains adjacent to the rivers and significant streams and areas around freshwater wetlands that are moderate-high value habitat.

Allowed Uses – Within the Resource Protection District, allowed uses should be limited to natural resource and open space uses including agriculture and forestry, low-intensity recreation, facilities that provide water access, and similar low impact uses. Uses that involve significant structural development or impervious surfaces should not be allowed in this district. Uses such as utility lines and roads may be located within the district if there is no alternative appropriate location.

Development Standards – All new structural development and paved surfaces except for roads, trails, and facilities for access to the water, should be set back from the water body or wetland and a green buffer maintained along the edge of the resource. In general, all activities within the district are also subject to the Shoreland Zoning performance standards.

Agricultural/Rural District (AG)

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.

Conservation/Open Space District (COS)

Objective – Formally recognize those parcels that are used for cemeteries, water quality protection or are permanently protected for conservation or open space purposes (see Figure 2.3). The land included within this district will change over time as additional land is conserved. The intent of this designation is to establish a policy that these types of properties/uses should be recognized as important resources and that any significant change in use should be considered a policy decision.

Allowed Uses – The allowed uses within the Conservation/Open Space District should be limited to low intensity recreational facilities and natural resource uses, including agriculture and forestry.

Development Standards – The development standards should provide flexibility for the appropriate use of the land, while protecting its natural resource and ecological values.

Maine Farmland Preservation Ordinances

Each year, more of Maine's farmland is converted to other uses. The preservation of farmland is an important goal of Maine's farmers, and it's a goal that the Department of Agriculture, Conservation, & Forestry and many Maine municipalities. One way the State and municipalities support farmland preservation is through laws and ordinances relating to land use regulation and property taxation.

State Laws

The State of Maine has a number of laws that support farmland preservation, including:

- **Maine Agricultural Protection Act** - Among other things, Maine's "Right-to-Farm Law" protects farmers from neighbors' complaints about noise, odor or other aspects of their legitimate and properly-conducted agricultural operations. ([Title 7 MRSA, Chapter 6](#))
- **Registration of Farmland** - Development activities that are incompatible with agricultural practices are prohibited within 50 feet of farmland that has been registered in accordance with this law. ([Title 7 MRSA, Chapter 2-B](#)).
- **Voluntary Municipal Farm Support Program** - This law enables municipalities to preserve farmland by purchasing and holding agricultural easements from willing landowners. ([Title 7 MRSA, Chapter 2-C](#)).
- **Farm and Open Space Tax Law** - Economic pressure to convert farmland to more intensive uses can be reduced through the "current use" taxation program established with this law. Participating landowners have property taxes on their farmland assessed according to its productive agricultural value rather than its development potential. ([Title 36 MRSA, Chapter 105, Subchapter 10](#))
- **Conservation Easement Law** - Through the gift or sale of restrictive easements to a government or land trust, Maine's conservation easement law allows property owners to assure the future availability of their land for agriculture. ([Title 33 MRSA, Chapter 7, Subchapter 8-A](#)) Learn about DACF's [Conservation Easement Registry](#).

DACF's Farmland Protection Program

For more information about State efforts to protect farmland, please visit the Agricultural Resource Development Division's [Farmland Protection Program webpage](#).

Local Ordinances

The goal of preserving farmland is articulated in many local comprehensive plans, but few towns take the next step, which is to pursue that goal through municipal zoning and other land use ordinances. To assist municipalities that are having difficulty with this second step, we have compiled the following set of farm-friendly provisions from local Maine land use ordinances. We hope that more municipalities, supported by their local farmers and armed with these examples, will adopt similar standards.

- [Auburn Zoning Ordinance \(PDF\)](#) (Current as of 2/2010) - Section 3.31 of the Auburn Zoning Ordinance establishes a maximum density of 1 unit per 10 acres in the Agriculture and Resource Protection District. (See Section 3.31)
- [Poland Land Use Code \(PDF\)](#) (Current as of 2/2010) - The Poland Land Use Code reflects the state's right-to-farm law by requiring that any new subdivision include a 100 ft. buffer between the new development and an active commercial farm. (See Section 6-113.11). Poland also requires a minimum of 5 acres per lot in the Farm and Forest District. (See Table 5-107.2).
- [New Gloucester Zoning Ordinance \(PDF\)](#) (Current as of 2/2010) - New Gloucester requires a minimum of 5 acres per lot in the Farm and Forest District. (See Section 4.4.4 of the Zoning Ordinance)
- [Wilton Zoning Ordinance \(PDF\)](#) (Current as of 3/2010) - The Wilton Zoning Ordinance includes a "Rural Land Management System" that is used to determine whether or not a residential subdivision is

allowable in the Farm and Forest Zone, as well as the minimum lot size for those subdivisions that are allowed. The system uses four soils-suitability criteria, one of which is the proportion of the site having soils classified as "Unique Farmland" or "Prime Farmland" by the USDA Soil Conservation Service. According to the system's formula, the more of these soils there are on the site, the larger the required minimum lot size will be and, therefore, the fewer homes will be built on the site. (See Section 4.5C of the Wilton Zoning Ordinance) The effectiveness of this system for the preservation of farmland could be greatly enhanced if coupled to Cluster/Open Space/Conservation Subdivision Standards.

