



City of Auburn, Maine

Office of Planning & Permitting

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To: Auburn Planning Board
From: Megan Norwood, City Planner
Re: Planning Board Initiated Zoning Amendment to Section 60-1367: Recreation/Open Space Standards for Subdivisions to Discuss Alternatives that Meet the Goal of Open Space.
Date: April 13, 2021

I. PROPOSAL: The Planning Board began discussing this item at the special meeting on March 25th. The background information on the ordinance is below. At the meeting, the Planning Board discussed a few options and wanted to think through what each option could look like at a workshop. The options discussed at the meeting included:

- The recreation/open space standards should apply to any development as long as they are not prohibitive to construction;
 - o The Planning Board would have to define what “prohibitive to construction” means and establish a metric for projects to be assessed.
- The recreation/open space standards should apply to the number of buildings, not units;
- The Form-Based-Code/General Business Districts should be exempt from the recreation/open space standards as they already have recreational facilities nearby;
- The “fee-in-lieu” should be determined by the Parks and Recreation Board based on the impact the project will have to existing recreation facilities. Where are the recreation facilities (distance-wise) from the area where the project is proposed?
- The impact of green space should be assessed as well as the resident impact with no green space provided.

The Planning Board should first discuss if multifamily development is desirable in the core of the City. If so, one approach Staff recommends is to cap or replace the acreage calculation for multifamily developments with a set value amount such as \$200/unit. As discussed under the current ordinance, the City should be split into areas for recreation facilities and the funds should be allocated to facilities in those areas that would benefit the inhabitants of the proposed development.

II. BACKGROUND:

As many Planning Board members are aware, the stringent recreation/open space requirements intended to apply only to single-family residential subdivisions now also apply to multifamily buildings as part of recent changes to subdivision law. Currently, the ordinance requires a fee in-lieu or an acre of open space for the first 10 units and 5,000 square feet for each additional unit after that. The multifamily zoning districts allow for 17 units per acre so if they wanted to create one 17-unit building on an acre, they wouldn't also be able to meet the 1-acre requirement for open space. It becomes cost prohibitive to the developers of multifamily projects to dedicate a large sum of funds and/or try to create an open space area on a small lot to meet the existing standards that apply to traditional lot subdivisions.

Subdivision law used to apply to the creation of lots where you have, for example, 6, 1-acre lots on a cul-de-sac - the traditional walkable subdivision that's not super close to recreational facilities and has the space to provide their own. Subdivision law changed recently to include dividing a building into 5 or more units so now a new (or existing) multifamily building in the more urbanized area of the City are pulled into the subdivision requirements and the recreation/open space standards now apply to them as well. The requirement was never intended to be applied to large multifamily buildings which (in theory) should already be in areas close to recreational facilities.

Sec. 60-1367. - Recreation area/open space standards.

- (a) Every developer of a residential subdivision shall include as part of a subdivision proposal a provision for recreational and open space which is adequate to meet the reasonably foreseeable needs of the residents of the

subdivision. The standard established by the city to satisfy this purpose is an area of not less than 43,560 contiguous square feet or one acre of land for the first ten lots or units. The amount of land required is increased at a rate of 5,000 square feet per unit for each unit over ten units. The standard noted in section 60-1365 shall be used as a guideline by the planning board and may be varied for low impact developments.

- (b) In any case in which the developer chooses to develop in total or in part land area that could be used to satisfy the recreational land dedication for units/house lots of it is not feasible to dedicate rights and land to meet the requirements due to topography, location or other limiting factors or if the developer can satisfy the planning board that a dedication of land is not required for recreational and open space needs, the developer may contribute to the city, or to a condominium or homeowners' association, a fee-in-lieu amount in cash which is essentially equivalent to the value which such dedicated land rights in the area where the proposed subdivision is located would have had. This fee will be capped at and based on the average market value of similarly zoned land in the immediate area of the proposed development at the time of final subdivision approval as determined by the city tax assessor.
- (c) In reviewing the amount of money requested, the board shall review the adequacy of existing facilities available to the inhabitants of the subdivision, improvements that may be needed by the existing facilities to make them adequate for the additional impact being created by the added units and any other factors which may influence the need for land dedication for a fee-in-lieu of.
- (d) A developer may choose to use both the land dedication provision and fee-in-lieu of land dedication provision in conjunction with each other. Any fee-in-lieu of amount of money used with a land dedication shall be used to develop, enlarge or enhance this recreational facility.
- (e) In determining the adequacy of land dedication and/or fee-in-lieu of land dedication, the board shall assess the projected needs of the inhabitants of the subdivision. If the planning board determines that full land dedication is necessary, then they may require such land dedication with no fee-in-lieu of land dedication.
- (f) In the situation when a fee-in-lieu of land dedication is supplied by the developer, then the developer may choose to request what uses or equipment the money will be used for. The planning board shall request an assessment of the developer's desires from the parks and recreation advisory board and if they agree with the developer, then all monies received will be earmarked for the purposes so chosen.
- (g) The proposal for land dedication may be in the form of a deed of a parcel of land within or contiguous to the subdivision, or contiguous to an existing public recreational facility within reasonable proximity of the subdivision. The planning board shall use the recreational/open space district map, made a part of the ordinance as a guide. Alternatively, the land dedication may be part of a condominium or homeowners' association or proposed in any other form acceptable to the planning board provided it serves the needs of the residents of the subdivision.
- (h) The planning board may decline to accept a proposed dedication of rights in land to serve the recreational needs of the residents of the subdivision in any case in which it determines that the public expense of maintaining the same would unduly burdensome compared to the recreational benefit which would be conferred or where the planning board determined that such recreational needs can more efficiently be served by applying a cash contribution from the developer to enlarge or enhance an existing recreational facility.
- (i) All funds contributed to the parks and recreation open space dedication will be allocated to the development of facilities located within zones as shown on the recreational/open space district map, made a part of this chapter, unless the planning board and/or developer have determined that a contribution to a facility which lies outside the zoned area would better serve the needs of the subdivision. Such funds shall be used within a five-year period. Funds not used after five years shall be returned to the developer with interest. The interest amount shall be the average of yearly interest rates established by local banks. If for unforeseen reasons monies accumulated are not used as previously agreed upon within the five-year period, the recreation advisory board may request the planning board to reallocate the funds for other recreational uses. Notice to the developer shall be given and input from the developer shall be used to determine whether or not these monies may be reallocated.
- (j) Before making any final determination about the recreational needs of the subdivision's residents, or how they can best be met, the planning board shall solicit input from the parks and recreation advisory board and shall carefully consider any recommendations in this regard which it received in response.
- (k) If a project is either proposed to be phased in, is a part of a unified development or is developed by the same developers on adjacent land to previously developed land, it shall be considered as one development and will be required to participate in the recreation open space dedication.

- (l) The approval by the planning board of a residential subdivision plan shall not be deemed to constitute an acceptance by the city of any open space shown on such plan. The planning board may also require the filing of a written agreement between the developer and the city covering future deed and title, dedication and provisions for the costs of grading, developing, equipping and maintaining recreation areas.

(Ord. of 9-21-2009, § 7.3I)

II. DEPARTMENT REVIEW:

- Police - No Comments
- Auburn Water and Sewer – No Comments
- Fire Department/Code Enforcement – No Comments
- Engineering – No Comments
- Public Services - No Comments
- Airport – No Comments
- 911 - No Comments

- III. PLANNING BOARD ACTION/STAFF SUGGESTIONS:** The Planning Board should use this workshop to discuss the items above and decide whether to schedule a public hearing/see some draft language from Staff on what one of the options could look like in the ordinance.