



# **AUBURN PLANNING BOARD MEETING**

**February 11, 2014**

## **Agenda**

**6:00 P.M. - City Council Chambers (Auburn Hall)**

### **ROLL CALL**

### **MINUTES:**

Approval request of the January 14, 2014 Planning Board meeting minutes

### **PUBLIC HEARINGS:**

Planning Board Public Hearing on a proposal to amend the City Of Auburn Zoning Ordinance, Chapter 60, Section 60-172.a (1) to modify the restriction on residential homes in the Agriculture and Resource Protection District pursuant to Article IV, Division 3- Use Regulations of the City of Auburn Ordinances

### **OLD BUSINESS:**

None

### **MISCELLANEOUS:**

Discussion on Revised Planning Board By-Laws and Procedures.

### **ADJOURNMENT**



# **PLANNING BOARD HANDBOOK**

**Adopted: \_\_\_\_ / \_\_\_\_ / 2012**

(Note: This material is based on the City of Lewiston's Planning Board Handbook)

# **PLANNING BOARD HANDBOOK**

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- II. Project Submittal: Standard Operating Procedures**
- III. Public Procedures and Freedom of Access Act (FOAA, Maine’s Sunshine Law)**
- IV. Ethical Principles in Planning**

ALL ORDINANCE PROVISIONS GOVERNING AND REGULATING DEVELOPMENT ACTIVITY IN THE CITY OF AUBURN, AS REVIEWED BY THE PLANNING AND CODE ENFORCEMENT DEPARTMENT, PLANNING BOARD AND ZONING BOARD OF APPEALS ARE CONTAINED IN CHAPTER 60 OF THE CITY’S CODE OF ORDINANCES OF, ENTITLED “ZONING.”

# **I. Planning Board:** ***General Information***<sup>1</sup>

## **A. Planning Board Constitution**

### Section 3.1 Membership: appointment, removal, terms, vacancies

(a) There shall be a Planning Board of seven (7) members. Members of the Planning Board shall be residents of the City and shall not be officers or employees of the City. Persons appointed by the City Council to serve on other boards, agencies, panels, and/or commissions shall not serve concurrently on the Planning Board.

(b) Members shall serve without compensation.

(c) Members of the Planning Board shall be appointed by the City Council for terms of three (3) years. Such terms shall be staggered so that the term of not more than three (3) members shall expire in any calendar year. Incumbent members of the Planning Board shall serve for the balance of their terms and thereafter until their successors are appointed.

(d) Permanent vacancies on the Planning Board shall be filled by the City Council for the unexpired term of the former member.

(e) Any member of the Planning Board may be removed for cause by the City Council at any time; provided, however, that before removal such members shall be given an opportunity to be heard in his or her own defense at a public hearing before the City Council.

### Section 3.2 Chairperson and Vice-Chairperson

(a) The members of the Planning Board shall annually elect one of their number as chairperson to preside at all meetings and hearings, and another of their number as vice-chairperson.

(b) In the absence of the chairperson, the vice-chairperson shall act as chairperson and shall have all the powers of the chairperson.

## **B. Record Keeping**

### Section 3.3 Staff Secretary: minutes, public records

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<sup>1</sup> Excerpted from Article III, Chapter 16, previous Code of City Ordinances, as revised (*adoption of grammatical revisions and codification of entirety pending*), Part II, Chapter 60 (*Zoning*) of the current Code of Ordinances, and Maine Revised Statutes.

(a) The City Planner shall designate a member of his staff who shall serve as Staff Secretary of the Planning Board and attend all of its proceedings.

(b) The Staff Secretary shall provide for the keeping of minutes of the proceedings of the Planning Board, noting the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all Planning Board meetings, hearings, and proceedings and all correspondence of the Planning Board.

### **C. Meetings, Hearings & Other Procedures**

#### **Section 3.4 Quorum and necessary vote**

(a) As to any matter requiring a public hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four (4) members, being present. The concurring vote of at least four (4) members shall be necessary to authorize any action by the Board. If the requisite votes are not present the matter shall be tabled.

(b) If less than a quorum is present, the hearing may be adjourned. The Staff Secretary shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

#### **Section 3.5 Meetings, hearings and procedures**

(a) Regular meetings of the Planning Board shall be held at the call of the chair or as provided by rule of the Board. Special meetings may be called by any four (4) members of the Planning Board, or at the request of the City Council. Testimony at any hearing may be required by the Planning Board to be given under oath.

(b) The Planning Board shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the State of Maine and this chapter. Such rules shall be filed with the Staff Secretary of the Planning Board and with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of Maine or by the City Council or by this chapter, may be waived by the chairperson upon good cause being shown.

#### **Section 3.6 Workshop or informational meetings**

(a) Informal meetings or workshops of the Planning Board or any of its committees may be held at the call of any of its members or the City Planner, as the case may be, for the presentation of information.

### **D. Record and Decisions**

#### **Section 3.7 Record and decisions**

(a) The minutes of the Staff Secretary, and any transcript of the proceedings, and all exhibits, papers, applications and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.

(b) Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation.

(c) The Staff Secretary shall mail notice of any decision of the Board to the applicant and any designated interested parties within five (5) business days of such decision.

### **E. Conflicts of Interest**

#### Section 3.8 Conflicts

(a) No member of the Planning Board shall participate in the hearing or disposition of any matter in which he or she has a pecuniary interest. Any question of whether a member has a conflict of interest sufficient to disqualify the member shall be decided by a majority vote of the members present, except the members whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be disqualified.

### **F. Legal Appeal**

See, Part II, Chapter 60, Division 5, Sec. 1208, Auburn Code of Ordinances: (*Zoning; Judicial Appeal; Superior Court*); See also, Part II, Chapter 60, Division 5, Sec. 1381, Auburn Code of Ordinances: (*Zoning; Appeals and Applicability; Appeals*)

Appeals from decisions of the city planning board. . . shall be taken to the superior court within 30 days of such decision or action in accordance with Rule 80B of the Maine Rules of Civil Procedure and 30-A M.R.S.A. Section 2691(3). Except as otherwise provided by statute, every person shall have the right to inspect and copy and record of the board's proceedings, provided that, the inspection be scheduled to occur during regular hours and at such a time as will not inconvenience the regular activities of the office having custody of the record and provided further that the cost of copying the recorded or, if necessary, the translation of mechanical or electronic data compilations into some other form, shall be paid by the person requesting the copy.

### **G. Supplemental Jurisdiction; Committees**

#### Section 3.10 JURISDICTION AND AUTHORITY

(a) In addition to the jurisdiction conferred on it by other provisions of State law and the ordinances of the City and in accordance therewith, the Planning Board shall have the following jurisdiction and authority:

- (1) To prepare and recommend to the City Council, a comprehensive plan.

- (2) To prepare and recommend to the City Council changes in and amendments to the comprehensive plan as necessary
- (3) To aid and assist the City Council and departments and agencies of the City in implementing general plans and in planning, developing and completing specific planning related projects.
- (4) To hear, review, and approve or deny applications for subdivision approval as provided in Chapter 23 of these ordinances.
- (5) To hear, review, and offer its recommendations to the City Council on applications for zoning changes and amendments to, or revisions of, the zoning ordinance, and to initiate recommendations for zoning changes and amendments to, or revisions of, the zoning ordinance as necessary.
- (6) To review and offer its recommendations to the City Council on public planning related projects.
- (7) \* To offer its recommendations to the City Council with regard to the compatibility of the City Manager's proposed capital improvements program with the Comprehensive Plan.
- (8) To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the City as it deems desirable.

Section 3.11 PLANNING BOARD COMMITTEES

- (a) The chairperson of the Planning Board shall from time to time assign the members of the Board to such regular and special committees as may be established by the Board. Such committees shall have no final authority but shall assist the Board in the conduct of its business by making recommendations to its concerning such specific items as may be assigned to them for study and report.

## **II. Project Submittal:** **Standard Operating Procedures,** *Staff Generated*

### A. Introduction

The Auburn Planning Board conducts public meetings every 2<sup>nd</sup> Tuesday of each month, and holds workshops every 4<sup>th</sup> Tuesday of each month. The Planning Board reviews all large development proposals, uses that require ‘special exceptions,’ proposed amendments to the City’s Code of Ordinances, and Zoning changes proposed. Each case needs to have the following steps completed:

1. DEVELOPMENT APPLICATION:

Developer / Applicant needs to submit a formal application including plans, application form, abutters list, project narrative, fees and in some cases stormwater management plans and traffic surveys. The application must include twenty (20) copies of the entire development proposal and shall not be filed less than thirty (30) days prior to a regularly scheduled meeting. Plans shall be folded at a size not to exceed 8-1/2 x 11 inches.

2. DISTRIBUTION OF PROPOSALS:

On the Monday following the submittal deadline, the applications need to be distributed to the various City departments for their review and comment. Copies of development proposals go to the following individuals: Gary Johnson (Engineering Department); Gary Simard (Auburn Fire Department); Phil Crowell (Auburn Police Department); Sid Hazelton (Highway); and Norm Lamie (Auburn Water District). Subdivision proposals shall also be sent to Cheryl Dubois (Tax) and Pete Bushway (Parks). These individuals are collectively known as the Project Review Group (PRG).

3. PRG MEETING:

On The 3<sup>rd</sup> Wednesday of the month, a meeting is held in council chambers to discuss the proposals and to hear comments, concerns or development conditions.

4. PUBLIC NOTICE:

Development applications being reviewed by the Planning Board require public notice in the newspaper and to property owners within five-hundred (500) feet of the development proposal. The newspaper notification requires two (2) postings. The first notice at least twelve (12) days before the hearing

and the second notice at least seven (7) days before the hearing. Each notice shall state the time, date, place and general subject to be heard. Abutters shall be mailed a notice of a Public Hearing on an application for subdivision, site plan and/or special exception approval and amendments for Chapter 60 (Zoning) at least fourteen (14) days prior to the hearing. The notice shall state the time, date, place, the general subject to be heard and a responsible party to be contacted for further information.

5. PLANNING BOARD PACKETS:

Prior to the public hearing, packets must be put together and distributed to the Planning Board. The packets should include: an agenda; minutes from previous the meeting; copies of the development applications under review; and a Staff Report.

6. PUBLIC HEARING:

The Planning Board will hold a public hearing on the second Tuesday of each month. During hearings, Staff will make a presentation, record the hearing, and take notes.

7. NOTIFICATION OF ACTION:

After a public hearing, an applicant shall be sent a letter of action taken (approval or denial of the project submittal), which shall include any conditions of approval.

8. HEARING MINUTES:

Hearing minutes must be typed up prior to the following month's public hearing. Eric will review the minutes for the correctness / content and will sign thereafter.

9. FILES:

Two (2) case files containing the application, minutes, Staff Report, Project correspondence, approval letter, etc. shall be made. One copy will be filed in the Special Exception / Subdivision by address (SE) or name (Subdivision) filing cabinets. The second file will be a "public hearing" case file and will include all cases that went before the Planning Board that particular month and will include the application, minutes (typed and written), Staff Report, and action-taken letter. The tape recording of the hearing will be filed by date. Sharon also made up a hearing book that was updated monthly by type of project.

### III. Public Procedures and Freedom of Access Law (Maine Public Right to Know Law)

#### Maine Revised Statute Title 1, Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

A portion of which acquired from

<http://www.mainelegislature.org/legis/statutes/1/title1ch13.rtf> on January 4, 2011.

#### Subchapter 1: FREEDOM OF ACCESS

### 1 §401. DECLARATION OF PUBLIC POLICY; RULES OF CONSTRUCTION

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. [1975, c. 758, (RPR) .]

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter. [2011, c. 320, Pt. B, §1 (NEW) .]

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. [1975, c. 758, (RPR) .]

#### SECTION HISTORY

1975, c. 483, §1 (AMD). 1975, c. 758, (RPR). 2011, c. 320, Pt. B, §1 (AMD) .

### 1 §402. DEFINITIONS

**1. Conditional approval.** Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

[ 1975, c. 758, (NEW) .]

**1-A. Legislative subcommittee.** "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[ 1991, c. 773, §1 (NEW) .]

**2. Public proceedings.** The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; [1975, c. 758, (NEW) .]

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or

other political or administrative subdivision; [1991, c. 848, §1 (AMD) .]

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1995, c. 608, §1 (AMD) .]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [2009, c. 334, §1 (AMD) .]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [2009, c. 334, §2 (AMD) .]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

- (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and
- (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [2009, c. 334, §3 (NEW) .]

[ 2009, c. 334, §§1-3 (AMD) . ]

**3. Public records.** The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute; [1975, c. 758, (NEW) .]

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [1975, c. 758, (NEW) .]

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (AMD) .]

C-1. Information contained in a communication between a constituent and an elected official if the information:

- (1) Is of a personal nature, consisting of:
  - (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
  - (b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official; [2011, c. 264, §1 (NEW) .]

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; [1989, c. 358, §4 (AMD) .]

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF) .]

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [1991, c. 448, §1 (AMD) .]

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; [1995, c. 608, §4 (AMD) .]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD) .]

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization; [2001, c. 675, §1 (AMD) .]

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; [2003, c. 392, §1 (AMD) .]

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical

damage sufficient to disrupt the normal functioning of a critical infrastructure; [2003, c. 614, §1 (AMD) .]

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure; [2005, c. 381, §1 (AMD) .]

N. Social security numbers ; [2011, c. 320, Pt. E, §1 (AMD) .]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [2009, c. 1, §1 (COR) .]

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; [2011, c. 149, §1 (AMD) .]

*(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q)*

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; and [2011, c. 149, §2 (AMD) .]

R. Social security numbers in the possession of the Secretary of State. [2011, c. 149, §3 (NEW) .]

[ 2011, c. 149, §§1-3 (AMD); 2011, c. 264, §1 (AMD); 2011, c. 320, Pt. E, §1 (AMD) .]

**3-A. Public records further defined.** "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough; [1997, c. 714, §1 (NEW) .]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and [2001, c. 477, §1 (AMD) .]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [2001, c. 477, §1 (AMD) .]

[ 2001, c. 477, §1 (AMD) .]

**4. Public records of interscholastic athletic organizations.** Any records or minutes of meetings under subsection 2, paragraph G are public records.

[ 2009, c. 334, §4 (NEW) .]

## SECTION HISTORY

1973, c. 433, §1 (AMD). 1975, c. 243, (RPR). 1975, c. 483, §2 (AMD). 1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD). 1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1 (AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358, §§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD). 1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1 (AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96, §§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 392, §§1-3 (AMD). 2003, c. 614, §§1-3 (AMD). 2005, c. 381, §§1-3 (AMD). 2007, c. 597, §1 (AMD). RR 2009, c. 1, §§1-3 (COR). 2009, c. 176, §§1-3 (AMD). 2009, c. 334, §§1-4 (AMD). 2009, c. 339, §§1-3 (AMD). 2011, c. 149, §§1-3 (AMD). 2011, c. 264, §1 (AMD). 2011, c. 320, Pt. E, §1 (AMD).

## 1 §402-A. PUBLIC RECORDS DEFINED

*(REPEALED)*

## SECTION HISTORY

1975, c. 483, §3 (NEW). 1975, c. 623, §1 (RPR). 1975, c. 758, (RP).

## 1 §403. MEETINGS TO BE OPEN TO PUBLIC; RECORD OF MEETINGS

**1. Proceedings open to public.** Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

[ 2011, c. 320, Pt. C, §1 (NEW) .]

**2. Record of public proceedings.** Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

A. The date, time and place of the public proceeding; [2011, c. 320, Pt. C, §1 (NEW) .]

B. The members of the body holding the public proceeding recorded as either present or absent; and [2011, c. 320, Pt. C, §1 (NEW) .]

C. All motions and votes taken, by individual member, if there is a roll call. [2011, c. 320, Pt. C, §1 (NEW) .]

[ 2011, c. 320, Pt. C, §1 (NEW) .]

**3. Audio or video recording.** An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

[ 2011, c. 320, Pt. C, §1 (NEW) .]

**4. Maintenance of record.** Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

[ 2011, c. 320, Pt. C, §1 (NEW) .]

**5. Validity of action.** The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

[ 2011, c. 320, Pt. C, §1 (NEW) .]

**6. Advisory bodies exempt from record requirements.** Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

[ 2011, c. 320, Pt. C, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 293, (AMD). 1975, c. 422, §1 (AMD). 1975, c. 758, (RPR). 2009, c. 240, §1 (AMD). 2011, c. 320, Pt. C, §1 (RPR).

## 1 §404. RECORDED OR LIVE BROADCASTS AUTHORIZED

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter. [1975, c. 758, (RPR) .]

#### SECTION HISTORY

1975, c. 422, §2 (RPR). 1975, c. 483, §4 (AMD). 1975, c. 758, (RPR) .

### 1 §404-A. DECISIONS

*(REPEALED)*

#### SECTION HISTORY

1973, c. 433, §2 (NEW). 1973, c. 704, §§1,2 (AMD). 1975, c. 758, (RP) .

## 1 §405. EXECUTIVE SESSIONS

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [1975, c. 758, (NEW) .]

**1. Not to defeat purposes of subchapter.** An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

[ 2009, c. 240, §2 (AMD) .]

**2. Final approval of certain items prohibited.** An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

[ 2009, c. 240, §2 (AMD) .]

**3. Procedure for calling of executive session.** An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[ 2009, c. 240, §2 (AMD) .]

**4. Motion contents.** A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an

executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

[ 2003, c. 709, §1 (AMD) .]

**5. Matters not contained in motion prohibited.** Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

[ 2009, c. 240, §2 (AMD) .]

**6. Permitted deliberation.** Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [2009, c. 240, §2 (AMD) .]

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [2009, c. 240, §2 (AMD) .]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [1987, c. 477, §3 (AMD) .]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [1999, c. 144, §1 (RPR) .]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [2009, c. 240, §2 (AMD) .]

F. Discussions of information contained in records made, maintained or received by a body or agency when

access by the general public to those records is prohibited by statute; [1999, c. 180, §1 (AMD) .]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [1999, c. 180, §2 (AMD) .]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [1999, c. 180, §3 (NEW) .]

[ 2009, c. 240, §2 (AMD) .]

#### SECTION HISTORY

1975, c. 758, (RPR). 1979, c. 541, §A3 (AMD). 1987, c. 477, §§2,3 (AMD). 1987, c. 769, §A1 (AMD). 1999, c. 40, §§1,2 (AMD). 1999, c. 144, §1 (AMD). 1999, c. 180, §§1-3 (AMD). 2003, c. 709, §1 (AMD). 2009, c. 240, §2 (AMD) .

### **1 §405-A. RECORDED OR LIVE BROADCASTS AUTHORIZED**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP) .

### **1 §405-B. APPEALS**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP) .

### **1 §405-C. APPEALS FROM ACTIONS**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP) .

### **1 §406. PUBLIC NOTICE**

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding. [1987, c. 477, §4 (AMD) .]

#### SECTION HISTORY

1975, c. 483, §6 (AMD). 1975, c. 758, (RPR). 1987, c. 477, §4 (AMD) .

## 1 §407. DECISIONS

**1. Conditional approval or denial.** Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

[ 1975, c. 758, (NEW) .]

**2. Dismissal or refusal to renew contract.** Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

[ 2009, c. 240, §3 (AMD) .]

### SECTION HISTORY

1975, c. 758, (NEW) . 2009, c. 240, §3 (AMD) .

## 1 §408. PUBLIC RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING

**1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.

[ 2007, c. 501, §1 (AMD) .]

**2. Inspection, translation and copying scheduled.** Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.

[ 2003, c. 709, §2 (NEW) .]

**3. Payment of costs.** Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. [2003, c. 709, §2 (NEW) .]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. [2003, c. 709, §2 (NEW) .]

C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. [2003, c. 709, §2 (NEW) .]

D. An agency or official may not charge for inspection. [2003, c. 709, §2 (NEW) .]

[ 2003, c. 709, §2 (NEW) .]

**4. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies.

[ 2003, c. 709, §2 (NEW) .]

**5. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:

- A. The estimated total cost exceeds \$100; or [2003, c. 709, §2 (NEW) .]
- B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [2003, c. 709, §2 (NEW) .]

[ 2003, c. 709, §2 (NEW) .]

**6. Waivers.** The agency or official may waive part or all of the total fee if:

- A. The requester is indigent; or [2003, c. 709, §2 (NEW) .]
- B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [2009, c. 240, §4 (AMD) .]

[ 2009, c. 240, §4 (AMD) .]

#### SECTION HISTORY

1975, c. 758, (NEW). 2003, c. 709, §2 (RPR). 2007, c. 501, §1 (AMD). 2009, c. 240, §4 (AMD).

## 1 §409. APPEALS

**1. Records.** If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

[ 2009, c. 240, §5 (AMD) .]

**2. Actions.** If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

[ 2007, c. 695, Pt. C, §1 (AMD) .]

**3. Proceedings not exclusive.** The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

[ 2009, c. 240, §6 (AMD) .]

