



KITTERY TOWN PLANNING BOARD MEETING

Council Chambers – Kittery Town Hall 200 Rogers Road, Kittery, Maine 03904

Phone: 207-475-1323 - Fax: 207-439-6806 - www.kittery.org

AGENDA for Thursday, May 28, 2015

6:00 P.M. to 7:00 P.M.

REGULAR MEETING

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES OF 5/14/2015 MEETING

PUBLIC COMMENTS - Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate. Those providing comment must state clearly their name and address and record it in writing at the podium.

PUBLIC HEARING/OLD BUSINESS

ITEM 1 – Town Code Amendment – Title 16.7.3.5.6 Nonconforming Structure Reconstruction.

Action: hold a public hearing; make recommendation to Town Council. The proposed amendment addresses an omission in the current code related to reconstructing nonconforming structures outside of the Shoreland Overlay Zone.

NEW BUSINESS

ITEM 2 – Town Code Amendment – 16.5.2.4 Permit Period, Appendix A Schedule 16 Land Use and Development Fees

Action: review amendment and schedule a public hearing. The proposed amendment corrects a discrepancy between 16.5.2.4 and Fee Schedule 16, where the Code refers to the renewal of expired building permits upon reapplication and payment of a renewal fee, but the Fee Schedule omits any reference to a renewal fee.

ITEM 3 – Board Member Items / Discussion

- A. Committee Updates
- B. Action List
- C. Other

ITEM 4 – Town Planner Items:

- A. Town Code Amendments for 16.7.8 Land Not Suitable for Development; 16.8.7 Sewer System and Septic Disposal, 16.9.1.4 Soil Suitability, 16.8.16 Lots; 16.2.2 Definitions; and associated zones in 16.3.2. Request to schedule a public hearing.
- B. Other

ADJOURNMENT - (by 10:00 PM unless extended by motion and vote)

7:00 P.M. to 8:00 P.M.

WORKSHOP

ITEM 1 – Title 16.8.11 – Cluster Residential and Cluster Mixed-Use Development

A joint workshop of the Planning Board, Kittery Open Space Advisory Committee (KOSAC) and the Kittery Conservation Commission to review current cluster residential and cluster mixed use development provisions in Title 16 and discuss their merits and limitations as well as alternatives used by other towns for consideration in future amendments.

1 **TOWN OF KITTERY, MAINE**
2 **PLANNING BOARD MEETING**
3 **Council Chambers**

UNAPPROVED
May 14, 2015

4
5 Meeting called to order: 6:00 p.m.

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

8 Members absent: None

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

10
11 Pledge of Allegiance

12
13 Minutes: April 23, 2015

14 Mr. Alesse and Ms. Kalmar requested amendments.

15 **Ms. Kalmar moved to approve the minutes of April 23, 2015 as amended.**

16 **Ms. Davis seconded.**

17 **Motion carried: 6-0-0**

18
19 **Ms. Kalmar moved to approve the minutes of May 6, 2015 site walks for 100 Pepperrell**
20 **Road and Fernald Road.**

21 **Mr. Lincoln seconded.**

22 **Motion carried: 6-0-0**

23
24 Public Comment: Ms. Grinnell opened the public comment period and, hearing none, closed it.

25
26 **ITEM 1 – Bartlett Hill Multifamily Cluster Subdivision – Subdivision Preliminary Plan Review**

27 Action: hold a public hearing, grant or deny preliminary plan approval. Owner and applicant Peter J. Paul,
28 Trustee of AMP Realty Holdings, LLC, requests approval of plans to develop a multi-family residential
29 cluster subdivision. The approximately 18-acre parcel is located on portion of Tax Map 28, Lot 14 with
30 frontage along Fernald Road and Route 236, in the Residential – Suburban (R-S) Zone with portions in
31 the Commercial (C-2) Zone and Resource Protection Overlay (OZ-RP) Zone. Agent is Tom Harmon,
32 Civil Consultants.

33
34 Mr. Harmon provided an overview of the project. They have added a stamped detail of the
35 retaining wall as requested.

36 Mr. Alesse asked that he address staff recommendations.

37 Mr. Harmon said they still need to define reserve open space areas and a management plan, and
38 will provide the septic design, maintenance plan, and homeowners' association documents at the
39 final review stage.

40 Mr. Di Matteo added that the Fire Chief still wants to see a name other than Bartlett Hill to avoid
41 confusion. He also reported that the Police Chief supports the waiver of sidewalks if the shoulders
42 are wide enough for safe walking and to provide for sidewalks in the future if needed.

43 Mr. Harmon noted that the right-of-way is wide enough to accommodate sidewalks in the future.

44 Mr. Di Matteo addressed other outstanding items in the staff notes, including:

- 45 • That open space should be one lot and have a management plan
- 46 • Note five, asking for a 50-foot no-cut, no-disturb buffer to the Kittery Land Trust property
- 47 • Note six, regarding management for cottontail rabbit habitat
- 48 • Note eight, regarding plan notes
- 49 • How scantic soils are deducted in calculating land suitable for development
- 50 • The Board has also received more information from the soil scientist on classification

51 Ms. Davis asked why there is no longer a burden on the property next door for stormwater
52 management and Mr. Harmon explained that the same Maine DEP criteria no longer apply now
53 that the lots are divided and smaller.

54 Ms. Kalmar noted that the Kittery Land Trust asked at the first public hearing that the applicant
55 ensure there is only one point of access from the development to the Remick Preserve next door.
56 Mr. Harmon said that the owner wishes to have no access and that this concern will be handled
57 through homeowners' documents.

58 Ms. Kalmar asked that the Board receive assurance of a solution.

59

60 Chair Grinnell opened the public hearing for comment and, hearing none, closed it.

61

62 **Ms. Kalmar moved to grant conditional approval for the preliminary plan subdivision**
63 **application for the Preliminary Plan Subdivision application, Bartlett Hill A Multifamily**
64 **Residential Cluster Development, located at Fernald Road in the vicinity of Route 236 (Tax**
65 **Map 28 Lot 14) in the Residential – Suburban Zone with portions of the site in the C-2 and**
66 **Shoreland Overlay Zones, for owner/applicant AMP Realty Holdings, LLC. Conditions**
67 **include: to revise the plan to reflect the staff and peer-review comments prior to preparing**
68 **and submitting the final plan application.**

69 **Mr. Alesse seconded.**

70 Ms. Davis reminded the applicant that the plan should be described as a subdivision plan.

71 **Motion carried 6-0-0.**

72

73

74 **ITEM 2 – 100 Pepperrell Road – Shoreland Development Plan Review**

75 Action: hold a public hearing, approve or deny development plan. Owners and applicants Jonathan King
76 and James W. Stott are requesting approval of plans to remove the 20th-century additions to the John Bray
77 house and connect new construction consisting of a main dwelling wing with attached garage, a guest
78 wing, a summer house and a deck and pool. 100 Pepperrell Road is located at Tax Map 27, Lot 45 in the
79 Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') Zones. Agents are Simon Jacobsen
80 and Mark Johnson, Jacobsen Architecture, LLC.

81

82 Mr. Jacobsen provided a brief overview of the project.

83 Chair Grinnell explained that the Planning Board held a site walk on May 6, and that while there
84 were no stakes in the ground as expected, those stakes would have been for clarity for the Board.

85 She read a letter from the Architects inviting neighbors to a site walk on May 13 which the

86 Planning Board did not attend, where stakes had been put in place. Ms. Grinnell also provided a

87 list of 16 people who had provided letters of support for the project in recent days:

88 1. MJ Blanchette and Brian Cox

89 2. Linda and Denis Forster

90 3. Nancy McNally

91 4. Lisa Wilcott

92 5. Hannah Leifheit-Smith

93 6. Mark Steffen and Randy Price

94 7. Cathy and Steve Barnhorst

95 8. Elisabeth Scholes and W. Garrett Scholes

96 9. Jeanne Pryll

97 10. Martha Petersen

98 11. Susan Cunningham

99 12. Edward Colleran

100 13. Kristin and Ken Fellows

101 14. Constance Lamprell and Katharine Lamprell Pounds

102 15. Ted and Sarah Brewer

103 16. Souci Upton Rollins

104

105 Chair Grinnell opened the public hearing.

106

107 Alan Haesche of 103 Pepperrell Road provided several comments, including:

108

- Thanking the applicant for the additional site walk

109

- His and his wife’s experience with historic properties

110

- How setting and integrity influence listing on the National Register of Historic Places

111

- The proposal makes the Bray House look like a backdrop for a pool

112

- The view from the property is one of the vistas listed in the Comprehensive Plan but he understands that there are no ordinances behind it

113

114

- There is a standard for vistas in the Mixed Use Kittery Foreside Zone

115

116 The Board offered to accept a copy of Mr. Haesche’s written comments as part of the record.

117

118 Jonathan Sobel of 12 Moores Island Lane commented that the Bray House is within his view and

119

he and his wife think it is an excellent project which average individuals cannot accomplish.

120

121 Susan Emery of 5 School Lane offered several comments:

122

- Owners of historic homes are obligated to caretake them, not own them in the usual sense

123

- The existing additions don’t detract but are integral to the Bray House character

124

- The Comprehensive Plan refers to Kittery Point’s neighborhood conservation designation on page 124

125

126

- She thinks the plan is destructive to Kittery Point Village and does not favor it

127

128 Tom Hibschan, 188 Brave Boat Harbor Road offered several comments:

129

- Described his work and experience with architecture and restoration

130

- He is a member of the Comprehensive Plan Committee

131

- He sent comments via email to the Planning Board April 23

132

- He is concerned about views along this prime scenic roadway and views from the water

133

- Kittery Point Village is one of the most historic areas of the nation

134

135 Linda Briggs of York, owner of Anne Erwin Sotheby’s who represented the seller of the Bray

136

House, lent her support to the project and described how many people to whom they showed the

137

house wanted to tear it down and rebuild.

138

139 Jacquelyn Nooney of 9 Island Avenue, offered several comments:

140

- She has worked with the owners on designing and building gardens at their current home and appreciates their creativity and sensitivity to the project

141

- As a designer the tension between the old and new in this plan “makes both of them more exciting”

142

143

- Its presence on the street adds to the streetscape and she is very supportive

144

145

146 Tom Emerson of 10 Ox Point Drive, offered several comments:

147

- He is an Architect and Planner and has been a professor of Architecture

148

- This firm understands how to add to the historic fabric of the area and the fact that this

149

firm worked on this project will be significant in the future

- 150 • He discussed historic architecture along coastal Maine—their “methodology is right” and
151 he is fully in support

152

153 Kathleen Thornton of York and Anne Erwin Sotheby’s offered several comments:

- 154 • She doesn’t equate the additions with the Bray House and they are in disrepair
155 • Those discussing the view are bringing it up out of personal interest

156

157 Chair Grinnell closed the public hearing.

158

159 Ms. Grinnell spoke about the Comprehensive Plan, saying that it is the will of the people, and then
160 that will is put into the Code.

161

162 Mr. Di Matteo explained the revised Findings of Fact provided to the Board. Concerns about
163 vegetation include the large lilac and the proximity of construction to the pine trees. Information
164 from Shoreland Resource Officer Jessa Kellogg is provided. He spoke to the peer review engineer,
165 CMA, regarding stormwater management and suggests a condition that the applicant provide a
166 stormwater management plan to CMA prior to issuance of a building permit. He suggests a
167 condition that a historic preservation consultant be hired to ensure the applicant conforms to the
168 recommendations of Maine Historic Preservation Commission

169

170 Mark Johnson represented the applicant and a discussion regarding cutting of vegetation and
171 preservation of trees ensued.

172 Ms. Davis noted that the letter from the arborist should be signed.

173 Mr. Lincoln asked about the Shoreland Resource Officer’s standing before the Board, and Mr. Di
174 Matteo explained that her role is advisory.

175 Mr. Di Matteo also reiterated that the Shoreland Zoning Law prohibits removing any trees in this
176 case, where the existing nonconforming clearing may not be expanded.

177 Certified and licensed arborist Mike Lee provided several comments:

- 178 • 25-30% of the roots can be removed
179 • The DEP recommended cutting no closer than 15 feet from the trunk. He has seen trees
180 survive as close as five feet, although it is not ideal
181 • Proper root pruning will mitigate harm
182 • Cabling or bracing can stabilize the pine trees
183 • The State Forester consulted by the Shoreland Resource Officer provided an opinion that
184 mitigation is the best option, and he agrees because at 60 years old the pine trees don’t
185 support the environmental need on site
186 • They are considered “surface root trees” and can take a lot of root damage
187 • The lilac can be moved fairly easily

188

189 Ms. Davis pointed out that conserving shore cover and visual points of access are part of the
190 codified purpose of the Shoreland Overlay Zone, and Mr. Alesse added that this is one of the
191 findings of fact the Board must vote on.

