

Title 16.8.11 – Cluster Residential and Cluster Mixed-Use Development

Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Secretary Deborah Driscoll Davis, Mark Alesse, Robert Harris, David Lincoln.

Staff present: Chris Di Matteo, Town Planner; Elena Piekut, Assistant Town Planner.

Committee members present: Christine Bennett, Kittery Open Space Advisory Committee (KOSAC) and Kittery Land Trust; Karen Young, KOSAC and Mt. Agamenticus to the Sea Conservation Initiative; Meghan Kline, KOSAC; Steve Hall, KOSAC and Kittery Conservation Commission; Craig Wilson, KOSAC; Herb Kingsbury, Conservation Commission; Page Mead, KOSAC.

Ms. Kalmar, Ms. Piekut, and Mr. Di Matteo began the meeting with introductions, an agenda, and overview. The group discussed many points, summarized chronologically below.

- No cut, no disturb buffers should be reworded. We used to reference the table for wetland setbacks. We should make it clear that it's about the maximum amount of protection. (Di Matteo, lines 174-184) "Where two setbacks overlap, the more restrictive applies." (Kalmar)
- What is the intention of the waterfront access provision? Active recreation? Or conservation? (Di Matteo, 143)
- 174 is talking about wetland setbacks only, but maybe refer to front and side as well. The DEP requires no-cut vegetated buffers, and all of the Lewis Farm subdivision setbacks (including front and side) are vegetated and must remain vegetated (Wilson)
- Create a standard of maintaining existing vegetation where possible. That was a big goal of Lewis Farm. The wetlands are an easy one to use across the parcel. Some towns require a buffer around the whole parcel. (Di Matteo)
- I would encourage us to keep as much vegetation with as many rationales as possible. A 60' x 100' house site is already a lot of vegetation. (Wilson)
- Lewis Farm as a clustered subdivision is too spread out, not clustered enough, with multiple clusters that fragmented a large lot. (Wilson)
- These developments are largely motivated by profit (Grinnell). But allowing and even requiring cluster subdivisions saves a developer money in infrastructure investment (Piekut). And that saves the Town in infrastructure maintenance and providing services (Grinnell). People may also pay more for lots with common open space (Piekut).
- Commonly held land on water should be more for conservation than for active boating (Grinnell, line 143). Wetlands could be treated separately from a water body good for recreation (Kalmar).
- Part of the intent of maintaining water access for recreation is so that there is one communal dock, not nine individual ones, so that recreation is clustered too (Wilson).
- So we agree that this standard is geared toward recreation, not conservation (Di Matteo)
- Motorized boats shouldn't be allowed where there's mud at low tide (Davis).

- York requires that open space be laid out, and special features be identified, before the subdivision layout is designed. If the goal is to preserve in common the land with the greatest

ecological and cultural values, then that's a logical order (Young). Perhaps under application procedures we can spell out a methodical way to approach this (Di Matteo). They also require the developer to be designed with the proposed holder of the open space (Young).