- [Hermon Land Use Ordinance \(PDF\)](#) (Current as of 3/2010) - Hermon has a Right to Farm section in its Land Use Ordinance. In the Agriculture/Forestry and Rural Residential Districts 100 ft. buffers shall be provided between agriculture and non-agricultural development, with the buffer being the responsibility of the non-agricultural developer. Also, all developers must disclose to their clients the noise, dust, odor, and other farm practices in the area, and that those farm practices have right to continue. (See Section 4.3.7)
- [Fairfield Land Use Ordinance \(PDF\)](#) (Current as of 2/2010) - Fairfield's Rural District was created to 'further the preservation of a working landscape, environmental quality, and a low intensity of development.' There is a basic maximum density of 1 dwelling unit per 10 acres, however, a developer may increase this density by increasing setbacks or wooded buffers. In addition, "(t)he owner of a parcel actively used for agricultural or forest operations may create new lots no smaller than 40,000 sq. ft., provided that for each new lot created, nine (9) acres of remaining acreage be voluntarily entered into a deed restriction or conservation easement prohibiting development for residential purposes.' (See Section 7.10 of the Fairfield Land Use Ordinance)
- [Unity Land Use Ordinance \(PDF\)](#) (Current as of 2/2010) - Unity has a 'transfer of development rights' (TDR) program called the Farmland Protection Incentive Measure. Its purpose is to 'alleviate some development pressures on productive farmland, by providing an incentive to locate development on other land.' In Unity's Rural District, all new lots created by dividing a larger parcel must average 120,000 sq. ft. in size. Using the Farmland Protection Incentive Measure, however, one may create lots that average 60,000 sq. ft. - effectively doubling the density of development - provided that 40,000 square feet of productive farmland is preserved for every new lot created at the higher density. The preserved productive farmland can be located anywhere in the municipality. (See Section VI of the Unity Land Use Ordinance)
- [Ogunquit Zoning Ordinance \(PDF\)](#) (Current as of 2/2010) - The Ogunquit Zoning Ordinance requires a minimum of 200,000 sq. ft. per lot in the Farm District. (See Table 703.1)
- [Waterboro Zoning Ordinance \(PDF\)](#) (Current as of 2/2010) - Waterboro requires a minimum of 5 acres per lot in the Forest and Agriculture District (See Article of the Waterboro Zoning)

Other local ordinances researched are below.

LEWISTON

Sec. 1. Rural-agricultural district (RA). (a) Statement of purpose. The purpose of the rural-agricultural district is to provide areas within the city for the development of very low density residential uses while protecting the rural character of these portions of the city. Within the rural-agricultural district the retention of active agricultural uses is encouraged. Development which occurs within the district should be sensitive to the rural nature of the district and should preserve open space and agricultural land to the maximum extent possible.

Sec. 18. Resource conservation district (RC). (a) Statement of purpose. The purpose of the resource conservation district is to protect fragile ecological systems, vulnerable areas and areas of unique natural or scenic value from development or use which would adversely affect water quality, productive or unique wildlife and aquatic habitat, biotic systems, ecological relationships or scenic and natural values or which would create unreasonable risks to the public safety and welfare due to flooding, earth movement or slides or unstable soil conditions. To accomplish this purpose, uses are permitted which

avoid disruption of the natural environment and are compatible with the natural risks associated with development within these areas while allowing productive use to be made of the land.

Agriculture means the cultivation of the soil, production of crops, including crops in commercial greenhouses, and raising and keeping of livestock, including animal husbandry, orchards, truck gardens, plant nurseries, poultry and other nondomestic animals, bees, the use of manure and fertilizers, the processing of agricultural products.

Farm housing means dwelling units located on an active farm which are accessory to the agricultural use and are occupied by employees of the farm or members of the farm household. Any farm housing shall be located on the same parcel as the agricultural use.

Farm stand means a temporary structure containing less than five hundred (500) square feet of floor area for the sales of agricultural products between May first and December first.

LISBON

DIVISION 5A. - RURAL OPEN SPACE DISTRICT II

Sec. 70-357. - Purpose.

The purpose of the rural open space district II is to maintain the agriculture land base of Lisbon. Agriculture, uses supporting agriculture and limited residential uses are appropriate uses in the rural open space district II.

(C.M. of 11-15-2011, V. 2011-208)

Sec. 70-361. - Dimensional requirements.

Lots in the rural open space II district shall meet or exceed the minimum requirements as identified in section 70-536 and the following (refer also to article VI of this chapter):

- (1) *Maximum coverage.* Maximum coverage of lot by structures in the rural open space district II shall not exceed 20 percent; except that high intensity farming shall not exceed 25 percent.
- (2) *Lot standards.* Lots shall comply with the following:
 - a. Lots shall have a minimum area of 60,000 square feet and a maximum area of 100,000 square feet.
 - b. After the effective date of this amendment, lots for residential use shall have the required frontage on an existing publically maintained road.
 - c. The lot frontage to lot depth ratio shall be 1:1.5.

(C.M. of 11-15-2011, V. 2011-208)

Sec. 70-362. - Performance or land use standards.

Permitted uses and conditional uses in this division shall conform to the performance standards delineated in article VI of this chapter and the following:

- (1) After the effective date of this amendment, residential subdivisions are prohibited.

(2) After the effective date of this amendment, backlots are prohibited.