**4. Attorney's fees.** In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

[ 2009, c. 423, §1 (NEW) .]

#### SECTION HISTORY

1975, c. 758, (NEW). 1987, c. 477, §5 (AMD). 2007, c. 695, Pt. C, §1 (AMD).  
2009, c. 240, §§5, 6 (AMD). 2009, c. 423, §1 (AMD).

## 1 §410. VIOLATIONS

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged. [1987, c. 477, §6 (RPR) .]

#### SECTION HISTORY

1975, c. 758, (NEW). 1987, c. 477, §6 (RPR) .

## **IV. Ethical Principles in Planning**

(Adopted May 1992 by the American Planning Association and acquired from <http://www.planning.org/ethics/ethicalprinciples.htm> on January 4, 2012)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

**The planning process must continuously pursue and faithfully serve the public interest.**

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;

2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

**Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.**

Planning Process Participants should:

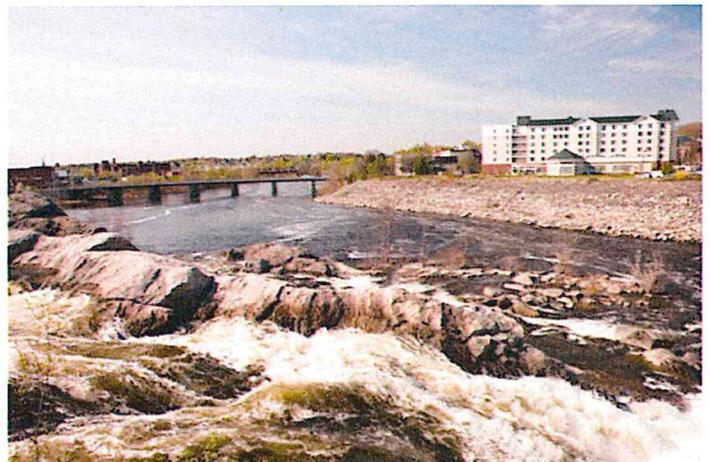
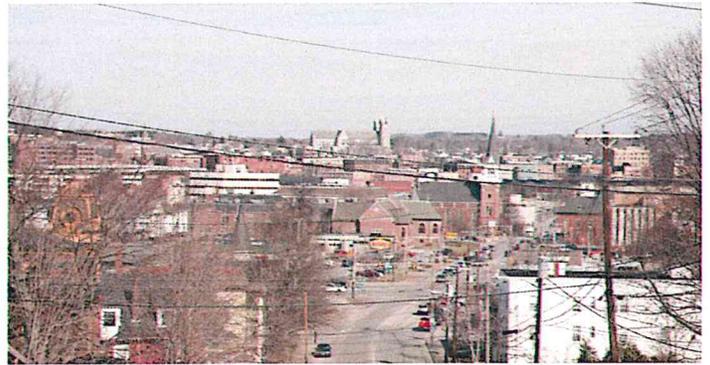
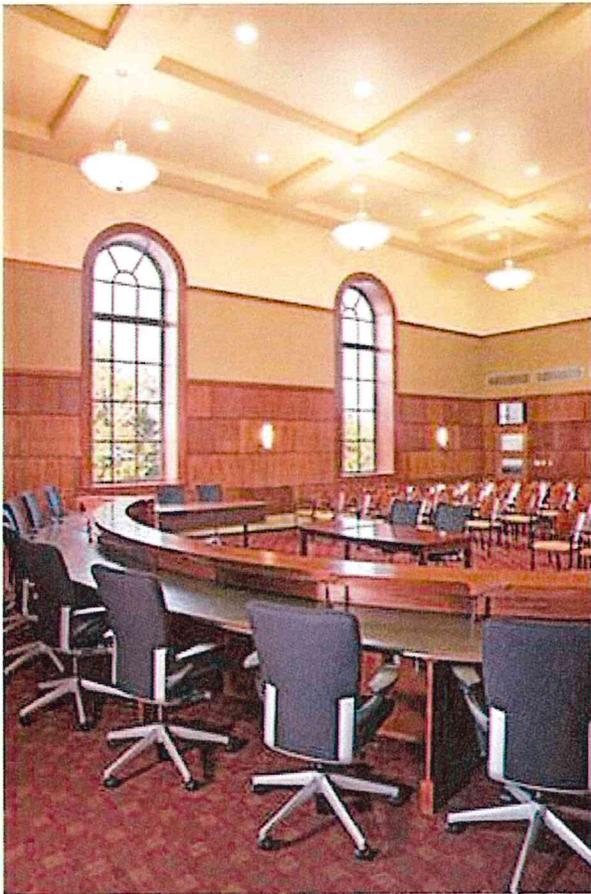
1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation

commence earlier than one year following termination of the role as advisor or decision maker;

9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.



# City of Auburn Planning Board Workbook 2014



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# **BYLAWS OF THE CITY of AUBURN, MAINE PLANNING BOARD**

## **Article I. Name**

The name of this Board shall be the City of Auburn Planning Board.

## **Article II. Enabling Authority**

The Auburn City Planning Board is established by Auburn City Charter, section \_\_\_\_\_, Auburn Code, Chapter 60, the Maine Planning and Land Use Law, Title 12 as \_\_\_\_\_ amended.

## **Article III. Purpose, Objectives, and Duties**

### **Section 1. Purpose:**

The purpose of the Auburn City Planning Board ("Board") is to exercise the powers and duties established by the enabling authority cited in Chapter 60 of these bylaws and any other powers or duties established by state or local law.

### **Section 2. Limitations:**

The Board shall be limited to performing the tasks enumerated in these bylaws or otherwise delegated to it by state law, City Charter or City Code.

### **Section 3. Advice to City Council:**

The Board shall advise the City Council on matters relating to the physical and environmental development of the City. Its recommendations shall consider the impact which such development shall have on the physical, social, economic, and environmental condition of the City.

### **Section 4. Reports and Recommendations to City Council-**

The Board shall furnish the City Council with reports and recommendations on ordinances, ordinance amendments, annexations, zonings, resolutions, or any other matters requested by City Council, or which are deemed important by the Board for the orderly development of the City.

### **Section 5. Annual Report to City Council-**

The Board shall make an annual written report to City Council concerning the Board's operations and the status of planning activities, including recommendations regarding actions by City Council related to planning and development.

### **Section 6. CIP Recommendations to City Council-**

The Board shall make recommendations to the City Council on the annual Capital Improvements Plan (CIP).

### **Section 7. Planning Board Role in Comprehensive Plan-**

The Board shall advise City Council in the preparation and continuance of the Comprehensive Plan, the Plan being a guide for the future development of the City. The Board shall hold public hearings as may be required by law for the adoption of the Master Plan. It may also hold other hearings with interested groups or individuals in arriving at its recommendations.

**Section 8. Annual Review of Comprehensive Plan-**

The Board, in January of each year, shall review the adopted sections of the Comprehensive Plan and determine if changes should be considered. A public hearing shall also be scheduled to allow citizens the opportunity to suggest changes. The primary purpose of this annual review is to identify policies that should be studied for possible change or new policies that should be added to the Comprehensive Plan. These policies shall be considered for inclusion in the work program for the coming fiscal year. The Board shall also consider in its review those policies or proposals that should be given special consideration in the preparation of the annual Capital Improvements Plan.

**Section 9. Other Recommendations-**

The Board may make recommendations to other governmental or private entities.

**Article IV Membership**

**Section 1. Membership Number and Representation-**

The Board shall consist of seven (7) members and two (2) associate members, nominated by the Mayor and approved by City Council. The Mayor shall appoint persons who, insofar as possible, represent different professions and occupations having an interest in the growth and development of the city. The membership shall be representative of important segments of the community, such as the economic, governmental, educational, and social development of the local unit of government, in accordance with the major interests as they exist in the local unit of government, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire geography of the local unit of government to the extent practicable.

**Section 2. No Compensation-**

Members of the Board shall serve without compensation.

**Section 3. Appointments and Term Limits-**

All members of the Board shall be appointed for a three (3)-year term. Members of the Board shall not serve more than three (3) consecutive terms without stepping down for a three (3) year period. Such terms shall be staggered so that the term of not more than three (3) members shall expire in any calendar year.

**Section 4. Residency Requirement-**

All members of the Planning Board shall be registered electors in the City of Auburn.

**Section 5. Filling Vacancies-**

Vacancies of Planning Board members shall be filled by the City Council for the unexpired term and shall remain as members until that term has expired.

**Section 6. Notification of Term Expirations-**

The Director of Planning and Permitting shall notify City Clerk at least thirty (30) days prior of the expiration of a member's term. The City Clerk shall present to City Council all proposed reappointments or new Planning Board applicants no later than sixty (60) days after the expiration of the term.

**Section 7. Attendance-**

Members are expected to attend regularly scheduled meetings and shall notify the Chair and the Department of Planning and Permitting Staff Secretary in advance if they expect to be tardy or absent. The Staff Secretary shall maintain attendance records and shall report to the Chair if an attendance problem appears to have developed. If a member misses, without notice, more than three (3) regularly scheduled meetings in a row or four (4) or more meetings in a sixteen (16) month period, the Chair shall notify City Council. The Board officers may discuss the matter with the member in question and if sufficient improvement in attendance does not occur within a reasonable time, the Chair may recommend to City Council that the member be removed.

**Section 8. Removal from Board-**

A member of the Planning Board may be removed by the City Council for misfeasance, malfeasance, or nonfeasance in office following written charges, notice, and a hearing, however, before removal, such member shall be given an opportunity to be heard in his or her defense at a public meeting before the City Council.

**Article V- Ethics and Conflicts of Interest**

**Section 1. Conflict of Interest Defined-**

A member of the Board shall abstain from discussion, voting, or otherwise acting on any matter where that member is involved in a conflict of interest. A conflict of interest shall at a minimum include, but not necessarily be limited to, a member:

- a. Discussing, voting on, or otherwise acting on a matter directly and specifically involving that member.
- b. Discussing, voting on, or otherwise acting on a matter involving work on property, which is owned by that member or which is adjacent to property owned by that member.
- c. Discussing, voting on, or otherwise acting on a matter directly involving a corporation, company, partnership, or any other entity in which that member is an owner, board member, or otherwise has a direct financial interest.
- d. Discussing, voting on, or otherwise acting on a matter, the outcome of which may result in a direct financial or other benefit to that member or to immediate family of that member.
- e. Discussing, voting on, or otherwise acting on a matter where the member's employee or employer is:
  - (1) An applicant or agent for an applicant, or
  - (2) Has a direct interest in the outcome.

**Section 2. Member Response to Conflict of interest-**

When a conflict of interest exists with regard to a particular matter, the member of the Planning Board who is subject to the conflict, shall do all of the following immediately, upon first knowledge or realization that a conflict exists:

- a. At the next meeting of the Board or a committee, declare that a conflict exists and that the member will recuse him or herself from the matter.

- b. Disclose, except where it violates a confidence, the general nature of the conflict, and the minutes shall so record the conflict and recusal
- c. Cease to participate in any manner when the matter is discussed, voted on, or otherwise acted on at Board or committee meetings, or in any other forum.
- d. During deliberation of the matter before the Board or a committee, leave the meeting or the area where members of the Board sit, until action on the matter is concluded.

**Section 3. Disclosure-**

When there is a potential conflict of interest, prior to any deliberation on an application, the member shall disclose all pertinent facts relating to the potential conflict, except where it violates a confidence, and those facts shall be included in the minutes of the proceedings. A member must make this disclosure whenever the member may reasonably be considered to have a conflict. Failure of a member to disclose a potential conflict under this section constitutes malfeasance in office and is grounds for removal by City Council.

**Section 4. Raising of Question-**

If facts are presented which raise the question of whether any member(s) of the Board are subject to a conflict of interest, the question may be decided by a majority vote of the remaining members of the Board. Upon a finding that a conflict exists, the member(s) subject to the conflict shall be disqualified from voting on the matter.

**Section 5. Prohibition of Gifts-**

A member of the Board shall neither solicit nor accept gratuities, favors, gifts, or anything of monetary value from persons or entities in a position to benefit from a decision of the Board.

**Section 6. Annual Disclosure-**

Every January, members of the Board shall complete an annual disclosure of employer and any other organization affiliations that reasonably could lead to a conflict of interest and shall update this disclosure in writing at any time during the year when such affiliations change.

**Section 7. Outside Communication (Ex Parte)**

Members of the Board shall make reasonable efforts to avoid individual communications with interested parties regarding site specific proposals or site petitions before the Board. If a member receives such communications, the member shall make note of the content of the communication and report it to the Board at a public meeting or hearing, so that every member of the Board and other interested parties attending are made aware.

**Section 8. Recusal-**

A Planning Board shall recuse themselves, if they act as a petitioner, representative of a petitioner, or as a party interested in a petition during the member's term of office.

**Section 9. City Council Activity-**

A member of the City Council shall not be heard before the Board as a petitioner, representative of a petitioner or as a party interested in a petition during the Council member's term of office.

**Section 10. Representation-**

A Board member, when speaking to individuals, groups or organizations on planning matters, shall identify him/herself as a member of the Board and shall indicate whether he/she speaks on behalf of the Board or in an individual capacity. A member of the Board may only speak on behalf of the Board after being given authority to do so by resolution of the Board.

**Section 11. Separation from City Actions-**

The Board or its individual members shall not intrude into the management of the City Department of Planning and Permitting or into those matters which are handled administratively within City Government.

**Section 12. Conflict from Employment or Affiliation-**

Board members shall not engage in any employment or endeavor, or in any business transaction, wherein the membership on the Board would be a qualification for such employment or endeavor, or a significant reason for the business transaction.

**Section 13. General Board Behavior-**

Board members shall carry out the business of the Board as a public service and shall conduct themselves at all times in a fair, courteous, and understanding manner.

**Article VI- Officers**

**Section 1. Positions-**

The officers shall be a Chair and Vice-Chair.

**Section 2. Chair Leadership of Meeting and Points of Order-**

The Chair shall preside at all meetings and hearings of the Board and shall decide points of order and procedure, subject to the provisions of these bylaws.

**Section 3. Chair Leadership of Discussion and Voting-**

The Chair shall have the privilege of leading and controlling the discussion of all matters before the Board and to vote thereon.

**Section 4. Role of Vice Chair-**

The Vice-Chair shall act for the Chair in the Chair's absence.

**Section 5. Duties of Staff Secretary-**

The Director of Planning and Permitting shall designate a member of his or her staff to act as Staff Secretary of the Planning Board and shall attend all meetings. The Staff Secretary shall provide for the keeping of minutes; noting the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent record and decisions of all Planning Board meeting, hearings, proceedings and all correspondence of the Planning Board

**Section 6. Timing of Elections-**

The election of officers shall be held at the first regular meeting in July, provided that if that meeting should occur not occur in July, the election of officers shall be held at the next regular meeting.

**Section 7. Nomination of Officers-**

Nominations of officers shall be made from the floor, and the election shall be held immediately thereafter. Voting shall be by secret ballot when more than one candidate has been nominated for the office. If only one candidate has been

nominated for the office, the election may proceed on a voice vote at the discretion of the Chair.

**Section 8. Election of Officers-**

A candidate receiving a majority vote of the entire membership of the Board shall be declared elected and shall serve a term of one (1) year or until the candidate's successor shall take office.

**Section 9. Vacancies-**

When an office becomes vacant before the expiration of the current term, the vacancy shall be filled as soon as practicable. The vacant office shall be filled by election in the same manner as full-term offices and the new officer shall serve the remainder of the current term. A member currently serving in another office may be elected to a vacant office, in which case a replacement for that member's previous office shall be elected at the same time.

**Section 10. Term Limits for Officers-**

No member of the Board shall hold the same office for more than two (2) successive terms, nor hold more than one (1) office at a time.

**Article VII- Meetings**

**Section 1. Schedule-**

The Board shall schedule regular meetings at City Hall, or as otherwise designated by resolution, on the second Tuesday of the month, in the evening. Board meetings may be scheduled on other days of the week to avoid conflicts with rescheduled City Council meetings, holiday observances or election dates. Consistent with the Open Meetings Law, the entire schedule of regular meetings for the upcoming organizational year shall be posted within ten (10) days after the end of the current organizational year. If there is a change in the schedule of regular meetings, notice of the change shall be posted within three (3) days after the meeting at which the change is made.

**Section 2. Length of Meeting-**

No agenda item will be taken up by the Board after 10:00 p.m., except by the consent of four (4) Board members present. In those cases where agenda items are not completed, they will be put forward to the next regular meeting of the Board and placed first on the agenda.

**Section 3. Special Meetings and Notice-**

Special meetings may be called by the Chair or any four (4) members of the Board. The purpose of the special meeting shall be stated in the public notice for that meeting. At the special meeting, The Board may not conduct any business beyond the specific purpose stated in the public notice, except by unanimous consent of the members present. Public notice of the special meeting shall be posted at least twenty-four (24) hours prior to the scheduled starting time.

**Section 4. Work Sessions and Notice-**

The Board may hold non-voting working sessions to carry on the work of the Board. Public notice of the working session shall be posted at least twenty-four (24) hours prior to the scheduled starting time.

**Section 5. Committee Meetings and Notice-**

Public notice of committee meetings shall be posted at least twenty-four (24) hours prior to the scheduled starting time.

**Section 6. Meeting Notice at City Hall-**

Public notice of all meetings shall be posted at City Hall.

**Section 7. Notice to Board Members-**

Notice of each meeting shall be provided to all members of the Board at least forty-eight (48) hours prior to the scheduled starting time for all regular and special meetings and at least twenty-four (24) hours prior for all rescheduled and committee meetings.

**Section 8. Meeting Cancellation and Notice-**

The Chair may cancel a meeting if there is no business on the agenda or if it is certain that a quorum will not be present. The Chair may also cancel a meeting because of weather, emergency, or other circumstances that may substantially limit the ability of members of the Board or the public to attend. The Chair shall give notice of cancellation to members of the Board and to the Planning Manager at least two (2) hours prior to the scheduled meeting time, where practicable. The Chair shall post public notice of the cancellation as soon as practicable. The Chair may reschedule cancelled meetings with the Board's consent. Public notice for rescheduled meetings shall be posted at least twenty-four (24) hours prior to the scheduled starting time.

**Section 9. Quorum-**

A quorum shall consist of four (4) members of the Board. An affirmative vote of four (4) members is required for the Board to act on any matter. The right to vote is limited to members of the Board actually present at the time the vote is taken at a lawfully called meeting.

**Section 10. Methods of Voting-**

Except for the election of officers, voting shall be by voice and a show of hands. If the vote is not unanimous, a roll call vote shall be taken and recorded by yeas and nays in the minutes.

**Section 11. Reconsideration of Decision-**

After a motion has been decided, any member voting with the prevailing side may move for reconsideration of the motion at the same or the next regular meeting. The Staff may request reconsideration based on new information or upon advice from the City Attorney. No motion may be reconsidered more than once.

**Section 12. Board Actions on Public Hearing Matters-**

On matters requiring public hearings, the Board may take action during the meeting in which a public hearing is held. Such matters may be tabled by a majority of the members present.

**Section 13. Minutes, Records and Decisions-**

The Board shall arrange to keep minutes of all meetings, which shall be a record of the Board's consideration and actions. The minutes shall record all resolutions, transactions, findings, and determinations of the Board. The minutes shall also include a list of those members present and not present at each meeting; identifying information, where given, of all persons appearing before the

Board; a copy of each decision or other matter acted upon by the Board and a description of the outcome of each action. Each member of the Board is therefore encouraged to express specific reasons supporting his or her vote. Such expressions should be made during the discussion period preceding the actual voting. The minutes shall be filed in the Department of Planning and Permitting Office and shall be a public record.

**Section 14. Record Keeping-**

The Board shall maintain files and records which adequately and appropriately reflect the Board's consideration and actions, including all decisions, transactions, findings, and determinations of the Board. The files and records shall be open to the public during normal Department of Planning and Permitting working hours.

**Section 16. Public Access-**

All meetings of the Planning Board shall be open to the public and conducted in accordance with the City of Auburn's Policy on Freedom of Access ("Right to Know") Law Requests, (1 M.R.S.A. §401 ET SEQ) Special accommodations, including a sign language interpreter, will be made for people with disabilities, when requested at least 24 hours in advance.

**Section 17. Private Communications during a Meeting-**

During Board meetings, Board members shall not initiate or respond to private communications (including email, instant messages, or text messages) with or from members of the Board, members of the public or the petitioner regarding Board business.

**Section 18. Executive Sessions-**

Executive Sessions may be called for purposes listed in the Open Meetings Act, if approved by four (4) members of the Board on a roll call vote. Official actions of the Board shall only be taken at public meetings of the Board.

**Section 19. Public Comment-**

Audience participation in the form of public comment on agenda and non-agenda items shall be allowed at all meetings. An individual may speak for up to five (5) minutes. The Chair may extend an individual's speaking time in his/her discretion. Board agendas shall provide an opportunity for audience participation for non-agenda items.

