

Appendix 22
Observations and Recommendations Regarding Land Use Ordinances and Open Space in Harpswell

Memo to: Selectmen, Planner, Codes Enforcement Officer, CPIC and Planning Board, Town of Harpswell
From: Harpswell Conservation Commission
Re: Observations and Recommendations Regarding Land Use Ordinances and Open Space

Background

In 2007-08, the Harpswell Conservation Commission (HCC) was asked by the Town to develop an Open Space Plan. As part of this task, the HCC was asked to prepare an analysis of how existing ordinances impact on open space and what new ordinances might be considered to protect open space. This analysis can be found below.

In summary, the HCC discovered that changes are needed in the existing ordinances to protect open space. However, the HCC does not have the mandate or expertise to make these changes. As a result, the HCC recommends that the Town appoint a committee or hire a consultant to do this work. The ideas outlined below can be used as a starting point for this work.

Recommendation Regarding the Definitions Addendum

The term “open space” is not used or defined in Harpswell’s Ordinances’ Definitions Addendum. In order to eliminate confusion or ambiguity, the HCC recommends a definition of “open space” be added to the Definitions Addendum. The Commission recommends that the following definition be inserted:

Open space, also known as natural areas or green space, is an area of land in a predominantly undeveloped condition. It can include forests, fields, wetlands and/or water bodies. Open space can be improved land, such as a ball field or cemetery, or unimproved land, such as a wildlife preserve or other natural area, or just an undeveloped parcel of land. Open space land may be preserved, enhanced, or restored in order to maintain or improve the natural scenic, ecological, cultural, hydrological or geological values of the land.

Harpswell Ordinances Regulating Development

Local ordinances represent an effective means to protect open space through a variety of techniques. Harpswell uses four different ordinances to regulate the types of allowable

development within the town. The four ordinances are 1) Basic Land Use, 2) Subdivision 3) Site Plan Review, and 4) Shoreland Zoning. These are described below.

1. Basic Land Use Ordinance

The Basic Land Use Ordinance¹ establishes performance standards for development in the interior of town. It regulates the density and siting of development on the landscape and its use. The HCC believes the Basic Land Use Ordinance needs to be modified to protect open space.

Observations and Recommendations Regarding Basic Land Use Ordinances

The HCC suggests that we need the following clarifications in our Basic Land Use Ordinance.

a. Recommendation on Natural Resource Protection Standards

When development is proposed on property located in a priority area of the Open Space Plan, the HCC suggests guidance be given regarding the siting of development in relation to the natural resource present, for example, a vernal pool or deer wintering yard.

b. Observations on the Long Term Impacts of Current Regulations on Open Space

Open space can potentially be protected more effectively if some areas of the town are designated for development and other areas are conserved for open space. Some of our current basic land use regulations² may have a negative impact on the protection of open space over time. The HCC lists some of these potential negative impacts over time.

Impact of Current Minimum Lot Size Standard on Open Space: The current regulation regarding the uniform minimum lot size throughout town will have a major impact on open space. As presently written, the uniform minimum lot size will result in a more or less uniform 40,000 square foot lot density throughout the currently undeveloped areas of town. This density is neither rural nor village in character. The eventual build-out dictated by this law will sharply reduce the amount of actual open space in town. The fact that this allowable density is less than that of a traditional New England village means that the *sense* of open space will also be diminished due to the absence of contrasting higher density nearby.

The Impact of Setbacks on Town Character: The lot line setbacks, although they are modest and allow for considerable flexibility in structure placement in a regularly-shaped lot of minimum dimensions, are uniform throughout town. Over time, these setbacks will dictate uniformity in the landscape which is neither rural nor village in character.

¹ The Basic Land Use Ordinances can be found on the Town of Harpswell website at <http://www.harpswell.maine.gov> under Ordinances.

The Impact of Non-Conforming Lots on Open Space: The minimum lot size does not prevent legally existing non-conforming lots³ from being built upon. There are currently 697 unbuilt lots less than two acres scattered through town. Some of these lots will undoubtedly prove unbuildable due to their inability to support a septic system, inability to meet shoreland setbacks or other unsuitable conditions. Nonetheless, the legal potential structure density is less than that indicated by the zoning ordinance's minimum lot size.

The Impact of Back Lots on Open Space: Back lots appear to be reasonably easy to develop, since no frontage is required of lots served by only one road or right-of-way. The minimum road standard is also modest at 12-foot wide. The impact of this rule, while effective in reducing curb cuts, will tend to facilitate the maximum potential build out.