(C.M. of 11-15-2011, V. 2011-208)

Secs. 70-363—70-380. - Reserved.

Sec. 70-605. - High-intensity farming.

- (a) *Adjoining property.* High-intensity farming shall be carried out in locations and in such a manner as not to be obtrusive to adjoining property.
- (b) *Lot size.* A minimum lot size of two acres where public water and sanitary sewers are available and five acres where public water and sanitary sewers are not available shall be required.
- (c) *Coverage by buildings.* Maximum coverage of the lot by buildings shall not exceed 25 percent.
- (d) *Setbacks.* Minimum front, side and rear setbacks shall each be 100 feet.
- (e) *Lot width.* The minimum lot width at the front line of any principal building shall be 400 feet.

OLD ORCHARD

Sec. 78-961. - Purpose.

The rural district (RD) is established as a zoning district where the land is used for a wide variety of purposes at low density and where ample land area is an essential prerequisite for establishment and conduction of most rural land uses. Preservation of its rural character to the extent possible is also one of the most important purposes of the RD district.

(Ord. of 9-18-2001, § 9.1)

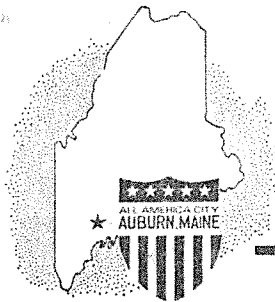
Sec. 78-962. - Permitted uses.

The following categories of uses are permitted in the rural district (RD):

- (1) Single-family dwellings, detached.
- (2) Accessory buildings, structures or uses customarily incidental or subordinate to a conforming or legally nonconforming principal building or use.
- (3) Municipal uses, provided there is no overnight parking of vehicles or machinery in the open and that no structure shall be located within 50 feet of a residential lot line.
- (4) Churches or parish houses.
- (5) Agriculture uses.
- (6) Forestry and timber harvesting.
- (7) Community living arrangements.
- (8) Temporary anemometer tower

(Ord. of 9-18-2001, § 9.1.1; Ord. of 12-15-2009(3))

Farming means the cultivation of the soil for food products or other useful or valuable growth of field or garden, nursery stock and noncommercial greenhouses, but excluding animal husbandry.



CITY OF AUBURN, MAINE

"MAINE'S CITY OF OPPORTUNITY"

45 SPRING STREET · AUBURN, MAINE 04210

DEPARTMENT OF COMMUNITY DEVELOPMENT PLANNING

DEVELOPMENT/REDEVELOPMENT
PLANNING SECTIONS

ROLAND G. MILLER
DIRECTOR

INSPECTIONS SECTION

MEMO

TO: The Honorable Mayor and Members of City Council

FROM: Paul Choate, Chairman, Auburn Planning Board

SUBJ: Review of Alternatives to Agriculture Resource Zoning Provision

DATE: August 14, 1984

Pursuant to the request of the City Council to review several alternative proposals to modify the Agriculture and Resource Protection District, the Planning Board has completed the assignment and the findings and recommendations are contained in the report that follows. It should be noted at the outset that the parameters of the Planning Board review were confined to the goals and objectives, regarding rural land use, delineated by the City Council. Although the statements dealt with the broad topic of rural land use policies, they were applied only to the central issue under discussion at the present time; that being, the proposed modification to the Agriculture and Resource Protection Zoning District provisions.

GOALS AND OBJECTIVES

The input received from the Council/Planning Board informational session of July 9, 1984, was an expression of what the City Council wished to accomplish and hoped to discourage regarding the future development pattern that will emerge in the rural areas of Auburn. The following lists served as a basis for proposal review:

CHART I

WANT TO ACCOMPLISH

1. Share tax burden equitably.
2. Give rural land owners more chance in what they can do with land (particularly families who are long term owners).
3. Allow more single-family homes.
4. Preserve prime agriculture areas.

5. Preserve wooded areas.
6. Protect farmers from higher taxation.
7. Review "50% rule" annually to encourage farming.
8. Support working farms.
9. Preserve cleared tilled areas.
10. Build home first, then start farm.
11. Reimburse landowners for lost development opportunity.

CHART II

WANT TO DISCOURAGE

1. Increasing dramatically cost of Municipal services.
2. Land speculation in rural areas.
3. Traditional subdivision developments.
4. Preservation of agriculture in marginal areas.
5. Conflicts with neighboring communities.
6. Building of new roads at City expense.
7. Over industrialization.
8. Isolation of "back land" parcels.
9. Conflicting land uses (nusiances raised by farming).
10. Large building lots.
11. Development along long corridors in rural areas.

As of the preparation of this report, five alternative approaches had been formulated, discussed and reviewed under the criteria listed above. A brief description of the major components of each proposal follows:

#1 - EXISTING REGULATIONS

The existing provisions have undergone numerous reviews since they were adopted in 1960. The latest comprehensive revisions, including a title change, was done in 1974. The major provisions of the current regulations are:

1. Uses - Agriculture and natural resource base industrial activities, and residential uses directly connected to those activities. In addition, a wide variety of uses are allowed by Special Exception.
2. Dimensional Regulations - Ten (10) acre minimum lot size, 250 feet of accepted street frontage for the establishing of a residential use accessory to a principle use.
3. Other - A party wishing to establish a residential use must derive 50% of the family income from resource based operations.