**Article VIII- Public Hearings**

**Section 1. Planning Discretion in Holding a Public Meeting-**

In addition to those required by law, the Board may, at its discretion, hold such public hearings or conferences as it decides will be in the public interest. Special accommodations, including a sign language interpreter, shall be made for people with disabilities, when requested at least twenty-four (24) hours in advance.

**Section 2. Legal Notice for Public Hearings-**

The public shall receive proper legal notice as to time and location of public hearings as required by law.

**Section 3. Public Comment Specifics-**

An individual wishing to address the Planning Board during public hearings may speak for three (3) minutes. The first person identifying him/herself as the

petitioner, or as a person representing the petitioner or an organized group, may speak for five (5) minutes. Subsequent speakers identifying themselves as the petitioner, or as a person representing the petitioner or an organized group, may speak for three (3) minutes. The Chair may extend the speaking time further at his/her discretion.

**Section 4. Topical Subject Matter-**

During public hearings, subject matter shall be limited to the topic under consideration. Board response to the public's remarks shall be confined to clarification of the presented facts.

**Section 5. Continuation-**

At the discretion of the Chair, or by vote of a majority of the members present, public hearings may be continued to another date, subject to 60 requirements for a decision by the Board or by the consent of applicant.

**Article IX- Applications, Petitions and Communications**

**Section 1. Application Submittals-**

All applications to acted on by the Planning Board shall be filed with the Department of Planning and Permitting according the annual adopted schedule of submittal deadlines and meeting dates.

**Section 2. Complete Applications-**

All applications must be complete prior to action by the Planning Board. The Staff shall review the application and respond to the applicant within 5 working days to resolve an incomplete application. The staff shall determine if an application needs to be held back until the next month's meeting.

**and Petitions-**Petitions pertaining to zoning changes, annexations, area plans, street dedications or vacations, and other related matters shall:

- a. Be filed with the Department of Planning and Permitting for review and scheduling for Board action and to other City service areas and governmental agencies for comment in accordance with the Land Use Control Ordinance.
- b. Be considered by the Board during a regular or special meeting, where all persons interested in the subject will be heard before final Board action.
- c. Require the affirmative vote of four (4) Board Members for a recommendation of approval and scheduling for Council action. Lacking four (4) affirmative votes, a denial recommendation is recorded. The petition will be scheduled for City Council consideration regardless of the Board action.

**Section 2. Other Zone Change Initiation-**

Zoning changes may also be initiated by Council or by the Board.

**Section 3. Affirmative Motions-**

When making a final decision on any petition, motions shall be made in the affirmative, i.e. as motions to approve the petitioner's request. Failure to obtain the requisite number of affirmative votes on such a motion shall constitute a denial. The purpose of this provision is to eliminate confusion and the possibility

of inaction that arises when motions to deny fail to garner sufficient affirmative votes for passage.

**Section 4. Public Communications to the Board-**

The Board shall invite persons concerned with items the Board is to consider to address written communications to the Department of Planning and Permitting. The Board shall request that these communications be directed at the entire Board and not toward individual members and that these communications be sent at an early enough date to give the Department of Planning and Permitting sufficient time for careful consideration in arriving at its recommendation to the Board. Board Members who receive individual communications from the public regarding items under consideration shall share such communications with the entire Board, and, where applicable, with staff, as soon as practicable. Communications from the public on particular items shall be made available to Board members prior to Board meetings at which those items will be considered and not during the meeting itself. Members may request that the contents of certain communications be read before the Board.

**Article X- Agenda and Order of Business**

**Section 1. Making of the Agenda-**

Agendas for all Board meetings shall be developed by the Director of Planning and Permitting and the Board Chair. Agendas for all regular meetings of the Board, along with reports related to matters listed on the agenda for Board action, shall be available to concerned parties or other interested citizens the Friday preceding each regular meeting. Whenever possible, the Department of Planning and Permitting shall advise persons known to be involved in a particular matter of any changes in procedure or scheduling which become necessary after preparation of the agenda.

**Section 2. Board Action on Agenda Items-**

Except by unanimous consent of Board members present, the Board shall not consider, discuss or take action on new matters not appearing on the Board's prepared agenda. Any member may introduce new matters for discussion under "Board Proposed Business", however, the Board shall not take official action on new "Board Proposed Business" prior to its next regular or special meeting.

**Section 3. Meeting Format and Order of Business-**

The order of business at regular meetings shall be as follows. The order of business may be suspended or modified by a majority vote.

1. Roll Call and other Introductions
2. Approval of Minutes of Previous Meetings
3. Approval of Agenda
4. Written Communications and Petitions
5. Audience Open Comments on non-agenda items
6. Scheduled Public Hearings
7. Regular Business – Review of Development Proposals
8. Other Business- New or Old
9. Reports from Planning Members or Staff, City Administration
10. Adjournment

**Section 4. Audience Participation at Work Sessions and Committee Meetings-**

At working sessions and committee meetings, an Audience Participation agenda item shall be provided immediately after regular business items.

**Article XI- Committees**

**Section 1. Standing and Special Committees-**

The Board may create standing or special committees to carry on the work of the Board. Standing committees may, but need not be, described in the bylaws. Committees shall be limited to performing the tasks delegated to them by the Board. Each committee shall include at least one (1) member of the Board and may contain other community members, in the Board's discretion.

**Section 2. Citizen Advisory Committees-**

The Planning Board Chair, with the concurrence of the Board, may appoint one (1) or more persons as citizens' advisory committees to assist or collaborate with the Board in its duties. The functions of such person or persons are advisory and do not include actions which are those required by law for the Board. Advisory committee appointees shall serve at the pleasure of the Board. The Board may invite additional citizens, groups, or representatives of organizations to participate in the committee activities in a manner deemed most appropriate by the committee. Committee members shall participate with Board Members and staff in all aspects of developing any requested plan or report. Such committees may be invited to prepare oral and/or written re-views of the final staff recommended reports or plans prior to final consideration by the Board.

**Section 3. Committee Appointments-**

Members of committees shall be appointed by the Chair and approved by the Board.

**Article XII- Responsibilities of the Department of Planning and Permitting**

**Section 1. Staff Role with Planning Board Matters-**

At the discretion of the City Manager, or as otherwise mandated by City Council, the staff of the Department of Planning and Permitting shall be the primary provider of administrative support and professional advice to the Planning Board and the Director of Planning and Permitting, or their designee, shall be the primary liaison between the Planning Board and staff. The Director of Planning and Permitting or designee shall also act as a liaison between the community in general and other governmental units on planning matters.

**Section 2. Planning Board Work Plan-**

By February of each year, the Director of Planning and Permitting shall collaborate with the Board in developing a proposed work program for planning-related duties of the Planning Board. This proposed work plan will be presented to the City Manager for consideration in the development of the Planning Board's annual work plan. The proposed work program will be designed to make maximum effective use of Planning Board and Staff in meeting a set of major objectives or responsibilities of the Board.

**Section 3. Staff Reports to the Planning Board-**

The Director of Planning and Permitting shall provide the Board with constructive, periodic reports regarding the status of planning matters under consideration by the Department of Planning and Permitting and keep the Board informed of major planning issues which relate to the approved major objectives or responsibilities of the Board.

**Section 4. Planning Board Representation to the City Council-**

The Director of Planning and Permitting or designee shall represent the Board before City Council. The Director of Planning and Permitting shall also represent the Board at other times as directed.

**Article XIII Parliamentary Authority**

**Section 1. Robert's Rules of Order and Board Procedures-**

The rules contained in the current edition of Robert's Rules of Order Newly Revised shall guide the Board; however parliamentary procedure shall be flexible and may be adjusted in the Chair's discretion to best serve the needs of the Board. Nevertheless, no parliamentary procedure shall be followed that is inconsistent with these bylaws.

**Section 2. Adherence to By-Laws-**

The Board shall not adopt or follow any operating rules, regulations, or guidelines not expressly allowed by these bylaws.

**Article XIV- Amendment of By-laws**

**Section 1. Procedures to Amend By-Laws-**

Proposed amendments to these bylaws may be approved at any regular meeting by an affirmative vote of five (5) members of the Board. A draft of the proposed amendments must have been submitted in writing at the previous regular meeting to be considered. A draft of the proposed amendments must be submitted to the Office of the City Attorney for review and shall not be effective until approved by City Council.

**Section 2. Annual Review of By-Laws-**

The provisions of these bylaws shall be reviewed by the Board annually at the first regular meeting in July, provided that if that meeting should occur on July 1, the Board shall review the bylaws at the next regular meeting.

**Article XV- Miscellaneous**

**Section 1. Other Matters-**

For matters not covered in the City Charter or City Code, the Board shall establish specific policies and procedures in conducting its business.

**Section 2. Writing Reports to the City Council-**

All written reports or statements submitted by the Board shall, upon request, be transmitted to Council.

**Section 3. Legal Consultant to the Board-**

The City Attorney's Office shall be the legal consultant to the Board.

## **POLICIES AND PROCEDURES - (January 20, 2014 draft)**

### **PUBLIC HEARINGS**

#### **1. Notification to Interested Parties:**

- a. Post legal notice, as required by State law and City Ordinance
- b. Send legal notice to abutters, neighbors within a reasonable distance (greater than minimum required by law), to identified community/neighborhood groups, to City Councilors, city departments boards or committees, other public agencies that might be interested/affected
- c. In addition to the legal notice, create and send an explanation, in English, of the proposal and its potential effects. Advise recipients more information will be available, shortly before the hearing, on the City of Auburn/Planning Board web site that will have staff analysis, relevant documents or data submitted by applicant and PB's Policies And Procedures for conduct of public hearing

#### **2. Preparation for the Public Hearing**

- a. All the information, plans, reports and the like that may be presented or used at the public hearing shall be available by the close of business on the Friday preceding the hearing. The objective is to provide time for the staff, the Board
- b. The staff shall include the title and a brief description of all the documentation submitted by the petitioner/applicant and indicate it is available for inspection in the offices of the Planning and Permitting Department during business hours.
- c. Similarly, if members of the public have prepared written material or reports about a petition or application, they may submit it to be included in the material to be posted.
- d. If the applicant, or members of the public have written material to be posted, they should coordinate with the staff and submit the material in a compatible electronic format.
- e. These Policies And Procedures will be posted on the web site so that the applicant/petitioner and the public will be aware how the hearing will be conducted.

#### **3. Status of Board Members**

- a. Any regular Board member may want to recuse him/her self from acting on the application/petition because of a conflict of interest or personal reason. Any member who does shall surrender his/her seat and either leave the chamber or sit in the back of the room. Such member shall not communicate with other members of the Board who are acting on an application/petition and shall not address the Board if they are a party at interest who is potentially affected by the application/petition.
- b. In the case where a member does not have a conflict of interest, as defined by City of Auburn Municipal Code (Pt. 2, Ch. 2, , Art. 3, Div. 2 ) but believes he/she may have the appearance of a conflict, the member shall state the

situation and the remaining regular members of the Board shall vote whether they believe a conflict does exist and the member should sit or not.

- c. One Associate member shall be selected to hear and act upon the application/petition for each regular member who is absent or recuses him/herself. Sitting in a public hearing shall be alternated between the two Associate members.
- d. In the case where a hearing is continued to a subsequent meeting and all of the members who sat on the original hearing are not present, a regular member who was absent at the earlier hearing may sit on the continued meeting provided he/she certifies that he/she has familiarized themselves with the testimony and proceedings of the previous hearing.

**4. Staff Report:**

- a. A member of the staff shall present the report prepared by the staff or any other relevant information. Board members may ask questions and seek clarification of the application/petition, potential impacts of the development, if approved, provisions of the Zoning Ordinance or of other applicable regulations and laws.
- b. It is not appropriate, at this time, for Board members to comment on the merits of the application/petition and whether it should be approved or not. Those comments should be reserved until after the presentation by the applicant and testimony given by the public.

**5. Participation by the Public:**

- a. A public hearing is an open meeting as described in M.R.S.A. §401 ET SEQ. The public is entitled to listen to the proceedings. The public is invited to participate in the proceedings at times designated herein. An open meeting does not mean the public is allowed to participate in an ongoing dialogue with the Board or the staff throughout the meeting.
- b. The applicant, any member of the public, or any public official addressing the Board shall use the microphones in the chamber. They shall first give their name and address and if representing and speaking in behalf of another party shall so state. All public hearings are recorded to be available for the record. If a person does not use the microphone their comments may not be recorded.
- c. Any member of the public or any public official addressing the Board shall be limited in speaking to five minutes. At the Chair's discretion, an additional five minutes may be granted. A speaker should not repeat, at length, arguments or points made by previous speakers. They should briefly state their agreement or support for those positions. Reading of prepared speeches is not encouraged. The Board welcomes submittal of prepared written statements that will be included in the record.
- d. In the interests of an orderly public hearing all persons speaking shall seek recognition from the chair and shall not speak directly to Board members, staff or other members of the public except as the Chair may direct. Board

members and staff shall also seek recognition from the chair before speaking to other persons.

- e. The objective of the hearing is to hear testimony. There will be time for dialogue and debate on the merits of the application/petition later.

**6. Presentation by the Petitioner/Applicant:**

- a. After the presentation of the staff report and questions about it from the Board, the applicant shall make the case for approval of the application/petition and any analysis of the potential impacts of the proposed development. The applicant shall be prepared to respond to questions from the Board or the staff.
- b. In the case of a petition to amend the Zoning Ordinance or the Zoning Map, everyone should be aware that the potential impacts are not limited to the property of the petitioner but would be applicable to all properties in the city in the same zoning district classification. Similarly everyone should be aware that approval of the petition does not limit the extent of development to a specific proposal described by the petitioner. A change of zoning district designation, or the text of the Zoning Ordinance, entitles the petitioner, or all property owners in the same zoning district classification elsewhere in the city to the full development potential described for that zoning district classification. Other uses or a more intensive development, different than a petitioner's specific proposal, may be authorized in that zoning district classification.

**7. Public Comment:**

- a. After presentation by the application/petition and questions from the Board and planning staff, the public is invited to speak. Any person may speak; it is not limited to nearby neighbors or to residents of Auburn. All people who speak are required to use the microphones provided and give their name and address.
- b. Any person who speaks may support, or oppose, the application/petition or ask questions of the staff, the Board or the applicant.
- c. This part of the hearing is not intended to be a debate, dialogue or rebuttal between the speaker and the Board or staff. Primarily the Board will listen to the testimony but may ask questions of the speaker for clarification of his/her position.
- d. Speakers are requested to not restate, at length, points made by previous speakers. They should refer to them briefly to underscore those points.
- e. Speakers will be recognized in the order in which they come forward. The hearing is not arranged to hear all of the proponents and then all of the opponents, or vice versa.
- f. It is not the practice of the Board to take a poll of those in favor and those opposed. The number of people with a particular position is not a factor; the strength of their arguments is what matters.

- g. After all persons who want to speak have done so, the Board will move to close the public comment part of the hearing. After that motion discussion will be limited to Board members and staff.

**8. Discussion, Action by the Board:**

- a. After the presentation by the applicant and public comment, the Chair will call for a general discussion among the Board to gauge their perspective on the application/petition. Members may, through the chair, direct a question to the applicant for clarification. Also, members may think the application/petition might be acceptable if subjected to certain limiting conditions. Through the chair, the member may ask the applicant whether such condition is acceptable.
- b. After general discussion, if it appears there is a consensus, a motion will be in order. After a motion is made and seconded, there will be discussion on the specific motion. Other members may suggest amendment to the original motion and ask the maker of the motion if it is acceptable.
- c. Following parliamentary procedure the Board will decide, by vote, whether to approve, with or without conditions, disapprove or defer action on the application/petition. The vote of the Board on the motion constitutes the decision of the Board and for determining the timing of subsequent actions, such as appeals.

**9. Written Decision:**

- a. After approval of a motion, duly made and seconded, a written decision needs to be drafted. Given the complexity of some applications and the likelihood that the Board may want to attach limiting conditions, it would be challenging to produce a written decision instantaneously. The staff will prepare the draft of a written decision, incorporating the intent of the motion approved by the Board. The draft of the decision will then be circulated to members of the Board for their review. If the draft is considered acceptable by the members, the written decision will then be filed. If one or more members does not agree with the language of the draft prepared by the staff, they shall submit alternative language, that shall then be circulated to the Board for their additional review.
- b. This procedure for subsequent review of the draft of a written decision is necessary because the alternative would be to schedule a review of the draft at the next scheduled meeting of the Board. That could result a delay of a month or more and would be unfair to all concerned.

**CITY OF AUBURN  
POLICY ON FREEDOM OF ACCESS (“RIGHT TO KNOW”) LAW REQUESTS  
1 M.R.S.A. §401 ET SEQ.**

**PURPOSE:** It is the purpose of this policy to ensure that all citizens have access to public records in the possession of the City, and that the time and methods of providing public records to members of the public both complies with their rights under the law and allows for the smooth functioning of government departments.

**DEFINITION:** Definition of the term “public records” can be found in 1 M.R.S.A. §402 (3). The City is required by law to provide access to public information within in five (5) business days of a request. But is prohibited by law from releasing information classified as confidential.

**RULES FOR ACCESS TO PUBLIC RECORDS:**

1. Persons requesting to see or copy public records must fill out the attached form and present it to the City during regular business hours. Within five (5) business days the City must provide either the requested information or a written explanation why the information is not available to the public.
  - a. Protection of Records: To protect records, the City may require that an employee or official of the City be present during inspection and/or copying of documents.
  - b. Scheduling: When the presence of an employee or official is required to ensure the protection of any record, the inspection or copying shall be scheduled as promptly as possible during regular business hours provided that the scheduling shall minimize disruption of the function of the department.
  - c. Copying: Any record that is copied by the City shall be copied during regular business hours on a schedule that does not disrupt the functioning of the department. If City copiers are used, the charge to the person shall be \$ 1.00 per page copied. If any record is copied on a photocopier other than one belonging to the City, the City reserves the right to have an employee or official present at the time the record is copied to protect the record. In such cases, the City shall charge the person copying the record any costs incurred by the City in providing an employee or official to be present to protect the record.
3. Any denial by the City of a request to see a public record shall be made in writing within five (5) days of the request. Such denial may be appealed to Superior Court within five (5) working days of receipt of the denial.
4. Unauthorized removal of a government document, failure to return a government document and damaging a government document are Class D crimes.

CITY OF AUBURN

REQUEST FOR ACCESS TO PUBLIC RECORDS

I request to review the following records in the City of Auburn:

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Date: \_\_\_\_\_ Signed \_\_\_\_\_

Contact Information:

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Tel.#: \_\_\_\_\_

email \_\_\_\_\_

\*\*\*\*\*

\_\_\_\_\_ Request Approved

\_\_\_\_\_ Request Denied

Reason for Denial:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed \_\_\_\_\_

Date: \_\_\_\_\_

DIVISION 2. ETHICS AND CONFLICTS OF INTEREST

**DIVISION 2. ETHICS AND CONFLICTS OF INTEREST** <sup>[5]</sup>

[Sec. 2-109. Definitions.](#)

[Sec. 2-110. Policy; purpose and intent of division; adoption of additional standards.](#)

[Sec. 2-111. Ethics panel established; membership; powers and duties.](#)

[Sec. 2-112. Conflicts of interest generally.](#)

[Sec. 2-113. Conduct relative to municipal contracts.](#)

[Sec. 2-114. Incompatible employment positions.](#)

[Sec. 2-115. Procedure for determinations by ethics panel.](#)

[Sec. 2-116. Effect of recommendations of ethics panel.](#)

[Secs. 2-117—2-145. Reserved.](#)

**Sec. 2-109. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Financial involvement* means any existing (or current efforts toward achieving) ownership or investment interest, contract right, significant customer relationship, or employment relationship of or with a public official or a person with whom the public official has a personal relationship.

*Municipal board* means the city council, the school committee, the planning board, the board of zoning appeals, the civil service commission and the board of assessment review.

*Participation in a matter* means action by a public official to vote, decide, deliberate, influence or direct others in regard to matters currently before or anticipated as coming before a municipal board, or which involve the operation of municipal government or the school system.

*Personal relationship* means any family, affectional or social relationship that is characterized by one or more of the following:

- (1) Persons who are husband and wife, or parent and child.
- (2) Persons who share a physical intimacy with each other.
- (3) Persons who acknowledge an ongoing romantic relationship with each other.
- (4) Persons who live together in the same residence.
- (5) Persons who intermingle their financial assets without an accounting of separate ownership interests.

*Public official* means:

- (1) Any person holding an elected or appointed position with a municipal board;
- (2) The city manager;
- (3) The assistant city manager;

DIVISION 2. ETHICS AND CONFLICTS OF INTEREST

- (4) Directors of municipal and school system departments;
- (5) The city purchasing agent/deputy finance director;
- (6) The superintendent of schools;
- (7) The assistant superintendent of schools; and
- (8) School principals.