2. Subdivision Ordinance

Harpwell's Subdivision Ordinance controls land use in subdivisions and describes 1) the procedure a developer must follow to obtain approval, 2) the criteria for the internal design and 3) construction standards for improvements. All subdivisions must be designed to ensure that important scenic areas and open spaces are maintained. The Ordinance allows for the preservation of scenic and natural beauty of the area, aesthetics, historic sites, significant wildlife habitat, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Observations and Recommendations for Subdivision Ordinances

The HCC outlines below a list of issues and suggestions that might be considered by the Town to better protect open space in subdivisions.

a. Clarification of Terminology: The Subdivision Ordinance and its terminology should be made easier to understand. Also, the Subdivision Ordinance could allow for the following:

- Collection of impact fees
- Collection of fees in lieu of open space or recreation areas
- Creation of quality/predetermined open space
- The use of covenants by Homeowner's Associations to protect and manage open space created by the subdivision
- Creation of recreation areas.

b. Definition of Open Space: The term "open space" is used numerous times throughout the document, but is not explicitly defined. The definition given on page 2 should be used.

c. Issues Related to Common Open Space: For the purpose of qualifying for the alternative lot size, the Subdivision Ordinance states that "Common Open Space" shall:

1) be at least 50% of the subdivision area, 2) not contain motorized ways, common septic system, sidewalks, parking lots; however, it may contain non-motorized recreational trails, 3) have legal and practical access for informal and unstructured recreation, to all owners in the subdivision and 4) be in common ownership protected by a conservation easement.

On the basis of the above, the HCC recommends that if any of the land in a subdivision is located in a priority area of the Open Space Plan that the land which is set aside for common open space should include the high priority area. Some examples of areas to be included would be critical habitat and wildlife corridors. HCC recommends that performance standards be developed to define the purpose, quality and characteristics of high priority open space.

An impartial third party should be appointed to monitor stewardship of common land. HCC recommends that within the open space performance standards third parties responsible for maintaining and monitoring its stewardship be defined.

d. Incentives and Disincentives for Preservation of Open Space: The Subdivision Ordinance encourages creation of open space by providing a “density bonus” for subdivisions which provide open space. While this additional bonus provides an incentive for developers to create open space, it is coupled with several disincentives, such as added planning requirements for open space and site design requirements for common septic systems or wells.

3. Site Plan Review Ordinance

The Site Plan Review Ordinance regulates all multi-unit residential and non-residential development. Site plan review can ensure that development in a specific area will be consistent with surrounding existing development. The Site Plan Review Ordinance includes language to maintain and preserve environmentally sensitive areas to the maximum extent but does not specify how this will be done.

Recommendations for Site Plan Review

The HCC outlines some recommendations for consideration below:

a. Definition of Open Space: The term open space is not defined under the site review ordinance. The definition given on page 2 should be added to the Definitions Addendum.

b. Comment on Development Plans by the Conservation Commission: If authorized by the Selectmen, the Harpswell Conservation Commission could comment on building development which abuts or impacts high priority open space, as defined by the HCC Open Space Plan.

c. Development of Guidelines for Development Impacting on Open Space: The HCC should work with the Planning Board to develop guidelines or a checklist based on the

Open Space Plan to use for judging the impact of a new building site plan on high priority open space.

4. Shoreland Zoning

The state mandated Shoreland Zoning regulates the types of uses and establishes performance standards for the development of land along the shoreline of Harpswell. This zoning requires that all land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including tidal waters and within 75 feet of streams, have protection standards. The purpose of these standards is to:

- maintain safe and healthful conditions,
- prevent and control water pollution,
- protect fish spawning grounds, aquatic life, bird and other wildlife habitat, buildings and lands from flooding and erosion, archaeological and historic resources, commercial fishing and maritime industries, freshwater and coastal wetlands,
- control building sites and land uses, conserve shoreland cover and points of access,
- conserve natural beauty and open space, and
- anticipate and respond to impacts of development.

New Types of Land Use Regulations to Consider in Harpswell

In addition to our existing ordinances, there are other means of protecting open space that Harpswell does not utilize. The following land use tools could be considered by the Town.

1. Overlay Zoning

Overlay zoning, which are imposed over existing zoning districts, provide an additional layer of development standards to address special land use needs. When planning to protect open space, the basic land use ordinance could be amended to place an overlay zone on an area that is determined to be unsuitable for development. Potential overlay zoning which could be used to protect or enhance Harpswell's critical resources include the following:

a. Aquifer protection and high yield wells: The Town is gathering data to be included in Phase II of the water and septic study. The results of the study could be used to identify an overlay zone to protect aquifers and high yield wells.

b. Clam Flats and High Yield Fishing Areas

c. Special Resource Areas, such as Historic or Archeological Sites

d. Poor Soil Areas: Poor soil areas include shallow depth to bedrock areas. If protected, this would assist in erosion control and would limit development in areas where it may be inappropriate.

2. Performance Standard Zoning for Open Space

Performance standard zoning establishes zones based on an allowable environmental impact to the resources of an area as opposed to a specific allowable use. This technique allows a municipality to maintain control over development impacts and ensure that development will occur without severely damaging natural resources. Some potential suggestions are:

a. Shade Tree Preservation on State Roads: The Department of Transportation has regulations to protect shade trees along state roads. Harpswell should implement these regulations.

b. Open Space Set Backs from Roads and Buildings: The Town could develop regulations regarding minimum set backs from roads and buildings to protect open space in subdivisions.