#2 - MAYOR CLEVELAND'S SLOW RELEASE PROPOSAL

This proposal is a modification to the existing regulations that would allow non-resource based residential development on a time released basis. It should be noted that this proposal was put forward in tandem with the recommendation that a Low Density Country Residential Zone be created and be mapped to replace Rural Residence strip zones on posted roads. The major components of the mayor's proposal are as follows:

1. Uses - All uses permitted under existing regulations and adds the allowance of single-family housing development not connected to a resource operation. The number of potential lots is based upon the number of living children above an established threshold of two. This proposal establishes an uninterrupted term of ownership in order to be eligible to create house lots.

2. Dimensional Regulations - Eliminates the need for the provision of a minimum road frontage for the creation of a house lot; but adds the requirement that the lot be surveyed and that a permanent easement be provided for access to the lot. A minimum lot size of three acres is required for a house lot provided that no dimension of the lot be less than 250 feet.

3. Other - This proposal would allow for the deletion of the second paragraph, and clarification provisions that follow in the definition of Farm found in Section 2.2.

#3 - COUNCILMAN WALLINGFORD'S EXCLUSIVE AGRICULTURAL ZONE PROPOSAL

This proposal is an attempt to establish a basis for suppressed valuation of land that is voluntarily designated for inclusion under these provisions by the farmer. It should be noted that all lands presently zoned Agriculture and Resource Protection that would not be proposed for inclusion in this exclusive district would be zoned under a recommended Low Density Country Residential classification:

1. Uses - Indentical to the current uses allowed in the Agriculture and Resource Protection Zone. It is not recommended by this proposal that any uses, except sawmills, be allowed as Special Exceptions.

2. Dimensional Regulations - All regulations have been retained from the existing Agriculture and Resource Protection District.

3. Other - Inclusion of land in this district is voluntary. Land can be added or withdrawn from the district at any time by merely filing a letter of request with the Tax Assessor. Furthermore, the Tax Assessor annually will be responsible in determining the eligibility of the landowner to have land continue under this zoning classification.

#4 - PLANNING BOARD MEMBER MATZEN'S FAMILY FARM PROPOSAL

This proposal is similar to Mayor Cleveland's proposal with three modifications that are explained below:

1. Uses - All uses permitted under existing regulations and adds the allowance of single-family housing development not connected to a resource operation provided that the parcel is already residentially developed. The number of potential lots is based upon the number of immediate family members. The proposal establishes an uninterrupted term of ownership which provides the development option to families that owned the property prior to the adoption of any restrictions.

In addition, the family member developing a lot under these provisions must retain ownership of the lot for a specified amount of time.

2. Dimensional Regulations - The same as Mayor Cleveland's proposal.

#5 - COMBINATION PROPOSAL

All use and dimensional recommendations in this proposal are similar to Mayor Cleveland's modified district. The departure from other proposals is the provision of an option for a long term property owner (since 1960) to create non-resource housing lots based upon either the amount of acreage owned or the number of living children. For a person who has owned the property for a ten year period, the number of lots that can be created is based upon the amount of contiguous acreage owned.

ANALYSIS OF ALTERNATIVES

Upon completion of a comparison of the afore enumerated alternatives to the goals and objectives listed by the Council Charts I and II (see attached), assessing the level of goal achievement, were developed. It should be recognized that some of the provisions of the various proposals, when compared to the goal statements, do not result in a simple yes or no conclusion. Some of the goals statements are not applicable to the Agriculture and Resource Protection alternatives. Those are so noted on the charts with the designation of N/A.

FINDINGS

A review of the existing ordinance and alternatives to that ordinance show that the existing code satisfies more of the stated desires of the City Council than any other options. This type of numerical comparison, however, does not consider that any particular goal is more important than another in that no indication was received from the City Council regarding a proposed "weighting" system. The Planning Board did not feel it appropriate to come up with their own.

The two proposals that satisfy the second highest number of desires expressed by the Council are the Matzen proposal and a combination of elements from all other proposals. These options, however, have twice as many goals not satisfied than the existing ordinance.

It was noted during the preparation of the several proposals that common policy questions arose. The decisions that were made resulted in the structure of the proposal as reviewed. The questions that needed to be answered were:

1. Longevity of ownership.
2. The speed with which lots are released for development.
3. Using family members and/or acreage as the criteria for the number of lots that can be created.
4. Whether or not to have frontage requirements for newly created residential lots.

Beyond just a numerical comparison of options, the Planning Board examined the components of each option that it address the policy questions noted above. A majority opinion of what aspects of each alternative were most desirable in achieving a satisfaction of the goals of the City Council was done by the Planning Board. The results were as follows:

Term of Ownership - It was recognized that persons who have acquired property since 1960 did so with the full knowledge of what the land use restrictions were that applied to the property. Those land use restrictions also affected the price that sellers could market their land for. Therefore, the only persons who experienced a reduction in what they could do with the land are those who owned it prior to 1960. A majority of Planning Board members felt that any increase in development opportunity should only accrue to those families that owned property prior to 1960.

Speed of Release - The Planning Board concluded that because it is the intent of the City Council to allow for equity extraction for long term owners of property, this proposal should be immediately available to those owners. Therefore, if ownership since 1960 is one of the adopted criteria, the relaxation of ordinance provisions should result in an immediate opportunity for those property owners.

