TOWN OF GRAY

GRAY TOWN COUNCIL WORKSHOP

AGENDA • NOVEMBER 28, 2023

Gray Town Council Workshop	**Town Council Chambers** **24 Main Street, Gray, ME 04039** **https://us06web.zoom.us/j/84389858791** **Phone 646-558-8656 / Meeting ID: 843 8985 8791**	**5:30 PM**

CALL to ORDER

Roll Call

WORKSHOP 5:30 PM

Discuss Open Space Subdivision amendments that align with state statute

November 28 Workshop Packet Materials

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October 30, 2023

TO: Gray Town Council (TC)
Josh Tiffany, Interim TM

FROM: Doug Webster, Planning

RE: November 1, 2023 TC Workshop
Implementing 30-A MRSA Sections 4364 & 4364-A & B
Background information & policy guidance input questions

Introduction

In accordance with the State-required implementation of 30-A MRSA sections 4364 and 4364-A & B (aka LD 2003), this memo contains relevant background information and a host of questions. The objective is to solicit policy guidance input from the Council at the upcoming workshop on Wednesday, November 1 regarding changes to Gray's subdivision (SD) and related ordinances.

The proposed amendments to the SD and zoning ordinances to bring Gray into compliance with the new statute will be predicated on four elements:

-State statute-required language
-Policy guidance from the TC
-Input from the ordinance advisory committee (OAC)
-Input from the open space committee (OSC)
-Legal input and final review

As the TC is aware, there have been two previous ordinance amendments to implement LD 2003. The first addressed accessory dwelling units and the second focused on increased density and affordability; both in accordance with State Statute. The third and anticipated final round of ordinance amendments focuses on the subdivision ordinance, but there are also some related proposed changes to the zoning ordinance.

In each section below, I have provided background information for each change then posed the policy guidance question at the end of each section. At the end of this memo, I have merely compiled all of the questions posed throughout this memo to enable the Council to use this last portion of the memo as a template/checklist at the upcoming workshop.

Listing of abbreviations:

ADU-Accessory Dwelling Unit
MD-Current zoning district, Medium Density
MF-Multi-family
OS-Open Space
OSC-Open space committee
PUD-Planned unit development-a type of commercial subdivision
RES-Residential
ROW-Right-of-way for i.e. a road or street

RRA-Current zoning district, Rural, Residential & Agricultural
SD-Subdivision
SF-Square feet
PB-Planning Board
TC-Town Council

Summary of proposed amendments to Gray's zoning & subdivision ordinances

Proposed *zoning* ordinance amendments

1. Changing ADU maximum footprint from 750 SF to 800 SF
2. Changing CEO application/use of maximum footprint for building permits

Proposed *subdivision* ordinance amendments

1. Requiring public-use trail connection to connect open space "nodes"
2. Increasing clarity and requirements for soil information submittal
3. Changing cistern requirement (fire protection) to town control
4. Use of backlots in subdivisions
5. Clarity regarding parcel configuration

Proposed *open space* subdivision amendments

1. Front-loading input from town staff & OSC to ID overall layout
2. Adding additional type of small lot OS SDs in rural areas with standards
3. Adding additional type of MF OS SD in rural areas with standards
4. Increased clarity and application of common open space
5. Requiring common open space for phased SDs to be connected
6. Consider maximum number of DUs per structure and/or parcel
7. Minimizing frontage & requiring minimal usable building envelope

Proposed zoning amendments & input

1. Changing ADU maximum footprint from 750 SF to 800 SF:

   The currently adopted maximum footprint for an ADU is 750 SF. Given the steadily increasing price of building materials, construction is more efficient using 4' increments. A standard 24' x 32' structure/DU is 768 SF. The proposal is to slightly increase the maximum footprint of an ADU from 750 SF to 800 SF to allow for more efficient use of building materials.

   Question Z-1: Does the Council support increasing the maximum footprint of an ADU to 800 SF?

2. Changing application/use of maximum footprint for building permits:

   As the Council may be aware, many property owners who do not have sufficient lot size to be issued a permit for a duplex understandably seek permits from Codes for an ADU in accordance with recently adopted language. This previously happened with "accessory apartments."

Some properties in Gray have an existing structure, such as a garage with an unfinished second floor, that has a footprint *greater than* 750 SF. In instances where such property owners wish to convert the second floor of the existing garage to an ADU, the challenge for Codes is how to ensure that the 750 SF maximum for an ADU is met.

