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Residential subdivisions located on Open Fields of Pasture

Footnote “C” of 225 attachment 2:2 requires “Residential subdivisions proposed to be located on open fields or pasture (whether or not they are actively used) shall be designed in accordance with the clustering approach described in § 225-43”. Lacking specifics, this footnote is found to apply only as direction to specific performance section 225-56 part “A” which states “all residential subdivision development proposals encompassing 10 or more acres of existing open fields or pasture shall be laid out according to the cluster standards in § 225-43 above, and in a manner consistent with Chapter 191, Subdivision of Land.”.

Section 225-56 is a specific performance standard applicable to “Agricultural Land” which is not defined and is not found to have a consistent common meaning. As stated above, part “A” of this section is found to be applicable as a result of the term in common with footnote “C” “open fields or pasture”, however the remaining parts B through G of 225-56 are not enforceable.

In summary, footnote “C” of 225 attachment 2:2 and section 225-56 part “A” require that residential subdivision development proposals encompassing 10 or more acres of existing open fields or pasture be laid out according to the cluster standards in § 225-43; remaining parts of 225-43 and 225-56 are not applicable.

Cluster Standards applicable to lots encompassing 10 or more acres of existing Open Field or Pasture.

§ 225-43

C.

- (1) NA
- (2) Conservation plan. The layout of the open space development shall reflect the site inventory and analysis. To the extent practical, the proposed open space shall be located to connect to any abutting open space of at least 10 contiguously undeveloped acres. The location of the residential units and roads shall be on the portions of the site that are most appropriate for development. The proposed open space must contain 3 or more of the following criteria:
 - (a) The portions of the site identified as Primary Conservation area.
 - (b) The portions of the site identified as Secondary Conservation areas.
 - (c) Contains or connects to existing undeveloped land of at least 10 contiguous acres, conservation land or land enrolled in a current use taxation program (tree growth, farmland, open space, working waterfront) as defined in Title 36 M.R.S.A. § 572, 36 M.R.S.A. § 1102, 36 M.R.S.A. § 1102, 36 M.R.S.A. § 1132, respectively.
 - (d) NA
 - (e) NA.
- (3) Development plan. Each lot and building location shall be an element of an overall plan for site development. The plan for the development must illustrate the layout of lots and/or the placement of buildings and the treatment of spaces, paths, roads, driveways, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of this chapter.
- (4) Maximum number of units or lots. The total number of lots or dwelling units permitted as part of the development shall be determined by dividing the net residential acreage of the site by seventy-five percent of the minimum lot area requirement for the zone in which it is located ***except in the R-3 District which has a specific density provision for open space developments (see below).***
- (5) Gross area of the development. The provisions of this section apply only to the division of a parcel of land meeting the following minimum gross area requirements:

Gross Area District Requirement

R-1 3 acres
District

R-2 5 acres
District

R-3 10 acres
District

- (6) Minimum open space. At least thirty (30) percent of the gross area of the development must be set aside as permanent open space in accordance with the provisions of Subsection **D** *except in the R-3 District which has a specific open space requirement (see below)*.
- (7) Dimensional requirements: The creation of lots and the placement of buildings and structures on lots shall be in accordance with the following minimum standards rather than the dimensional requirements of § **225-17** unless more restrictive requirements are established by the Planning Board in approving the development plan:
 - (a) Minimum lot size. There is no minimum lot size for lots that are part of an open space development except as follows. If a lot will be served by on-site water supply and sewage disposal, the lot must have a minimum of twenty thousand (20,000) square feet of area.
 - (b) Minimum lot frontage or width. Each lot shall have a minimum of 12 feet of frontage on a public or private street for access to the lot. The Planning Board may allow for the access and frontage to be shared with other lots, provided there will be provisions for shared ownership and long-term maintenance in a form that is acceptable to the Town. [See § **225-17H(3)(d)**.]
 - (c) Minimum front setback. Buildings that front on existing public streets must meet the front setback requirement of § **225-17** for the district in which it is located. The minimum setback of buildings and structures from internal streets or private accessways shall be identified on the approved development plan. Buildings must be set back a minimum of twenty-five (25) feet from the edge of the travel way of a street or the back of a sidewalk if one is provided unless more restrictive requirements are established by the Planning Board in approving the development plan. This setback applies whether or not individual lots are created.
 - (d) Minimum side and rear setbacks. Buildings and structures that are located on lots that abut the perimeter of the subdivision must conform to the minimum setback requirements of the district in which it is located. There is no required minimum side and rear setbacks from internal property lines. The minimum setback of buildings and structures from internal property lines shall be identified on the approved development plan. Principal buildings on the same or adjacent lots must be separated by a minimum of 15 feet.
 - (e) Shore frontage. Shore frontage shall not be reduced below the minimum normally required for the Shoreland Zone in which the development is located.
- (8) NA
- (9) NA
- (10) Open space preservation. The portion of the development that will be preserved as permanent open space shall be based on the primary and secondary conservation areas identified in the site inventory and analysis. Priority shall be given to the protection of the primary conservation areas and the secondary conservation areas with the highest value as identified in the site inventory and analysis. The ownership of the open space may include any of the following (with a preference to the order below):
 - (a) Ownership by a conservation organization approved by the Planning Board with permanent restrictions on its future use; or
 - (b) Ownership by the Town with a conservation easement to a conservation organization approved by the Planning Board.
 - (c) Ownership by the developer with a conservation easement to the Town Conservation Commission or a conservation organization approved by the Planning Board; or
 - (d) Ownership by a homeowners' association with a conservation easement to the Town Conservation Commission or a conservation organization approved by the Planning Board.

D. Dedication and maintenance of open space and facilities.

- (1) The open space identified in the development plan shall be permanently protected upon approval of the project. There shall be no further subdivision of this land, which shall be used only for agriculture, forestry, noncommercial recreation or conservation. However, easements for public utilities, or structures accessory to noncommercial recreation or conservation, may be permitted in accordance with the approved development plan.
- (2) The open space shall be shown on the development plan and with appropriate notation on the face thereof to indicate that the open space shall not be used for future building lots.
- (3) If any or all of the open space is to be owned by a homeowners' association, the bylaws of the proposed homeowners' association shall specify maintenance responsibilities and shall be approved by the Planning Board prior to approval of the development plan. Covenants for mandatory membership in the association setting forth the owners' rights and interest and privileges in the association and the open space shall be approved by the Planning Board and included in the deed for each lot. The provisions shall require the association to levy annual charges against all property owners to defray the expenses connected with the maintenance of the open space and other common and recreational facilities.
- (4) The developer shall maintain control of such open space and be responsible for its maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Planning Board upon request of the homeowners' association or the developer.

C4/C6; R-3 Districts

- I. Rural open space subdivisions. Subdivisions in the R-3 District may be approved and developed in accordance with the provisions of this section and § **225-43** rather than the dimensional requirements set out for the R-3 District in the Table of Dimensional Standards. [**Added 5-16-2012 STM, Art. 11**]
- (1) The maximum net residential density for a rural open space subdivision shall be determined based on a minimum lot size of forty-five thousand (45,000) square feet per dwelling unit. The minimum lot size is reduced to thirty-seven thousand five hundred (37,500) square feet per dwelling unit for subdivisions that set aside more than fifty percent (50%) of the net residential acreage of the parcel as permanent open space rather than the thirty percent (30%) required under Subsection **I(3)**.
 - (2) The minimum lot size, frontage, and other dimensional requirements shall be determined by the Planning Board at the time of approval of the subdivision in accordance with § **225-43**.
 - (3) An area equal to at least ninety percent (90%) of the area unsuitable for development deducted from total area in the calculation of the net residential area plus at least thirty percent (30%) of the net residential acreage of the parcel shall be set aside as permanent open space in accordance with § **225-43**.