



**PLANNING BOARD**

**Report to Town Meeting**

**ARTICLE 10.            Zoning Amendment – Farm Stands & Farmland  
(Planning Board)**

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To see if the Town will amend Section 3.312 and Article 12 of the Zoning Bylaw, by deleting the ~~lined-out~~ language and adding the language in ***bold italics***, as follows:

~ SEE ATTACHMENT ~

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Recommendation

The Planning Board voted 6-0 to recommend that Town Meeting adopt this article.

Background

Article 10 is a technical change. To remain consistent with changes in state law, Amherst's zoning needs to be amended to reflect those changes.

Section 3 of MGL Ch. 40A (the Zoning Act) provides farm uses with protections from local zoning: ". . . nor shall any such ordinance or bylaw prohibit, unreasonably regulate, or require special permits." For many years, it established 5 acres as the minimum size for a farm property or operation which could enjoy such protections.

However, this August the Massachusetts legislature revised this section of the Zoning Act to lower the size of 'protected' farm properties or operations from five acres to two acres, if the property met a specific threshold of \$1,000/acre in revenue from the farm activity.

This change created the following pattern of such 'protection' for all Massachusetts farms based on their property size, their farm revenue, and, for farm stands, the % of local- or state-grown produce they sold:

<u>Property Size</u>	<u>Level of Protection</u>
0 to < 2.0 acres	Farm uses can be controlled/prohibited by local zoning.
2.0-< 5.0 acres	Farm uses are protected from prohibition and ‘unreasonable’ local zoning restrictions including special permits, if the owner can: 1) demonstrate an annual gross revenue of \$1,000/acre, and 2) for farm stands, meet the 25%+ local produce requirement under state law.
5.0+ acres	Farm uses are protected from prohibition and ‘unreasonable’ local zoning restrictions, without any revenue/acre requirement; to be protected, farm stands must meet requirements for locally- and Massachusetts-grown produce.

Article 10 amends the Zoning Bylaw to reflect this change in two ways. First, it incorporates the changes in state law by creating a new definition of farmland in the Zoning Bylaw which references all applicable state laws, regulations, and characteristics of farms recognized by the state. This definition will provide clarity for other references to farmland in the Zoning Bylaw and will have the useful effect of automatically ‘accepting’ any new revisions undertaken by the state.

Secondly, Article 10 will amend the use category which includes the two kinds of farm stands that Amherst regulates through its zoning. This already specifically references the longstanding five acre threshold, and will be amended to include the new 2 acre threshold. This will result in the following pattern of regulation for farm stands in Amherst:

**Class I Farm Stand** – Protected. Meets the state standards for property size and/or revenue, and thresholds for locally- and Massachusetts-grown produce sold at any by-right farm stand. Will be allowed by right through Site Plan Review (SPR) approval in all zoning districts.

**Class II Farm Stand** – Partially Protected. Meets the state standards for property size and/or revenue standards, and Amherst’s 15% threshold for local produce sold. Will be allowed by right (SPR) in some zoning districts, and permitted only by Special Permit in all others.

What’s Changing? The only thing that Article 10 will change about the regulation of farm stands in Amherst is to acknowledge the new state acreage threshold for protections against local zoning. All other regulation of farm stands will remain unchanged. The effect will be to allow farm stands on smaller farm properties, if they can meet the minimum revenue requirements in state law.

To qualify under the new lower acreage standards, an applicant for a new farming operation or farm stand on a property of more than two acres but less than five acres would need to provide convincing evidence to the Building Commissioner (acting as the Zoning Enforcement Officer) that the products grown on the property could plausibly result in the \$1,000/acre threshold for gross annual revenue.

Public Hearing

The Planning Board held a public hearing on Article 10 on September 29, 2010. After discussion and public comment, the Board voted 6-0 to recommend that Town Meeting adopt this article.