192 Ms. Kalmar explained that the Shoreland Zoning Law prohibits cutting any more trees.

193

194 Earledean Wells of the Conservation Commission asked that the Commission have an opportunity
195 to review the stormwater management plan when it is submitted.

196

197 Mr. Lincoln asked about the Shoreland Resource Officer’s comments regarding shoreline
198 stabilization. Mr. Di Matteo suggested that this would be part of the stormwater management plan.

199 Mr. Lincoln also asked about the archaeological study.

200 Mr. Johnson explained that test pits will be dug over the area of the disturbance, and Mr. Di
201 Matteo said if a Phase II study is needed, construction would not begin.
202 Ms. Davis asked about the outdoor compressor proposed and Mr. Johnson explained that while the
203 applicant still intends to use geothermal energy instead, it depends on the structural assessment of
204 the house. If compressors are used, they will be the quietest possible and will not be located on the
205 property line.

206
207 Mr. Alesse explained his opinion that the proposal does not meet standards for preserving the
208 historic resource and conserving visual points of access to the water, and that he will vote no on
209 findings five and six. He thinks the applicant has “given short shrift” to most MHPC
210 recommendations and the design overwhelms the Bray House.

211 Ms. Kalmar explained that the Code only enables the Board to consider a structure a historic
212 resource if it is eligible for or on the National Register of Historical Places, and that there is no
213 standard such as a percentage to prevent the loss of a view.

214 Mr. Alesse noted that spatial relationships as described by the Secretary of the Interior’s Standards
215 are being changed.

216 Mr. Harris explained that in driving by the property there is not much view of the water to be seen.
217

218 **Mr. Lincoln moved to grant conditional approval for the Shoreland Development Plan**
219 **application dated March 19, 2015 for 100 Pepperrell Road (Tax Map 27, Lot 45) in the**
220 **Kittery Point Village and Shoreland Overlay Zones, for owners and applicants Jonathan**
221 **King and James W. Stott.**

222 **Mr. Harris seconded.**

223
224 Ms. Kalmar read the Findings of Fact.
225

226 **FINDINGS OF FACT**
227 **For 100 Pepperrell Road**
228 **Shoreland Development Plan Review**
229

230 **WHEREAS:** Jonathan King and James W. Stott request approval of their Shoreland Development Plan, a
231 proposal which entails demolition of 3,139 square feet of existing structures and addition of 5,101 square
232 feet of new buildings to an existing single family dwelling at 100 Pepperrell Road, Tax Map 27, Lot 45 in
233 the Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250’) Zones, hereinafter the
234 “Development;” and
235

236 Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;
237

238 And pursuant to the Application and Plan and other documents considered to be a part of the plan review
239 decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the
240 “Plan”):
241

- 242 1. Shoreland Overlay Zone Project Plan Review Application, March 19, 2015.
 - 243 2. Existing Conditions Plan, North Easterly Surveying, Inc., October 2, 2014.
 - 244 3. Site Plan, Elevations, and Site Photos, Jacobsen Architecture, March 19, 2015
 - 245 4. Revised Site Plan and Elevations, Jacobsen Architecture, received May 4, 2015.
- 246

247 **NOW THEREFORE**, based on the entire record before the Town Planning Board and pursuant to the
248 applicable standards in the Land Use and Development Code, the Town Planning Board makes the
249 following factual findings and conclusions:
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252
253
254
255

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17. D Shoreland Overlay Zone

1.d The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development

Findings: The proposed demolition and construction would result in a total of 12,054 square feet of devegetated area, or 19.94% of the 60,460-square-foot lot.

Conclusion: This standard appears to have been met.

Vote: 6 in favor 0 against 0 abstaining

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Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article III Nonconformance

16.7.3.1 Prohibitions and Allowances

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

Finding: The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.5 Types of Nonconformance

16.7.3.5.5 Nonconforming Structure Repair and/or Expansion

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

Finding: The proposed changes are no more nonconforming than the existing condition.

Conclusion: The requirement appears to be met

Vote: 6 in favor 0 against 0 abstaining

16.6.6 Basis for Decision

16.6.6.1.B In hearing appeals/requests under this Section, the Board of Appeals must use the following criteria as the basis of a decision:

- 1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;*
- 2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;*
- 3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its*

location; and

4. Use will be in harmony with and promote the general purposes and intent of this Code.

Finding: The proposed development does not pose a concern.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

259

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones

16.7.3.6.1 Nonconforming Structure Expansion

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs [A through C]

Finding: The existing structure is nonconforming, but is located outside the required setback from the normal high water line. The proposal does not increase nonconformity.

Conclusion: Standards A-C are not applicable.

Vote: 6 in favor 0 against 0 abstaining

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Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. Maintain safe and healthful conditions;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

2. Not result in water pollution, erosion or sedimentation to surface waters;

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2, #3, and #9 this requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested condition #4, this requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.

Vote: 6 in favor 0 against 0 abstaining

5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
Conclusion: With the proposed conditions #7 and #8, this requirement appears to be met.

Vote: 4 in favor 2 against (Alesse & Davis) 0 abstaining

6. Protect archaeological and historic resources;
Conclusion: The proposed development does not appear to have an adverse impact. With the proposed conditions #5 and #6, this requirement appears to be met.

Vote: 5 in favor 1 against (Alesse) 0 abstaining

7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

8. Avoid problems associated with floodplain development and use;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

9. Is in conformance with the provisions of this Code;
Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

10. Be recorded with the York County Registry of Deeds.
Conclusion: As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.

Vote: 6 in favor 0 against 0 abstaining

264
265 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review
266 standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan
267 Application of Jonathan King and James W. Stott, owners and applicants, to remove additions and connect
268 new construction to an existing single family dwelling at 100 Pepperrell Road (Tax Map 27, Lot 45)
269 subject to any conditions or waivers, as follows:

270
271 **Waivers:** None
272

273 **Conditions of Approval** (not to be included on final plan):

- 274 1. The plan will be revised to meet the recording requirements of the York County Registry of
275 Deeds.
- 276 2. The plan will be revised to include a note stating that the development is a single dwelling unit per
277 the definition of Title 16, Chapter 2 Definitions.
- 278 3. The plan will be revised to relocate the lilac.
279

280 **Conditions of Approval** (to be included on final plan to be recorded):

- 281 1. No changes, erasures, modifications or revisions may be made to any Planning Board approved
282 final plan. (Title 16.10.9.1.2)
283
- 284 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated
285 with site and building construction to ensure adequate erosion control and slope stabilization.
- 286 3. Prior to the commencement of grading and/or construction within a building envelope, as shown
287 on the Plan, the owner and/or developer must stake all corners of the envelope. These markers
288 must remain in place until the Code Enforcement Officer determines construction is completed
289 and there is no danger of damage to areas that are, per Planning Board approval, to remain
290 undisturbed.
- 291 4. A subsurface wastewater disposal permit application (HHE 200) will be submitted to the Code
292 Enforcement Officer for review and approval prior to the issuance of a building permit.
- 293 5. A Phase I Archaeological Survey will be performed as well as all subsequent investigations
294 recommended by the archaeologist and Maine Historic Preservation Commission, including
295 Phase II and Phase III Surveys if necessary.
- 296 6. Applicant/Contractor will adhere to the recommendations made by the Maine Historic
297 Preservation Commission specific to the rehabilitation of the Bray House as indicated in their
298 letter dated April 7, 2015. Adherence will be confirmed by an independent historic preservation
299 consultant meeting the minimum National Park Service professional qualification standards listed
300 on the Maine Historic Preservation Commission website.
- 301 7. No existing trees will be removed, with the exception of two diseased flowering trees on the
302 south side of the Bray House. The large lilac in the vicinity of the proposed summer house will
303 be transplanted.
- 304 8. Per the recommendations of the consulting arborist in a letter dated April 29, 2015, if
305 construction results in damaging more than one-quarter of the root system of an existing tree, in
306 order to preserve the tree, “proper root pruning techniques” will be used and the applicant will
307 “install a support system to mitigate the loss of the roots” in accordance with best practices and to
308 the satisfaction of the certified arborist on site. In the event that trees do not survive construction
309 damage, a mitigation plan shall be prepared in adherence to recommendations by the Shoreland
310 Resource Officer and Maine DEP.
- 311 9. To ensure that the development will not result in water pollution, erosion, or sedimentation to
312 surface water, prior to the issuance of a building permit, the applicant must submit a stormwater
313 management plan reviewed and approved by the Town’s peer review engineer.
- 314 10. All Notices to Applicant contained herein (Findings of Fact dated 5/14/15).

315

316 The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of
317 Fact upon confirmation of compliance with any conditions of approval.

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319
320
321

Vote of 5 in favor 0 against 1 abstaining

322 Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the
323 York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five
324 (45) days from the date the decision by the Planning Board was rendered.

325
326

ITEM 3 – Old Armory Way Mixed Use Development – Preliminary Site Plan Review

328 Action: grant or deny continuance. Owner/applicant Ken McDavitt requests continuance of his plan
329 seeking approval to construct two condominiums (total of three dwelling units) with eight commercial
330 boat slips at 15 Old Armory Way, Tax Map 4, Lot 51 in the Mixed Use – Kittery Foreside (MU-KF)
331 Zone, Shoreland Overlay (OZ-SL-250') Zone, and Commercial Fisheries/Maritime Uses Overlay (OZ-
332 CFMU) Zone. Agent is Ken Wood, P.E., Attar Engineering, Inc.

333

334 Mr. McDavitt represented himself and provided an overview of progress since the Planning
335 Board's last review, including:

- 336 • He submitted the Architect's drawings showing building height
- 337 • He received a response from the Maine Historic Preservation Commission, which deemed
338 the building *not eligible* for the register of historic places
- 339 • He provided a letter from the surveyor explaining how the complexity of the site, snow
340 cover, and coordinating with the tide have prevented him from finishing the survey

341

342 In light of this delay, Mr. McDavitt requested a 60-day continuance.

343

344 Ms. Kalmar suggested the Board deny the continuance and ask the applicant to return when the
345 application is complete.

346

**Ms. Kalmar moved to deny continuance of the site plan application of Ken McDavitt to
347 construct two residential condominiums (total of three dwelling units) with eight commercial
348 boat slips at 15 Old Armory Way, Tax Map 4, Lot 51.**

349

Mr. Alesse seconded.

350

Motion carried: 6-0-0

351

352

ITEM 4 – Yankee Commons Mobile Home Park Expansion – Subdivision Preliminary Plan Review

354 Action: schedule a public hearing. Owner/applicant Real Property Trust Agreement requests
355 consideration of plans for a 78-lot expansion of the Yankee Commons Mobile Home Park for the property
356 located at US Route 1, Tax Map 66, Lot 24 in the Mixed Use (MU) and Residential – Rural (R-RL)
357 Zones. Agent is Thomas Harmon, P.E., Civil Consultants.

358

359 Mr. Harmon represented the applicant and was joined by Jay Stephens of Civil Consultants, Gary Beers
360 representing the owner, and Brian Rayback of Pierce Atwood. Mr. Harmon explained that this review
361 continues a process begun in 2012 and provided an overview of the project, including:

362

- 362 • 77 units are proposed and will be served by 5000 feet of road, public water and sewer
- 363 • They received Maine DEP approval in June 2013
- 364 • Four waivers are requested

364

365

Ms. Davis asked that the Board meet with the Town Attorney.

366 Ms. Kalmar said she would like to discuss the concept of “environmental suitability” at that meeting.
367 Ms. Davis would like the Attorney to discuss the court’s decision and understand when State law
368 supersedes the Town Code.

369
370 **Ms. Kalmar moved to schedule a site walk for the Preliminary Subdivision Plan Application of**
371 **owner/application Real Property Trust Agreement for a 78-lot expansion of the Yankee Commons**
372 **Mobile Home Park located at Route 1, Tax Map 66, Lot 24 and 25 for Tuesday, June 2, 2015 at**
373 **10:30 and schedule a public hearing for June 11, 2015.**
374 **Ms. Davis seconded.**
375 **Motion carried: 6-0-0**

376
377
378 **ITEM 5 – 81 Tower Road – Shoreland Development Plan Review**

379 Action: accept or deny plan application; approve or deny plan. Owner/applicant The Frederick Nominee
380 Trust requests consideration of a shoreland development plan for an addition to and second story
381 expansion of an existing, nonconforming structure located at 81 Tower Road, Tax Map 58, Lot 46 in the
382 Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250’)Zones. Agent is Jason
383 Smith, Evergreen Builders.