- Is the common land of a subdivision open only to the residents or everyone? (Kingsbury) It depends. It's possible to be public. They would have to petition the Town to accept it and in some places it would be disastrous. It should be site specific but it's a possibility (Kalmar).
- We want to map current open spaces and potential open spaces and could then determine where best to petition for public acceptance/access. Public use in an isolated situation doesn't necessarily work (Di Matteo).
- Whether there's public access or not, just to have the open space between parcels and between subdivisions connected makes it all more meaningful from a habitat and water resource protection perspective, instead of making islands of open space (Bennett). That's a standard we don't have—the goal of locating open space near other open space. There's some language but it could be clearer (Di Matteo). It's not very strongly worded (Piekut). It's not clear what "contiguous" means (Kalmar).
- What's the difference between "open space" and a conservation easement? (Grinnell) Conserved land is held by a conservation organization and is permanently conserved, as opposed to open space that is associated with a cluster subdivision and is held by a homeowner's association and not conserved in the same way or for the same purposes (Young). High probability of people in the subdivision encroaching on the open space from their lots—how does the town deal with that? (Mead) Monitoring is a concern. In York, York Land Trust has declined to hold land with too many abutters to avoid spending their time managing multiple encroachments, which is why it's important to have the land holder involved in open space design (Young). Open space should be marked because people don't read their documents (Davis). We should strengthen the notion of the management plan (intent, how managed) and make it a part of homeowner's association covenants. Or find a partner like the municipality or a land trust (Di Matteo).
- A long time ago there was a plan to put up small plaques to delineate open space. What happened? (Grinnell) It got shot down by the Planning Board (Hall). There are some at Shepard's Cove (Kingsbury). At Lewis Farm you only own your little piece of ground and the rest is commonly held, so it's not very difficult. It is difficult to say which areas are more sensitive (Wilson).
- DEP now requires that stormwater buffers be demarcated in some way. An individual homeowner can own a DEP buffer and in many cases they do so those are very important to understand (Wilson). Snow shouldn't be stored on those (Davis).
- Have we considered have a third party inspect these open spaces? (Kingsbury) It's in the ordinance now. There's supposed to be an annual report to the town (Kalmar). I'm not sure any clusters have done it (Wilson). We haven't seen much (Di Matteo). I don't think the form exists yet (Bennett).
- A baseline document should be created, for the Code Enforcement Office to hold, which contains pictures and existing conditions at the time of permitting, so that encroachments can be identified (Bennett). Maybe we could make that retroactive? (Grinnell) There could be a fee to cover the Code Enforcement time (Davis). Could also include GPS points (Mead).
- Discussion of responsibilities and punishment for violations. Easy to find a violation per ordinance, but there's no specific fine (Di Matteo).
- Does the Town get a copy of homeowner's association documents? (Grinnell) We get a draft at the Planning Board and then they record it (Di Matteo) and then they get recorded with each deed

(Grinnell). The Planning Board is approving it for things related to public improvements and code-related concerns, but any self-restricted portions shouldn't be reviewed by the Board. The Assessor's Department gets a record of deeds each month (Di Matteo). It's not happening that way (Harris).

- KOSAC provided a memo containing several recommendations.
- We should increase 30% of net residential acreage included in the open space to 50%. An argument is that where there is no sewer, cluster subdivision allows the lot size to be cut down by half (from 40,000sf to 20,000sf), so half of the net residential acreage can be saved (Wilson and KOSAC). We started this conversation after the ordinance first came into effect, and the 44-lot Stone Meadow cluster subdivision was proposed, which was visually shocking and didn't look like a cluster subdivision. A lot of what we talked about with that 50% was in the Rural Residential and Rural Conservation Zones. In the Suburban Zone and Mixed Use Zone, I don't think 50% is necessary. These are areas where we want to infill and there is the infrastructure to support public safety with water and sewer (Bennett).
- Conservation is an important goal for open space but it's not the only goal—active recreation especially in the urban areas has its own benefits (Di Matteo).
- I agree it was surprising that the initial Stone Meadow proposal met the letter of the code (Di Matteo). Would it have been if we had required them to come forward with a standard subdivision plan first? (Davis) It's hard to say but you may have not had as many units. This was also an extension of a roadway so that was a piece of it (Di Matteo). The code is so vague that emergency roads have only been used to circumvent road length limitations and I would suggest that emergency roads be specifically required by emergency services (Kalmar). As a counterpoint to that, road length was initially developed from the models from a public safety standpoint, presuming a fire department couldn't service more than 1500 feet. Now we need to talk about road lengths in terms of fragmentation. The rationale has changed. It should be in purpose statement for road standards (Wilson). The legislative intent is to preserve unfragmented land (Kalmar). It's codified that the intent is to have dead-end roads in residential areas which I think is misplaced. You need to develop thoroughfares in the sense that they get you from point A to point B rather than a dead end in some places, because when you have all dead ends the existing thoroughfares can't sustain the growth (Di Matteo). Having streets that are connected disperses traffic (Piekut). Consider that people will use through roads a cut-through—Love Lane is a racetrack (Mead). This is how we end up with issues like the hodge-podge at Highpointe Circle (Grinnell).
- The suggestion that the Kittery Land Trust be added in the ordinance as a possible holder of open space—although they won't want every piece—could relieve some of the monitoring burden on the Town (Piekut). Does the Town have the capacity to hold open space? (Grinnell) In the code it is an option (Piekut, line 205). Should be Kittery Land Trust or another nonprofit conservation organization (Hall). Does the Town hold any of those now? (Grinnell) We already have ball fields, etc. (Wilson). The KLT does hold one (Young). The Town may hold some land behind the Post Office (Davis).
- In order to keep development concentrated near roads and infrastructure, consider an overlay zone in the first 300 to 500 feet from the road in rural areas where houses will be clustered, and beyond that require much less density (Wilson/KOSAC). This might result in losing the experience of a roadway as rural. Consider this especially with scenic byways (Di Matteo). You might also consider a limit on how far roads can penetrate into a site, say 500 feet (Wilson). You