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**~ ATTACHMENT ~**

**Article 10. Zoning Amendment - Farm Stands & Farmland  
(Planning Board)**

To see if the Town will amend Section 3.312 and Article 12 of the Zoning Bylaw, by deleting the ~~lined out~~ language and adding the language in ***bold italics***, as follows:

**A. Amend Section 3.312**

3.312 Salesroom or farm stand for the sale of nursery, garden or other agriculture produce (including articles of home manufacture from such produce)

***Class I and Class II farm stands shall be located on a farm shall be property a minimum of two (2) acres in size where it can be demonstrated that the sale of products produced from the agricultural use of the property annually generates at least \$1,000 per acre based on gross sales dollars, or, on a property a minimum of five acres in size for both Class I and Class II facilities.***

3.3120 Class I ***Farm stand***

R-O

R-LD R-N R-VC R-G R-F B-G B-L B-VC B-N COM OP LI PRP FPC

SPR SPR SPR SPR SPR SPR SPR SPR SPR SPR SPR SPR SPR SPR

Standards & Conditions

For produce grown during either June, July, August & September of every year, or during the harvest season of the crop(s) raised on land of the owner or lessee, at least 25 percent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located. For produce generated without regard to seasons, at least 25% of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located, and at least an additional 50 percent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land, other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture (including the growing and keeping of nursery stock and the sale thereof), floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, all as provided for under MGL Ch. 40A, Sec. 3, as amended.

3.3121 Class II *Farm stand*

R-O

<u>R-LD</u>	<u>R-N</u>	<u>R-VC</u>	<u>R-G</u>	<u>R-F</u>	<u>B-G</u>	<u>B-L</u>	<u>B-VC</u>	<u>B-N</u>	<u>COM</u>	<u>OP</u>	<u>LI</u>	<u>PRP</u>	<u>FPC</u>
SP	SP	SP	SP	SP	SPR	SPR	SPR	SPR	SPR	SP	SP	SP	SP

For produce grown during June, July, August & September of every year, or during the harvest season of the primary crop(s) raised on land of the owner or lessee, at least 15% of the products for sale shall be produced by the owner or lessee of the land on which the facility is located. For produce generated without regard to seasons, at least 15% of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located, and at least an additional 50 percent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land, other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture (including the growing and keeping of nursery stock and the sale thereof), floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another.

**B. Amend Article 12, Definitions, by adding the following new definitions in alphabetical order and renumbering the remaining sections accordingly:**

**12. *Farmland: Land under agricultural use as defined in MGL Ch. 128, Section 1A, and MGL Ch. 61A, Sections 1 and 2, inclusive, as amended, and, including for the purposes of this Bylaw, the lawful propagation and raising of wild or game species under applicable state and federal law, and, land under agricultural use whose soils are classified as prime, unique, or of state and local importance by the USDA Soil Conservation Service. The provisions of MGL Ch. 40A, Section 3, shall apply.***

## ARTICLE 10 FARM STANDS & FARMLAND



### Agricultural Law Memo

**ALM 10-04**

August 9, 2010

**TOPIC:** Small Plot Farming: Amendments to Chapter 40A, Section 3

**ISSUE:** On Thursday, August 5, 2010, Governor Patrick signed into law Chapter 240 of the Acts of 2010. Section 79 of Chapter 240 amends General Laws Chapter 40A, Section 3, by adding as an additional category of agricultural uses protected by that statute any parcel of 2 acres or more that generates annual revenues from the sale of products of \$1,000 or more per acre. The purpose of this ALM is to explain the meaning of this addition.

Chapter 40A, Section 3, provides a conditional exemption for the use of land and the construction and use of structures on land for the primary purpose of commercial agriculture. It provides that no zoning ordinance or by-law may prohibit, unreasonably regulate, or require a special permit for the use of land and the construction and use of structures that have a primary purpose of commercial agriculture. Prior to amendment, Section 3 applied to (1) parcels of land of any size devoted primarily to commercial agriculture within districts zoned for agriculture, and (2) parcels of five acres or more devoted primarily to commercial agriculture within any zoning district. Neither of these has a minimum revenue requirement.

As amended, Section 3 provides an additional third category of protection: (3) parcels of land of 2 acres or more if the sale of products from the agricultural use generates \$1,000 per acre or more of gross sales. Therefore, if a parcel falls into any **one** of these three categories, the parcel will enjoy the protections of Section 3. The full text of Section 3, as amended, is attached to this ALM.

Readers should note three points: (1) the amendments to Section 3 became effective immediately upon the Governor's signing on August 5, 2010; (2) agriculture is broadly defined by reference to General Laws Chapter 128, Section 1A; and (3) the amendments do not alter the acreage requirements of other laws, such as use taxation under Chapters 61, 61A and 61B.

## Chapter 240 of the Acts of 2010

**SECTION 79.** Section 3 of chapter 40A of the General Laws is hereby amended by inserting after the word "more", in line 25, as so appearing, the following words: or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars.

### **Amended Section 3 of Chapter 40A (inserting text in bold):**

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more **or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars** in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.