384
385 Mr. Smith described the project, where an octagonal stairwell will be added for access to a new second
386 story.

387 Mr. Di Matteo explained that paragraph two of the staff review is incorrect and reminded the Board that
388 for a Shoreland Development Plan, the Board has discretion in whether to hold a site walk or public
389 hearing.

390
391 **Ms. Kalmar moved to accept the application and grant conditional approval for the Shoreland**
392 **Development Plan dated April 23, 2015 from The Frederick Nominee Trust for 81 Tower Road**
393 **(Tax Map 58, Lot 46) in the Residential – Rural Conservation and Shoreland Overlay Zones**
394 **subject to the following conditions in the Findings of Fact.**

395 **Ms. Davis seconded.**
396 Ms. Kalmar read the Findings of Fact.

397
398 **FINDINGS OF FACT**
399 **For 81 Tower Road**
400 **Shoreland Development Plan Review**

401
402 **WHEREAS:** The Frederick Nominee Trust requests approval of a shoreland development plan for an
403 addition to and second story expansion of an existing, nonconforming structure located at 81 Tower Road,
404 Tax Map 58, Lot 46 in the Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-
405 250’)Zones, hereinafter the “Development,” and

406
407 Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;

408
409 And pursuant to the Application and Plan and other documents considered to be a part of the plan review
410 decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the
411 “Plan”):

- 412
413 1. Shoreland Overlay Zone Project Plan Application, April 23, 2015.
414 2. Shoreland Development Plan, North Easterly Surveying, Inc., April 21, 2015.
415 3. Frederick Residence Addition, Randall Design, January 12, 2015.

416

417 **NOW THEREFORE**, based on the entire record before the Town Planning Board and pursuant to the
418 applicable standards in the Land Use and Development Code, the Town Planning Board makes the
419 following factual findings and conclusions:
420

421 **FINDINGS OF FACT**

422

423

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17. D Shoreland Overlay Zone

1.d The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development

Findings: The proposed construction would result in a total of 4,388 square feet, or 11.7% of the 37,530-square-foot lot.

Conclusion: This standard appears to have been met.

Vote: 6 in favor 0 against 0 abstaining

424

425

426

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article III Nonconformance

16.7.3.1 Prohibitions and Allowances

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

Finding: The proposed development increases nonconformity as permitted in 16.7.3.6.1 Nonconforming Structure Expansion.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.5 Types of Nonconformance

16.7.3.5.5 Nonconforming Structure Repair and/or Expansion

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

Finding: The proposed development increases nonconformity as permitted in 16.7.3.6.1 Nonconforming Structure Expansion.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.6.6 Basis for Decision

16.6.6.1.B *In hearing appeals/requests under this Section, the Board of Appeals [note: Planning Board is also subject to this section per 16.7.3.5.5 above] must use the following criteria as the basis of a decision:*

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;

2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone

wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;

3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and

4. Use will be in harmony with and promote the general purposes and intent of this Code.

Finding: The proposed development does not pose a concern.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones

16.7.3.6.1 Nonconforming Structure Expansion

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs A-C

Finding: A. Staff confirmed that there are no recorded expansions of the portion of the structure within the setback since 1989. The proposed expansion represents a 6.4% increase in area and a 7.4% increase in volume. B. Does not apply. C. The expanded foundation meets the setback requirement.

Conclusion: The requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

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Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

11. Maintain safe and healthful conditions;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

12. Not result in water pollution, erosion or sedimentation to surface waters;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

13. Adequately provide for the disposal of all wastewater;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

14. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

15. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

16. Protect archaeological and historic resources;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

***17. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/
maritime activities district;***

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

18. Avoid problems associated with floodplain development and use;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

19. Is in conformance with the provisions of this Code;

Conclusion: This requirement appears to be met.

Vote: 6 in favor 0 against 0 abstaining

20. Be recorded with the York County Registry of Deeds.

Conclusion: As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.

Vote: 6 in favor 0 against 0 abstaining

431

432 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review
433 standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan
434 Application of The Frederick Nominee Trust, owner and applicant, for an addition to and second story
435 expansion of an existing, nonconforming structure located at 81 Tower Road, Tax Map 58, Lot 46 in the
436 Residential – Rural Conservation (R-RLC) and Shoreland Overlay (OZ-SL-250') Zones subject to an
437 conditions or waivers, as follow:

438

439 **Waivers:** None

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Conditions of Approval (to be included on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. All Notices to Applicant contained herein (Findings of Fact dated May 14, 2015).

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 6 in favor 0 against 0 abstaining

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 6 – Hampton Inn, 275 US Route 1 – Sketch Plan Review

Action: approve or deny sketch plan. Owner Kittery Trading Post Shops, LLC and applicant 275 US Route 1, LLC request consideration of a sketch plan for a commercial development consisting of an 83-room hotel located at 275 US Route 1, Tax Map 30, Lot 41 in the Commercial 1 (C-1) and Resource Protection Overlay (OZ-RP) Zones. Agent is Ryan Plummer, Two International Group.

Rolf Biggers of BMA Architects represented the applicant. Mr. Biggers provided an overview of the proposal, including:

- It will be four stories and 83 rooms, which is relatively small for a Hampton Inn
- There will be limited meetings spaces and no restaurant
- There will be suites for longer stays
- Hampton Inn is a Hilton Brand
- The design is based on a prototype with adjusted materials and structure to meet the height requirement and meet design standards with clapboards, a brick “rusticated base,” and accentuated cornice
- Parapets hide equipment on the flat roof
- Hampton Inn has its own building codes that often exceed the local code
- There will be a porte-cochère entrance
- The first floor will contain primarily public and support spaces, including an indoor pool and fitness room

Ms. Davis asked about the plans for the other two buildings shown on the site.

Mr. Biggers explained that the site has been master planned for compatible uses, likely a small restaurant and a coffee shop, partly to provide services the hotel does not include.

Mr. Di Matteo explained that the applicant is only seeking approval for the hotel, although aspects of the plan such as stormwater will anticipate the full buildout of the site.

488 Mr. Biggers noted that Hilton’s landscaping and parking lot requirements ensure that the site will be
489 maintained in the meantime.

490 Mr. Lincoln asked about the site’s entrance and exit.

491 Mr. Biggers said the Old Wilson Road will be used and there will be no new curb cuts.

492 Mr. Lincoln expressed concern about the design’s compatibility with Kittery and the standards of the
493 zone, particularly the flat roof.

494 Mr. Biggers said the building would be 13 feet taller with a sloped roof and that Fire Departments prefer
495 the flat roof over an enclosed attic space.

496 Ms. Davis asked whether there are any other prototypes the Board could consider.

497 Mr. Biggers said there are not and noted that the hotel’s small size makes it difficult to compete with
498 Portsmouth hotel prices.

499

500 **Ms. Kalmar moved to approve the Sketch Plan dated April 8, 2015 from Owner Kittery Trading**
501 **Post Shops LLC, and applicant Two International Group for a commercial development consisting**
502 **of an 83-room hotel located at 275 Route 1, Tax Map 30, Lot 41 in the Commercial 1 (C-1) and**
503 **Resource Protection Overlay (OZ-RP) Zones.**

504 **Mr. Harris seconded.**

505 Mr. Lincoln asked to see a rendering with the proposed materials.

506 **Motion carried: 5-0-1 (Mr. Lincoln abstaining).**

507

508

509 **ITEM 7 – 9 Mill Pond Road – Shoreland Development Plan Review**

510 Action: accept or deny plan application. Owner/applicant Eric Stites requests consideration of a shoreland
511 development plan for an addition to and second story expansion of an existing, nonconforming structure
512 located at 9 Mill Pond Road, Tax Map 23, Lot 6A in the Residential – Urban (R-U), Shoreland Overlay
513 (OZ-SL-250’), and Resource Protection Overlay (OZ-RP) Zones. Agent is Tom Emerson, Studio B-E.

514

515 Tom Emerson represented the applicant. He described the project and its existing nonconformities. The
516 existing condition is well over the permitted devegetated area, so an impervious walk will be replaced
517 with a pervious one to reduce that condition. Mr. Emerson will make corrections to the plan as requested.

518

519 **Ms. Kalmar moved to schedule a site walk for the Shoreland Development Plan application dated**
520 **April 23, 2015 from Eris Stites & Katherine Peternell for 9 Mill Pond Road (Tax Map 23, Lot 6A)**
521 **in the Residential – Urban, Shoreland Overlay, and Resource Protection Overlay Zones, for June 2,**
522 **2015 at 11:30 a.m. and schedule a public hearing for June 11, 2015.**

523 **Mr. Lincoln seconded.**

524 **Motion carried: 6-0-0**

525

526

527 **ITEM 8 – Lewis Farm Subdivision Phase II – Major Modification to an Approved Plan**

528 Action: approve or deny plan modification. Owner/applicant Lewis Farm, LLC requests consideration of
529 a major modification to an approved subdivision plan located off Haley Road and Lewis Road, Tax Map
530 61, Lots 25 and 29, in the Residential – Rural (R-RL) Zone. The modifications consist of revised lot lines
531 and revised Maine Department of Environmental Protection wooded buffers. Agent is Jeffrey Clifford,
532 P.E., Altus Engineering.

533

534 Mr. Clifford represented the applicant and described the proposed modification.

535 Mr. Di Matteo explained that although classified as major because it involves lot lines and easements, the
536 modification is relatively minor.

537

538 **Ms. Kalmar moved to accept the plan application of Lewis Farm, LLC for a major modification to**
539 **a cluster subdivision plan approved March 14, 2013.**

540 **Mr. Lincoln seconded.**

541 **Motion carried: 6-0-0**

542

543 **Ms. Kalmar moved to approve the application of Lewis Farm, LLC for a major modification to a**
544 **cluster subdivision plan approved March 14, 2013, consisting of revised lot lines and Maine DEP**
545 **wooded buffer easements, located off Haley Road and Lewis Road, Tax Map 61, Lots 25 and 29, in**
546 **the Residential – Rural Zone.**

547 **Ms. Davis seconded.**

548 **Motion carried: 6-0-0**

549

550

551 **ITEM 9 – Board Member Items / Discussion**

A. Committee Updates

B. Other

552

553 Mr. Lincoln asked whether the Planning Board has any jurisdiction over the Wood Island Life Saving
554 Station.

555

556

557 **ITEM 10 – Town Planner Items:**

558 A. KACTS Kittery Foreside 2016-17 Infrastructure Funding Update

559 B. Other

560

561 Ms. Davis would like to know more about the work planned for “15 transient vessels at the Kittery Point
562 Yacht Yard” described in the Maine DOT’s 2015-2017 work plan.

563 Ms. Grinnell would like to discuss that work plan at the next meeting.

564

565 **Mr. Alesse moved to adjourn.**

566 **Ms. Davis seconded.**

567 **Motion carried: 6-0-0**

568

569 The Kittery Planning Board meeting of May 15, 2015 adjourned at 9:30 p.m.

570

571 Submitted by Elena Piekut, Assistant Town Planner, May 21, 2015.

**Town of Kittery
Planning Board Meeting
May 28, 2015**

Town Code Amendment - Title 16.7.3.5.6 Nonconforming Structure Reconstruction.

Action: hold a public hearing; make recommendation to Town Council. Proposed amendment addresses an omission in the current code related to reconstructing nonconforming structures outside of the Shoreland Overlay Zone.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Workshop		NOT HELD
YES	Initial Planning Board Meeting	December 18, 2014	
YES	Public Hearing (special notice requirements)	Must be published 2x prior to PH	TBD
YES	Review/Approval/ Recommendation to Town Council		TBD

Background: Following is the original code language regarding reconstruction of nonconforming buildings as written prior to the ordinance update of 2010. This section was not transferred to the 2010 code update.

16.28.140 Reconstruction of nonconforming buildings.

Any legally nonconforming building which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his or her agent, may be restored or reconstructed in conformity with the dimensions of the original building within twelve (12) months of the date of said damage or destruction, provided, however, that such restoration or reconstruction shall not enlarge the size or make it more nonconforming than the prior nonconforming building. Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed. (Ord. 12-99; land use and dev. code § 7.3.4, 1994)

Since the update of 2010, the language in Title 16.7.3.5.6 addresses nonconforming building reconstruction only within the Shoreland or Resource Protection Overlay Zones (and setback restrictions), where Planning Board review is required. After an initial review by the Board, Staff has provided another draft for consideration.