Criteria for Determination of Number of Lots - The two options that have been most widely discussed were basing the number of lots to be created on either the number of living children or the number of acreage owned. Because of administration problems and potential legal questions concerning favoring large families over small families, the Planning Board recommends that acreage be used as the basis for the number of lots that a person can develop.

Frontage - The majority of Planning Board members felt that some minimum frontage should be required for the creation of additional house lots.

RECOMMENDATIONS

Upon again reviewing the provisions of the Agriculture and Resource Protection District, and upon reviewing the various alternatives to this district, the City of Auburn Planning Board finds that the provisions as recommended and submitted to the Council on September 3, 1983 remain valid and are recommended for adoption. The Auburn Planning Board finds that the reasons for the creation of the Agriculture and Resource Protection Zone 23 years ago are still as critically important to the future well-being of our community as they were in 1960. The consequences of shifting assessed valuation to the outlying areas as well as the increased costs of providing municipal services work against the long-term financial well-being of the community and have an adverse impact on citizens who are engaged in agricultural activities for their livelihood. It is the position of the Planning Board that the alternatives attached to this memo will not serve the best interests of the citizens of our community and, therefore, are not recommended to be included within the City Zoning Ordinance.

If the City Council does not concur with our findings or recommendation, however, consideration should be given to the options listed below. Although not recommended, these options are listed in rank order from most desirable to least desirable.

Leave the Agriculture and Resource Protection as is and create a Low Density Country Residential Zone to be applied to areas the City Council does not feel appropriate to be put in the Resource Protection Zone. It may also replace some of the Rural Residential Strip Zones that presently exist along posted roadways.

The Agriculture and Resource Protection Zone would be modified to allow for additional housing development within the parameters outlined under the policy recommendation noted previously. If this is done, the Planning Board would recommend that the Rural Residential Strip Zones along posted roadways in outlying areas be eliminated.

The Agriculture and Resource Protection Zone be modified within the parameters of policy recommendations noted previously and a Low Density Country Residential Zone be created. The Low Density Country Residential Zone would replace the Rural Residential Strip Zones along posted roadways.

The Agriculture and Resource Protection Zone be modified to provide for a time release mechanism that would continue to make housing lots available in the remote areas of Auburn. This be accompanied by a Low Density Country Residential Zone that would replace the Rural Residential Strip Zones along posted roadways. The specifics of the time release formula can only be drafted if the City Council addresses each of the four policy areas previously noted in order to establish the parameters for the modified district.

CHART I

WANT TO ACCOMPLISH						
	EXISTING	CLEVELAND	WALLINGFORD	MATZEN	COMBINATION	
1	+	0	0	+	+	+
2	0	+ / 0	+	+	+	+
3	0	+	+	+	+	+
4	+	0	+ / 0	+ / 0	+ / 0	+ / 0
5	+	0	0	0	0	0
6	+	0	+	0	0	+
7	N/A	N/A	N/A	N/A	N/A	+
8	+	0	+	0	0	+ / 0
9	+	0	0	0	0	0
10	0	0	0	0	0	0
11	+	+	+	+	+	+

+ Goal Satisfied
0 Goal Not Satisfied

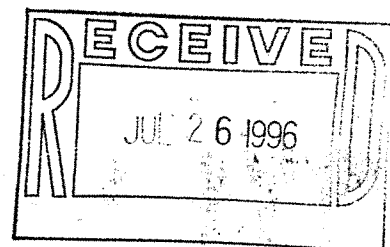
CHART II

He said
1) LANDOWNER SEPTIC
2) "I" ROAD
NOT TRUE

WANT TO DISCOURAGE						
	EXISTING	CLEVELAND	WALLINGFORD	MATZEN	COMBINATION	
1	+	0	0	0	0	0
2	+	0	0	+	+	+
3	+	+	0	+	+	+
4	+ / 0	+	+	+ / 0	+ / 0	+ / 0
5	+ / 0	+	+	+	+	+
6	+	0	0	0	0	0
7	N/A	N/A	N/A	N/A	N/A	N/A
8	+	+	0	+	+	+
9	+	0	0	0	0	0
10	+	+	+	+	+	+
11	+	+	0	+	+	+

+ Goal Satisfied
0 Goal Not Satisfied

July 25, 1996



PHILIP F. W. AHRENS

DIRECT
207.791.1298

E-MAIL
PAhrens@
PierceAtwood.com

Patricia A. Finnigan
City Manager
City of Auburn
45 Spring Street
Auburn, ME 04210

RE: Agriculture and Resource Protection District

Dear Pat:

As you requested in your June 18 letter to me, we have considered the merits of the arguments raised on behalf of Peter and Mary Moore by Paul Frinsko in his May 8, 1996 letter to the Auburn City Council threatening litigation regarding the legality of the income test contained in the Auburn Ordinance's definition of a "farm." We also have considered whether there are any modifications that the City Council might consider to preserve the intent of the Ordinance in regard to the Agriculture and Resource Protection District while allowing some room for flexibility.

I. The Legality of the Income Test

In his May 8 letter Mr. Frinsko argues that the income test violates the due process and equal protection guarantees of the Maine and U.S. Constitutions. He also argues that the income test regulates the owner of the land rather than the land itself, and thus is an impermissible subject of a zoning ordinance. I will address each of these arguments in turn.