Codes is working on addressing this. The point of raising this situation herein is to ensure that the Council is apprised that there may need to be future amendments to clarify the Council's intentions regarding the maximum footprint of an ADU. There is no on-point question at this time; merely an FYI.

General background information for subdivisions

Types of subdivisions (SD): There are three basic types of SDs that are anticipated once the new zoning is completed; regular, open space, and multi-family (MF). Under each type of SD, the current proposal is to have sub-types as listed below.

Regular SDs:
- -Traditional residential SD
- -Traditional commercial SD (i.e. Northbrook)
- -Planned unit development SD (commercial with common design elements)

Open space SDs:
- -Small lot OS SD (similar to current Res OS SD in Medium Density district)
- -Residential OS SD (adjustments to current Res OS SD)
- -MF OS SD (new proposal for MF development in generally rural areas)

Multi-family SD:
- -Res SD with one or more MF dwelling (per new definition)

The first type is "regular" SD which could be either a residential SD or a commercial. In a regular SD, whether residential or commercial, the lot sizes are set in the zoning ordinance for the zoning district in which the SD is proposed. Currently on the books, there is a planned unit development (PUD) that is a commercial SD where there are one or more common themes. The longer-term objective is to have the PB approve the basic layout and establish some parameters for commercial use of the lots in the PUD that could be more easily approved (i.e. at a staff level).

Proposed Subdivision amendments & input

1. Requiring public-use trail connection to connect open space "nodes":

   Gray adopted the Open Space plan in March of 2022. As the Council is aware, the Open Space Committee (OSC) is currently actively involved with identifying the many existing, and future, areas throughout town used for open space purposes. Examples include Pineland's trails, Wilkes Beach, and of course the Libby Hill area. For the purposes of discussion, I have termed such areas "nodes".

One of the most important long-term elements of practically implementing the Open Space Plan is providing connections between these areas. If a parcel is proposed to be subdivided, it is arguably an opportune time to ensure that these various nodes are connected with a public easement to further the objectives of the Open Space Plan. I anticipate having some real-world examples for the Council's consideration at the upcoming workshop.

The location of this conceptual public easement on the subject parcel would be an integral part of the planning board's (PB) review with input from the Open Space Committee (OSC). The developer and PB, with input from the OSC, would determine the most appropriate location to provide this public easement for a trail connection. The objective is not to compromise any commonly owned or used parcels in the SD, such as the common park area, but rather to provide a trail connection to enable the nodes to be connected. The trail connection could conceptually be part of perimeter buffer for open space SDs.

Question SD-1: Does the Council support requiring a public use trail connection for subdivisions that connect open space nodes?

2. Increasing clarity and requirements for soil information submittal:

The objective is to increase clarity for field verification regarding soils (see 401.13.13.C.3.b). This section of the current SD Ord. allows for an applicant to submit the requisite portion of the Cumberland County Medium Intensity Soil Survey that was done in 1974. It is readily available to many land use professionals and is a GIS layer available from the State. The PB makes a determination on a case-by-case basis, for each SD, regarding if a high-intensity soil survey is needed.

The current language is not particularly clear regarding what field verification is necessary when a medium intensity soil survey is needed. Several of the recent PB submittals for SDs have not contained many details regarding field verification as was intended when the language was adopted. Planning staff therefore advocates that this professional in-the-field verification of the medium intensity survey be more clearly specified within the SD ordinance.

Question SD-2: Does the Council support clarifying the field verification for SDs utilizing a medium-intensity soil survey?

3. Changing cistern requirement (fire protection) to town control:

Section 401.13.2.C of the SD ordinance addresses fire protection in subdivisions. Subsections 4 and 5 detail the requirements for cisterns. A cistern is an in-ground tank (typically concrete) that has a large diameter pipe connection on top to which the fire department connects their trucks. It is essentially an in-place water supply. Under the current SD ordinance, the developer designs and pays for the installation of the necessary cistern(s) as part of the town's approval of the project.

The homeowner's association is currently required to ensure that the cistern for their development is properly maintained so it is ready for an emergency. The historical challenge is that not all such homeowner's associations have ensured that their cisterns are operational. While there are steps the town can take to address this situation, it takes significant effort to track down the appropriate parties for the respective associations and ensure that the corrections are completed.

The change being considered for SDs that use cisterns is to have the town be responsible for the cistern at the developer's expense. The vision is that the developer pays a fee as part of final SD approval that is used by Gray Public Safety to purchase and install an appropriately sized cistern. The area where the cistern is to be located would be within a public ROW or within the SD.