Summary:

1. The Code currently lacks a provision to allow the Code Enforcement Officer to issue permits for the reconstruction of nonconforming structures located outside of the Shoreland or Resource Protection Overlay Zones. This issue is addressed with the proposed new language in section C.
2. The amendment allows for a longer period of time (18 months vs. 12 months) for reconstruction and eliminates cause (no fault vs. damage other than willful act of the owner/agent), creating consistency with the existing overlay reconstruction language (16.7.3.5.6.A and B). The longer period of time is more adequate to resolve conditions equivalent to those in 16.7.3.5.6.A (damage is > 50% of the value) than B (damage is < 50% of the value).

The Board may want to consider an amendment that divides this provision into two scenarios as it is for properties in the Shoreland Overlay Zone (A and B). The Board of Appeals could review and approve those properties that incur loss of > 50% of the value and determine if a reconstruction can be built in a more conforming manner, i.e. further outside a yard or wetland setback. Properties that incur less damage are allowed to be built in place with a permit obtained by the CEO.

3. Staff proposes new language that clarifies applicability of a section within the overlay zones, removing parenthetical language.

See letter from the Conservation Commission attached.

After the public hearing, the Board may move to recommend these amendments to the Town Council
Move to recommend the proposed amendments to Title 16.7.3.5.6 Nonconforming Structure Reconstruction [as written/as revised]...

1 **16.7.3.5.6 Nonconforming Structure Reconstruction.**

2
3 A. In the Shoreland or Resource Protection Overlay Zone(s), Any nonconforming structure which is located less
4 than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or
5 destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction
6 or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of
7 the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in
8 compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent
9 as determined by the Planning Board. ~~(in cases where the structure is located in a Shoreland Overlay of~~
10 ~~Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.~~

11
12 B. In the Shoreland or Resource Protection Overlay Zone(s), Any nonconforming structure which is located
13 less than the required setback from a water body, tributary stream, or wetland and removed, damaged or
14 destroyed by any cause through no fault of action by the owner by 50% or less of the market value of the
15 structure before such damage, destruction or removal, may be reconstructed in place if a permit is obtained from
16 the Code Enforcement Officer ~~or the Planning Board (in cases where the structure was located in the Shoreland~~
17 ~~Overlay or Resources Protection Overlay Zone)~~ within twelve (12) months of the established date of damage or
18 destruction. [Amended and moved; formerly 16.7.3.5.6.D]

19
20 C. Outside of the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is
21 removed, damaged or destroyed by any cause may be restored or reconstructed in place if a permit is obtained
22 from the Code Enforcement Officer within eighteen (18) months of the date of said removal, damage or
23 destruction. Such restoration or reconstruction must not make the structure more nonconforming than the prior
24 nonconforming structure. Nothing in this section prevents the demolition of the remains of any building so
25 damaged or destroyed.

26
27 D. In the Shoreland or Resource Protection Overlay Zone(s), if the total amount of floor area and volume of the
28 original structure can be reconstructed beyond the required setback area, no portion of the reconstructed
29 structure may be reconstructed at less than the setback requirement for a new structure. When it is necessary to
30 remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section
31 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has
32 been partially damaged must be made to the Code Enforcement Officer. [Amended and moved; formerly
33 16.7.3.5.6.C]

34
35 E. In no case will may a structure be reconstructed or replaced so as to increase its non-conformity. In the
36 Shoreland and Resource Protection Overlay Zones, if the reconstructed or replacement structure is less than the
37 required setback it may not be any larger than the original structure, except as allowed pursuant to Section
38 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion, as determined by the nonconforming floor area
39 and volume of the reconstructed or replaced structure at its new location. [Amended and moved; formerly
40 16.7.3.5.6.B]

41
42 F. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical
43 extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section
44 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.
45 [Moved; formerly 16.7.3.5.6.E]

46
47 END



Town of Kittery, Maine

Conservation Commission

P.O. Box 808, Kittery, Maine 03904

DATE: May 14, 2015

TO: Chris Di Matteo, Town Planner
Ann Grinnell, Planning Board Chair

FROM: Earldean Wells, Chairman

RE: Request to discuss updates to 16.7.3.5.6 and Table 16.9

16.7.3.5.6:

The Kittery Conservation Commission realizes that the Planning Board has been working on 16.7.3.5.6. The KCC Chair has been away and wishes to ask the board to consider our comments regarding the removal of the wording: through no fault or action by the owner which in our view allows the property owner to neglect their property to the point where it becomes a hazard to public health and safety and then is rewarded with being given the same rights/privileges as property owners who have taken proper care of their property but have had an unfortunate situation arise. This also encourages property owners to neglect their property when the town should be encouraging owners to take proper care of their property.

KCC also notes that no mention has been made in the former code wording or the proposed update regarding foundation holes left unfilled and open to the public without a safety fence around them. Presently there is a gaping foundation hole in Kittery, the remains of a house fire several years ago. The owners did not obtain a permit to rebuild within the allowable time limit. This is a hazard to public health and safety, while we realize that this particular open foundation is likely grandfathered by now, some thought should be given to avoid this situation in the future. Towns usually require at least a chain link fence to protect residents.

Table 16.9

Presently Table 16.9 is the only standard for the minimum setbacks from wetlands and water bodies. The Conservation Commission requests that the Planning Board consider taking streams and intermittent streams out of this table and allow them to stand alone.

Table 16.9 requires that the to size of a wetland and/or water body is determined by the delineation of the wetland or water body edges and the hydric soils (less than 501 square feet; 501 square feet to one acre; more than one acre)-the entire wetland and water body is considered no matter regardless if it extends off the property.

Streams and intermittent streams (only observable during certain times of the year) have side edges and boundaries as well as hydric soils but an impact in one area of the stream would be an impact the entire length of the stream. Therefore the Conservation Commission requests that the Planning Board consider setting a minimum setback from all streams or intermittent streams at 100 feet.



Town of Kittery, Maine

Conservation Commission

P.O. Box 808, Kittery, Maine 03904

**Town of Kittery
 Planning Board Meeting
 May 28, 2015**

Town Code Amendment – 16.5.2.4 Permit Period, Appendix A Schedule 16 Land Use and Development Fees

Action: review amendment and schedule a public hearing. The proposed amendment corrects a discrepancy between 16.5.2.4 and Fee Schedule 16, where the Code refers to the renewal of expired building permits upon reapplication and payment of a renewal fee, but the Fee Schedule omits any reference to a renewal fee.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
NO	Workshop		
YES	Initial Planning Board Meeting	Scheduled 5/28/15	
YES	Public Hearing (special notice requirements)	Must be published 2x prior to PH	
YES	Review/Approval/ Recommendation to Town Council		

Background

Earlier this year Mr. Daniel Poulin complained to the Town Manager concerning being charged in full a second time in order to renew his building permit that had expired. The Code allows for “renewal of an expired building permit after re-application and payment of a *renewal fee*. Appendix A of the Town Code, where town fees are established, includes no renewal fee.

In this instance where substantial work associated with a building permit was not started prior to the specified six-month period per 16.5.2.4, past practice has been to require full re-payment of the building permit base application fee and the associated fee per \$1,000 of the value of work as outlined in Schedule 16 of Appendix A of the Town Code (attached). In cases where work had started the associated fees were applied only to work that was not yet completed.

May 11, 2015 the Town Council adopted a resolution, attached, that directs the Town Manager to provide a full refund, with the exception of the base application fee, to Mr. Poulin and to instruct staff to do the same with similar situations until a code amendment has been adopted.

Review

Attached for the Board’s consideration is an amendment that clarifies what the renewal fee is as it relates to the fee and the condition. An expired building/regulated activity permit is allowed to be renewed for only a single six-month period with payment of only the base application fee, \$25 for a residential use and \$100 for commercial uses. Pertaining to this provision, an ‘expired’ permit that is eligible for renewal does not include a permit that has expired more than six months.

Recommendation

If the Planning Board is amenable to the proposed amendment and/or along with any revisions they find is warranted, the Board can...

...move to schedule a public hearing for Town Code Amendment, Title 16.5.2.4 Permit Period, and Appendix A Schedule 16 Land Use and Development Fees on June 25, 2015.

Code Amendment

1 **16.5.2.4 Permit Period.**

2 A permit expires if no substantial work has been commenced within six months from date of issue. A permit
3 expires if work is not substantially complete within two years from date of issue. Expired permits may be
4 renewed upon written request and justifiable cause demonstrated to the Code Enforcement Officer's
5 satisfaction application and payment of a renewal fee, as outlined in Appendix A of the Town Code.

6
7 Written request for renewal must be made prior to the permit expiration. The permit may be renewed one
8 time only for a single six (6) month period, upon payment of the base application fee. If substantial work has
9 not commenced upon expiration of the six (6) month renewal period, a new permit application and payment
10 of all applicable new permit fees must be submitted. If work is not substantially complete upon expiration of
11 the six (6) month renewal period, a new permit application and payment of all applicable fees must be
12 submitted based on the value of the remaining permitted work.

13
14 Any work commenced or completed without the issue of a permit as required by this Code is subject to an
15 after-the-fact permit with twice the payment of all applicable fees
16

KITTERY TOWN CODE APPENDIX A – FEE SCHEDULES

Purpose: Fees established for permitting, licensing, services, application, appeal, or the like, ordained in any title of the Town Code, are to be set in a corresponding fee schedule authorized by resolution of the Town Council and appended as required by Section 1.3.4 of Title 1 of the Town Code. This appendix fulfills that requirement.

Authority: The Town Council enacts revisions to these schedules, in exercise of powers and functions which the Legislature has conferred upon it, which are not denied either expressly or by clear implication, and in exercise of powers and functions granted to the municipality by the Constitution of Maine, general law or charter. The Council is authorized to enact ordinances, as specified in Section 2.07 (3) of the Town Charter and 30-A M.R.S. §3001, pursuant to its powers that authorize the town, under certain circumstances, to provide for public health, welfare and safety.

Applicant Service Accounts (ASA): Pursuant to Town Code Title 3, Chapter 3.3, applicants requesting appeals, approvals, licenses, or permits, which involve services as listed therein, are required to establish an ASA when the expense threshold is greater than \$250.00 with the Town Treasurer used to pay other direct costs necessary to complete the application process, not including application fees as shown in this Appendix.

Schedules:

SCHEDULE 4. BOARD OF ASSESSMENT REVIEW APPEAL

Board of Assessment Appeal Review Fee	\$100.00
---------------------------------------	----------

SCHEDULE 5. BUSINESS LICENSES

Chapter 5.1 AMUSEMENT DEVICES

1. One to three machines	\$50.00
2. Four or more machines (per machine above the first three)	\$50.00

Chapter 5.2 SPECIAL AMUSEMENT PERMITS

Special amusement permits	\$20.00
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Chapter 5.3 FOOD SERVICE ESTABLISHMENTS

1. Victualers, innkeepers and lodging house initial fee	\$50.00.
2. Renewal fee	\$25.00

Chapter 5.5 MASSAGE ESTABLISHMENTS

1. Therapeutic massage establishment	\$50.00
2. Therapeutic massager	\$10.00

Chapter 5.6 MOBILE FOOD-VENDING UNITS

Lunch wagon, mobile unit, or roving diner	\$50.00
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Chapter 5.8 TAXICABS

1. Taxicab business license	\$100.00
2. Taxicab vehicle license	\$10.00
3. Taxicab operator license	\$10.00

G. Closing out of business sales	\$100.00
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SCHEDULE 8. HEALTH and SAFETY

Chapter 8.1 SOLID WASTE COLLECTION and DISPOSAL

Article II. Requirements

Resource Recovery Facility Disposal Fee Schedule

8.2.2.1 Resource Recovery

As shown in Attachment 1

Article III. Deposit Permit

Replacement sticker permit \$10.00 except
 there will be no charge if the applicant submits sufficient
 remnants of the old sticker, or proof that the loss was not
 due to the applicant's negligence.