(Code 1967, § 1-4.2)

**Sec. 2-110. Policy; purpose and intent of division; adoption of additional standards.**

- (a) It is the policy of the city that the proper operation of democratic government requires that public officials be independent, impartial and responsible to the citizens, that public office not be used for personal gain, and that the public have confidence in the integrity of its municipal government. The purpose and intent of this division is to promote the objective of protecting the integrity of the government of the city against actual or reasonably perceived conflicts of interest without creating unnecessary barriers to public service.
- (b) This division shall not prevent the city council, the school committee, the city manager or the superintendent of schools from adopting additional procedures and employment standards intended to prevent the exercise or appearance of improper influence or bias in the conduct of government business.

(Code 1967, § 1-4.1)

**Sec. 2-111. Ethics panel established; membership; powers and duties.**

- (a) *Established; membership.* There shall be established an ethics panel consisting of three regular voting members and two alternate members. Two regular voting members and one alternate member of the ethics panel shall be appointed by the mayor with approval of a majority of the members of the city council, and one regular voting member and one alternate member of the ethics panel shall be appointed by the chair of the school committee with approval of a majority of the members of the school committee. A regular voting member or alternate member of the ethics panel may not hold any other city or school department office or position or be a member of any board or commission to which the city council or school committee has appointing authority.
- (b) *Term of members; chair.* The regular voting members of the ethics panel shall be appointed to staggered three-year terms. When the first appointments are made, one member shall be appointed by the mayor to a three-year term, one member shall be appointed by the chair of the school committee to a two-year term, and one member shall be appointed by the mayor to a one-year term. The mayor annually shall appoint one of the regular voting members to serve as chair of the ethics panel. Alternate members shall be appointed to three-year terms.
- (c) *Role of alternate members.* Alternate members of the ethics panel may participate and vote in ethics panel proceedings if a regular voting member is incapable or unavailable to serve in regard to a particular referral or is disqualified from participation because of a conflict of interest. The alternate member designated shall be selected by the chair of the ethics panel.
- (d) *Powers and duties.* The ethics panel shall have the authority to issue advisory opinions on questions relating to conflicts of interest and the incompatibility of employment positions.

(Code 1967, § 1-4.3)

DIVISION 2. ETHICS AND CONFLICTS OF INTEREST

**Sec. 2-112. Conflicts of interest generally.**

- (a) *Standard of conduct.* A public official shall refrain from participation in a matter when there exists an actual, potential or reasonably perceived conflict of interest arising from a personal relationship or a financial involvement that would cause a reasonable person to believe that the public official cannot act in his official capacity without self-interest or bias.
- (b) *Referral of matters to ethics panel.* When a public official does not voluntarily refrain from participation in a matter and there is a question as to the existence of a conflict of interest under the standard set forth in subsection (a) of this section, the matter may be referred to the ethics panel for its advisory opinion as follows:
- (1) A public official may refer to the ethics panel the question of whether he has an actual, potential or reasonably perceived conflict of interest;
  - (2) Two or more members of the city council, the school committee or other municipal board may refer to the ethics panel the question of whether another member of that body, or a public official who serves under the authority of that body, has an actual, potential or reasonably perceived conflict of interest; or
  - (3) A registered voter within the city may request an advisory opinion from the ethics panel regarding whether an elected or appointed public official who serves on a municipal board has an actual, potential or reasonably perceived conflict of interest. Such request shall be made on forms available from the city clerk and shall be endorsed by the signatures of 25 registered voters within the city.
- (c) *Ethics panel determination.* The ethics panel shall determine whether the public official should refrain from participation in a matter because of the actual, potential or reasonably perceived existence of a conflict of interest arising from a personal relationship or a financial involvement that would cause a reasonable person to believe that the public official cannot act in his official capacity without self-interest or bias.

(Code 1967, § 1-4.4)

**State law reference**— Conflicts of interest, 30-A M.R.S.A. § 2605.

**Sec. 2-113. Conduct relative to municipal contracts.**

No municipal officer, employee or agent shall solicit or accept any gratuity or favor or anything of monetary value from any contractor or potential contractor with the city relative to the procurement of any supplies, equipment, construction or other services with municipal, state or federal grant funds. In addition to any other penalties which may be provided by law, any municipal officer, employee or agent who violates this section shall be subject to appropriate disciplinary action, including, in the case of an officer, removal from office; in the case of an employee, suspension or discharge from employment; and in the case of an agent, termination of such agency.

(Code 1967, § 1-2.1)

**Sec. 2-114. Incompatible employment positions.**

- (a) *Standard of conduct.*
- (1) *Generally.* A public official, other than the city manager or the superintendent of schools, who is a municipal or school department employee shall not hold a supervisory position, or be senior in

DIVISION 2. ETHICS AND CONFLICTS OF INTEREST

the chain of command, to an individual with whom he has a personal relationship or a financial involvement (other than the municipal or school system employment relationship), unless:

- a. The relationship is disclosed by the public official to the city manager or superintendent of schools, whoever is the appropriate senior administrative officer;
- b. The city manager or superintendent of schools approves a management plan that is designed to prevent favoritism or any other improper influence in connection with the employment relationship and that provides ongoing oversight by a person not subordinate to either of the individuals who have the personal relationship or financial involvement; and
- c. The city manager or superintendent of schools reports to the city council or the school committee, whichever is the appropriate legislative body, the existence of the potential incompatibility of employment positions and the establishment of a management plan to address the potential incompatibility.

(2) *City manager and superintendent of schools.* Neither the city manager nor the superintendent of schools shall hold a supervisory position, or be senior in the chain of command, to an individual with whom he has a personal relationship or financial involvement (other than the municipal or school system employment relationship), unless:

- a. The relationship is disclosed to the city council or school committee, whichever is the appropriate legislative body, by the city manager or superintendent of schools; and
- b. The legislative body establishes a management plan that is designed to prevent favoritism or any other improper influence in connection with the employment relationship and that provides ongoing oversight by a person not subordinate to the city manager or superintendent of schools.

(b) *Referral of matters to ethics panel.* The city manager, the superintendent of schools, or a majority of the members of the city council or the school committee may request an advisory opinion from the ethics panel relating to the incompatibility of employment positions and the formulation of a management plan.

(Code 1967, § 1-4.5)

**Sec. 2-115. Procedure for determinations by ethics panel.**

(a) *Referral of cases; notice of referral.*

- (1) A referral to the ethics panel shall be in writing and shall describe with particularity the factual basis of the referral.
- (2) The ethics panel promptly shall give notice of the referral to the chair of the municipal board concerned and the public official whose personal relationship or financial involvement is the subject of the referral.

(b) *Fact-finding.*

- (1) Upon receipt of a referral, the ethics panel shall determine the facts necessary to render an advisory opinion. The facts may be agreed upon and set forth in the referral. If additional fact-gathering is necessary, the ethics panel, or a person designated by it, may conduct informal interviews and solicit additional information. The ethics panel shall determine the facts through a formal hearing process only if so requested either by the public official who is the subject of a referral or by the public officials who submitted a referral.

DIVISION 2. ETHICS AND CONFLICTS OF INTEREST

- (2) In regard to its gathering of facts relating to the existence and nature of a personal relationship, the ethics panel shall be limited to the voluntary statements and other information provided by the public official whose relationship is at issue.
- (c) *Deliberation.* Upon conclusion of its fact-finding, the ethics panel shall deliberate over the question referred to the panel. Any person may submit written comments to the ethics panel setting forth his position regarding the question under consideration.
- (d) *Issuance of advisory opinion.* Upon conclusion of fact-finding and deliberation, the ethics panel shall issue a written advisory opinion that includes findings of fact, application of the standards set forth in this division, and recommendations. The ethics panel shall furnish a copy of its advisory opinion to the chair of the municipal board concerned and the public official whose personal relationship or financial involvement is the subject of the opinion.
- (e) *Time limits.* The ethics panel shall attempt to issue its advisory opinion within two weeks of its receipt of a referral. The ethics panel may decline to consider referrals regarding conflict of interest questions relating to the final vote of a municipal board that occurred prior to the referral.

(Code 1967, § 1-4.6)

**Sec. 2-116. Effect of recommendations of ethics panel.**

The opinion and recommendations of the ethics panel shall be advisory only. The members of a municipal board may vote to adopt the recommendation of the ethics panel as it relates to the participation in a matter by a public official.

(Code 1967, § 1-4.7)

**Secs. 2-117—2-145. Reserved.**

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FOOTNOTE(S):

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State Law reference— Conflicts of interest, 30-A M.R.S.A. § 2605. [\(Back\)](#)



# Development Review Application

City of Auburn Planning and Permitting Department  
City of Lewiston Department of Planning and Code Enforcement



PROJECT NAME: \_\_\_\_\_

PROPOSED DEVELOPMENT ADDRESS: \_\_\_\_\_

PARCEL ID#: \_\_\_\_\_

REVIEW TYPE:      Site Plan                       Site Plan Amendment   
                                 Subdivision                       Subdivision Amendment

PROJECT DESCRIPTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONTACT INFORMATION:**

Applicant

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home #: \_\_\_\_\_  
Email: \_\_\_\_\_

Property Owner

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home #: \_\_\_\_\_  
Email: \_\_\_\_\_

Project Representative

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home #: \_\_\_\_\_  
Email: \_\_\_\_\_

Other professional representatives for the project (surveyors, engineers, etc.),

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home #: \_\_\_\_\_  
Email: \_\_\_\_\_

# PROJECT DATA

The following information is required where applicable, in order complete the application

## IMPERVIOUS SURFACE AREA/RATIO

Existing Total Impervious Area \_\_\_\_\_ sq. ft.  
Proposed Total Paved Area \_\_\_\_\_ sq. ft.  
Proposed Total Impervious Area \_\_\_\_\_ sq. ft.  
Proposed Impervious Net Change \_\_\_\_\_ sq. ft.  
Impervious surface ratio existing \_\_\_\_\_ % of lot area  
Impervious surface ratio proposed \_\_\_\_\_ % of lot area

## BUILDING AREA/LOT

### COVERAGE

Existing Building Footprint \_\_\_\_\_ sq. ft.  
Proposed Building Footprint \_\_\_\_\_ sq. ft.  
Proposed Building Footprint Net change \_\_\_\_\_ sq. ft.  
Existing Total Building Floor Area \_\_\_\_\_ sq. ft.  
Proposed Total Building Floor Area \_\_\_\_\_ sq. ft.  
Proposed Building Floor Area Net Change \_\_\_\_\_ sq. ft.  
New Building \_\_\_\_\_ (yes or no)  
Building Area/Lot coverage existing \_\_\_\_\_ % of lot area  
Building Area/Lot coverage proposed \_\_\_\_\_ % of lot area

### ZONING

Existing \_\_\_\_\_  
Proposed, if applicable \_\_\_\_\_

### LAND USE

Existing \_\_\_\_\_  
Proposed \_\_\_\_\_

### RESIDENTIAL, IF APPLICABLE

Existing Number of Residential Units \_\_\_\_\_  
Proposed Number of Residential Units \_\_\_\_\_  
Subdivision, Proposed Number of Lots \_\_\_\_\_

### PARKING SPACES

Existing Number of Parking Spaces \_\_\_\_\_  
Proposed Number of Parking Spaces \_\_\_\_\_  
Number of Handicapped Parking Spaces \_\_\_\_\_  
Proposed Total Parking Spaces \_\_\_\_\_

### ESTIMATED COST OF PROJECT

\_\_\_\_\_

## DELEGATED REVIEW AUTHORITY CHECKLIST

### SITE LOCATION OF DEVELOPMENT AND STORMWATER MANAGEMENT

Existing Impervious Area \_\_\_\_\_ sq. ft.  
Proposed Disturbed Area \_\_\_\_\_ sq. ft.  
Proposed Impervious Area \_\_\_\_\_ sq. ft.

- 1. If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with MDEP.**
- 2. If the proposed impervious area is greater than one acre including any impervious area crated since 11/16/05, then the applicant shall apply for a MDEP Stormwater Management Permit, Chapter 500, with the City.**
- 3. If total impervious area (including structures, pavement, etc) is greater than 3 acres since 1971 but less than 7 acres, then the applicant shall apply for a Site Location of Development Permit with the City. If more than 7 acres then the application shall be made to MDEP unless determined otherwise.**
- 4. If the development is a subdivision of more than 20 acres but less than 100 acres then the applicant shall apply for a Site Location of Development Permit with the City. If more than 100 acres then the application shall be made to MDEP unless determined otherwise.**

### TRAFFIC ESTIMATE

Total traffic estimated in the peak hour-existing \_\_\_\_\_ passenger car equivalents (PCE)  
(Since July 1, 1997)

Total traffic estimated in the peak hour-proposed (Since July 1, 1997) \_\_\_\_\_ passenger car equivalents (PCE)  
If the proposed increase in traffic exceeds 100 one-way trips in the peak hour then a traffic movement permit will be required.

### Zoning Summary

1. Property is located in the \_\_\_\_\_ zoning district.

2. Parcel Area: \_\_\_\_\_ acres / \_\_\_\_\_ square feet(sf).

<b>Regulations</b>	<u>Required/Allowed</u>	<u>Provided</u>
Min Lot Area	_____ / _____	
Street Frontage	_____ / _____	
Min Front Yard	_____ / _____	
Min Rear Yard	_____ / _____	
Min Side Yard	_____ / _____	
Max. Building Height	_____ / _____	
Use Designation	_____ / _____	
Parking Requirement	1 space/ per _____ square feet of floor area	
Total Parking:	_____ / _____	
Overlay zoning districts(if any):	_____ / _____	_____ / _____
Urban impaired stream watershed?	YES/NO If yes, watershed name _____	

## DEVELOPMENT REVIEW APPLICATION SUBMISSION

### Submissions shall include fifteen (15) complete packets containing the following materials:

1. Full size plans containing the information found in the attached sample plan checklist.
2. Application form that is completed and signed.
3. Cover letter stating the nature of the project.
4. All written submittals including evidence of right, title and interest.
5. Copy of the checklist completed for the proposal listing the material contained in the submitted application.

### Refer to the application checklist for a detailed list of submittal requirements.

L/A's development review process and requirements have been made similar for convenience and to encourage development. Each City's ordinances are available online at their prospective websites:

**Auburn:** [www.auburnmaine.org](http://www.auburnmaine.org) under City Departments/ Planning and Permitting/Land Use Division/Zoning Ordinance

**Lewiston:** <http://www.ci.lewiston.me.us/clerk/ordinances.htm> Refer to Appendix A of the Code of Ordinances

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, I certify that the City's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

**This application is for development review only; a Performance Guarantee, Inspection Fee, Building Permit Application and other associated fees and permits will be required prior to construction.**

Signature of Applicant:

Date:



# Development Review Checklist

City of Auburn Planning and Permitting Department  
City of Lewiston Department of Planning and Code Enforcement



**THE FOLLOWING INFORMATION IS REQUIRED WHERE APPLICABLE TO BE  
SUBMITTED FOR AN APPLICATION TO BE COMPLETE**

PROJECT NAME: \_\_\_\_\_

PROPOSED DEVELOPMENT ADDRESS and PARCEL #: \_\_\_\_\_

Required Information		Check Submitted		Applicable Ordinance	
		Applicant	Staff	Lewiston	Auburn
<b>Site Plan</b>					
	Owner's Names/Address				
	Names of Development				
	Professionally Prepared Plan				
	Tax Map or Street/Parcel Number				
	Zoning of Property				
	Distance to Property Lines				
	Boundaries of Abutting land				
	Show Setbacks, Yards and Buffers				
	Airport Area of Influence (Auburn only)				
	Parking Space Calcs				
	Drive Openings/Locations				
	Subdivision Restrictions				
	Proposed Use				
	PB/BOA/Other Restrictions				
	Fire Department Review				
	Open Space/Lot Coverage				
	Lot Layout (Lewiston only)				
	Existing Building (s)				
	Existing Streets, etc.				
	Existing Driveways, etc.				
	Proposed Building(s)				
	Proposed Driveways				
<b>Landscape Plan</b>					
	Greenspace Requirements				
	Setbacks to Parking				
	Buffer Requirements				
	Street Tree Requirements				
	Screened Dumpsters				
	Additional Design Guidelines				
	Planting Schedule				

<b>Required Information</b>		<b>Check Submitted</b>		<b>Applicable Ordinance</b>	
		<b>Applicant</b>	<b>Staff</b>	<b>Lewiston</b>	<b>Auburn</b>
<b>Site Plan</b>					
<b>Stormwater &amp; Erosion Control Plan</b>					
	Compliance w/ chapter 500				
	Show Existing Surface Drainage				
	Direction of Flow				
	Location of Catch Basins, etc.				
	Drainage Calculations				
	Erosion Control Measures				
	Maine Construction General Permit				
	Bonding and Inspection Fees				
	Post-Construction Stormwater Plan				
	Inspection/monitoring requirements				
	Third Party Inspections (Lewiston only)				
<b>Lighting Plan</b>					
	Full cut-off fixtures				
	Meets Parking Lot Requirements				
<b>Traffic Information</b>					
	Access Management				
	Signage				
	PCE - Trips in Peak Hour				
	Vehicular Movements				
	Safety Concerns				
	Pedestrian Circulation				
	Police Traffic				
	Engineering Traffic				
<b>Utility Plan</b>					
	Water				
	Adequacy of Water Supply				
	Water main extension agreement				
	Sewer				
	Available city capacity				
	Electric				
	Natural Gas				
	Cable/Phone				
<b>Natural Resources</b>					
	Shoreland Zone				
	Flood Plain				
	Wetlands or Streams				
	Urban Impaired Stream				
	Phosphorus Check				
	Aquifer/Groundwater Protection				
	Applicable State Permits				

<b>Required Information</b>		<b>Check Submitted</b>		<b>Applicable Ordinance</b>	
		<b>Applicant</b>	<b>Staff</b>	<b>Lewiston</b>	<b>Auburn</b>
<b>Site Plan</b>					
	No Name Pond Watershed (Lewiston only)				
	Lake Auburn Watershed (Auburn only)				
	Taylor Pond Watershed (Auburn only)				
<b>Right Title or Interest</b>					
	Verify				
	Document Existing Easements, Covenants, etc.				
<b>Technical &amp; Financial Capacity</b>					
	Cost Est./Financial Capacity				
	Performance Guarantee				
<b>State Subdivision Law</b>					
	Verify/Check				
	Covenants/Deed Restrictions				
	Offers of Conveyance to City				
	Association Documents				
	Location of Proposed Streets & Sidewalks				
	Proposed Lot Lines, etc.				
	Data to Determine Lots, etc.				
	Subdivision Lots/Blocks				
	Specified Dedication of Land				
<b>Additional Subdivision Standards</b>					
	Single-Family Cluster (Lewiston only)				
	Multi-Unit Residential Development (Lewiston only)				
	Mobile Home Parks				
	Private Commercial or Industrial Subdivisions (Lewiston only)				
	PUD (Auburn only)				
<b>A JPEG or PDF of the proposed site plan</b>					
<b>Final sets of the approved plans shall be submitted digitally to the City, on a CD or DVD, in AutoCAD format R 14 or greater, along with PDF images of the plans for archiving</b>					

# City of Auburn, Maine

*"Maine's City of Opportunity"*

## Office of Planning & Permitting

### REVISED STAFF REPORT #3

To: Auburn Planning Board

From: Douglas M. Greene, A.I.C.P., R.L.A.,   
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: February 11, 2014

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After a presentation of a Staff Report, Citizen Comment and a discussion by the Planning Board at its January 14, 2014 meeting, the Planning Board directed City Planner, Doug Greene to prepare draft language that would implement the intent of the proposed text amendment as a Special Exception in the Agricultural and Resource Protection (AG/RP) zone.

This staff report is broken down into 4 sections:

- I. 4 memos from the consultants for the 2010 Comprehensive Plan Update that chronicle how the Agricultural and Resource Protection zoning district was treated.
- II. A draft amendment to the Agricultural and Resource Protection zone (AG/RP), which, if approved would allow residences in the AG/RP zone, under specific circumstances, as a Special Exception and Site Plan Review. (Attached with this report)
- III. A case study summarizing how an application would be reviewed by staff and the Planning Board. Included in this section are:
  - Site Plan Review Ordinance (Attached with this report)- This section lays out the purpose, criteria for approval, required information and findings for the final decision of the application.
  - Special Exception Ordinance (Attached with this report)- This section establishes what a special exception is and the conditions that need to be met for approval.
  - Site Analysis- A series of maps will be available on line and also presented at the meeting showing different site conditions to be evaluated for the proposed residence location.
- IV. Final Staff Comments and Recommendations-

# SECTION I.

To: Comprehensive Plan Committee  
From: Mark Eyerman - MEMO #1  
Subject: Thoughts on the AG/RP Issue  
Date: April 3, 2009

Here are a number of thoughts on the AG/RP issue. They are somewhat free-standing pieces that all tie back into the core issue:

## 1. What are the City's long term objectives with respect to the AG/RP areas?

I have heard two different visions for the AG/RP areas over the long term which I have tried to lay out below. Depending on the City's objective, the appropriate course of action may be very different.