Based on legal input, the location of the cistern would need to be at least in the general vicinity of the proposed SD. There does not appear to be the option of leaving the determination of the cistern location solely up to town staff. There must be a "rational nexus" between the fee the developer pays for the cistern and the benefit realized to the development.

In the event that the town does end up literally owning (installing and maintaining) the cisterns, there may be on-going costs unless the fee charged to the developer takes into account such on-going expenses. Fees charge to the developer should not be beyond the anticipated expenses for the design, installation, and on-going maintenance of the cisterns.

Question SD-3: Does the Council support continuing to explore options to enable the town to charge a fee to the developer and incur the responsibility of designing, installing, and maintaining the cistern(s)?

4. Backlots in subdivisions:

Particularly over the past 15+ years, the PB has not typically allowed backlots to be part of an approved traditional SD. A backlot is a parcel that obtains its zoning-required frontage from an accessway that is not a street. An integral part of a PB approved SD is a "street," meaning an accessway meeting town standards that is part of the PB approved development.

It is noteworthy that the current standards for open space subdivisions specifically allow up to two back lots per development. The vision was to allow for a more flexible approach to lot layout including up to two larger lots. This provision has not been extensively used since it was adopted.

Question SD-4: Does the Council support allowing backlots in traditional subdivisions?

Question SD-5: Does the Council have any input on allowing backlots in open space subdivisions?

5. Parcel configuration:

   Although the current SD Ord. contains qualitative language regarding the configuration/shape of lots (see 401.13.1.B), a few recent PB SDs have contained lots that caused questions to be raised regarding their shape and the practically usable building envelope. Pending Council input, this concern may be exacerbated by reducing the minimum required frontage requirement for future OS SDs. Town staff advocates that the language in the SD Ord. be amended to provide additional guidance for applicants and authority for the PB regarding allowing such lots in all SD lots.

   Question SD-6: Does the Council support amending the SD ordinance to clarify language regarding parcel configuration?

General background information for open space subdivisions

For the purposes of implementing 30-A MRSA Sections 4364 & 4364-A & B, the current focus is on adjusting standards for both small lot OS SDs and residential OS SDs. As an integral part of drafting the new zoning, one proposal that I seek Council input on is the concept of a MF OS SD. This type of residential SD contemplates one or more MF dwellings on one parcel, and perhaps should be considered even in generally rural districts. The vision is that one or more MF dwellings, such as townhouses, would be clustered together on one or more areas of the lot allowing for significant open space and a substantial buffer to abutting properties.

One new concept that is proposed for the small-lot OS SD and the Residential OS SD is to minimize the required street frontage. For reference purposes, a lot that is *not* in a residential OS SD in the current RRA district, zoning standards require 200' of frontage and an 80K sq. ft. (SF) lot. The current residential OS SD requirements for lots in RRA include 125' of frontage and a 35K SF minimum lot size lot. For the current MD district, the residential OS SD standards are 100' of frontage and a 30K SF minimum lot size.

The purpose of minimizing the required street frontage is to allow for increased flexibility for the overall layout of the SD. It is noteworthy that in addition to minimum setbacks, there are minimum required contiguous building envelopes required to ensure the viability of each parcel in the development.

For each of the types of proposed SDs listed below, I have listed various salient elements of each type of SD to enable the council to better understand the current proposal.

Small-lot OS SD:

-23K SF minimum individual lot size
-Minimum contiguous usable building envelope; 50' x 60'
-Minimum frontage; 40'
-Minimum setbacks; 35' front, 15' side & rear
-Greater percentage of undeveloped OS required due to reduced lot size
-No MF or duplex; reduced lot size less expensive, may work well for 55+

-Minimum park area (level & usable) required; consider requiring improvements such as clearing and/or road access
-Front & perimeter buffer required; increased depth as # of DU increases
-Growth or rural areas is concept pending Council input
-Likely need common or cluster well/septic if public water not available

Residential OS SD:
-36K SF minimum individual lot size (allows for total of 6-bedroom septic)
-Minimum contiguous usable building envelope; 80' x 80'
-Minimum frontage; 60'
-Minimum setbacks; 40' front, 20' side & rear
-No MF or duplex; min. lot size allows for 1x SFD & 1x ADU
-Minimum park area (level & usable) required
-Front & perimeter buffer required; consider increase depth as # of DU increases
-Growth or rural areas is concept
-May need common or cluster well/septic w/o public water pending # DU/lot