A. The Due Process Claim

Mr. Frinsko argues that the income test is arbitrary and thus violates the due process clause. He says that the income test bears no rational relationship to the Ordinance's goal of preserving agricultural land. He argues that "there is no predictable or measurable relationship between the percentage of household income derived from farm uses and the actual use of the land."

The Maine Supreme Court has stated that an ordinance satisfies due process requirements if the ordinance bears a reasonable relationship to the public health, safety, morals, or general welfare and is not unreasonable, arbitrary, or discriminatory based upon the reasonably foreseeable future development of the

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community. LaBay v. Town of Paris, 659 A.2d 263, 266 (Me. 1995). "Generally, there is a presumption of the constitutional validity of municipal ordinances." Id. Thus, the question is whether the income test bears any reasonable relationship to the public health, safety, morals, or general welfare or is unreasonable, arbitrary, or discriminatory.

Although Mr. Frinsko makes a convincing argument that the percentage of a family's income that is derived from farm uses is not necessarily related to the use of that family's land, the due process test, as outlined above, is not that stringent. Rather, there need only be a reasonable relationship between the ordinance and the goals sought to be achieved. In the case of the income test, it is reasonable to assume that if at least 50% of a family's income is derived from farm uses, the family's land is more likely to be devoted to farm uses. That there may be other, better ways to further that goal does not mean that the income test is invalid, as long as it has a reasonable relation to its goal. Further, the Ordinance may seek not only to protect agricultural land generally, but to protect small, family-owned (traditional) farms. The income test directly furthers that goal by preventing individuals or entities with substantial sources of non-farm income from operating a farm in the district.

Thus, it appears to us that there is a strong argument that the income test does not violate due process.

B. The Equal Protection Claim

Mr. Frinsko claims that to treat identical farm operations differently based on how much or how little money they make in comparison to some other source of revenue is "a totally irrational classification" that violates his clients' right to equal protection of the laws. He argues that to classify those who derive at least 50% of their income from farm uses separately from those who do not is irrational, and does not further the Ordinance's goals.

When an equal protection challenge does not involve a suspect classification or fundamental right, the test for whether a law meets equal protection requirements is similar to the test for whether a law satisfies due process requirements. In that case, to meet equal protection requirements the challenged classification need only be rationally related to a legitimate state interest. Berry v. H.R. Beal & Sons, 649 A.2d 1101, 1102 (Me. 1994). As discussed above, it is rational to assume that if at least 50% of a family's income is derived from farm uses, the family's land is more likely to be devoted to farm uses. That there may be other, better ways to further that goal does not mean that the income test is invalid, as long as it has a rational relation to its goal. Further, the income test directly furthers the goal of protecting

small, family-owned (traditional) farms by preventing individuals or entities with substantial sources of non-farm income from operating a farm in the district.

Mr. Frinsko also argues that the income test violates equal protection because it treats married persons differently than unmarried persons, amounting to discrimination based on marital status. As previously stated, when an equal protection challenge does not involve a suspect classification or fundamental right, the challenged classification need only be rationally related to a legitimate state interest. *Id.* Married persons, however, are not a suspect class deserving of special constitutional protection. *Cf. Wellman v. Department of Human Services*, 574 A.2d 879, 883 (Me. 1990) (giving no special protection to unmarried persons). Thus, the treatment of married couples differently than unmarried couples survives equal protection scrutiny, as long as that distinction has a rational relation to its goals.

The basis for including spouses in the income test appears to be to ensure that 50% of the family's income is derived from farming. Although a family may include the other members listed by Mr. Frinsko (*e.g.*, a parent or sibling), it is rational to use the spousal test to further the goal of protecting agricultural land and the goal of protecting small, family-owned (traditional) farms at which most of the income is derived from farm sources.

C. The Ultra Vires Claim

Mr. Frinsko alleges that because the income test regulates the owner of the land rather than the land itself, it is not a proper subject of zoning. Mr. Frinsko appears to be arguing that such regulation is beyond the power of the City Council, and is thus an *ultra vires* action. The only Maine case Mr. Frinsko cites to support his claim is *Keith v. Saco River Corridor Commission*, 464 A.2d 150, 154 (Me. 1983). The *Keith* case, however, merely stands for the proposition that grandfathering applies to the land in question, not to the owner of the land. It does not necessarily follow from this proposition that a municipality cannot regulate land by reference to certain attributes of the owner or occupant of the land. In fact, in 1978 the Maine Supreme Court relied in part on an income test to find that a pole barn used for storage of bakery waste was not accessory to a farm use under the Auburn Ordinance. In *Giguere v. City of Auburn*, 390 A.2d 514 (Me. 1978), the plaintiff asked the court to rule that his pole barn was accessory to a farm use. The court declined to do so, noting that record demonstrated "that the Plaintiff's principal occupation is the bakery waste business, and that he sells no farm produce. The referee found that the Plaintiff's income from farming was negligible." *Id.* at 516. Thus, the court relied on the plaintiff's income to show that the plaintiff's use of the property was not primarily farm-related.