Article IV. Commercial Disposal Service

Hauler license fee

Class	Description	Fee
A.	Any size, any materials, tipping outside, and with no cost to, the town.	\$200.00
B.	Household waste and recyclables, Large, tipping at the collection facility. For haulers providing service to more than 25 residents or businesses.	\$100.00
C.	Household waste and recyclables, Small, tipping at the collection facility. For haulers providing service to 25 or fewer residents or businesses.	\$50.00
D.	Landfill, reuse, and recoverable materials. For haulers providing service to residents or businesses delivering to the recovery facility, and paying user fees.	\$50.00
E.	Solid waste facility combination, Large For haulers providing all disposal services to more than 25 residents or businesses.	\$125.00
F.	Solid waste facility combination, Small For haulers providing all disposal services to 25 or fewer residents or businesses.	\$75.00
G.	Business-generated bulk salable paper goods. For baling facility direct drop, any size.	Free

SCHEDULE 10. VEHICLES and TRAFFIC

Chapter 10.3 STOPPING, STANDING and PARKING

10.3.11 Towing.

Between seven a.m. and five p.m., Monday through Friday	\$85.00
All other times	\$100.00
Additional charge if "dolly" has to be used	\$15.00
Maximum charge for any dry run where a vehicle is not towed	\$40.00
Motorcycle, extra charge	\$15.00
First 24 hours of storage (unless towed due to snow removal)	\$0.00
Charge if vehicle has to be unlocked	\$0.00
Charge if transmission has to be unlocked from underneath the vehicle	\$0.00
Additional charge for any unusual circumstances	\$15.00

SCHEDULE 12. STREETS, SIDEWALKS and PUBLIC PLACES

Chapter 12.1 EXCAVATIONS,

Excavation Permit Fees (per square yard)

Surface Condition	First 25 square yards	Over 25 square yards
Asphalt pavement	\$10.00	\$8.00
Portland concrete	\$12.00	\$10.00
Gravel	\$1.00	\$0.80
Lawn grass	\$3.00	\$2.75
Field grass slopes	\$1.00	\$0.80
Unimproved areas	\$0.50	\$0.35

Chapter 12.6 SHELLFISH, Shellfish License Fees

Resident recreational	\$15.00
Residents 70 and over (limited to 15 licenses)	Free
Nonresident recreational	\$30.00

SCHEDULE 13. PUBLIC SERVICES

Chapter 13.1 SEWER SERVICE SYSTEM

Article I. In General

Rates and charges: Quarterly Usage

1. First 1,000 cubic feet or fraction thereof	\$75.00
2. Per one hundred cubic feet in excess of 1,500 feet	\$5.00

Article III. Building Sewers and Connections

Building sewer permit fees:

1. Residential or commercial	\$15.00
2. Industrial	\$15.00

Article IV. Main Extensions

Special sewer entrance permit fee	\$2,500.00
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Article V. Private Sewage Disposal

Private sewage disposal system permit and inspection fee	\$10.00
Private sewage treatment facility after-hours labor charge (three-hour minimum labor charge)	\$25.00 per hour
Septic tank contents discharge rate	\$0.10 per gallon
Holding tank contents discharge rate	\$0.015 per gallon

SCHEDULE 14. APPEALS

Chapter 14.4 MUNICIPAL ACTION DECISION APPEAL/REQUEST

14.4.14 Fees.

Board of Appeals Application Fees

Administrative Decision Appeal Request	\$50.00
Variance Request	\$100.00
Miscellaneous Variation Request	\$100.00
Special Exception Use Request	\$150.00

SCHEDULE 16. LAND USE AND DEVELOPMENT FEES

Chapter 16.5 BUILDING/REGULATED ACTIVITY PERMITS

16.5.3 Application.

16.5.3.3 Fee.

Building/Regulated Activity Fees

Per application	\$25.00 plus \$12/\$1,000
Commercial/industrial and larger than two-family dwellings	\$100.00 plus \$15/\$1,000
Re-inspection for a failed inspection	\$50.00
Structure demolition	\$20.00
Stop work order removal	\$125.00
Building permit amendments (Value of Change)*	\$12 or \$15.00/\$1,000
After the fact Building Permits	Double Fee

For maintenance activities to existing residential property including, but not limited to, repairs to roof, siding, painting, chimney etc., the town will waive the \$12/\$1,000 fee up to the first \$10,000 of the cost of the project. An application is required to be filed for work under the waiver at the \$25 application fee.

*Note: does not apply on maintenance projects and /or permits remaining under an initial \$10,000 value of work.

EXAMPLE: Building/regulated activity permit fee for a new \$148,000 house:

Base application fee \$25.00 plus $(\$148,000/\$1,000) \times \$12 = \$1,776.00$
 Total building/regulated activity permit fee \$ 1,801.00

Maintenance Permit Example #1: Roofing repairs = \$15,000.

Application fee = \$25.00 plus $(\$15,000 - \$10,000) \$5,000 \text{ cost or } 5 \times 12 = \60 for a total cost of \$85.00.

Maintenance Permit Example #2: Chimney repairs = \$10,750.

Application fee = \$25.00 only and fee is pro-rated on \$750 (\$9.00) for a total of \$34.00 (fee is pro-rated on any \$1,000 over the waiver amount).

Note 1: The value of work is based on the fair market value of the improvements as determined by the Code Enforcement Officer. Any work costing over a \$10,000 is pro-rated to the even \$100 of cost for permitting purposes.

Note 2: Building/regulated activity permit fees do not include fees for the following:

- Internal plumbing inspection (per fixture fee)
- External plumbing inspection (per septic system fee)
- Town electrical inspection (\$25.00 per inspection)
- State electrical inspection (per fixture fee)
- Sewer impact fees (\$2,000 per unit)
- Public safety impact fee
- Development exaction fee

16.5.8 Plumbing and Septic System Permit Fees.

16.5.8.2 Plumbing Permit Fees.

Administrative fee for all permits	\$25.00 plus
Minimum fixture fee	\$24.00
Fixture fee	\$6.00 per fixture
Re-inspection fee	\$20.00
New water distribution and/or drainage pipes installation or relocation, but no fixtures installed	\$24.00
Hook-up fee for connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer	\$24.00
Hook-up fee for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district	\$24.00
Permit transfer fee	\$6.00

16.5.8.3 Subsurface Wastewater Disposal System Fees.

State Surcharge	\$15.00
Complete systems:	
Administrative fee for all permits	\$50.00 plus
Engineered system	\$200.00
Non-engineered system	\$250.00
Primitive system (includes one alternative toilet)	\$100.00
Separate grey waste disposal field	\$35.00
Seasonal conversion permit	\$50.00
First time System Variance	\$20.00

System components (installed separately):

Alternative toilet (only)	\$50.00
Disposal field (engineered system)	\$150.00
Disposal field (non-engineered system only)	\$150.00
Treatment tank (non-engineered system)	\$150.00
Treatment tank (engineered system)	\$80.00
Holding tank	\$100.00
Other Components (Complete pump station, piping, other)	\$30.00

Chapter 16.8 DESIGN and PERFORMANCE STANDARDS – BUILT ENVIRONMENT

Article X. Signs

16.8.10.11 Sign Permit Application Procedures.

Sign permit fee per sign	\$100.00
Replacement decals	\$25.00
Temporary Sign	\$25.00
Annual permit fee, signboards and/or products, Kittery Foreside	\$25.00 for the full year or portion thereof

Article XIX. Sprinkler Systems

16.8.19.4 Fees and Fines.

Sprinkler system permit fee	\$100.00
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Chapter 16.9 DESIGN and PERFORMANCE STANDARDS - NATURAL ENVIRONMENT

Article III. Conservation of Wetlands Including Vernal Pools

16.9.3.6 Procedures for the Wetlands Alteration Application.

For altered or filled wetland area	\$4.00 per square foot
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Article VI. Overboard Discharge Systems

16.9.6.3.1 Application for Permit—Fee.

Application fee	\$100.00
Issuance fee	\$50.00

Article VIII. Floodplain Management

16.9.8.6 Application Fee and Expert's Fee.

Flood hazard development permit application fee valuation of the development	\$1.00 per \$1,000.00
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16.10.5.1.7 Submission Contents Complete.

Planning Board Application Fees

SUBDIVISION PLANS:

Subdivision Sketch Plan Review	\$200.00
Subdivision Plan Review	\$500.00 plus \$50.00/lot or dwelling unit
Modification to an approved subdivision plan	\$300.00 Flat Fee

SITE PLANS:

Site Sketch Plan Review	\$200.00
Site Plan Review	\$300.00 plus The greater of: \$50.00/use or unit; \$5.00/100 sq. ft. of gross floor area; \$0.50/linear foot of dock, slip and float; or \$20.00/unit intended to provide overnight sleeping accommodations
Major Modification to an approved site plan	\$300.00 plus The greater of: \$50.00/additional use or unit; \$5.00/additional 100 sq. ft. of gross floor area; \$0.50/linear foot of additional dock, slip and float; or \$20.00/additional unit intended to provide overnight sleeping accommodations

Appendix A – Fee Schedules Approved September 26, 2011 Effective September 27, 2011

Minor modification to an approved site plan \$100.00

ANY PLAN LOCATED IN THE SHORELAND OVERLAY ZONE:

Shoreland Overlay Zone Plan Review \$200.00

OTHER APPLICATIONS:

Private right-of-way plan review \$300.00

New commercial or business use change \$100.00

Wireless communication services facility plan review \$1,500.00

Wireless communication services facility co-location plan review \$1,000.00

Accessory dwelling unit plan review \$100.00

Zone or Code text change \$300.00

Note 1: Where an application fits more than one category, the higher application fee applies.

Note 2: For the purposes of this fee schedule, the term “gross floor area” means the total area of a building measured by taking the outside dimensions of the building(s) at each floor level intended for occupancy or storage. “Docks” are measured beginning from the mean low-water mark.

Impact Fees included herein for reference only

Chapter 13.2 SEWER IMPACT FEE

13.2.1 Sewer Impact Fee.

13.2.1.6 Fee Determination and Appeal

A. The sewer impact fee due and payable by the property owner is to be calculated and determined by the enforcing officer. If the property owner is aggrieved by the determination of the enforcing officer, a written appeal may be filed with the Town Manager within ten (10) days from the date of notification of such determination by the enforcing officer. The written appeal must set forth a concise statement of the grounds upon which the property owner contends that the determination by the enforcing officer is in error.

Chapter 13.3 PUBLIC SAFETY IMPACT FEE

13.3.1 Authority.

13.3.3.1 Determination of Impact Fee.

The amount of the fee provided herein, is reasonably related to the improvement's share of the cost, where the construction cost, as shown in the application for the building permit exceeds the sum of one hundred thousand dollars (\$100,000).

1. The impact fee assessed is calculated by the CEO at the rate of five dollars (\$5.00) per one thousand dollars (\$1,000) of the cost of improvements in excess of one hundred thousand dollars (\$100,000).
2. The first \$100,000 of the cost of the improvements, as determined herein, is exempted from this impact fee.
3. The following formula is to be used to determine the impact fee: Cost of the improvements less \$100,000 X .005 = Impact Fee.

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article VII. Development Exaction

16.7.7.2 Impact Fees.

Impact fees, and other like development exactions must be required by the Planning Board, when all legal requirements have been fulfilled in accordance with 30-A M.R.S. §4961-A (e.g., Sewer Connection Fees).