- At our last meeting Roland very articulately described the AG/RP District as sort of a land bank where a supply of land is held until it is needed for another use. When it is needed, it is then rezoned. Under this vision, open agricultural land is really something of an interim use. It is a way to keep a supply of vacant land available for future use. At the same time, this approach allows people who want to use the land for agricultural use to minimize their carrying costs as a result of low property taxation. An important corollary is that the AG/RP Zone keeps the land from being developed in a way that may compromise or limit its future use when it is needed for something else. For example, the Witham Road area of New Auburn was designated for future industrial use in the current Comprehensive Plan but has remained zoned as Rural Residential and Low Density Country Residential. As a result, a few new homes have been developed along Witham Road which may make it difficult to include that area as part of a new industrial/business park. However, if this area had been zoned AG/RP, it would remain available for future industrial development

- A second, different vision has emerged during the discussion of the North River Road AG/RP area. That vision is that some or all of the AG/RP area would be permanently preserved as open space and conservation land. Under this vision, some limited residential development may be OK if it doesn't compromise the overall character of the area and allows most of the land to be preserved as open space. This is a final use decision and isn't subject to the land being converted to something else when it is needed in the "future". If the objective is to create a "land bank", it may actually be counter productive to have pieces of land permanently preserved as open land unless that fits in with the long term use.

The following 4 memos chronicle the 2010 Comp. Plan Committee's discussion on the treatment and policies of the AG/RP zoning district.

How do these two visions fit with the current AG/RP area? Maybe both visions are appropriate in different parts of the district?

## 2. Is strip residential development along rural roads good or bad?

The "historic" pattern at least in some of the outlying areas has been to zone the land along the road for residential development (RR or LDCR) with the backland included in the AG/RP District. Since many lots are split between the two districts, this gives a property owner in this situation some limited development potential by creating lots along the existing road frontage. Is that good or bad long-range policy? Here are some thoughts on that.

On the positive side, allowing for some development along the road maintains the interior of the property in a block. Many of these areas are identified as large unfragmented habits that are capable of supporting a diversity of wildlife. By keeping development along existing roads, it minimizes the encroachment on the habit block. From the property owner's perspective, these are easy lots to create. They don't require the construction of roads or utilities so the land owner can create a lot incrementally often without subdivision review and with limited out-of-pocket costs. This allows the property owner to raise cash when they need it while retaining the balance of the property.

On the negative side, stripping off lots along these rural roads can change the character from rural to suburban, especially if the houses are close to the road or can be easily seen from the road. Seeing lot after lot being created along a road is often cited as being a constant reminder of the suburbanization of rural areas – it changes how people feel about the area. In addition, as we discussed when we talked about rural roads, creating driveways every 200 feet along these roads limits their future potential as collectors to move traffic. It sets up the potential for residential neighborhood versus through traffic conflict. Finally, if the AG/RP District really is intended to be a land reserve that may be converted to other uses in the future, allowing residential development along the road frontage makes that transition more difficult if not impossible.

## 3. Does rezoning AG/RP land create an unfair "windfall" for property owners?

It appears that the lack of development potential in the AG/RP District has been "internalized" into the market value of land. Land in the AG/RP sells for less than comparable land in other zones. If the AG/RP zone is changed or the land is rezoned to create residential development potential, the land may become substantially more valuable. In very simple terms, if someone owns 50 acres in the AG/RP district with say

1000 feet of road frontage, its market value may be \$50,000 or \$60,000. But if it is rezoned to RR and the property owner can easily cut-off 4 or 5 lots along the road that are each worth say \$50,000, the value of that land may now be \$200,000-250,000. That increased value is a "windfall" to the property owner that has resulted from the change in the zoning. Some land economists suggest that the community should get something in return for creating that increased value. This is a somewhat controversial position but one that is worth considering in this situation

#### **4. What do we mean by rural?**

Different people mean different things by the term "rural" or even "agriculture". Some people think of mowed fields, white fences, and scenic views when they say rural. Rural is almost a synonym for open space. But "working rural" is very different from that or at least has been. That rural involves farm dumps, equipment repair, noises and smells, and related uses. There has been some discussion in the committee about how broadly or narrowly the types of non-residential uses allowed in the AG/RP should be drawn.

#### **5. What is a farm in today's terms?**

This is a key issue. The current ordinance defines farm as having a minimum lot of 10 acres, devoting at least 10 acres to the production of field crops or the grazing of at least 20 head of livestock, and from which the occupant and his or her spouse derives at least 50% of their income. This definition is somewhat dated. In the today's world, this definition excludes many of the things that might be considered to be commercial agriculture such as:

- a horse stable/farm
- commercial greenhouses
- an organic vegetable or flower operation on less than 10 acres
- a Christmas tree farm
- a cranberry bog

It also excludes many agricultural businesses based upon the 50% of income test. My sense is that many "commercial" farms rely on an outside source of income to allow the agricultural business to continue. It also excludes the "hobby farm" in which the agricultural activity is only an incidental portion of the household's income. In some communities, horses have become a major agricultural use that allows people who own horses for their own use to stable, breed, and train other people's horses but this is probably not the majority of the household's income.

If the objective of the AG/RP is to encourage agricultural use of land as an interim use, any and all of these types of uses may be valuable in doing that. But the next question becomes - and when is that enough use to justify allowing them to construct a home in conjunction with that use? The objective probably needs to be to avoid creating a loophole that allows residential development that really isn't related to the use of the land for agricultural or other natural resource purposes.

To: Comprehensive Plan Committee  
From: Mark Eyerman – MEMO #2  
Subject: Possible Approaches for Revising the AG/RP District  
Date: April 6, 2009

I have outlined three alternative approaches for revising the requirements of AG/RP District to provide the committee with a starting point for our discussion at Tuesday's meeting. As you think about these alternatives, it is important to keep in mind two things:

1. What is the City's objective for the AG/RP District (see my other email)?
2. In some areas the AG/RP District is coupled with an RR or LDCR District along the road frontage to create some development potential for the owners of large parcels that have road frontage. As we think about these alternatives, we need to keep this concept in mind since a fourth alternative in some areas could be to establish or re-establish a strip of RR or LDCR where it does not currently exist in conjunction with an updated AG/RP District.

#### Alternative #1 Update the AG/RP Provisions Without Changing the Basic Intent

There has been discussion that the current provisions of the AG/RP District are outdated and difficult to use. There seems to be four issues with the current provisions:

1. The name of the district
2. The limited range of agricultural activities that meet the definition of farm
3. The 50% of income provision
4. The treatment of related rural uses

Here are some ideas for how these four issues could be addressed. This assumes that the basic purpose of the zone remains unchanged and that a residential use is permitted only in conjunction with "commercial agricultural" operation on a parcel that has at least 10 acres.

1. **Name** – I'm not sure I understand the issue with the current name but maybe the committee could propose changing it to something like Rural Resource Protection District.

2. **Definition of Farm** – While the AG/RP District allows a wide range of agricultural uses, the current definition of farm that is used to determine if a house is allowed is much more restrictive. The farm for purposes of the AG/RP District must use at least 10 acres for the production of field crops or the grazing of livestock. If strictly applied, this precludes a house in connection with many commercial agricultural operations. One possibility is to change the requirement so that a house has to be accessory to a “commercial agricultural use” rather than a farm and to eliminate the 10 acre of use requirement. A commercial agricultural use could be defined broadly to include the full range of agricultural activities that are carried out on a commercial basis.

3. **Income Test** – This is a tough issue since the objective is to limit the ability to build a house to those situations where there truly is or will be a commercial agricultural use. The current definition is worded “will be derived” recognizing the prospective nature of this. It also talks in terms of annual income to the farm occupant which to me implies the “net profit” from the farm. Realistically, a start-up operation or even a buy-out of an existing operation may not be profitable for a significant period. Here are a couple of possible ways to revise the current provision:

- change the test from annual income of the farmer to a revenue based requirement – how much revenue does the operation create
- reduce the percentage of household income that must be derived from commercial agricultural to better reflect the possibility for outside employment by members of the household
- tie the requirement to the filing of a Schedule F (or farm partnership or corporation schedules) for federal income tax purposes or some other evidence of a commercial agricultural activity such as a loan commitment. Schedule F is the farm income schedule that is typically filed by small farmers.

4. **Related Uses** – The permitted uses and special exception uses in the AG/RP District allow a wide range of agricultural and related activities. A number of the uses do include some type of limitation related to activities that occur on the property. The agricultural produce item j. limits this to “produce grown on the premises”. The definition of “wayside stand” limits products to those “primarily grown or produced on the premises . . .” Sawmills are allowed “incidental to the harvesting of forest products” which implies that you can have a sawmill only in conjunction with a harvest. We could consider modifying the permitted uses to allow more rural related uses on free-standing basis or with fewer “locally produced” limitations. For example, many communities have

struggled with the issue of “traditional farm stands” versus retail outlets that include items produced off the premises in addition to home-grown/produced items.

## Alternative #2 Create a New Zone with Very Limited Residential Development Potential

In a sense, the current coupling of the AG/RP District with a strip of RR or LDCR along the road frontage does this. It allows the road frontage to be developed as house lots while the backland is “protected” from development. The overall residential density that is allowed under this arrangement is a function of the percentage of the parcel in AG/RP and the zoning of the road frontage. The percentage of a lot that is in RP is a function of its size, depth, and amount of road frontage. In reality, the development potential of a parcel is controlled by its road frontage not its size. Here are a couple of simple examples based on a 50 acre parcel under a few different scenarios. These do not include any consideration of farm housing – if one or more homes were allowed under that provision, the overall density would increase accordingly.

- 50 acre parcel with 1000’ of road frontage that is zoned **RR**

RR allows 1 acre lots with a minimum of 250’ of road frontage or lot width therefore 4 lots could potentially be developed along the frontage resulting in a gross density of 4 units on 50 acres or *1 unit per 12.5 acres*

- 50 acre parcel with 2000’ of road frontage that is zoned **RR**

If the lot configuration changes to a wider, shallower parcel and the parcel has 2000’ of frontage in the RR District, 8 lots could potentially be developed along the road frontage resulting in a gross density of 8 units on 50 acres or *1 unit per 6.5 acres*

- 50 acre parcel with 500’ of road frontage that is zoned **RR**

Or if the lot has limited road frontage, only 2 lots could be created resulting in a density of 2 lots on 50 acres or *1 unit per 25 acres*

- 50 acre parcel with 1000’ of road frontage that is zoned **LDCR**

LDCR allows 3 acre lots with a minimum of 325’ of road frontage or lot width therefore 3 lots could potentially be developed resulting in a gross density of 3 units on 50 acres or *1 unit per 16.7 acres*. As the frontage

increases or decreases, the density would change the same way as if the frontage is zoned RR.

Rather than creating one zone along the road frontage and the AG/RP District behind it, the Committee could consider creating a revised zone that allows very low density residential development (say 1 unit per 10 acres) and creates flexibility for how residential development could occur. Here are some ideas for how that might work:

- the gross density would be 1 unit per 10 acres (or whatever is decided) but individual lots could be as small as 40,000 SF
- there would be no street frontage/lot width requirement so that lots could be created wherever it makes sense and access could utilize private drives or private ways
- lots would need to be located where it makes sense in terms of the natural characteristics of the land – away from land with agricultural potential or with natural resource constraints
- if development along existing rural roads is a concern, it could include a requirement for limiting direct vehicle access to certain roads and/or a provision for retaining/creating a natural buffer along these roads

In addition to these basic provisions, there could be a requirement that an amount of land equal to the difference between the 10 acre/unit density requirement and the actual lot size be set aside as permanent open space through a conservation easement or similar mechanism if this in an area where the City's objective is to create permanent conservation rather than a land bank.

This approach would accomplish a couple of things:

1. It would equalize the development potential for property owners that now is a function of frontage on existing roads – every property owner with 50 acres would potentially have the same development potential.
2. It would provide more flexibility in how the residential development that does occur can be located and laid out as opposed to the existing system that essentially requires that it be strung out along the road to meet the large lot width requirements.
3. If it was coupled with a land conservation requirement, it could allow significant areas to be permanently conserved over the long term while providing the property owners with some development potential.

### Alternative #3 Revise the AG/RP District to Create Limited Residential Development Potential

The concept of Alternative #2 could be extended to areas where there is only AG/RP zoning without a strip of RR or LDCR along the road by allowing a property owner limited development potential that is not associated with “commercial agriculture” in return for doing something that benefits the City. The concept here is that allowing very limited development potential creates value for the property owner and that increased value could be shared between the property owner and the larger community. Here are some ideas along that line:

1. The City could allow property owners to buy the right to develop in the AG/RP District at the 1 unit per 10 acre or whatever density by paying the City a development offset fee. This fee would go into a dedicated account to purchase land in areas where the City wants to permanently conserve open space such as along the rivers or in the Lake Auburn or Taylor Pond watersheds.
2. Similarly, the City could allow property owners the right to develop in return for conserving 10 acres of land per unit either on the parcel or in other areas where the City wants land conservation. This might be granting a conservation easement to a land trust or watershed protection group. For example, a property owner who owns land on both sides of North River Road could create a small number of lots on the land away from the river in return for permanently conserving land on the riverside of the road by granting a conservation easement to a land trust or state agency.

This approach would give property owners of AG/RP only land some very limited development potential but only as a trade-off for doing something the City wants. The downside is that it would potentially result in some residential development in these areas that would reduce the value of the AG/RP District as a “land bank” since it could make the future conversions of the land to other uses more problematic. On the other hand, it would allow property owners some residential use and potentially create a mechanism for conserving the open space that the City is interested in.



To: Auburn Comprehensive Plan Committee  
From: Mark Eyerman - **MEMO # 3**  
Subject: Rural Land Use Policy  
Date: April 15, 2009

I have prepared two pieces for the Committee for Thursday's meeting. The first is Eyerman's "TRIAL BALLOON". In this trial balloon, I tried to synthesize the discussions of the last two meetings into a somewhat comprehensive set of policy directions for managing land use in the rural parts of the City. Most of this comes from what I think I heard from the committee members during our discussions but in a few places I filled in the blanks. I think it is important that we see the big picture before we "vote" on the pieces.

In the second piece, I have broken out the policy concepts that are embedded in the "trial balloon" and have put together a set of questions dealing with the components that we can vote on.

### Eyerman's Trial Balloon

Here is my take on a comprehensive land use policy for the rural areas. I have laid this out as a list of components to help us work through them but there is no particular significance to the order. As you look at this remember that we are working on the Comprehensive Plan not actual zoning provisions. The plan needs to establish the general policy directions for what the City wants to have happen with the understanding that the details will need to be worked out by the Planning Board or other implementation group.

1. *Create a separate Shoreland Resource Protection District*—The State Shoreland Zoning Law requires the City to zone areas in proximity to certain waterbodies and wetlands in accordance with state requirements. Shoreland Zoning mandates that undeveloped 100 Year floodplains adjacent to the rivers and great ponds/lakes be zoned resource protection that essentially is a non-development zone. The state also requires that an area 250' in width around freshwater wetlands with high/moderate waterfowl habitat value be designated resource protection. The City has used the AG/RP District to address this requirement in the past. The City is updating its Shoreland Zoning to meet new state requirements and is working on creating a separate Shoreland RP District that would apply only to these very limited areas identified by the state. These areas would essentially be "pulled out" from

the AG/RP District. This is a sound concept and should be supported in the Comp Plan. This district could also be used to protect other specific “high value” natural resource areas if the City ever wanted to do that.

2. *Maintain the basic concept of having two approaches for managing land use in the Rural Area – one that allows for limited residential development potential independent of agriculture and one that allows for residential development potential only in conjunction with a bona fide commercial rural use* – The City currently has two situations, one where there is a strip of RR or LDCR along the road with the backland zoned AG/RP and the other where there is no strip of residential zoning. This item proposes that as an organizational approach, this basic concept remain in place.
3. *Rename/Re-characterize the AG/RP District as a “Rural Conservation” District* – With the creation of a separate Shoreland RP District, the AG/RP District could be renamed to better reflect what its purpose is. I picked “Rural Conservation District” but there is no magic in that name. The purpose statement for the district could reinforce that the objective of the City is that this area remain essentially as a rural area that accommodates rural and agricultural uses but does not allow for residential development. It could also include the idea that rural land owners are provided with opportunities to make economic use of their property that does not include residential development.
4. *Update the requirements for the Rural Conservation District* – Within this area, a wide range of agricultural and “rural” uses would be allowed. This would include a variety of commercial “natural resource based” or agricultural activities such as farm markets that sell both home grown/made and non-local items, processing and manufacturing of natural resource based products, agricultural related businesses (equipment supply, feed, tack shops, etc.), and land intensive commercial recreational uses. In addition, existing agricultural buildings and structures that are no longer used would be allowed to be reused for low-intensity non-residential uses (storage, tradesman/contractor/landscaping businesses, etc.).

Residential uses would be permitted only in the following situations:

- in conjunction with a bona fide commercial agricultural use
- in conjunction with a bona fide commercial natural resource use

- in conjunction with a pre-existing commercial recreational uses (golf course, ski area, etc.) where the residential use is an integral part of a planned development

To accommodate accessory residential uses, the income/revenue requirements for commercial agricultural uses or natural resource uses would be updated to recognize the potential for outside sources of income.

5. *Continue to have shallow strips of low density residential use along certain rural roads but allow some flexibility where the units are built* – Where there is a desire to recognize existing development patterns or to provide rural property owners with limited independent residential development potential, a strip of low-density residential zoning would be maintained/established along the road similar to the current pattern. This residential strip would be used to determine the number of residential units that could be built based upon the density, lot size, and frontage requirements of that zone. Property owners would be given a range of options for how and where those units are developed including:

- creating lots along the road frontage in conformance with the residential zoning requirements
- creating lots on other areas of the parcel that are zoned Rural Conservation with reduced lot size and access/frontage requirements to allow “rural” development without creating paved streets
- creating lots on other parcels in the Rural Conservation District that are owned by the same owner (mini development transfer)
- selling the development right to another property owner to allow higher density development in residential districts (transfer of development rights)

If residential development is moved from the residential strip to a Rural Conservation area, the owner would need to demonstrate that the location is appropriate and consistent with the rural objective – doesn’t negatively impact natural resources or agricultural potential. In addition, if units are moved from the residential strip, an area of land within the strip would need to be permanently protected by a conservation easement or similar method to prevent it from being developed in the future.

6. *Establish objective criteria for determining which roads should have a residential strip* – Under the two area model (with and without a residential

strip), the key policy issue becomes where residential strips should be provided. Here are some ideas for possible criteria but this is just a starting point:

Where residential strips could be provided

- where there is existing residential development along the road
- where the area is adjacent to a developed area or residentially zoned areas and could potentially develop for residential use in the future (an area that might be withdrawn from the land bank in the future for residential uses)
- where fire protection can be provided within the existing service area – reasonable response time, available water supply
- where police protection can be reasonably provided with the current patrol system
- where there is active agricultural use of the property (as a way of subsidizing agricultural income)

Where residential strips should not be provided

- if the road will evolve as a rural collector where roadside development and additional driveways are not desired
- where the area may potentially develop as a non-residential area in the future (the holding zone concept)
- where the land along the road is not suitable for low density residential development
- where the land along the road has significant natural resource value or is adjacent to land with significant value
- where the current road system/condition cannot accommodate increased traffic
- where the area is beyond reasonable public safety response

7. *Review where residential strips should be provided based on the criteria as part of the land use area discussions* – Assuming that we can agree on some broad criteria for where residential strip should and should not be allowed, we can then look at the existing AG/RP zones as we finish going through the various geographic areas as to see if any changes should be proposed as to where residential strips should be located.

## Questions/Voting

I have put together a set of questions that address many of the policy issues embedded in my “trial balloon”. I have tried to structure these as yes-no or either-or questions so we can go through them simply and quickly. As you look at the questions, refer back to the discussion in the trial balloon for the context and details.

1. Does the Committee support creating a separate Shoreland Resource Protection District that would apply only to areas mandated by the state law?

- a. YES
- b. NO

2. Does the Committee support retaining the basic approach for managing land use in rural areas – having two situations, one with just the rural zone and one with a strip of residential land along the road?

- a. YES
- b. NO

3. Does the Committee support renaming the AG/RP Zone?

- a. YES
- b. NO

3.1 Is Rural Conservation an appropriate name to use in the Comp Plan?

- a. YES
- b. NO

3.2 Do you have a suggestion for a more appropriate way to refer to this area in the Comp Plan?

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4. Should the updated Rural Conservation designation allow property owners to have a broader range of non-residential agriculture and natural resource related uses?

- a. YES
- b. NO

4.1 Should quasi-industrial type uses be allowed if they relate to agriculture or natural resource activities (see discussion in Trial Balloon)?