Mr. Frinsko cites several cases from outside of Maine to support his proposition that a municipality cannot regulate land by reference to certain attributes of the owner or occupant of the land. Those cases, however, relate to the ability of municipal administrative bodies to impose restrictions on the owner, rather than the ability of the municipality itself to regulate land by reference to certain attributes of the owner or occupant of the land. In Vlahos Realty Co. v. Little Boar's Head District, 146 A.2d 257 (N.H. 1958), for example, the question was the legality of a variance that was limited to a specific owner of the premises. The court had no occasion to reach the question of whether the municipal legislative body could regulate land by reference to certain attributes of the owner or occupant of the land. The same is true of the other cases cited by Mr. Frinsko. The cases in which courts have struck down a municipal legislative classification based on the identity of the owner have involved situations in which the State authorizing statute has been interpreted to preclude such distinctions or where the distinction had no rational relationship to the ends sought to be achieved. See, e.g., Vermont Baptist Convention v. Burlington Zoning Board, 613 A.2d 710, 711 (Vt. 1992)

Municipalities in Maine have broad home rule authority to enact ordinances as long as they "conform to the enabling legislation by which the legislature has delegated police powers" to towns and cities. LaBay v. Town of Paris, 659 A.2d 263, 266 n.5 (Me. 1995). Under the State's land use statutes, "a municipal zoning ordinance may provide for any form of zoning consistent with this chapter." 30-A M.R.S.A. § 4352. Thus, as long as an ordinance is consistent with State law, there appears to be no reason it cannot regulate land by reference to certain attributes of the owner or occupant of the land.

II. The Prudence of the Income Test and Proposed Ordinance Modification

Although we believe that there are strong arguments that the income test is legal, we believe Mr. Frinsko makes several valid points regarding its effect. The income test may not be a very effective tool to achieve the City's goals, and that it may cause problems that the City may want to avoid.

First, we agree with Mr. Frinsko that it seems to make more sense to regulate the land itself and avoid regulating by reference to certain attributes of the owner or occupant of the land. Such regulation invariably results in problems with administration of an ordinance, and raises issues of the type raised by Mr. Frinsko in his May 8 letter. Although we believe that there are strong arguments to persuade a court to uphold the validity of the income test, that question is by no means free from doubt.

Second, it does not seem that a farm is much more likely to retain its traditional flavor merely because the farmer spouse earns more money than the non-

Patricia A. Finnigan
July 25, 1996
Page 5

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AND WORK PRODUCT

farmer spouse. Nor is a farm necessarily more likely to retain its traditional flavor merely because the farmer does not have outside sources of income.

Third, we agree with Mr. Frinsko that the income test discourages start-up farmers, and may be construed require farmers who are unable to make a profit to cease operations entirely (because they could earn more money from bank interest income, for example, than from farm operations).

Fourth, we believe the income test is somewhat ambiguous. For example, who is the "farm occupant"? Does it include a parent living with the farmer? The farmer's children? How does one determine total annual income? For example, is it on a net or gross basis? How will that income test be enforced without raising issues concerning the privacy of the farmer and his or her sources of income?

In short, we believe the income test raises concerns that militate in favor of its repeal. We do not believe, however, that Mr. Frinsko's proposed alternative is the best approach. In fact, his approach would not even address his own concerns with the income test. Rather, his approach would simply also allow single family dwellings on very large (100+ acres) otherwise undeveloped lots. This would retain the rural character of the Agriculture and Resource Protection District, but it would not further the goal of protecting agricultural uses.

Thus, in order to serve the goal of protecting agricultural uses, one suggestion would be to eliminate the income test. In that event, the "farm" definition would still require that the land be used for agricultural purposes. It thus would require the Moores, for example, to engage in farming activities, and not simply to use the land for their dwelling. Mr. Frinsko indicated in his letter that the Moores can and will comply with all of the existing ordinance's requirements except for the income test.

There are certainly other modifications to the ordinance that can be considered; I'd be happy to talk with you further if you wish.

* * * * *

Pat, I trust that this analysis serves the City's needs. If we can be of further assistance, please do not hesitate to call me.

Sincerely,



Philip F. W. Ahrens

SCHEDULE F
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Farming

▶ Attach to Form 1040, Form 1040NR, Form 1041, or Form 1065.
▶ Go to www.irs.gov/ScheduleF for instructions and the latest information.

OMB No. 1545-0074

2018

Attachment
Sequence No. **14**

Name of proprietor

Social security number (SSN)

A Principal crop or activity

B Enter code from Part IV

C Accounting method:

☐ Cash ☐ Accrual

D Employer ID number (EIN), (see instr)

E Did you "materially participate" in the operation of this business during 2018? If "No," see instructions for limit on passive losses ☐ Yes ☐ No

F Did you make any payments in 2018 that would require you to file Form(s) 1099 (see instructions)? ☐ Yes ☐ No

G If "Yes," did you or will you file required Forms 1099? ☐ Yes ☐ No

Part I Farm Income—Cash Method. Complete Parts I and II (Accrual method. Complete Parts II and III, and Part I, line 9.)