Multi-Family (MF) OS SD:
-For residential SDs with Multi-family development (per revised def.) meaning.
-one or more MF dwellings (>3 DUs)
-Three or more SFDs
-Two or more two-family dwellings
-Any combination containing four or more DUs on one lot
-Concept is generally rural areas for *future* zoning districts
-Possible example is Dunbar Woods in a rural zoning district
-Vision is MF dwelling(s) including i.e., townhouses (less expensive construction)
-Concentrated infrastructure may also reduce construction costs
-Public water or if wells used, likely need common or clustering
-Common park area (level and usable) required
-Increased minimum required percentage of undeveloped OS for rural areas
-Front & perimeter buffer required; increase depths as # of DU increases

Multi-Family SD:
-Concept is MF development generally in growth areas for *future* zoning districts
-Reduced buffers; consider build-to line in more dense districts
-Best suited for public water supply
-Common playground area (improved) required; minimum 50' x 50'
-15' minimum property line setback to achieve 30' building to building

Proposed open space subdivision amendments & input

1. Front-loading input at existing conditions workshop:

   For a host of reasons for open space SDs, it seems prudent to restructure the town review process to require initial input from both town staff and the planning board towards the very beginning of the SD process. Other municipalities, such as Brunswick, require this. The objective is to take a

comprehensive view of the entire parcel taking into account input from the PB, town staff, the Open Space Committee (i.e., trail connections) and development constraints (wetlands, slopes, soils, protected areas, etc.). The goal is to identify the most prudent, basic overall layout for the parcel before i.e., engineering efforts are directed towards where the various elements such as roads, lots, etc. are to be located.

While this may be viewed as an additional step, it commonly results in a more streamlined review process and more integrally involves the parties associated with the eventual approval of the development.

Question OS-1: Does the Council support amending the administrative procedure for open space subdivisions to require an existing conditions workshop to provide input to the overall layout of the project?

2. Adding additional type of small lot open space subdivisions in rural areas with standards:

   As referenced above, the current Res OS SD standards for the MD district allow for individually owned lots at 25K SF. This proposal would change this minimum lot size to 23K SF and would reduce the frontage to 40'. The minimum required contiguous building envelope is intended to provide a sufficient window to allow for residential development. The cumulative amendments are designed to afford design flexibility.

   Recognizing that such relatively dense residential developments may be considered in rural areas, adequate standards regarding elements such as buffering and water supply/wastewater would need to be integrally applied.

   Question OS-2: Does the Council support allowing such developments in districts such as Medium Density?

   Question OS-3: Does the Council support allowing such developments in predominantly rural districts, such as the current RRA, if there were a sufficiently deep buffer to roads and abutting properties?

3. Adding additional type of MF OS SD in rural areas with standards:

   As an integral part of implementing the Comp Plan, I seek Council input regarding if such projects are appropriate in generally rural zoning districts. It is my understanding that townhouses, due to the applicable standards in building codes, are generally more affordable than other larger multi-story, multi-family structures. Given the relatively densely developed residential area, this conceptually allows for a greater percentage of undeveloped open space.

   As with the explanation above regarding small-lot OS SD, it is seemingly important to ensure that there is sufficient buffering of the developed portion given the generally rural nature of the district.

Question OS-4: Does the Council support continuing to explore this type of development in the forthcoming new generally rural zoning districts?

4. Increased clarity and application of common open space/common park area:

   Since the Res OS SD standards have been adopted and applied, it is increasingly clear that the quality and usability of the area intended to be used by those living in the development has not achieved the intended purpose. The objective (see 401.13.13.I.4) was/is to reserve an area immediately adjacent to the road as a gathering location, for a possible playground, etc.

   In some instances, such common areas in developments are never brought to fruition. In others, particularly in western states, such common park areas are intensively used by residents for a host of uses. The various types of proposed open space subdivisions describe varying levels of required improvements of these areas to be completed by the developer to ensure their purpose. From a nation-wide planning perspective, they are well-proven.

   One element that was not contemplated when the current common park area requirement was implemented along with the Res OS SD was a scenario in which there was a large number of lots or dwelling units. For example, one 60K SF common park area may be sufficient for a 14-lot subdivision but if the project (at build-out) is 28 or more lots/dwellings, then perhaps consideration should be given to requiring one additional common park area or one slightly larger area.

   Question OS-6: Does the Council support requiring such common park areas with improvements contingent upon the developed portion of the project?

   Question OS-7: If the Council is supportive of the common park area, should there be a provision that requires additional area for larger developments contingent upon the number of lots or dwelling units?

5. Requiring common open space for phased SDs to be connected:

   Since the Res OS SD provision has been added to the town's SD ordinance, there have been a few developments that have been completed in two or more phases. Such phases are conceptually placed on the table at the time that the first phase is proposed for final approval.

