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# Memorandum

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

From: Mary E. Costigan

Date: June 10, 2019

Re: Agricultural Zone Amendments

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

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

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

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

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

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

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

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