1a	Sales of livestock and other resale items (see instructions)	1a		
b	Cost or other basis of livestock or other items reported on line 1a	1b		
c	Subtract line 1b from line 1a	1c		
2	Sales of livestock, produce, grains, and other products you raised	2		
3a	Cooperative distributions (Form(s) 1099-PATR)	3a		
3b	Taxable amount	3b		
4a	Agricultural program payments (see instructions)	4a		
4b	Taxable amount	4b		
5a	Commodity Credit Corporation (CCC) loans reported under election	5a		
b	CCC loans forfeited	5b		
5c	Taxable amount	5c		
6	Crop insurance proceeds and federal crop disaster payments (see instructions)			
a	Amount received in 2018	6a		
6b	Taxable amount	6b		
c	If election to defer to 2019 is attached, check here <input type="checkbox"/>	6d	Amount deferred from 2017	6d
7	Custom hire (machine work) income	7		
8	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	8		
9	Gross income. Add amounts in the right column (lines 1c, 2, 3b, 4b, 5a, 5c, 6b, 6d, 7, and 8). If you use the accrual method, enter the amount from Part III, line 50. See instructions	9		

Part II Farm Expenses—Cash and Accrual Method. Do not include personal or living expenses. See instructions.

10	Car and truck expenses (see instructions). Also attach Form 4562	10			23	Pension and profit-sharing plans	23		
11	Chemicals	11			24	Rent or lease (see instructions):			
12	Conservation expenses (see instructions)	12			a	Vehicles, machinery, equipment	24a		
13	Custom hire (machine work)	13			b	Other (land, animals, etc.)	24b		
14	Depreciation and section 179 expense (see instructions)	14			25	Repairs and maintenance	25		
15	Employee benefit programs other than on line 23	15			26	Seeds and plants	26		
16	Feed	16			27	Storage and warehousing	27		
17	Fertilizers and lime	17			28	Supplies	28		
18	Freight and trucking	18			29	Taxes	29		
19	Gasoline, fuel, and oil	19			30	Utilities	30		
20	Insurance (other than health)	20			31	Veterinary, breeding, and medicine	31		
21	Interest (see instructions)				32	Other expenses (specify):			
a	Mortgage (paid to banks, etc.)	21a			a		32a		
b	Other	21b			b		32b		
22	Labor hired (less employment credits)	22			c		32c		
					d		32d		
					e		32e		
					f		32f		
33	Total expenses. Add lines 10 through 32f. If line 32f is negative, see instructions	33							
34	Net farm profit or (loss). Subtract line 33 from line 9	34							

If a profit, stop here and see instructions for where to report. If a loss, complete lines 35 and 36.

35 Reserved for future use.

36 Check the box that describes your investment in this activity and see instructions for where to report your loss.

a ☐ All investment is at risk. b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 11346H

Schedule F (Form 1040) 2018

Part III Farm Income—Accrual Method (see instructions).

37	Sales of livestock, produce, grains, and other products (see instructions)		37	
38a	Cooperative distributions (Form(s) 1099-PATR)	38a	38b	Taxable amount
39a	Agricultural program payments	39a	39b	Taxable amount
40	Commodity Credit Corporation (CCC) loans:		40a	
a	CCC loans reported under election		40c	Taxable amount
b	CCC loans forfeited	40b	40c	Taxable amount
41	Crop insurance proceeds		41	
42	Custom hire (machine work) income		42	
43	Other income (see instructions)		43	
44	Add amounts in the right column for lines 37 through 43 (lines 37, 38b, 39b, 40a, 40c, 41, 42, and 43)		44	
45	Inventory of livestock, produce, grains, and other products at beginning of the year. Do not include sales reported on Form 4797	45		
46	Cost of livestock, produce, grains, and other products purchased during the year	46		
47	Add lines 45 and 46	47		
48	Inventory of livestock, produce, grains, and other products at end of year	48		
49	Cost of livestock, produce, grains, and other products sold. Subtract line 48 from line 47*		49	
50	Gross income. Subtract line 49 from line 44. Enter the result here and on Part I, line 9		50	

*If you use the unit-livestock-price method or the farm-price method of valuing inventory and the amount on line 48 is larger than the amount on line 47, subtract line 47 from line 48. Enter the result on line 49. Add lines 44 and 49. Enter the total on line 50 and on Part I, line 9.

Part IV Principal Agricultural Activity Codes

Do not file Schedule F (Form 1040) to report the following.

- Income from providing agricultural services such as soil preparation, veterinary, farm labor, horticultural, or management for a fee or on a contract basis. Instead file Schedule C (Form 1040) or Schedule C-EZ (Form 1040).
- Income from breeding, raising, or caring for dogs, cats, or other pet animals. Instead file Schedule C (Form 1040) or Schedule C-EZ (Form 1040).
- Sales of livestock held for draft, breeding, sport, or dairy purposes. Instead file Form 4797.

These codes for the Principal Agricultural Activity classify farms by their primary activity to facilitate the administration of the Internal Revenue Code. These six-digit codes are based on the North American Industry Classification System (NAICS).

Select the code that best identifies your primary farming activity and enter the six-digit number on line B.

Crop Production

- 111100 Oilseed and grain farming
- 111210 Vegetable and melon farming

- 111300 Fruit and tree nut farming
- 111400 Greenhouse, nursery, and floriculture production
- 111900 Other crop farming

Animal Production

- 112111 Beef cattle ranching and farming
- 112112 Cattle feedlots
- 112120 Dairy cattle and milk production
- 112210 Hog and pig farming
- 112300 Poultry and egg production
- 112400 Sheep and goat farming
- 112510 Aquaculture
- 112900 Other animal production

Forestry and Logging

- 113000 Forestry and logging (including forest nurseries and timber tracts)