ATTACHMENT 1 - RESOURCE RECOVERY FACILITY DISPOSAL FEE SCHEDULE

Item Classification Description	Fee	Unit	Item Classification Description	Fee	Unit
White goods			Oil or latex paints, stains, solvents		
Refrigerator or Freezer	\$ 15.00	Each	Gallon container	\$ 3.00	Each
Air Conditioner	\$ 15.00	Each	Quart container	\$ 1.00	Each
De-Humidifier	\$ 15.00	Each	Less than a quart	\$ 1.00	Each
Stoves & Microwaves	\$ 5.00	Each	Motor oil & antifreeze		
Washers & Dryers	\$ 5.00	Each	One gallon	\$ 1.00	Gal
Dishwashers	\$ 5.00	Each	< one gallon	\$ 1.00	Gal
Hot Water Tanks & Furnaces	\$ 5.00	Each	Waste oil (5 GAL MAXIMUM) / Gallon	\$ 1.00	Gal
Tires			Propane tanks		
Motorcycle, bicycle, others smaller than automobile without rim	\$ 1.00	Each	20# (gas grill size)	\$ 2.00	Each
Motorcycle, bicycle, others smaller than automobile with rim	\$ 1.00	Each	Over 20#	\$ 20.00	Each
Car/Pickup Tires 16½" or less	\$ 3.00	Each	Universal & electronic waste		
Car/Pickup Tires > 17"	\$ 4.00	Each	Monitors	\$ 5.00	Each
Car/Pickup Tires on Rims	\$ 6.00	Each	CPU'S (Desktops & Towers)	\$ 2.00	Each
Construction/Heavy Truck	\$ 25.00	Each	Laptops & Notebooks	\$ 2.00	Each
Heavy Equip/Tractor Tires	\$ 60.00	Each	Copiers, Printers, Scanners & Fax Machines	\$ 5.00	Each
Non-recoverable landfill, Rubbish			Floor Models (of above)	\$ 25.00	Each
Bags/Barrels	\$ 2.00	Each	Keyboard, Mouse (each), Computer Speakers (pair)	\$ 1.00	Each
Bags w/ Household Trash & Recyclables	\$ 10.00	Each	TV - Up to 24"	\$ 10.00	Each
Small Trailer / Pickup (4'x6')	\$ 45.00	Total	TV - 25" & Larger	\$ 15.00	Each
Full Size Trailer / Pickup (5'x6') (5'x8')	\$ 60.00	Total	TV - Consoles & Cabinets	\$ 25.00	Each
Shingles, One Square (3 Bundles, Covers 10x10)	\$ 10.00	Each	CD & DVD Players	\$ 2.00	Each
Wood & barbecue ashes not to exceed 10 gallons	\$ 2.00	Total	VCR's & Tape Decks	\$ 2.00	Each
Non-recoverable landfill, Furnishings			Amplifiers & Pre-Amps	\$ 2.00	Each
Mattress or Box Spring	\$ 10.00	Each	Receivers & Tuners	\$ 2.00	Each
Sofa	\$ 10.00	Each	TV Tuners & Cable Boxes	\$ 2.00	Each
Sleeper/Sectional	\$ 15.00	Each	Corded & Cordless Phones	\$ 2.00	Each
Stuffed Chair	\$ 5.00	Each	Satellite Receivers & Dishes	\$ 2.00	Each
Recliner	\$ 10.00	Each	Cabinet Speakers	\$ 2.00	Each
Wooden Chair	\$ 0.50	Each	Turntables & Combo Units	\$ 2.00	Each
Bureau	\$ 5.00	Each	Boom Boxes/Portable Radios	\$ 2.00	Each
Table	\$ 5.00	Each	Other not listed	\$ 2.00	Each
Headboard/Footboard	\$ 1.00	Each	Fluorescent lamps		
Carpet (4x6)	\$ 5.00	Each	< 4' straight lamps	\$ 1.00	Each
Carpet (6x8)	\$ 8.00	Each	4' straight lamps	\$ 1.00	Each
Carpet (8x10)	\$ 10.00	Each	8' straight lamps	\$ 1.00	Each
Recoverable materials			U-tubes, compact, circlines	\$ 1.00	Each
Brush/Branches/clean wood to be chipped/burned	\$ 10.00	CY	HHD, HPS, LPS, Merc Vapor	\$ 1.50	Each
Less than 1/2 cubic yard, min. charge	\$ 5.00	Total	Metal Halide	\$ 1.50	Each
1/2 cubic yards - 3 cubic yards	\$ 10.00	Total	Broken lamps	\$ 2.00	Each
3+ Cubic yards - 6 cubic yards	\$ 10.00	Total	Shatter shield cover guard	\$ 1.50	Each
Mixture of Ferrous metals: Aluminum, Steel, Stainless; Non- Ferrous Metals: Copper, Brass and/or Gravel/Bricks/Blocks free of rubbish					
Batteries			Lamp ballasts (Removed)		
Nickel	\$ 1.00	Each	PCB ballast	\$ 3.00	Each
Lead Acid	\$ 1.00	Each	Non-PCB ballast	\$ 1.00	Each
Lithium	\$ 1.00	Each			
Motor vehicle batteries	\$ 1.00	Each			
Organic compost material free of other waste & emptied by user.....FREE					



TOWN OF KITTERY
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1329 Fax: 207-439-6806

Town Council Resolution

WHEREAS Chapter 16.5 Building/Regulated Activity Permits Section 16.5.4.2^{2.4} states that "Expired permits may be renewed upon application and payment of a renewal fee;" and

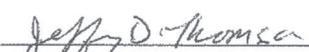
WHEREAS Appendix A Schedule 16 omits reference to a "renewal fee"; and

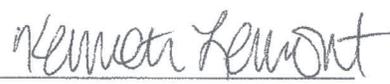
WHEREAS the Town's Planning Department staff will prepare a code amendment for the Planning Board's and Town Council's consideration to address this omission; and

WHEREAS Daniel Poulin, owner of 14 Jewett Lane, made the Town aware of this omission but has paid a new permit fee twice to begin construction of his single-family home after his permit had expired without action; NOW THEREFORE,

The Town Council resolves to instruct the Town Manager to refund all but administrative charges (\$25) associated with Mr. Poulin's second permit, and to advise the Planning and Code Enforcement Departments to charge \$25 in the future for similarly-situated applicants until a code amendment is adopted.

Dated at Kittery, Maine the 11th day of May, 2015


Jeffrey Thomson, Chair


Kenneth Lemont


Russell B. White, Vice Chair


Jeffrey Pelletier


Charles Denault


Judith Spiller

Frank L. Dennett

2012-2015
PLANNING BOARD ACTION ITEMS

ITEM #	DATE	BY	ITEM	PRIORITY	ACTION TAKEN	COMPLETE
1	8/9/2012		16.10.9.2 REDEFINE FIELD CHANGES; Major/Minor (for May 2015 TC workshop)	2	Staff to draft language for review	
2	10/13/2012	TE	DPW PROJECTS COME BEFORE PB; NEED UPDATED LIST	2	CDM to discuss with DPW, report to PB	
3	2/14/2013	DD	DEFINE COMMERCIAL RECREATION (for May 2015 TC workshop)	2	CDM to propose / December 2014; re-draft for 1/22/15 discussion; Re-send 12/18 pkt to PB for HOMEWORK; Board discussed reducing to priority 2; staff is reviewing all permitted uses/definitions, creating table of uses	
5	4/25/2013		WORKSHOP: Cluster Ordinance needs work USABLE OPEN SPACE RETAIN ROAD FRONTAGE (Buffers) TRAFFIC STUDIES	1	KOSC wants input; workshop postponed to May 28	
6	4/26/2013		ROADS / SIDEWALKS TO NOWHERE (ROW plans)/Shared Driveways/ROW Standards/Emergency access roads	1		
7	8/22/2013	Staff	Site dev pre-meeting; CMA construction inspection; Ref: 16.4.4.1.A (for May 2015 TC workshop)	1	Discussed December, 2014; staff drafted language for review, reviewed 3/12/15. Public Hearing and recommendation to Council 3/26/15	Pending
8	10/24/2013	Staff	HAT - Highest Annual Tide: no Elevation 6 (for May 2015 TC workshop)	1	January, 2015	
9	10/24/2013		16.7.8 Soil Suitability Guide; discontinue; replace with Net Residential Acreage calculations	Done	16.7.8 Land Not Suitable for Development: 10/23/14 PB Review/Recommend to Council for 11/10/14 approval; 5/5/15 TC workshop	Pending
10	11/14/2013		Fines	3	CDM to discuss with TM	
11	11/14/2013	Staff	16.7.3.5.6 Structure replacement <u>outside</u> of shoreland zone (missing from code)	1	Proposed language reviewed 12/18/14; no action; staff to provide draft for 4/23	
12	11/14/2013		Review flood hazard ordinance; 16.5.3.4; (esp. <i>No alteration of the natural contour of the land by grading or filling for any purpose is permitted in an area subject to periodic flooding.</i>)	3	Coordinate w CMA; draft language, if needed	
13	12/12/2013 3/28/2013	- -	<u>Comp Plan Items</u> Pedestrian / Bike paths / Bike Racks CONTINUE WORKSHOP WITH KCPC, KOSC REGARDING 1 - 3 ACRE RR; and future land use regulation; restrict # building permits issued per year	CPC* - -	 CDM will provide existing bike path plan; disc. 12/18; req. input from T. Emerson 1/22/15; input to CPC when appropriate May 15, 2013 Workshop; December 3, 2013 workshop, w Soil Suitability; PB input to CPC* when appropriate	

2012-2015
PLANNING BOARD ACTION ITEMS

ITEM #	DATE	BY	ITEM	PRIORITY	ACTION TAKEN	COMPLETE
14	1/23/2014		Outdoor Seating/Use of Public Way; extend to other zones	Pending	PB review: 10/23/14; rev. language 12/18/14; 1/22/15 discussion; <u>Foreside only</u> ; CDM to work w/ NCP/TC to add to Title 5 permanently; bring to TC 4/17/15	Pending
15	2/27/2014		Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Done	Reviewed 3/27/14; PB approval 6/26/14; to Council 11/10/14; Effective 2/28/15	Done
16	2/27/2014	AG	List of Committees/Boards to monitor	Done	CDM to place in 2/26 packets	Done
17	2/27/2014		Flag Lots (16.8.-16.9)	Done		Pending
18	3/13/2014		Septic pretreatment requirement as bonus (See also: VIII.3.i.ii 2015 Code Amendments: Briefing Book, #38)	Done		Pending
19	3/27/2014	DD	Kittery Historic Resources; historic designation identification	3		
20	5/8/2014	Staff	Sign ordinance changes:	2	Workshop: 7/14/14; Int'l Sign Assoc. 10/23/14 16.8.10.2.C approved by TC, effective 2/28/15	Done
			Message boards/internal & external lights & timers			
			Window/A-frame & portable signs/banners			
			Sign character/appearance/administration & enforcement			
21	5/22/2014	DD	Parking credits	1	Staff review; PB to discuss/recommend amendment if needed; PB to analyze results of Foreside Forum	
22	1/22/2015		Shoreland Zone:	3		
			Invasive plants; shoreland invasive plant removal			
			Excavation			
			Structure replacement; time periods			
			Shoreland definition		CDM to research Code for use of term;	
23	1/8/2015		Foreside Review Committee (16.3.2.15.F)	1	Discussed 1/22; Board to analyze and discuss results of Foreside Forums 4/23	
STAFF						
24	2/28/2013		UPDATE DESIGN STANDARDS FOR LED LIGHTING:	Staff		
25	10/13/2012		BUSINESS OVERLAY ZONES: WHERE AND WHAT CHANGES; 16.3.2.20 Proposed Quality Improvement Overlay; form based code vs. individual ordinances	Staff/CPC	Workshop; Sustain So ME; set up January 2014 workshop; Further discussion; PB input to CPC when appropriate	
26	10/24/13 Amendment		DPW Road Cuts; Title 12 amendment; approved by PB 10/24/13; to Council 11/25/13	Staff	Revise per Council Action / Re-visit: January 2015; 1/15: Shared notification w/ DPW & Planning per CDM	
27	10/24/2013		Definition: Substantially complete re: development vs. building permits (for May 2015 TC workshop)	Staff	Staff draft definition differentiating from bldg permits as appropriate	

2012-2015
PLANNING BOARD ACTION ITEMS

COMPLETED ITEMS		
Complete	LEGAL NOTICES IN PACKET OR EMAILED TO PB MEMBERS (email to PB @ same time sent to publication)	Complete
4/25/2013	UNBUNDLE ZONING AMENDMENTS	Complete / Ongoing
Complete	BUILDING PERMIT LIST IN PACKETS	Complete / Ongoing
3/25/2013	Amendment: 16.8.24.2 F (LED lights); amended 12/14 (allowing LED lighting)	Ordained: 3/25/2013; ordained 12/14
3/25/2013	DISCUSS PUBLIC NOTICES; ABUTTER'S LIST EARLY, INCLUDE M/L AND PHYSICAL ADDRESS; Sales (assessor) close April 1; system update in Fall	Complete
4/25/2013	Amendment: Speciality Food & Beverage	ordained 6/10/2013
1/24/2014	Foreside workshop with Council	
1/24/2014	REVIEW REPORT TO COUNCIL (RTC) FORMAT	1/24/2013
4/25/2013	PB Workshop Update: training; education; conflict of interest; attendance/voting;	Retreat: January 10, 2014; MMA workshop 3/25/14
4/25/2013	Title 16.11 Marine Development	Ordained: 1/27/2014
2/14/2013	Outdoor Seating/use of public ROW extension period/Title 5 (Seasonal only; extend sunset date)	To Council 6/9/14
	Proposed Ordinance Changes on line	Packets posted online
4/24/2013	ABUTTER'S LIST TO PB EARLY ON, BEFORE PUBLIC HEARING (at sketch plan)	
	Waivers;	January 2014
	Post Building Permits on Web Site	Provided in Board packets
11/14/2013	ByLaw Changes	Adopted 1/22/15
2/28/2015	Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Effective 2/28/15

**TOWN OF KITTERY**

Planning and Code Office

200 Rogers Road, Kittery, ME 03904

Telephone: 207-439-0452-Ext. 1 Fax: 207-439-6806

INTEROFFICE MEMORANDUM

TO: PLANNING BOARD
FROM: CHRIS DI MATTEO, TOWN PLANNER
SUBJECT: TITLE 16 CODE AMENDMENTS ON MAY 4 JOINT WORKSHOP AGENDA
DATE: MAY 21, 2015
CC: NANCY COLBERT PUFF, TOWN MANAGER

This memo serves as a follow-up to the May 4 joint workshop with Town Council concerning the Title 16 amendments to Land Not Suitable for Development; Sewer and Subsurface Wastewater Disposal and associated provisions included in the attached drafts. The drafts have been revised to include the minor edits that resulted from the workshop. After thoughtful consideration one suggestion to substitute 'land area' for 'acreage' regarding 'Net Residential Acreage' was not made, however, definitions for acreage and acre have been added. An issue was raised by the Town Manager's Proposal Review Group regarding a conflict with Title 13 sewer connection requirements. The provision (lines 127-133 in Item 2) was revised to include a qualifying clause that states that the requirements of Title 13 must be met. As with past revisions the highlights reflect the most recent changes.

