

# City of Auburn, Maine

*"Maine's City of Opportunity"*

## Office of Planning & Permitting

### REVISED STAFF REPORT

To: Auburn Planning Board

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

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

Date: January 14, 2014

---

#### Staff Evaluation of Text Amendment:

Last month, the Staff submitted a background summary of the text amendment proposed for Agricultural and Resource Protection (AG/RP), Low Density Rural Residential (RR) and Low Density County Residential (CR) zones. The review explained how the text amendment relates to the 2010 Comprehensive Plan and Zoning Ordinance and also raised some issues to consider, possible ways to implement the proposal and finally made some preliminary staff recommendations.

This revised staff report will:

- I. Break down the text amendment into its major features followed by staff comments.
- II. Report on the size and impact of the text amendment on land area and lots.
- III. Raise questions and concerns about the text amendment.
- IV. Offer possible options on how to proceed.
- V. Final Staff Comments

- I. The text amendment was broken down into its major features and numbered with (#).

"We, the undersigned registered voters of the City of Auburn, do herein petition the City of Auburn to amend the Agricultural/Rural Zoning portion of the zoning ordinance (1) **to allow for a residential unit to be transferred from the residentially zoned portion of a parcel to the Agricultural/Rural portion, where a parcel that is located into the AG district land also included residentially zoned land.** (2) **New development would be allowed in this area understanding that the current AG/RP zoning of one unit per 10 acres would be maintained.** Also, the (3) **"best management practices" for storm water management and environmental protection would be maintained to ensure adequate protection of natural**

**resources to ensure that the relocation does not negatively impact natural resources or the agricultural potential of the land. (4) This proposed change would require the land in the residential zone from which a residential unit is transferred to be permanently protected from development through a legally binding preservation measure, such as a conservation easement.”**

The major points of the text amendment are numbered, then followed by staff comments:

1. For lots in the City of Auburn that have split zoning with rural type residential zoning along the road frontage either zoned Low Density County Residential (LDCR) or Low Density Rural Residential (LDRR) and Agricultural/Resource Protection (AG/RP) zoning to the rear, the current right to construct a residential unit in the CR or RR area could be moved to the rear AG/RP portion of the property.

STAFF COMMENTS- This part of the text amendment is seeking flexibility in locating homes on lots with split CR/RR and AG/RP zoning. Currently a residence could only be allowed to be built in the AG/RP zone if the owner meets the 50% income threshold from farming or agricultural activities<sup>1</sup>.

Positive Issues-

- Allowing this text amendment would not increase the density currently allowed under the current zoning.
- Would allow the property owner to be “away from the road” and have more flexibility in siting a residence.

Negative Issues-

- Allowing the text amendment may lead to an increased number of lot splits in the AG/RP zone.
- Potential conflicts of new residences in the AG/RP zone with adjacent farming operations.
- Could potentially create unintended negative environmental or agricultural impacts.
- Would ultimately weaken the current restriction limiting residences in the AG/RP zone.

2. The AG/RP zoned portion of the property where the residential unit was moved to would have to contain over 10 acres.

STAFF COMMENTS- This a reasonable restriction, which coincides with the current AG/RP minimum lot size. If the proposed text amendment is successful, all the other dimensional requirements for the AG/RP zone should apply. A land survey might be required if there is a question as to whether the AG/RP land contains at least 10 acres.

3. If allowed, the siting and construction of the residential unit would be required to use “best management practices” and not cause storm water problems and the siting of the relocated residence would not negatively impact natural resources or agricultural potential.

STAFF COMMENTS- Best management practices or low impact development techniques would be required for the relocated residences, using techniques like bio-swales and rainwater collection or retention containers, which should eliminate storm water problems. A

---

<sup>1</sup> As per Definition of Farming, Zoning Ordinance, pg. 16, and AG/RP Permitted Uses, Sec. 60-172, (a),(1) a-c. pg. 42

thorough site analysis, using criteria for environmental factors such as slope, soils, agricultural values, woodlands, wetlands or rock outcrops; and development factors such as: location, construction and design of driveways, the amount of disturbed areas and grading would all be used in siting the relocated residence. This review process could limit or mitigate negative impacts with regards to the residence and accessory structures. However, the clearing, grading and construction of a long driveway could create potential negative impacts. The longer driveway, while being a privately maintained, could create challenges for emergency vehicles (fire and ambulances) depending on the width of the driveway, its maintenance and weather conditions.

4. The residential portion of the lot that the unit was being transferred from would have to be permanently protected from development by a legally binding preservation measure, such as a conservation easement.

