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**Town Planner's Review**  
**Wednesday, July 28, 2021**

VIII. **Proposed Rezoning from Residence Coastal to Rural.** Proposal by the Durham Agricultural Commission to rezone numerous lots in the vicinity of Piscataqua Road (Route 4) from Residence Coastal (RC) to Rural (R).

➤ I recommend that the board discuss the proposal and schedule a public hearing

Please note the following:

- The Planning Board discussed this item briefly on June 23 and continued it to this meeting. Please see the enclosed memo from Theresa Walker, chair of the Agricultural Commission. Theresa will join the board to explain the proposal and answer any questions.
- *If the Planning Board wishes to move forward with a public hearing, the board will need to determine the area proposed to be rezoned. See the enclosed map.* Originally, the Agricultural Commission recommended rezoning the entire area within the bold lines. We have received 15 letters from homeowners in the area objecting to the proposal. All of these letters have been forwarded by email to the Planning Board. Fourteen of these letters are from residents in the Shearwater Street subdivision, which includes Razorbill and Cormorant Circles, and one was from a resident of Tirrell Place in the Morgan Way subdivision to the east of Shearwater Street.
- The Agricultural Commission discussed the opposition to the proposal at its meeting on July 12. About half the members supported proceeding with the proposal for the full area and half supported changing the request to include just the easterly half of the area, as shown on the map. One member supported another option to reduce the area even further to the east. *So, assuming the board wishes to set a public hearing it will need to decide which of the two options to proceed with or if there is a different area to be included.*
- The board will also need to decide whether to change the zones where excavation is allowed. Presently, it is allowed only in the Rural zone by conditional use. In reviewing the differences between RC and Rural the Agricultural Commission thought it appropriate to simply eliminate excavation as an allowed use anywhere in Durham. See the reference to RSA 155E at the bottom, the state law dealing with excavations. Because of this default provision in the law, *I recommend that excavation be changed from CU to X in the Rural district and from X to CU in the ORLI and MUDOR districts.* We would be wise to allow it somewhere in town and the potential impacts would be

much less in these two zones, though it is unlikely that we would ever see a significant commercial excavation project in Durham.

- On June 14, the Agricultural Commission voted (8-0) to request that the Planning Board consider the rezoning proposal. But the commission has modified its request as stated above to consider two options.
- See the enclosed table showing all of the differences between the Rural and RC districts. I also enclosed the letter that we sent to all property owners with lots proposed to be rezoning and to all other owners in this large RC area, including in the several small subdivisions. The commission held a public information session on May 10. There were a number of questions and comments.
- If the board schedules a public hearing we are required under state law to mail a letter explaining the proposal and announcing the public hearing to all of the lots proposed to be rezoned (not to other property owners nor to residents in the nearby subdivisions) and to property owners in any district with less than 100 owners where the use would change (i.e. those in the ORLI and MUDOR districts but not in the Rural District).
- If we prohibit excavation in all zones then a default procedure comes into play which would affect the five commercial core zones and the four research-industry zones. Here is an excerpt from the pertinent statute for excavation:

**RSA 155-E:4 Prohibited Projects. –**

The regulator [PLANNING BOARD] shall not grant a permit:

...III. When the excavation is not permitted by zoning or other applicable ordinance, provided, however, that in municipalities which have commercial earth resources on unimproved land within their boundaries, and which do not provide for opportunities for excavation of some of these resources in at least some, but not necessarily all areas within the municipality, or in municipalities which have zoning ordinances which do not address the subject of excavations, excavation shall be deemed to be a use allowed by special exception as provided in RSA 674:33, IV, in any non-residential areas of the municipality, and the zoning board of adjustment shall grant such a special exception upon a finding that:

- (a) The excavation will not cause a diminution in area property value or unreasonably change the character of the neighborhood;
- (b) The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof;
- (c) The excavation will not create any nuisance or create health or safety hazards; and
- (d) The excavation complies with such other special exception criteria as may be set out in applicable local ordinances.