At the workshop an expectation was made to have the Planning Board complete their review with a public hearing in advance of a July Council meeting where the amendments may be considered for adoption. I am requesting the Board schedule public hearings for the items below for June 25, 2015.

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 5/4/2015	Title: Land Not Suitable for Development (Current) Net Residential Acreage (Proposed)
Town code section: Title 16, §16.7.8	History: new proposal

ENCLOSURE: CODE AMENDMENT (PG. 2)

1

2 PURPOSE OF PROPOSAL:

3

4 This proposal would amend the Town Code, Title 16 which in its present form does not permit the
5 Planning Board to approve most subdivision development where septic systems are required.

6

7 SUMMARY OF PROPOSAL/AMENDMENT:

8

9 The proposal would repeal the statutory reliance upon an outdated reference known as *The Soil*
10 *Suitability Guide for Land Use Planning in the State of Maine* and would substitute standards that are
11 consistent with the Comprehensive Plan and best practices (Lines 52-53 & 126-128).

12

13 It would amend the calculation of Net Residential Acreage and Net Residential Density (Lines 156-155),
14 which is currently based on Land Not Suitable for Development (Lines 43-53) and used when
15 establishing the number of dwelling units allowed in a subdivision.

16

17 To arrive at Net Residential Acreage, the amendment would require subtracting the sum of all portions of
18 land wherein dwelling units cannot possibly be built due to wetlands, easements, burying grounds,
19 rights-of-way, etc., or where there are substantial constraints to development (Lines 68-95). In the case
20 of somewhat poorly drained soils partial credit is granted, adding to the buildable net acreage (Lines 90-
21 91). In no case are there instances of double subtraction where different types of land area overlap
22 (Lines 68-69).

23

24 JUSTIFICATION:

25

26 Absent this amendment, few new subdivision developments are likely to be approved by the Planning
27 Board because most of the Town's soils are rated as *very poor* and/or *poor* by the outdated Soil
28 Suitability Guide. The amendment would correct this serious problem.

29

30 The current ordinance prohibits septic systems on soils identified as "poor or very poor". The outdated
31 reference classifies most land in Kittery as "poor or very poor". The amendment is necessary before
32 most subdivisions requiring septic systems may go forward.

33

34 This amendment would implement the Comprehensive Plan's requirement to manage density, to protect
35 natural resources and features and to preserve property values. It would be fair to developers and does
36 not burden small land owners because non-subdivision projects would be subject to fewer deductions
37 under the calculation for 'minimum land area per dwelling unit.

38

39 FISCAL IMPACT:

40 None.

41

42 **PROPOSED AMENDMENT**

43 **Article VIII. Land Not Suitable for Development**

44

45 **16.7.8.1 — Locations and Sewage.**

46 The Planning Board may not approve portions of any proposed development that:

- 47 1. ~~Are situated below sea level;~~
- 48 2. ~~Are located within the one hundred (100) year frequency floodplain as found in the definition;~~
- 49 3. ~~Are located on land which must be filled or drained, or on land created by diverting a watercourse,~~
- 50 ~~except the Planning Board may grant approval if central sewage collection and disposal system is provided.~~
- 51 4. ~~Has any part of the development located on filled tidal wetlands.~~
- 52 5. ~~Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability-~~
- 53 ~~Guide for Land Use Planning in the State of Maine.~~

54

55 **Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**

56

57 **Article VIII. Net Residential Acreage**

58

59 **16.7.8.1 Purpose**

60

61 To determine for regulatory purposes the land area suitable for dwelling units. This land area, the net
62 residential acreage, is used to determine the maximum number of dwelling units allowed on a parcel that is
63 subject to subdivision. The total number of dwelling units allowed is equal to the net residential acreage
64 divided by the minimum land area per dwelling unit for a given land use zone.

65

66 **16.7.8.2 Net Residential Acreage Calculation**

67

68 To calculate net residential acreage the land area listed below must be subtracted from a parcel's gross
69 area. Where land areas to be subtracted overlap, the area therein is subtracted once.

- 70 A. All land located below the Highest Annual Tide elevation as published in the Maine DEP Highest Annual
71 Tide (HAT) levels for the most current year.
- 72 B. All land located within the floodplain as defined in Title 16.2, Flood, One Hundred (100) Year.
- 73 C. All wetlands as defined in Title 16.2 Wetland, as well as vernal pools, ponds, lakes, streams and other
74 water bodies, including fifty (50) percent of the associated setbacks described in Other Buildings and
75 Structures, Table 16.9 , Chapter 9 in this Title.
- 76 D. All land located on filled tidal lands, per Title 16.2 Tidal Land, Filled.
- 77 E. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot
78 be built.
- 79 F. All land located within proposed rights-of-way including parking and travel ways. Driveways are excluded.
- 80 G. All land isolated from the principal location for development on the parcel by a road/street, existing land
81 uses, or any physical feature, natural or manmade, such that it creates a barrier to the central
82 development of the site and no means of access is proposed nor likely to be provided in the future.
83 However, to demonstrate that identified isolated land may be considered developable for the purpose of
84 this calculation, the applicant must submit a plan and supporting documentation for the Board's
85 consideration.
- 86 H. All land zoned commercial (C-1, C-2, or C-3).
- 87 I. All land one (1) acre or more contiguous area with sustained slopes of 20% or greater.
- 88 J. All land identified as exposed bedrock, and soils with a drainage class of poorly drained, and/or very
89 poorly drained as defined in Title 16.2 Soils.
- 90 K. Fifty (50) percent of all land characterized as drainage class of somewhat poorly drained, unless public
91 sewer is used, in which case no land area is subtracted.

L. All land area within a cemetery and burying ground as defined in Title 16.2, including associated setback per MRSA Title13 §1371-A Limitations on construction and excavation near burial sites.

M. All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection Overlay Zone not included in 16.7.8.2.A-L.

16.7.8.3 Documentation

The Net Residential Acreage calculation must be supported by verifiable information and accurate data and be shown on the subdivision plan or other plan when applicable.

16.7.8.4 Exemptions to Net Residential Acreage Calculations

A. The maximum number of dwelling units for residential development not subject to subdivision is based on minimum land area per dwelling unit defined in Chapter 2 Definitions of this Title.

B. The creation of dwelling units subject to subdivision within existing buildings that are connected to town sewer and are located in the Mixed Use -Kittery Foreside; Mixed Use-Badgers Island; Residential Village; Business Local; or Business Local -1 zones are exempt from the net residential acreage calculations in 16.7.8.1. Total number of dwelling units permitted is determined by dividing the gross lot area by the minimum land area per dwelling unit allowed in the zone. The exemption is allowed in the above base zones when subject to the Shoreland Overlay Zone.

Chapter 16.2 DEFINITIONS

16.2.2 Definitions

Acre means a unit of area equal to 43,560 square feet (about 4047 square meters)

Acreage means land area measured in acres.

Tidal Land, Filled means portions of the submerged and intertidal lands that have been rendered by human activity to be no longer subject to tidal action or below the natural low-water mark after October 1, 1975.

Soils.

~~1. "Poorly drained soils" means soils where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for six to nine months of the year.~~

~~2. "Very poorly drained soils" means soils in an area where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for nine to ten (10) months of the year.~~

A soil's drainage class must be determined by a Maine Certified Soil Scientist and based on the most recent Natural Resources Conservation Service Supplemental Key for the Identification of Soil Drainage Class that reflects the Maine Association of Professional Soil Scientists, Key to Drainage Classes. The Key includes among other terms the following:

Very Poorly Drained. Water is removed from the soil so slowly that the water table remains at or above the surface most of the year. A seasonal high water table is at or above the surface from at least October through July and sometimes throughout the year. In August and September the water table may recede below twelve inches. The high water table severely limits the use of these soils for most agricultural, forestry, and urban activities. These soils are hydric and typically support a wetland plant community.

Poorly Drained. Water is removed from the soil so slowly that the soil remains wet most of the year. A seasonal high water table is at or near the surface from October through June. In July, August and September it may recede below sixteen inches. The seasonal high water table limits the use of these soils for most agricultural, forestry, and urban activities. These soils are hydric and typically support a wetland plant community.

147
148 **Somewhat Poorly Drained.** Water is removed from the soil slowly enough to keep it wet for
149 significant periods of time, but not the entire year. A seasonal high water table is at seven inches to
150 sixteen inches in depth from October through May and sometimes June. From July to
151 October it may recede below thirty inches in depth. A seasonal water table limits the use of these
152 soils for some agricultural, forestry and urban activities. These soils are not hydric in
153 Maine, and are commonly found in the transitional landscape positions between wetland and
154 upland soils.

155 **Cemetery and Burying Ground:** A private or public place set apart for the interment of the dead. In the
156 absence of an apparent boundary, i.e., fence, stone wall, survey markers, survey plan, or information from
157 the Kittery Historical and Naval Society or other reliable historic sources, the perimeter of the interment area
158 is determined by starting with a 10-foot distance from existing tombstones and expanded, where necessary,
159 to form a final rectilinear area.

160 **Net residential acreage** means the land area subject to subdivision that is identified for regulatory purposes
161 as developable and is means the gross available acreage less minus the area required for streets or access
162 and less the areas of any portions of the site which are unsuitable for development land area identified as
163 outlined in Article VIII of Chapter 16.7 *Net Residential Acreage*, unless otherwise exempt in 16.7.8.4
164 *Exemptions to Net Residential Acreage Calculation.*

166 **Net residential density** means the number of dwelling units in a subdivision per net residential acre. This is
167 calculated by dividing the net residential acreage by the square feet specified as *minimum land area per*
168 *dwelling unit* in the dimensional standards in Title 16.3.2 for the relevant base zone or overlay zone(s) where
169 applicable.

171 **Minimum land area per dwelling unit.**
172 Minimum land area referenced in *Chapter 3, Article II Zoning Definitions, Uses, Standards* of this Title means
173 the gross area of a parcel not subject to subdivision regulations minus the land area listed below. Where land
174 areas to be subtracted overlap, the area therein shall be subtracted once. For land area subject to
175 subdivision see 'Net Residential Acreage'.

- 176 A. All land located below the Highest Annual Tide elevation as published in the *Maine DEP Highest Annual*
177 *Tide (HAT) levels* for the most current year.
- 178 B. All wetlands as defined in Title 16.2 *Wetland*, as well as vernal pools, ponds, streams and other water
179 bodies.
- 180 C. All land located on filled tidal lands, per Title 16.2 *Tidal Land, Filled.*
- 181 D. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot
182 be built.

184 **Chapter 16.3 LAND USE ZONE REGULATIONS**
185 **Article III. Zone Definitions, Uses, Standards**

187 **16.3.2.1 Residential – Rural R-RL.**
188 **D. Standards**

191 2. Dimensional Standards:

193 Minimum land area per dwelling unit 40,000 square feet*

195 *As per Chapter 16.2 definition of ~~net residential density~~ *minimum land area per dwelling unit* except to
196 exempt properties which are unable to meet the square feet required for a single family dwelling unit,
197 provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective~~
198 ~~10/25/12)~~

199
200 3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

201 Subject to Net residential acreage and Net residential density per 16.2.2.

202 a. Cluster residential development. In a cluster residential development, the above standards may be
203 modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no
204 minimum lot size ~~land area requirement per dwelling unit~~, and with the conditions that:

205 i. Minimum principal building separation as required by the Fire Chief, but not less than 20 feet.

206 b. Subdivision development (Per Special Exception Uses 16.3.2.1.C.14). In a subdivision development,
207 standards 16.3.2.1.D.1 and 2 apply and include:

208 i. Minimum percentage of Common Open Space 15%.

210
211
212 **16.3.2.2 Residential – Suburban R-S.**
213 **D. Standards**

214
215
216 2. Dimensional Standards:

217
218 Minimum land area per dwelling unit*
219 without public sewage disposal 40,000 square feet
220 with public sewage disposal 30,000 square feet
221 unless reduced in accordance
222 with Note A.