STAFF COMMENTS- The intent of this provision of the text amendment is worthwhile, but the implementation and long term maintenance of a legally binding preservation measure such as conservation easements or deed restrictions would be difficult to manage. Here are some options and associated concerns:

Conservation Easement- This option is the most long term and protective of all land protection techniques. Conservation easements generally are used to permanently protect agricultural land and/or environmentally sensitive areas or areas of high aesthetic values and they tend to be used to protect land that is under development pressure. They are complicated and generally require a Conservation Board or other decision making body to approve the specifics of the proposed easement. A conservation easement program needs a qualified easement holder such as the Land and Nature Trust, American Farmland Trust or local land trust to manage and hold the easement. The easement holder would be responsible for monitoring the easement for the duration of the easement. There would need to be a process of valuing the easement through an appraisal and the value of the easement would have to be donated. The City would not be a good choice to act as a land trust.

Deed Restrictions are restrictions placed the property and recorded on a deed that stays with the property and is privately enforced. In this case, the residentially zoned road frontage would have a deed restriction placed on it prohibiting any future development. Enforcing this restriction could be difficult and could not be done by the city.

Special Exception Conditions- This option would make the proposal a Special Exception in the AG/RP zone and require the applicant to file an application that the Planning Board would then make a decision on. Besides reviewing the normal criteria for Special Exception, additional requirements would be needed to document that the proposed residence relocation would not negatively impact the agricultural potential or natural resources of the property. If approved, the Planning Board would put conditions on the plan to meet the intent of the “permanent preservation measure” of the text amendment.

Site Plan Conditions- One option might be to allow the relocation of the residence as a permitted use in the AG/RP zone. This approach would be the most permissive option and a proposed application would be administrated at through a Staff level, Site Plan review. The Staff would be responsible to review the Site Plan and apply conditions; such as designating non-buildable areas, and other site situations, which could be enforced by the City.

**II. How many properties, total acres and number of units would be eligible under the proposed text amendment?<sup>2</sup>**

Preliminary GIS mapping data indicate that the following statistics for these zones-

Low Density Country Residential Zoning with AG/RP in the rear & 10 acres AG/RP land\*

68 parcels	3,190.04 acres total
25 parcel w/no residences	846.04 acres w/ no residences

Low Density Rural Residential Zoning with AG/RP in the rear & 10 acres AG/RP land\*

110 parcels total	4,722.42 acres total
27 parcels w/ no residences	1,630.40 acres w/ no residences

\*Estimating potential new lots and/or eligible units will require further research.

**III. Staff questions and concerns to consider on the Text Amendment.**

- What impacts would allowing homes into the AG/RP zone have on existing farming operations?
- What impacts would allowing homes into the AG/RP zone have on the property's future land use designation or future development in general?
- Will this text amendment motivate new lot splits in the LDCR and LDRR zones?
- Does this text amendment circumvent the intent of the AG/RP zone?
- Is the impetus and relevance for the text amendment a community-wide concern or an individual property concern?
- What is the purpose of the AG/RP zone restrictions on new home construction? Is it to promote agriculture or to reserve land for future development?
- Should both rural residential zones (LDCR, LDRR) be considered or applied equally under the proposed text amendment?

**IV. Possible options or alternatives for the Planning Board to consider**

- A. Recommend disapproval. Do nothing. The option would keep things as they are. Make changes to the Comprehensive Plan if necessary.
- B. Planning Board decides the text amendment is worth pursuing as a permitted use. This approach would make the proposal a Staff responsibility to administer. Recommend staff develop more details and report back to Planning Board.
- C. Planning Board decides the text amendment is worth pursuing as a special exception and site plan review. This would involve a stringent application and review process. Recommend Staff develop more details and report back to Planning Board.
- D. Planning Board needs more information to make a decision on what to do with the text amendment and directs the Staff to research other planning tools that limit development and to develop specific text to meet the intent of the petition

---

<sup>2</sup> Agriculture/Resource Protection (AG/RP) zone requires 10 ac. minimum lot size, 250' frontage  
Low Density Country Residential (LDCR) zoning requires 3 acre minimum lot size, 325' frontage  
Low Density Rural Residential (LDRR) zoning requires 1 acre minimum lot size, 250' frontage

V. **Final Staff Comments and Recommendation-** The main focus of the proposed text amendment is to allow flexibility in locating a site for a residence in an AG/RP zone.

**Staff Recommends DISAPPROVAL due to:**

- The amount of information required for an individual application for Staff and Planning Board to make a reasonable decision.
- The Staff time needed to properly analyze and evaluate where a residence would be located in the AG/RP zone without negatively impacting agricultural or environmental assets.
- Concerns of potential conflicts with adjacent agricultural operations.
- Potential problems in delivering fire and emergency services for residences with long private driveways.
- Not consistent with the 2010 Comprehensive Plan and would weaken the City's policy on protecting against sprawl in the AG/RP zone.
- The current depth of most LDCR and LDRR type residential zones is 450 feet from a road, which is an adequate area to locate a residence.