   Given the importance of trying to preserve larger blocks of undeveloped open space in such developments, for a host of reasons, it seems prudent and appropriate to incorporate qualitative language in the SD ordinance that requires that the common open space for various phases of a project be connected to the maximum extent possible.

   Question OS-8: Does the Council support adding language to the SD ordinance that requires that common open space must be as contiguous as possible and connect with all phases of the project at buildout?

6. Consider maximum number of dwelling units per structure and/or parcel for MF open space SDs:

   In the event that the Council is conceptually supportive of such MF OS SDs in rural areas, it is conceivable that there could be a proposal for a development that proposed a total number of dwelling units that adversely affected the generally rural nature of the zoning district in which it is located. While the gross development density is dictated by the zoning district, locating a large number of dwellings in a rural district may not be in keeping with the intended character.

   Question OS-5: If the Council is supportive of MF OS SDs in rural areas, should there be standards that focus on minimizing adverse impacts to abutting properties and preserving the character of the respect rural zoning district?

7. Minimizing frontage & requiring minimal usable building envelope:

   As detailed above, one element of the small lot OS SD and the Res OS SD is minimizing the frontage requirement to encourage flexibility in the overall design/layout of the development. Conceptually taking into account adding provisions for parcel configuration requirements (for all SD lots) and requiring a minimum usable building envelope (OS SD only), is there any Council input regarding amending the SD ordinance with these provisions?

   Question OS-9: Does the Council have any input or concerns with minimizing the required frontage for small lot OS SDs and Res OS SDs provided that standards are incorporated to ensure the viability of each lot?

Density bonuses:

Affordability: The current Res OS SD standards (see 401.13.13.C.5.b) allow for a 10% increased density bonus (additional DUs) for developments that incorporate recorded deed covenants which establish fixed maximum sale prices regarding the fee transfer of title.

55+ developments: The current Res OS SD standards (see 401.13.13.C.6) allow for a 15% increased density bonus (additional DUs) for developments that voluntarily restrict use to those 55 or older.

Question OS-10: Does the Council have any input or seek adjustments for density bonuses regarding affordability?

Question OS-11: Does the Council have any input or seek adjustments for density bonuses regarding 55+ restricted developments?

Question Compilation

Zoning Question:

Question Z-1: Does the Council support increasing the maximum footprint of an ADU to 800 SF?

Subdivision Questions:

Question SD-1: Does the Council support requiring a public use trail connection for subdivisions that connect open space nodes?

Question SD-2: Does the Council support clarifying the field verification for SDs utilizing a medium-intensity soil survey?

Question SD-3: Does the Council support continuing to explore options to enable the town to charge a fee to the developer and incur the responsibility of designing, installing, and maintaining the cistern(s)?

Question SD-4: Does the Council support allowing backlots in traditional subdivisions?

Question SD-5: Does the Council have any input on allowing backlots in open space subdivisions?

Question SD-6: Does the Council support amending the SD ordinance to clarify language regarding parcel configuration?

Open Space SD Questions:

Question OS-1: Does the Council support amending the administrative procedure for open space subdivisions to require an existing conditions workshop to provide input to the overall layout of the project?

Question OS-2: Does the Council support allowing the described developments in districts such as Medium Density?

Question OS-3: Does the Council support allowing the described developments in predominantly rural districts, such as the current RRA, if there were a sufficiently deep buffer to roads and abutting properties?

Question OS-4: Does the Council support continuing to explore the described development in the forthcoming new generally rural zoning districts?

Question OS-5: If the Council is supportive of MF OS SDs in rural areas, should there be standards that focus on minimizing adverse impacts to abutting properties and preserving the character of the respect rural zoning district?

Question OS-6: Does the Council support requiring common park areas as described with improvements contingent upon the developed portion of the project?

Question OS-7: If the Council is supportive of the common park area, should there be a provision that requires additional area for larger developments contingent upon the number of lots or dwelling units?

Question OS-8: Does the Council support adding language to the SD ordinance that requires that common open space must be as contiguous as possible and connect with all phases of the project at buildout?

Question OS-9: Does the Council have any input or concerns with minimizing the required frontage for small lot OS SDs and Res OS SDs provided that standards are incorporated to ensure the viability of each lot?

Question OS-10: Does the Council have any input or seek adjustments for density bonuses regarding affordability?

Question OS-11: Does the Council have any input or seek adjustments for density bonuses regarding 55+ restricted developments?