- a. YES
- b. NO

4.2 Should existing agricultural buildings be allowed to be reused for low-intensity nonresidential uses?

- a. YES
- b. NO

5. Which of the following statements should be the City's policy on residential uses in the Rural Conservation area?

a. Residential uses should only be permitted in conjunction with a commercial agricultural or natural resource use (specifics to be determined)

OR

b. Property owners should be allowed very limited residential development potential in addition to homes permitted in conjunction with a commercial agriculture or natural resource use

6. Should residential uses be allowed in conjunction with the following types of activities in the Rural Conservation area?

6.1. an agriculturally related business (a tack shop or a feed supply operation)?

- a. YES
- b. NO

6.2. an agricultural or natural resource based processing or manufacturing use (a sawmill for example)?

- a. YES
- b. NO

6.3. an existing commercial recreational use as part of an overall plan?

- a. YES
- b. NO

7. Should the Comp Plan recommend that the way of determining if a rural use should be allowed to have an accessory residential unit be updated to revise the income requirement to take into account part time operations and the potential for outside income?

- a. YES
- b. NO

7.1. If yes, does the Committee agree that working out the details should be the responsibility of another group?

- a. YES

b. NO – the Committee should work out the details

8. Where there is a strip of residentially zoned land along the road, should the property owner be given flexibility to locate the units outside of the residential strip?

- a. YES
- b. NO

8.1 If yes, should the unit be allowed to be built?

8.1.1 Somewhere else on the same parcel in the Rural Conservation area?

- a. YES
- b. NO

8.1.2 On another lot owned by the same person in the Rural Conservation area?

- a. YES
- b. NO

8.1.3 Sold to be used to increase the density in residentially zoned areas?

- a. YES
- b. NO

8.2 If lots can be created elsewhere on the same parcel or on another parcel in the Rural Conservation area, should they be allowed to be laid out so they don't have frontage on a street?

- a. YES
- b. NO

9. Should the Committee establish criteria for evaluating where residential strips are located and where they are not?

- a. YES
- b. NO

9.1 If the answer is yes, which of the following describes how the criteria should be treated:

a. They should be informal criteria that are just used by the Committee

OR

b. They should be formal criteria that get included in the Comp Plan to guide future rezoning discussions

10. If the Committee decides that criteria should be created, should the Committee defer consideration of specific situations/roads and do that as part of the area by area land use discussion?

- a. YES
- b. NO

11. The trial balloon lays out some possible criteria (see above). Thinking about where residential strips should be located, should we consider the following?

11.1 Where there is existing residential development along the road?

- a. YES
- b. NO

11.2 Where the area is adjacent to a developed area or residentially zoned areas and could potentially develop for residential use in the future (an area that might be withdrawn from the land bank in the future for residential uses)?

- a. YES
- b. NO

11.3 Where fire protection can be provided within the existing service area – reasonable response time, available water supply?

- a. YES
- b. NO

11.4 Where police protection can be reasonably provided with the current patrol system?

- a. YES
- b. NO

11.5 Where there is active agricultural use of the property (as a way of subsidizing agricultural income)?

- a. YES
- b. NO

11.6 Are there other criteria that should be considered?

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12. And then thinking about where residential strips should not be located, should we consider the following:

12.1 If the road will evolve as a rural collector where roadside development and additional driveways are not desired?

a. YES

b. NO

12.2 Where the area may potentially develop as a non-residential area in the future (the holding zone concept)?

a. YES

b. NO

12.3 Where the land along the road is not suitable for low density residential development?

a. YES

b. NO

12.4 Where the land along the road has significant natural resource value or is adjacent to land with significant value?

a. YES

b. NO

12.5 Where the current road system/condition cannot accommodate increased traffic?

a. YES

b. NO

12.6 Where the area is beyond reasonable public safety response?

a. YES

b. NO

12.7 Are there other criteria that should be considered?

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April 29, 2009

To: Auburn Comprehensive Plan Committee

From: Antje Kablitz → MEMO #4

Subject: Rural Land Use Vote Outcome

On April 16, the Auburn Comprehensive Plan Committee voted on a set of questions that addressed many of the rural policy issues outlined in the "Trial Balloon" included Rural Land Use Memo prepared by Mark (see Appendix page 9).

The following is a tabulation of the vote from this meeting as well as a summation of the key policy directions.

The policy directions will guide the continued discussion of future land use in the Agriculture/Rural District.

#### **DETAILED VOTING TABULATION**

The eligible voters included the twenty active committee members in attendance. An eligible voter was defined as a committee members whose name appeared on the official comprehensive plan member list provided by the City as well as additional individuals who were added to the committee in the fall of last year. The committee chair as well as City and municipal staff did not vote.

When answering questions, the committee referred back to the discussion in the "trial balloon" for the context and details.

All votes were counted by a show of hands. In some instances, eligible voters chose to abstain from voting on specific questions.

1. Does the Committee support creating a separate Shoreland Resource Protection District that would apply only to areas mandated by the state law?

**YES 15**

No 1

Abstain 4

2. Does the Committee support retaining the basic approach for managing land use in rural areas – having two situations, one with just the rural zone and one with a strip of residential land along the road?

**YES 8**

No 6

Abstain 6

3. Does the Committee support renaming the AG/RP Zone?

YES 12

No 0

Abstain 8

3.1 Is Rural Conservation an appropriate name to use in the Comp Plan?

YES 7

No 5

Abstain 8

3.2 Do you have a suggestion for a more appropriate way to refer to this area in the Comp Plan?

The committee was in favor of keeping the word "Agriculture" in the name

Others were interested in "Land Reserve" to indicate that the land is held for future use.

4. Should the updated Rural Conservation designation allow property owners to have a broader range of non-residential agriculture and natural resource related uses?

YES 15

No 2

Abstain 3

4.1 Should quasi-industrial type uses be allowed if they relate to agriculture or natural resource activities (see discussion in Trial Balloon)?

**The committee chose not to vote on this, deciding to revisit the topic after a more detailed description of "quasi-industrial" agriculture or natural resource activities is available.**

4.2 Should existing agricultural buildings be allowed to be reused for low-intensity nonresidential uses?

YES 17

No 0

Abstain 3

5. Which of the following statements should be the City's policy on residential uses in the Rural Conservation area? The committee voted 12 to 8 in favor of A.

**A. Residential uses should only be permitted in conjunction with a commercial agricultural or natural resource use (specifics to be determined).**

B. Property owners should be allowed very limited residential development potential in addition to homes permitted in conjunction with a commercial agriculture or natural resource use

6. Should residential uses be allowed in conjunction with the following types of activities in the Rural Conservation area?

(6.1.) Allow residential uses in conjunction with *agriculturally related business (a tack shop or a feed supply operation)*.

**YES 12**                      No 0                      Abstain 8

(6.2.) Allow residential uses in conjunction with *an agricultural or natural resource based processing or manufacturing use (a sawmill for example)*

Yes 8                      **NO 10**                      Abstain 2

(6.3.) Allow residential uses in conjunction with *an existing commercial recreational use as part of an overall plan*

**YES 9**                                      **NO 9**                                      Abstain 4

The committee chose to reframe this question to include both new and existing commercial recreational uses and to require that the potential for residential development in a commercial recreational area to be dependent on:

- a) Scale of residential uses
- b) Size of the development
- c) Location of development
- d) The development of a planned development
- e) Recreation/open space easement protecting recreational land from future development

6.4 below reflects this change.

(6.4.) Allow residential uses in conjunction with *a any commercial recreational use as part of an overall plan*

**YES 12**                                      No 4                                      Abstain 4

7. Should the Comp Plan recommend that the way of determining if a rural use should be allowed to have an accessory residential unit be updated to revise the income requirement to take into account part time operations and the potential for outside income?

**YES 17**                                      No 0                                      Abstain 3

7.1. If yes, does the Committee agree that working out the details should be the responsibility of another group?

**YES 17**                                      No 0                                      Abstain 3

8. Where there is a strip of residentially zoned land along the road, should the property owner be given flexibility to locate the units outside of the residential strip?

**YES 12**

No 6

Abstain 2

8.1 Since the answer to 8 was yes, the committee was asked to define where the units could be allowed to be built...

8.1.1 Allow units somewhere else on the same parcel in the *Rural Conservation* area.

**YES 12**

No 6

Abstain 2

8.1.2 Allow units on another lot owned by the same person in the Rural Conservation area

YES 7

**NO 10**

Abstain 3

8.1.3 Allow property owners to sell development rights to be used to increase the density in residentially zoned areas.

**YES 12**

No 2

Abstain 6

8.2 If lots can be created elsewhere on the same parcel or on another parcel in the Rural Conservation area, could they be allowed to be laid out so they don't have frontage on a street?

**YES 11**

No 7

Abstain 2

9. Should the Committee establish criteria for evaluating where residential strips are located and where they are not?

**YES 14**

No 1

Abstain 5

(9.1) Include formal criteria in the Comp Plan to guide future rezoning discussions regarding residential strip development.

**YES 14**

No 1

Abstain 5

10. If the Committee decides that criteria could be created, should the Committee defer consideration of specific situations/roads and do that as part of the area by area land use discussion?

**YES 16**

No 0

Abstain 4

11. The trial balloon lays out some possible criteria (see above). Thinking about where residential strips could be located, should we consider the following?

11.1 Allow residential strips where there are existing residential development along the road.

**YES 12**                                      No 4                                      Abstain 4

11.2 Allow residential strips where the area is adjacent to a developed area or residentially zoned areas and could potentially develop for residential use in the future (an area that might be withdrawn from the land bank in the future for residential uses)

Yes 4                                      **NO 12**                                      Abstain 4

11.3 Allow residential strips where fire protection can be provided within the existing service area with reasonable response time and available water supply.

**YES 10**                                      No 6                                      Abstain 4

11.4 Allow residential strips where police protection can be reasonably provided with the current patrol system.

**YES 10**                                      No 6                                      Abstain 4

11.5 Allow residential strips where there is active agricultural use of the property as a way of subsidizing agricultural income.

**YES 13**                                      No 4                                      Abstain 3

11.6 Other criteria that could be considered include:

School impacts and capacity

Recreation impacts

Trash collection/public works impacts

12. When thinking about where residential strips should **NOT** be located, should we consider the following:

12.1 Residential strips should **NOT** be allowed if the road will evolve as a rural collector . **YES 13**                                      No 0                                      Abstain 7



## KEY POLICY DIRECTION

1. **Create a separate Shoreland Resource Protection Zone** that includes the areas of the existing AG/RP District that are mandated by State Shoreland Zoning to be zoned Resource Protection.
2. **Maintain an AG/Rural District** in which there is no independent residential development potential. Require all residential uses to be accessory to another allowed rural use.
3. **Allow accessory residential uses** in the AG/Rural District in conjunction with:
  - a commercial agriculture or natural resource use
  - agriculturally related businesses (tack shops, feed supply operations)
  - a commercial recreational use as part of a planned development that protects the recreation/open space portion of the project from future development.
- 3.a Update the criteria for what constitutes a rural use that can have an accessory residential use.
4. **Allow a broader range of nonresidential agriculture and natural resource related uses** in the AG/Rural District (details to be determined)
5. **Continue the concept of zoning “residential strips”** along selected rural roads and base the determination of which roads should have a residential strip on criteria to be included in the Comprehensive Plan.
  - 5.a Allow residential development that can occur in these “residential strips” to be:
    - Developed within the residential zone
    - Transferred and developed on a portion of the same parcel that is in the AG/Rural District
    - Transferred to another residential district to allow higher density development than is otherwise allowed
  - 5.b If a residential unit is transferred from the residentially zoned portion of the a parcel to the AG/Rural portion, the development standards should allow reduced lot sizes and reduced frontage/access requirements as long as the lot location does not negatively impact natural resources or agricultural

potential and the land in the residential strip from which the units is transferred is permanently protected from development.

- 5.c Similarly is a residential unit is transferred to another residential district, the land in the residential strip from which the unit is transferred is permanently protected from development
- 5.d The specific criteria for determining where residential strips should be allowed needs to be developed.

## APPENDIX: Trial Balloon used as Basis for Voting

1. *Create a separate Shoreland Resource Protection District*—The State Shoreland Zoning Law requires the City to zone areas in proximity to certain waterbodies and wetlands in accordance with state requirements. Shoreland Zoning mandates that undeveloped 100 Year floodplains adjacent to the rivers and great ponds/lakes be zoned resource protection that essentially is a non-development zone. The state also requires that an area 250' in width around freshwater wetlands with high/moderate waterfowl habitat value be designated resource protection. The City has used the AG/RP District to address this requirement in the past. The City is updating its Shoreland Zoning to meet new state requirements and is working on creating a separate Shoreland RP District that would apply only to these very limited areas identified by the state. These areas would essentially be “pulled out” from the AG/RP District. This is a sound concept and could be supported in the Comp Plan. This district could also be used to protect other specific “high value” natural resource areas if the City ever wanted to do that.
2. *Maintain the basic concept of having two approaches for managing land use in the Rural Area – one that allows for limited residential development potential independent of agriculture and one that allows for residential development potential only in conjunction with a bona fide commercial rural use* – The City currently has two situations, one where there is a strip of RR or LDCR along the road with the backland zoned AG/RP and the other where there is no strip of residential zoning. This item proposes that as an organizational approach, this basic concept remain in place.
3. *Rename/Re-characterize the AG/RP District as a “Rural Conservation” District* – With the creation of a separate Shoreland RP District, the AG/RP District could be renamed to better reflect what its purpose is. I picked “Rural Conservation District” but there is no magic in that name. The purpose statement for the district could reinforce that the objective of the City is that this area remain essentially as a rural area that accommodates rural and agricultural uses but does not allow for residential development. It could also include the idea that rural land owners are provided with opportunities to make economic use of their property that does not include residential development.
4. *Update the requirements for the Rural Conservation District* – Within this area, a wide range of agricultural and “rural” uses would be allowed. This would include a variety of commercial “natural resource based” or agricultural activities such as

farm markets that sell both home grown/made and non-local items, processing and manufacturing of natural resource based products, agricultural related businesses (equipment supply, feed, tack shops, etc.), and land intensive commercial recreational uses. In addition, existing agricultural buildings and structures that are no longer used would be allowed to be reused for low-intensity non-residential uses (storage, tradesman/contractor/landscaping businesses, etc.).

Residential uses would be permitted only in the following situations:

- in conjunction with a bona fide commercial agricultural use
- in conjunction with a bona fide commercial natural resource use
- in conjunction with a pre-existing commercial recreational uses (golf course, ski area, etc.) where the residential use is an integral part of a planned development

To accommodate accessory residential uses, the income/revenue requirements for commercial agricultural uses or natural resource uses would be updated to recognize the potential for outside sources of income.

5. *Continue to have shallow strips of low density residential use along certain rural roads but allow some flexibility where the units are built* – Where there is a desire to recognize existing development patterns or to provide rural property owners with limited independent residential development potential, a strip of low-density residential zoning would be maintained/established along the road similar to the current pattern. This residential strip would be used to determine the number of residential units that could be built based upon the density, lot size, and frontage requirements of that zone. Property owners would be given a range of options for how and where those units are developed including:

- creating lots along the road frontage in conformance with the residential zoning requirements
- creating lots on other areas of the parcel that are zoned Rural Conservation with reduced lot size and access/frontage requirements to allow “rural” development without creating paved streets
- creating lots on other parcels in the Rural Conservation District that are owned by the same owner (mini development transfer)
- selling the development right to another property owner to allow higher density development in residential districts (transfer of development rights)

If residential development is moved from the residential strip to a Rural Conservation area, the owner would need to demonstrate that the location is appropriate and consistent with the rural objective – doesn't negatively impact natural resources or agricultural potential. In addition, if units are moved from the residential strip, an area of land within the strip would need to be permanently protected by a conservation easement or similar method to prevent it from being developed in the future.

6. *Establish objective criteria for determining which roads should have a residential strip* – Under the two area model (with and without a residential strip), the key policy issue becomes where residential strips should be provided. Here are some ideas for possible criteria but this is just a starting point:

Where residential strips could be provided

- where there is existing residential development along the road
- where the area is adjacent to a developed area or residentially zoned areas and could potentially develop for residential use in the future (an area that might be withdrawn from the land bank in the future for residential uses)
- where fire protection can be provided within the existing service area – reasonable response time, available water supply
- where police protection can be reasonably provided with the current patrol system
- where there is active agricultural use of the property (as a way of subsidizing agricultural income)

Where residential strips should not be provided

- if the road will evolve as a rural collector where roadside development and additional driveways are not desired
- where the area may potentially develop as a non-residential area in the future (the holding zone concept)
- where the land along the road is not suitable for low density residential development
- where the land along the road has significant natural resource value or is adjacent to land with significant value
- where the current road system/condition cannot accommodate increased traffic
- where the area is beyond reasonable public safety response

7. *Review where residential strips should be provided based on the criteria as part of the land use area discussions* – Assuming that we can agree on some broad criteria

for where residential strip should and should not be allowed, we can then look at the existing AG/RP zones as we finish going through the various geographic areas as to see if any changes should be proposed as to where residential strips should be located.

# SECTION II

## PART II - CODE OF ORDINANCES

### Chapter 60 - ZONING

#### ARTICLE IV. - DISTRICT REGULATIONS

#### DIVISION 3. AGRICULTURAL AND RESOURCE PROTECTION USE REGULATIONS

#### **DIVISION 3. AGRICULTURAL AND RESOURCE PROTECTION USE REGULATIONS**

[Sec. 60-172. Permitted uses; exceptions.](#)

[Sec. 60-173. Dimensional regulations.](#)

[Secs. 60-174—60-199. Reserved.](#)

Sec. 60-172. Permitted uses; exceptions.

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

- (1) One-family detached dwellings, including manufactured housing subject to all the design standards, except the siting requirements of [section 60-173](#), as set forth in article XII of this chapter, accessory to farming operations subject to the following restrictions:
  - a. No certificate of occupancy shall be issued for any such farm residence until the barns, livestock pens, silos, or other such buildings or structures which are to be erected in connection with the proposed agricultural use as shown on the plans and specifications presented to the municipal officer charged with enforcement are substantially completed.
  - b. In no case shall any farm residence constructed under the provisions of this section after the effective date of the amended ordinance from which this section is derived continue to be occupied as a residence if the principal agricultural use has been abandoned or reduced in scope below the minimum requirements as shown on the plans and specifications presented to the municipal officer charged with enforcement.
  - c. Any residence constructed under this article shall not be converted to nonfarm residential use except by permission of the planning board based upon a finding that the abandonment or reduction in such use resulted from causes beyond the control of the applicant and not from any intention to circumvent the requirements of this article.
- (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.

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DIVISION 3. AGRICULTURAL AND RESOURCE PROTECTION USE REGULATIONS

- (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 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 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.

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- (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:
  - 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.
- (13) Licensed hospice care facility provided that it shall be licensed by the state as a Medicare certificate hospice.
- (14) One-family detached dwellings, including manufactured housing subject to the following conditions:
  - a. The lot shall contain a minimum 10 acres and a combination of either Low Density County Residential (LDCR) or Low Density Rural Residential (LDRR) zoning and Agricultural and Resource Protection (AG/RP) zoning.
  - b. The existing residential development right from the residentially zoned portion of the property may be transferred to the Agricultural Resource Protection portion of the property based on a Site Plan Review application that includes all the requirements of Site Plan Review, (Article XVI, Division 2) plus the following:
    - i. USDA Farmland classifications for the entire property

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DIVISION 3. AGRICULTURAL AND RESOURCE PROTECTION USE REGULATIONS

ii. Any proposed and future lotting, new road accesses and driveways, location of residences, accessory structures and any other appurtenances for the entire property.

iii. An approved Site Plan shall indicate graphically and by note non-buildable areas as a condition of approval. These non-buildable areas may be removed only by a zone change that would change the allowable land uses

c. All conditions prerequisite to the granting of any Special Exception (Sec. 60-1336) shall be met including the following condition:

i. The granting of the special exception will not negatively impact the natural resources or agricultural potential of the property.

(Ord. of 9-21-2009, § 3.31B)

**Sec. 60-173. Dimensional regulations.**

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 and/or no building shall be erected on a lot containing less than ten 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.
  - 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 yearround 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.