could allow development 500 feet in but preserve the 100 feet closest to the road (Davis). Should also encourage shared driveways and “stacked lots” to prevent eating up road frontage (Wilson).

- Table of examples I prepared was an exercise in studying the existing ordinance and shows how it would be applied in several situations. It compares a conventional and a clustered subdivision in each example. The exercise illustrated several things. Consider changing the minimum land area per dwelling unit in the Suburban Zone, where sewer service is expanding. It also shows how you end up with “extra” usable land area after meeting the minimum lot size for all lots permitted, so consider the concept of maximum lot size and maximum density presented by GrowSmart Maine, being used in in Cape Elizabeth (Piekut). *[Note: I also see now how this supports the recommendation to increase from 30% to 50% the net residential acreage included in the preserved open space. In every case except the Suburban Zone, the theoretical developer was left with more net residential land area than needed to meet the 20,000sf minimum lot size.]*
- Traditionally minimum lot size is usually equal to minimum land area per dwelling unit so density is almost synonymous with minimum lot size but the maximum density concept flips that and provides more flexibility. However it’s meant for more for truly rural areas, which Kittery might not be (Di Matteo). Remember that we’re trying to be connected to the Mt. Agamenticus to the Sea initiative (Kalmar). And that’s what the impetus for this ordinance was—maintain what rural and unfragmented blocks there are. There are some big blocks with meaningful habitat (Bennett). Brunswick has overlays to protect unfragmented blocks and other resources (Young). We’ve lost at least three of the large habitat blocks we had in 2000; there are really only two, maybe three left (Bennett). After the last Comp Plan when we tried to go to 3-acre zoning, there was a lot of opposition. If we do something like that again, we’ll need to educate the public and need the help of KOSAC (Davis).
- We should meet more often (Grinnell). We’d like a Planning Board representative on KOSAC (Bennett).
- Cape Elizabeth is using GrowSmart maximum density concept. We do need a mechanism for comparing conventional subdivision to cluster—I have mixed feelings about requiring the applicant to put work into something that’s not permitted but there should be a way to compare—linked to an example of how Newburyport does that. Newburyport also allows greater density based on historic preservation, affordable housing, and public access. I provided a simple example from Effingham, NH where putting more land in open space earns a bonus of more lots. Consider a density bonus of some sort in Kittery (Piekut). We have something in the Mixed Use Zone (Davis). We can use these things based on different zones. And without making it too onerous for the applicant, we can get an idea of what the yield in a conventional subdivision would be (Kalmar). Some of the evils of that are driven by numbers, if we had a five- or seven- or ten-lot limit on subdivisions a lot of that would go away. Smaller developments will be more sensitive. There’s a lot of money in subdivision—take that incentive away. Same as limiting a building to 100,000sf on Route 1 (Wilson). Monster development doesn’t maximize value, eventually it depresses value. Have to preserve existing property values (Alesse). More viable subdivisions should be where we have sewer (Davis).
- Let’s discuss how to work with KOSAC at our next meeting (Grinnell).
- What are the next steps? Staff will work on this? (Young) We’ll put minutes together and start drafting specific amendments. Keep looking at the resources provided, generate more questions, we’ll meet again later, keep in touch (Di Matteo).
- Think about simple amendments first (Wilson).
- We could write basic language for homeowner’s documents (Davis).