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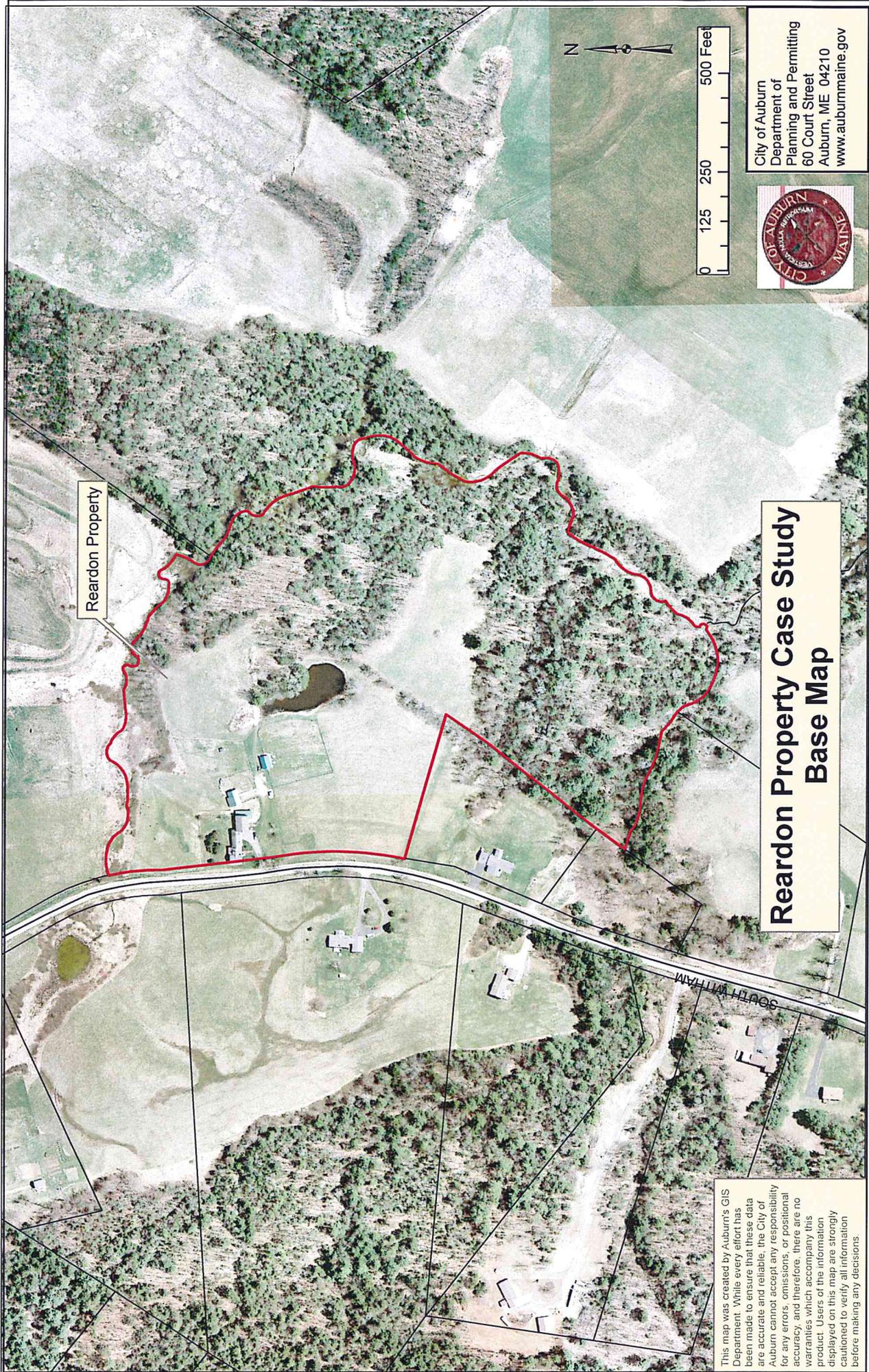
- (5) *Off-street parking.* Off-street parking spaces shall be provided in accordance with the requirements for specific uses as set forth in articles V through XI of this chapter.

(Ord. of 9-21-2009, § 3.31C)

**Secs. 60-174—60-199. Reserved.**

DRAFT





Reardon Property

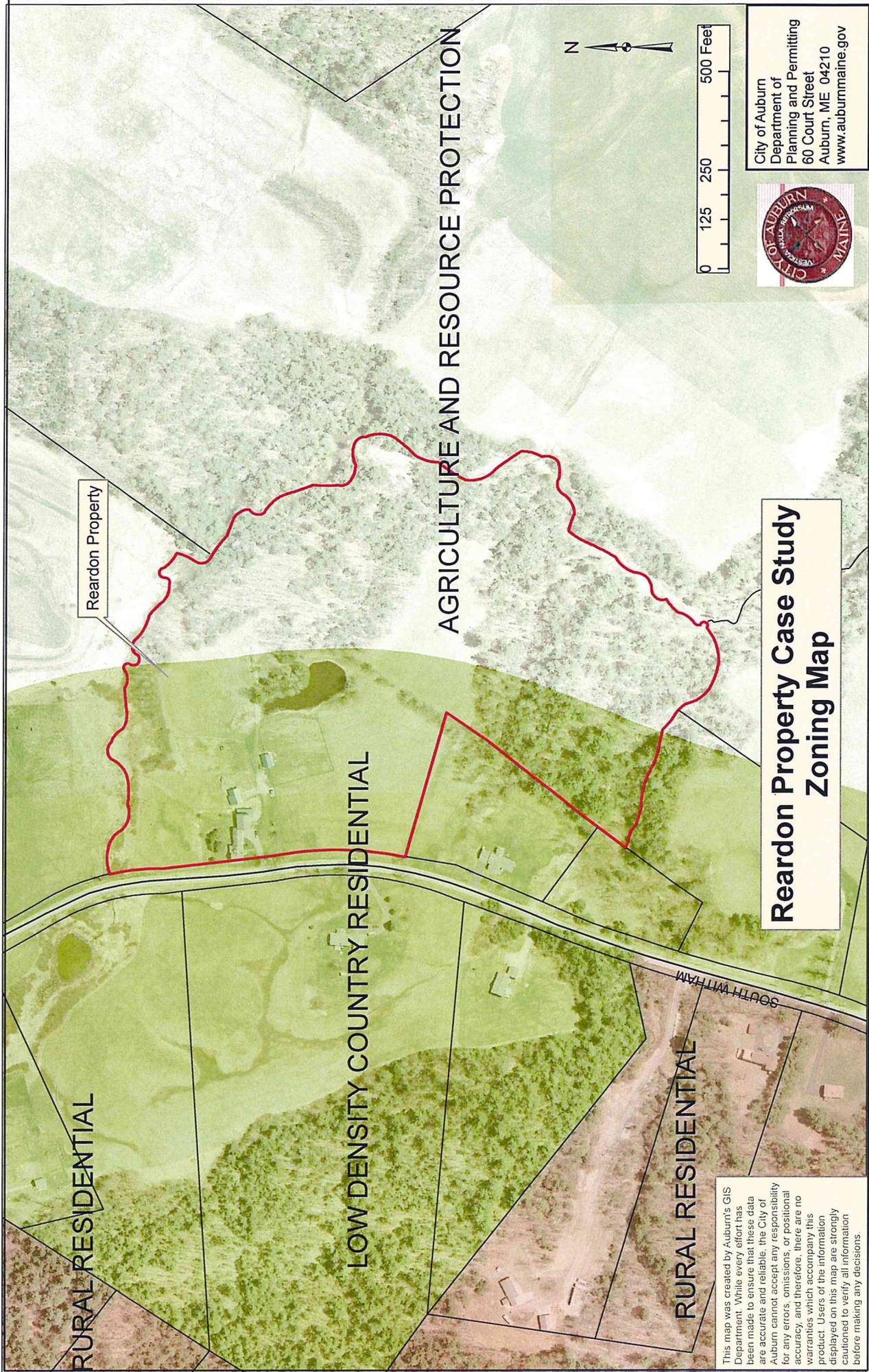
# Reardon Property Case Study Base Map



City of Auburn  
Department of  
Planning and Permitting  
60 Court Street  
Auburn, ME 04210  
[www.auburnmaine.gov](http://www.auburnmaine.gov)



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Reardon Property

AGRICULTURE AND RESOURCE PROTECTION

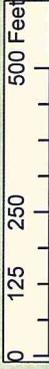
LOW DENSITY COUNTRY RESIDENTIAL

RURAL RESIDENTIAL

RURAL RESIDENTIAL

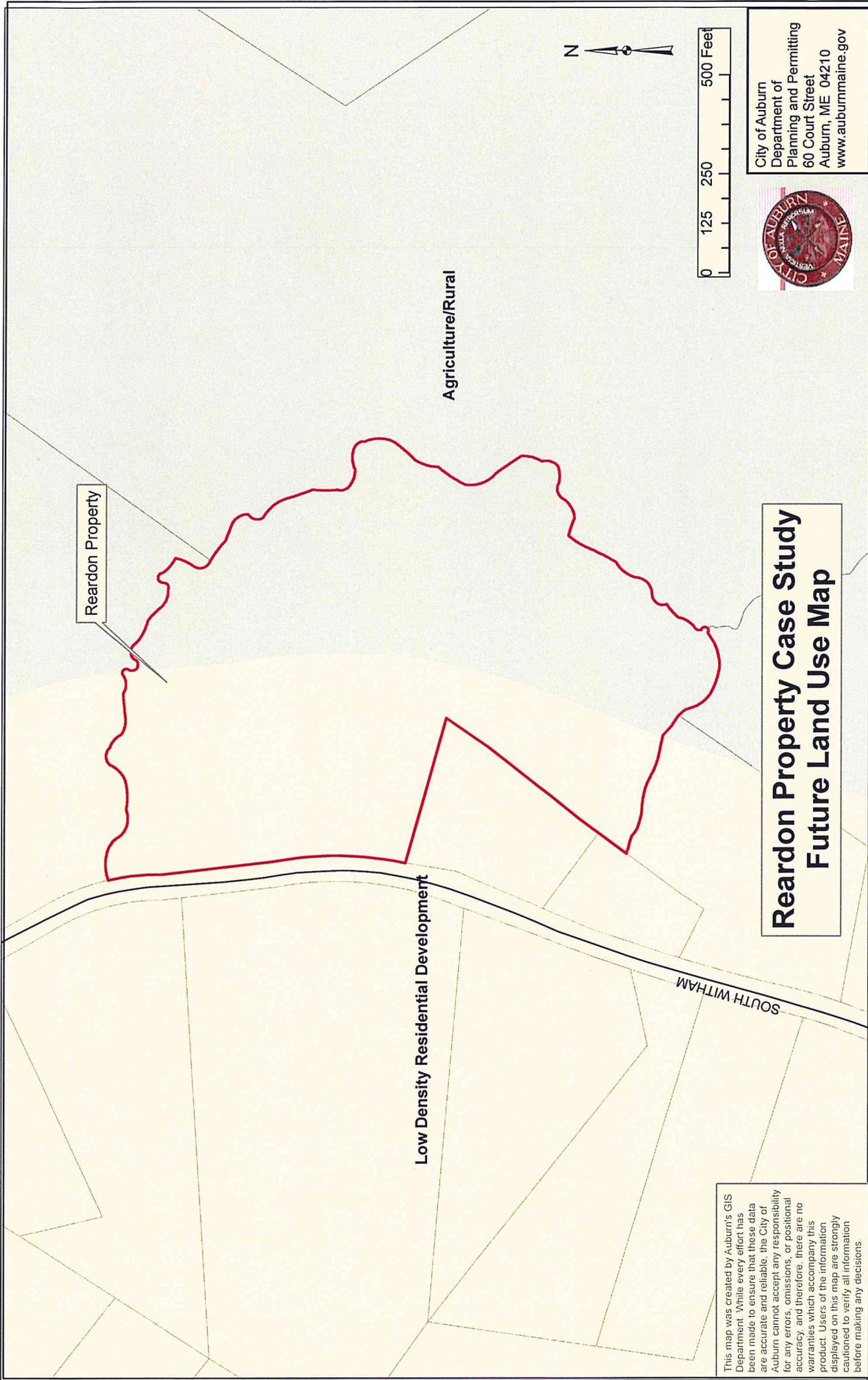
SOUTH WITHAM

**Reardon Property Case Study  
Zoning Map**



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Reardon Property

Low Density Residential Development

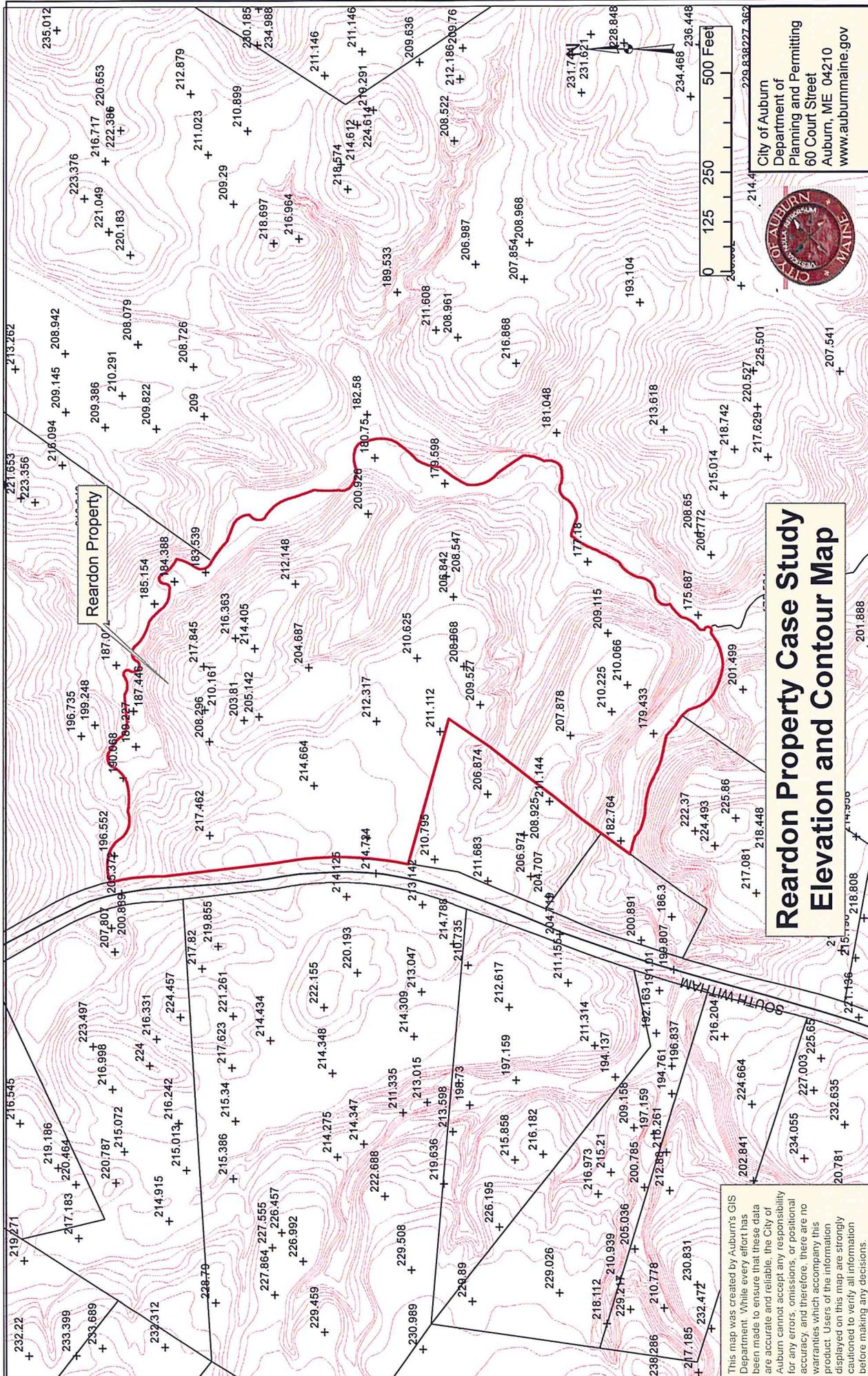
Agriculture/Rural

# Reardon Property Case Study Future Land Use Map

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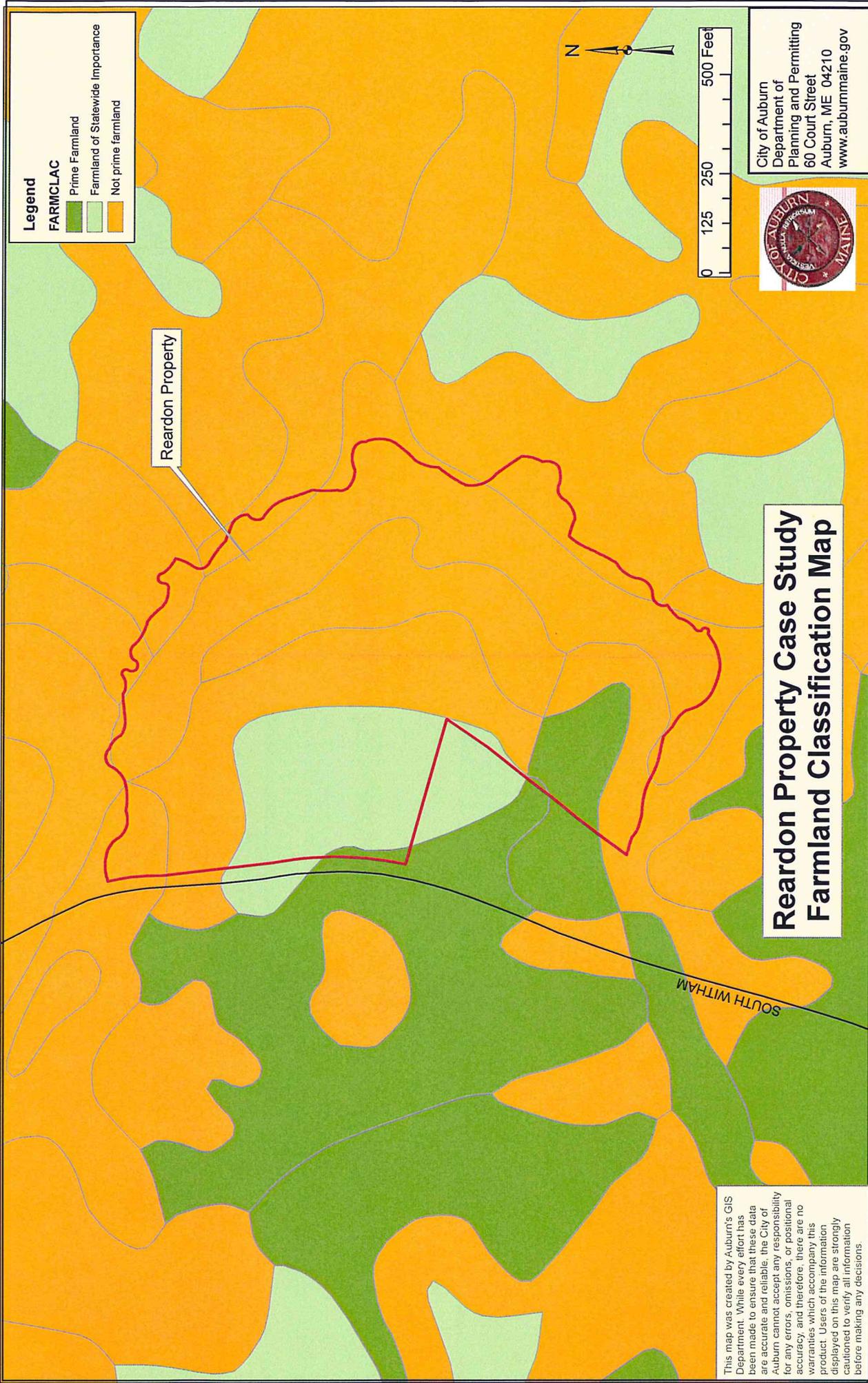
Reardon Property

# Reardon Property Case Study Elevation and Contour Map

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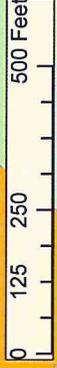
**Legend**  
**FARMCLAC**  
 Prime Farmland  
 Farmland of Statewide Importance  
 Not prime farmland

Reardon Property

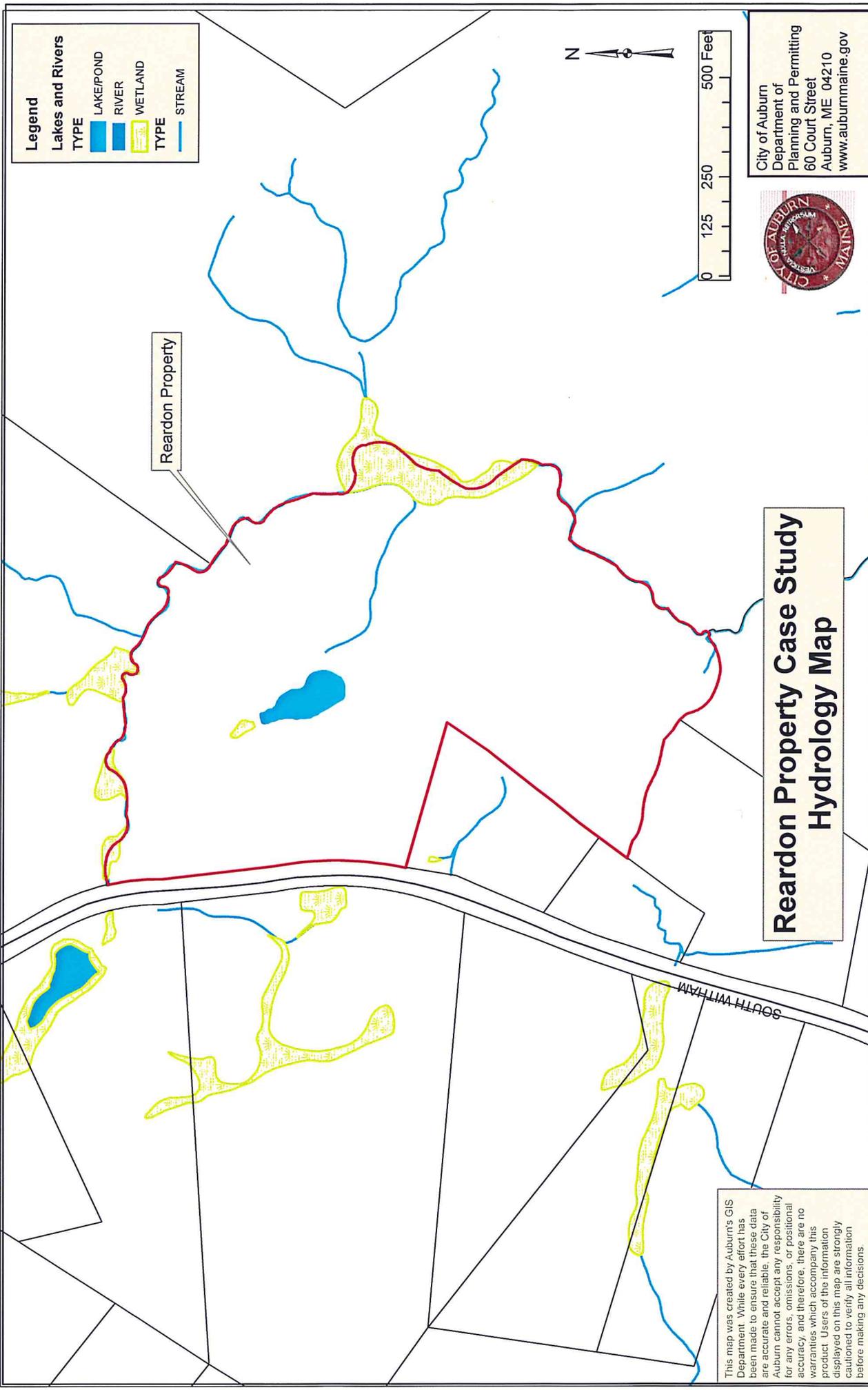
**Reardon Property Case Study  
 Farmland Classification Map**



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**Legend**  
Lakes and Rivers

TYPE	LAKE/POND
	RIVER
TYPE	WETLAND
	STREAM

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## Reardon Property Case Study Hydrology Map

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# SECTION III

## PART II - CODE OF ORDINANCES

### Chapter 60 - ZONING

#### ARTICLE XVI. - ADMINISTRATION AND ENFORCEMENT

##### DIVISION 2. - SITE PLAN REVIEW

###### Subdivision I. In General

###### Subdivision I. In General

###### Sec. 60-1276. Purpose.

###### Sec. 60-1277. Objective.

###### Sec. 60-1278. Applicability.

###### Secs. 60-1279—60-1299. Reserved.

###### **Sec. 60-1276. Purpose.**

The purpose of site plan review is to ensure that the design and layout of certain developments permitted by special exceptions, or other developments noted herein, will constitute suitable development and will not result in a detriment to city, neighborhood or the environment.

(Ord. of 9-21-2009, § 7.1A)

###### **Sec. 60-1277. Objective.**

In considering a site plan, the planning board shall make findings that the development has made provisions for:

- (1) Protection of adjacent areas against detrimental or offensive uses on the site by provision of adequate surface water drainage, buffers against artificial and reflected light, sight, sound, dust and vibration; and preservation of light and air;
- (2) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
- (3) Adequacy of the methods of disposal for wastes; and
- (4) Protection of environment features on the site and in adjacent areas.

(Ord. of 9-21-2009, § 7.1B)

###### **Sec. 60-1278. Applicability.**

A site plan review shall be required for the following projects:

- (1) All uses permitted by special exception.
- (2) Any other uses for which site plan review is required by any other provision contained in this or other ordinances.

(Ord. of 9-21-2009, § 7.1C)

###### **Secs. 60-1279—60-1299. Reserved.**

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DIVISION 2. - SITE PLAN REVIEW

Subdivision II. Procedure

Subdivision II. Procedure

- Sec. 60-1300. File for site plan review.
- Sec. 60-1301. Scale; required information.
- Sec. 60-1302. Exemption for information.
- Sec. 60-1303. Approval—Time line for review.
- Sec. 60-1304. Same—Public hearing; findings.
- Sec. 60-1305. Same—Subject to conditions, modification, restrictions, etc.
- Sec. 60-1306. Signed copies.
- Sec. 60-1307. Findings in writing.
- Sec. 60-1308. Expiration of approval.
- Sec. 60-1309. No building permitted without approval.
- Sec. 60-1310. Certificate of occupancy.
- Sec. 60-1311. Deposit of surety.
- Sec. 60-1312. Review of planning board needed for variance.
- Sec. 60-1313. Correction of off-site deficiencies.
- Secs. 60-1314—60-1334. Reserved.

**Sec. 60-1300. File for site plan review.**

An applicant for site plan review shall file with the department of community development and planning a completed site plan application along with an original and 20 copies of the site plan and the required processing fee. Such plans shall be filed not less than 30 days prior to a regularly scheduled meeting. Plans shall be folded at a size not to exceed 8½ inches by 11 inches.

(Ord. of 9-21-2009, § 7.1D(1))

**Sec. 60-1301. Scale; required information.**

The original plan shall be drawn on reproducible Mylar at a scale of no more than 100 feet to the inch. Each site plan shall contain the following information:

- (1) Name and address of owner and developer and interest of the applicant if other than the owner or developer.
- (2) Name of development, scale and meridian arrow, with specific definition of representation, date of plan and legend.
- (3) Names and addresses of all owners of record of all adjacent property as appear on assessor's records.

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Subdivision II. Procedure

- (4) Current zoning boundaries and 100-year floodplain boundaries including surrounding areas to a distance of 300 feet from the perimeter of the site.
- (5) Easements; rights-of-way, existing, planned or proposed; or other reservations adjacent to or intersecting the property.
- (6) Topographic map of the site, containing the following:
  - a. Existing contours, where the slope of existing ground surface is generally two percent or more, the topographic map shall show contours at intervals of five feet of elevation (or lesser intervals as the planning board or engineering department may prescribe). Where the slope of the existing ground surface is generally less than two percent, contour intervals of one foot shall be shown. These contours shall not be copied from the city topographic maps and shall be determined from an on-site survey certified by a registered land surveyor.
  - b. Proposed contours shall be shown at intervals to be determined by the city engineer.
- (7) Location of watercourses, wetlands, marshes, surface water, rock outcroppings, wooded areas, single trees with a diameter of ten inches measured three feet from the base of the trunk.
- (8) Location of buildings existing on the tract to be developed and on adjacent tracts within a distance of 100 feet from the property line, indicating whether existing buildings on the tract are to be retained, modified or removed.
- (9) Locations of water mains, sewer mains, wells, fire hydrants, culverts, drains, pipe sizes, grades and direction of flow, existing within 200 feet of the subject property.
- (10) Existing soil conditions and soil suitability test results.
- (11) Locations of proposed buildings and uses thereof.
- (12) Proposed traffic circulation system including streets, parking lots, driveways and other access and egress facilities, curblines, sidewalk lines and existing streets, including the projected traffic flow patterns into and upon the site for both vehicles and pedestrians and an estimate of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.
- (13) Location of existing and proposed public utility lines, indicating whether proposed lines will be placed underground.
- (14) Site developments requiring stormwater permits pursuant to 38 M.R.S.A. § 420-D shall include the required plan and to the extent permitted under 38 M.R.S.A. § 489-A, be reviewed under the procedures of article XVI of this chapter; and they shall meet and comply with 38 M.R.S.A. § 484(4-A) and those Rules promulgated by the Maine Department of Environmental Protection pursuant to the Site Law and section 420-D, specifically Rules 500 and 502, as last amended December 21, 2006. Adopted September 22, 2005, said Rules taking effect November 16, 2005, as enacted by Legislative Resolve, chapter 87, Public Laws of 2005 (LD 625/HP 458), amended March 20, 2006. If a project proposes infiltration and the standards in Rule 500, appendix D are not met, then a waste discharge license may be required from the Maine Department of Environmental Protection. An infiltration system serving a development regulated under the Site Location of Development Act may be required to meet standards in addition to those in appendix D.
- (15) Location and design of proposed off-street parking and loading areas indicating number and size of stalls.

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- (16) Proposed location and direction of and time of use of outdoor lighting.
  - (17) Existing and proposed planting, fences and walls, including all landscaping and screening and indicating existing trees to be retained and areas to be left undisturbed, including design features intended to integrate the proposed new development into the existing landscape to enhance aesthetic assets and to screen objectionable features from neighbors.
  - (18) Location, size, design and manner of illumination of signs.
  - (19) Disposal of sewage, trash, solid waste, oil waste, hazardous waste or radioactive waste showing disposal facilities, receptacles or areas.
  - (20) Perimeter boundaries of the site giving complete descriptive lot data by bearings, distances and radii of curves including the name and seal of the registered land surveyor who prepared the plan.
  - (21) Description and plan of capacity and location of means of sewage disposal together with approval of sewer district engineer or evidence of soil suitability for such disposal (test pit locations shall be shown on the plans) similarly approved by the city engineer department.
  - (22) A statement of the amount of area of land involved in the site, the percentage of the site proposed to be covered by buildings, the total number of dwelling units proposed per acre, the area proposed to be devoted to open space, the area proposed to be paved for parking, driveways, loading space and sidewalks, the total number of parking spaces required by the zoning chapter for the uses proposed, the number of employees expected per shift and the total floor area of proposed commercial or industrial uses.
  - (23) Description and plan of a phase development concept detailing the areas and sequence of phasing.
  - (24) A statement by the developer assuring that he has the financial capabilities to fully carry out the project and to comply with the conditions imposed by the planning board.
- (Ord. of 9-21-2009, § 7.1D(2))

**Sec. 60-1302. Exemption for information.**

Upon request, the planning board, or the planning director, acting for the board, may waive the necessity of providing any of the foregoing planning information which is not relevant to the proposed development.

(Ord. of 9-21-2009, § 7.1D(3))

**Sec. 60-1303. Approval—Time line for review.**

The planning director shall, within five days of receipt, transmit copies of the application and site plan to the department that in his view requires such information. The agencies receiving these copies shall have up to 15 days to make recommendations to the planning board.

(Ord. of 9-21-2009, § 7.1D(4))

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**Sec. 60-1304. Same—Public hearing; findings.**

The planning board shall, within 30 days of receipt of a completed application, hold a public hearing. Notice of a hearing shall be given in the manner provided for in division 3 of article XVII of this chapter. The planning board will take final action on the site plan within 60 days of receiving a completed application, or within such other time limit as may be mutually agreed to. Such final action shall consist of either:

- (1) A finding and determination that the proposed project will constitute a suitable development and will not result in a detriment to the neighborhood or the environment; or
- (2) A written denial of the application stating the reasons for such denial, upon a finding that:
  - a. The provisions for vehicular loading, unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will create hazards to safety.
  - b. The bulk, location or operation of proposed buildings and structures will be detrimental to and adversely affect the use and values of existing development in the neighborhood or the health or safety of persons residing or working therein.
  - c. The provisions for on-site landscaping are inadequate to screen neighboring properties from unsightly features of the development.
  - d. The site plan does not adequately provide for the soil and drainage problems which the development may give rise to in accordance with section 60-1301(14).
  - e. The provisions for exterior lighting create safety hazards for motorists traveling on adjacent streets, or are inadequate for the safety or occupants or users of the site, or will create a nuisance affecting adjacent properties.
  - f. The proposed development will unduly burden off-site sewer drainage or water systems.
  - g. The proposed development will create a fire hazard by failing to provide adequate access to the site, or to buildings on the site, for emergency vehicles.
  - h. The proposed development violates provisions of the zoning regulations applicable to the site or other applicable laws, regulations or ordinances.
  - i. The proposed development will unduly impact the ability to provide municipal services.

(Ord. of 9-21-2009, § 7.1D(5))

**Sec. 60-1305. Same—Subject to conditions, modification, restrictions, etc.**

Approval may be made subject to conditions, modifications and restrictions as the planning board may deem necessary; and any construction, reconstruction, alteration or addition shall be carried on only in conformity to such conditions, modifications or restrictions and in conformity with the application and site plan.

(Ord. of 9-21-2009, § 7.1D(6))

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**Sec. 60-1306. Signed copies.**

If no action is taken within 60 days after submittal of a completed application, the site plan shall be deemed to have been approved. An original of the approved plan signed by the planning board and one signed copy shall be delivered to the applicant, the assessor's department, the engineering department and to the building inspector on which basis building permits may be issued when all other required plans have been approved.

(Ord. of 9-21-2009, § 7.1D(7))

**Sec. 60-1307. Findings in writing.**

The findings of the planning board shall be in writing with a copy being forwarded to the applicant. The planning board's written report shall also include a statement as to how any deficiencies in the site plan might be resolved and what conditions, modifications and restrictions are to be complied with in executing the plan.

(Ord. of 9-21-2009, § 7.1D(8))

**Sec. 60-1308. Expiration of approval.**

Approval of a site plan shall expire one year after the date of approval unless all building permits have been obtained to begin construction in accordance with the approved site plan. Any site plan that contains a phase concept approved by the planning board shall not be required to obtain all building permits within the time sequence established for completion of each phase. No building permits or other permits shall be issued until all improvements are substantially completed for the preceding phase. A single one-year extension may be given upon a showing of good cause in writing by the applicant to the planning board not less than 30 days before the expiration of approval of his existing plan. The planning board shall approve or disapprove the requested extension at its next regular meeting.

(Ord. of 9-21-2009, § 7.1D(9))

**Sec. 60-1309. No building permitted without approval.**

No permit shall be issued for the construction of any building in an area included in the site plan or in any development for which a site plan is required until such site plan has been approved by the planning board and unless the construction plans and specifications presented to the building inspector with the application for the permit are consistent with the approved site plan.

(Ord. of 9-21-2009, § 7.1D(10))

**Sec. 60-1310. Certificate of occupancy.**

No certificate of occupancy shall be issued with respect to any building until all construction called for by the site plan is completed, except by special permission of the planning board granted upon a showing of special circumstances warranted the issuance of the certificate and that the remaining construction will be completed within a reasonable time.

(Ord. of 9-21-2009, § 7.1D(11))

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**Sec. 60-1311. Deposit of surety.**

The planning board may require the applicant with the submission of the site plan to tender a certified check payable to the city and issued by a surety company or secured by deposits issued by institutions authorized to issue the same by the laws of the state or the United States or irrevocable letters of credit issued by said banking institutions in an amount of money determined by the city planner, with the advice of the various city departments and agencies concerned, to be sufficient to ensure compliance with the approved site plan.

(Ord. of 9-21-2009, § 7.1D(12))

**Sec. 60-1312. Review of planning board needed for variance.**

For those developments subject to site plan review (division 2 of article XVI of this chapter) the relaxation of the dimensional requirements of any use district shall be reviewed by the planning board. The modifications of the dimensional requirements shall be allowed as the planning board may deem necessary to carry out the objectives and intent of site plan review as specified in division 2 of article XVI of this chapter.

(Ord. of 9-21-2009, § 7.1D(13))

**Sec. 60-1313. Correction of off-site deficiencies.**

The planning board shall have the right to require the developer, at his expense, to correct any off-site deficiencies either created or aggravated by the developer's proposed project.

(Ord. of 9-21-2009, § 7.1D)

**Secs. 60-1314—60-1334. Reserved.**



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Sec. 60-1335. Approval required.

Sec. 60-1336. Conditions.

Sec. 60-1337. Procedures.

Secs. 60-1338—60-1358. Reserved.

**Sec. 60-1335. Approval required.**

The planning board may approve for development those land uses listed as special exceptions under the terms of the zoning ordinance. The determinations of the board shall be in harmony with the expressed intent of the zoning ordinance and with the expressed major purpose of the city master development plan. Special exceptions shall be allowed only when they will substantially serve public convenience and welfare and will not involve dangers to health or safety.

(Ord. of 9-21-2009, § 7.2A)

**Sec. 60-1336. Conditions.**

- (a) As conditions prerequisite to the granting of any special exceptions, the board shall require evidence of the following:
- (1) That the special exception sought fulfills the specific requirements, if any, set forth in the zoning ordinance relative to such exception.
  - (2) That the special exception sought will neither create nor aggravate a traffic hazard, a fire hazard or any other safety hazard.
  - (3) That the special exception sought will not block or hamper the master development plan pattern of highway circulation or of planned major public or semipublic land acquisition.
  - (4) That the exception sought will not alter the essential characteristics of the neighborhood and will not tend to depreciate the value of property adjoining and neighboring the property under application.
  - (5) That reasonable provisions have been made for adequate land space, lot width, lot area, stormwater management in accordance with section 60-1301(14), green space, driveway layout, road access, off-street parking, landscaping, building separation, sewage disposal, water supply, fire safety, and where applicable, a plan or contract for perpetual maintenance of all the common green space and clustered off-street parking areas to ensure all such areas will be maintained in a satisfactory manner.
  - (6) That the standards imposed are, in all cases, at least as stringent as those elsewhere imposed by the city building code and by the provisions of this chapter.
  - (7) That essential city services which will be required for the project are presently available or can be made available without disrupting the city's master development plan.
- (b) As part of the granting or the denial of any such petition for a special exception, the board shall show by written statements filed in its records of such application and by a statement in the minutes of the

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board how the special exception sought fulfills the foregoing conditions. An applicant may request the board to make a statement as to how the special exception may be granted without danger to health and safety and without substantially derogating from the essential intents and purposes of the zoning ordinance or of the city master development plan.

- (c) Approval of a special exception may be made subject to such conditions, modifications and restrictions on the proposed land use as the planning board may deem necessary to carry out the foregoing objectives and conditions. Any development of the land uses allowed by special exception shall be carried out only in conformity to such conditions, modifications and restrictions in addition to those that may be called for by an approved site plan for the same site and shall be enforced by the municipal officer charged with enforcement in the same manner as specified for approved site plans. Any change, addition or enlargement of a use allowed by special exception shall require approval of the planning board in the same manner as specified for the original special exception.

(Ord. of 9-21-2009, § 7.2B)

**Sec. 60-1337. Procedures.**

Special exceptions shall be subject to the site plan review procedure specified in subdivision II of division 2 of article XVI of this chapter. The planning board shall, within 30 days of receipt of a completed application, hold a public hearing. Notice of a hearing shall be given in the manner provided for in division 3 of article XVII of this chapter. The planning board will take final action on the special exception within 60 days after its submittal or within such other time limit as may be mutually agreed to. The applicant shall accompany the application with the required fee in the amount provided in the city fee schedule.

(Ord. of 9-21-2009, § 7.2C)

**Secs. 60-1338—60-1358. Reserved.**

## SECTION IV

**III. Final Staff Comments and Recommendation-** The proposed text amendment was prepared as a Special Exception/Site Plan Review at the request of the Planning Board at its January 14, 2014 meeting. The focus of the proposed text amendment is to allow flexibility in locating a site for a residence in an AG/RP zone. The 2010 Comprehensive Plan contained language that supports this flexibility yet, other parts of the plan support a policy of using the AG/RP zone as a holding area for future development. These are conflicting directives.

**Staff Recommends DISAPPROVAL due to:**

- a) The Planning Board's decision to allow where a residence would be located in the AG/RP zone without negatively impacting agricultural potential or environmental assets would be based in great part on a staff recommendation. The staff feels this recommendation should involve more than one or two staff, within a one or two month review period to properly analyze and evaluate an application that could permanently effect future development potential for large areas.
- b) Concerns of potential conflicts with adjacent agricultural operations.
- c) The ability to allow the relocation of a residence from the Rural Residential Strip to the rear AG/RP portion of a property as a Special Exception is not difficult to achieve. Doing this however, is not consistent with the 2010 Comprehensive Plan's policy for using the AG/RP zone protect against sprawl and hold land in reserve for future development.
- d) The Staff wonders how an applicant would be able to meet all the conditions of approval of a Special Exception (Section 60-1336), especially conditions 1, 2, 3 and 6:
  - (1) That the special exception sought fulfills the specific requirements, if any, set forth in the zoning ordinance relative to such exception.
  - (2) That the special exception sought will neither create nor aggravate a traffic hazard, a fire hazard or any other safety hazard.
  - (3) That the special exception sought will not block or hamper the master development plan pattern of highway circulation or of planned major public or semipublic land acquisition.
  - (6) That the standards imposed are, in all cases, at least as stringent as those elsewhere imposed by the city building code and by the provisions of this chapter.
- e) 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.