223
224 *As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to
225 exempt properties which are unable to meet the square feet required for a single family dwelling unit,
226 provided the lot was conforming prior to the date of this enactment October 25, 2012. (Ordained 9/24/12; effective
227 10/25/12)

228
229 3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

230 Subject to Net residential acreage and Net residential density per 16.2.2.

231 a. Cluster residential development. In a cluster residential development, the above standards may be
232 modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no
233 minimum lot size ~~land area requirement per dwelling unit~~, and with the conditions that:

234 i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

235
236 b. Subdivision development (Per Special Exception Uses 16.3.2.2.C.10). In a subdivision development,
237 standards 16.3.2.2.D.1 and 2 apply and include:

238 i. Minimum percentage of Common Open Space 15%.

239
240 4. Mobile homes. Mobile homes must meet the standards of Article XI and XIII of Chapter 16.8.

242
243 **16.3.2.3 Residential - Kittery Point Village R-KPV.**
244 **D. Standards**

245
246
247 2. Dimensional Standards:

248
249 Minimum land area per dwelling unit 40,000 square feet*

250
251 *As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to

252 exempt properties which are unable to meet the square feet required for a single family dwelling unit,
253 provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective~~
254 ~~10/25/12)~~

255
256 3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

257 Subject to Net residential acreage and Net residential density per 16.2.2.

258 a. Cluster residential development. In a cluster residential development, the above standards may be
259 modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no
260 minimum lot size ~~land area requirement per dwelling unit~~, and with the conditions that:

261 i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

262
263 b. Subdivision development (Special Exception Uses 16.3.2.3.C.9). In a subdivision development,
264 standards 16.3.2.3.D.1 and 2 apply and include:

265 i. Minimum percentage of Common Open Space 15%.

267 **16.3.2.4 Residential – Urban R-U.**

268 **D. Standards**

269
270
271
272 2. Dimensional Standards:

273
274 Minimum land area per dwelling unit 20,000 square feet*

275
276 *As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to
277 exempt properties which are unable to meet the square feet required for a single family dwelling unit,
278 provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective~~
279 ~~10/25/12)~~

280
281 3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

282 Subject to Net residential acreage and Net residential density per 16.2.2.

283 a. Cluster residential development. In a cluster residential development, the above standards may be
284 modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no
285 minimum lot size ~~land area requirement per dwelling unit~~, and with the conditions that:

286 i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

287
288 b. Subdivision development (Special Exception Uses 16.3.2.4.C.10). In a subdivision development,
289 standards 16.3.2.4.D.1 and 2 apply and include:

290 i. Minimum percentage of Common Open Space 15%.

292 **16.3.2.5 Residential - Village R-V.**

293 **D. Standards**

294
295
296
297 2. The following space standards apply:

298
299 Minimum land area per dwelling unit 4,000 square feet*

300
301 *As per Chapter 16.2 definition of ~~net residential density~~ minimum land area per dwelling unit except to
302 exempt properties which are unable to meet the square feet required for a single family dwelling unit,

303 provided the lot was conforming prior to the date of this enactment October 25, 2012. ~~(Ordained 9/24/12; effective~~
304 ~~10/25/12)~~

306 **16.3.2.6 Residential- Rural Conservation R-RC**
307 **D. Standards**

308
309

310
311 2. The following dimensional standards apply:

312
313 Minimum land area per dwelling unit 80,000 square feet*

314
315 *As per Chapter 16.2 definition of minimum land area per dwelling unit except to exempt properties which
316 are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming
317 prior to October 25, 2012.

318
319 3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

320 Subject to Net residential acreage and Net residential density per 16.2.2.

321 a. Cluster residential development. In a cluster residential development, the above standards may be
322 modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no
323 minimum lot size ~~land area requirement per dwelling unit~~, and with the conditions that:

324 i. Minimum principal building separation as required by the Fire Chief, but not less than 20 feet.

325
326 b. Subdivision development (Special Exception Uses 16.3.2.6.C.8). In a subdivision development, the
327 standards 16.3.2.6.D.1 and 2 apply and include:

328 i. Minimum percentage of Common Open Space 15%.

330 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**

331
332

333 **16.8.11.5 Application Procedure.**

334 All development reviewed under this Article is subject to the application procedures in Chapter 16.10,
335 Development Plan Application and Review, and the following:

336 A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch
337 Plan:

338
339 1. Calculations and maps to illustrate:

340 a. proposed dimensional modifications and the dimensional standards required in the zone in which the
341 development will be located;

342 b. ~~non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7~~ All land
343 area identified in Title 16.7.8.1 Net Residential Acreage; and

344 c. ~~net residential acreage and~~ Net Residential Density; and

345 d. open space as defined in Section 16.8.11.6.D.2 of this Article.

346
347

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 5/5/2015	Title: Sewage Disposal (Sewer only)
Town code section: Title 16, §16.8.7.1	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 4)

1 PURPOSE OF PROPOSAL:

2
3 The proposal would amend 16.8.7.1, currently titled Sanitary Sewer and Septic Disposal to comply with
4 Kittery Town Charter Section 2.14. The charter requires that there be only one topic per ordinance.
5 Items related to sewer would be consolidated in 16.8.7.1. Subsurface wastewater disposal regulations
6 would become 16.8.7.2. (See separate memorandum)

7
8 Revisions align Town Code Title 16 with Title 13 (Public Services/Sewer) and clarify the waiver process.

9
10 SUMMARY OF PROPOSAL/AMENDMENT:

11
12 Section 16.8.7.1.A (line 106) would define sewer hook-up requirements for individual structures, as well
13 as for subdivisions, in order to clarify and codify what is current practice.

14
15 Section 16.8.7.1.E (line 128) would permit a developer to request a waiver from the mandatory sewer
16 hook-up requirement should conditions make it infeasible to do. Guidelines for the request and for the
17 Board's deliberations are described.

18
19 JUSTIFICATION:

- 20
21
- These amendments would make sewer hook-up guidelines clearer and easier to find for
22 both developers and owners of single structures with sanitary facilities.
 - Rules governing sewer hook-ups for individual structures would be added to Title 16. The
23 additions would align with and refer readers to Title 13 requirements.
 - Clarifying the process by which a developer may request a waiver from the requirement to
24 hook-up to the Town sewer system would ensure that all requests are treated equitably.
25
26
27
28
29

30 FISCAL IMPACT: None

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32

Town of Kittery

Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 5/5/2015	Title: Sewage Disposal <u>(Subsurface wastewater disposal only)</u>
Town code section: Title 16, §16.8.7.2 and to Title 16.2.2 Definitions	History: Amendment

ENCLOSURES: CODE AMENDMENT (PG. 5)

33 PURPOSE OF PROPOSAL:

34

35 MRS 30-A §4352 requires that "a zoning ordinance must be pursuant to and consistent with a
36 comprehensive plan." This proposal contains amendments that would implement Kittery's
37 Comprehensive Plan in many significant ways.

38

39 It would also eliminate a reference to an outdated soil manual that restricts the siting of subsurface
40 wastewater disposal (SWD) systems in a manner that does not reflect modern soil science or best
41 practices.

42

43 The proposal would bring this section into compliance with Town Charter section 2.14, which requires a
44 single topic per ordinance.

45

46 SUMMARY OF PROPOSAL/AMENDMENT:

47

48 Section 16.8.7.1.B.1 (lines 170-171) corrects a conflict with stated 100-foot setback and the setbacks
49 contained in Table 16.9 *Minimum Setbacks from Wetlands and Water Bodies* for Subsurface Sewage
50 Disposal

51

52 Section 16.8.7.1.C (lines 144-145) would be deleted. This subsection limits septic use based on the
53 outdated *Soil Suitability Guide*.

54

55 Section 16.8.7.2.D.1 (line 203) would permit current soil-depth requirements to be followed where a
56 replacement SWD system, with the same capacity as the original, cannot meet the newer standards.

57

58 Section 16.8.7.2.D.3 (line 212) would increase the depth of soil required for passing test pits by six (6)
59 inches, instead of mandating prohibitively-expensive advanced pretreatment for all new SWD systems.

60

61 Section 16.8.7.2.E (line 220) would require advanced pretreatment in new construction that is within
62 100 ft. of porous sand-and-gravel aquifers. There are only two small sand-and-gravel aquifers in Kittery,
63 both are in the vicinity of Cutts Ridge.

64

65 Title 16.2.2 Definitions: New definitions for the following, relative to sewage disposal:

66

- 66 · Septic System
- 67 · Subsurface wastewater disposal system
- 68 · Wastewater
- 69 · Domestic wastewater

70

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JUSTIFICATION:

- Proposed amendments are pursuant to and consistent with the Kittery Comprehensive Plan. They would:
- Protect sensitive environmental resources such as groundwater, wetlands, watersheds and sand-and-gravel aquifers (Comp. Plan pp.43-44, pp.62-64, p.125)

In addition:

- Requiring deeper soil for passing test pits ensures greater separation between a SWD system and the water table or bedrock. This improves the filtering of effluents. Although no current SWD system can filter excreted pharmaceuticals or all household chemicals, better soil filtration would provide greater protection from nitrogen and phosphorous contamination, called "nutrient pollution", of our groundwater, watersheds and wetlands. Soil scientists confirmed the value of this strategy.
- The proposal would not create a disincentive for the routine replacement of old or failing SWD systems. Such routine replacements would be held to less-stringent standards than those for new systems and systems being enlarged due to expanded use.
- Removing the outdated soil manual reference allows current best practices to be employed when siting SWD systems. This protects the Town's interests and the applicant's.
- Removing other topics from this subsection would make SWD regulations less confusing.

FISCAL IMPACT:

None

101 **CODE AMENDMENT**

102 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**

103 **Article VII. Sewage Disposal**

104 **16.8.7.1 Sanitary Sewer System and Septic Disposal.**

105
106 A. An existing or new dwelling unit or structure that requires wastewater disposal must connect to town sewer where sewer is within 100 feet of the property line and where gravity flow can be obtained per Town Code Title 13, Chapter 13.1. Sewer Service System. Individual dwellings and structures in approved and recorded developments where town sewer becomes available as described in this paragraph must connect per the requirements of Title 13, Chapter 13.1. {NEW}

107
108
109
110
111
112 B. Where town sewer is located within one thousand (1,000) feet of the property line of a commercial or industrial development or a residential subdivision, the developer shall connect to town sewer per the town Wastewater Treatment Department (WTD) specifications. The developer shall provide written certification to the Planning Board from the WTD that the proposed addition to town sewer is within the capacity of the collection and wastewater treatment system. {MOVED FROM 16.8.7.3}

113
114
115
116
117
118 C. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service lines must extend to each lot's boundary line. Connections to town sewer must be installed in accordance to this Article and Title 13.1 Sewer Service System in the Kittery Town Code.

119
120
121 {MOVED FROM 16.8.7.1.E}

122
123 D. Proposal and construction drawings must be approved in writing by the town WTD. All required approvals must be secured before the start of final plan review.

124
125 {MOVED FROM 16.8.7.1.A & F}

126
127 E. When town sewer connection to the parcel and/or proposed lots is not feasible, the Planning Board may allow individual or common subsurface wastewater disposal systems in accordance with Section 16.8.7.2. To determine feasibility, the developer shall submit information that considers the unique physical circumstances of the property and sewer connection alternatives to conventional construction/installation techniques such as, but not limited to, horizontal/directional boring and low pressure sewer. The developer's information must be accompanied by findings and recommendations of the town Peer-Review Engineer. In determining feasibility, the Board may not base its decision solely on additional costs associated with a sewer connection. The intent of this subsection is not to avoid the requirements of Title 13.1 Sewer Service System in the Kittery Town Code. {MODIFIED & MOVED FROM 16.8.7.1.B}

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136
137 ~~A. Public sanitary sewer disposal system connections must be installed, in accordance to Article VII o Chapter 16.8, with proposal and construction drawings reviewed and approved in writing by the servicing sanitary sewer agency. {Moved and Modified, SEE 16.8.7.1.D}~~

138
139
140
141 ~~B. If, in the opinion of the Board, service to each lot by a sanitary sewer system is not feasible, the Board may allow individual subsurface waste disposal, or a separate central sewage collection system to be used in accordance with Section 16.8.7.4. {Moved and Modified, SEE 16.8.7.1.E}~~

142
143
144
145 ~~C. In no instance may an initial installation septic disposal system be allowed in soils rated poor or very poor for such purpose by the Soil Suitability Guide for Land Use Planning in Maine. {DELETED}~~

146
147
148 ~~D. If the developer proposes individual subsurface waste disposal or central collection system and waste generated is of a "significant" nature, or if waste is to be discharged, treated or untreated, into any body of water, approval must be obtained in writing from the Maine Department of Environmental Protection. {DELETED}~~

149
150
151
152 ~~E. Sanitary sewer disposal systems must be installed, at the expense of the developer, to the individual lot boundary line. {Moved and Modified, SEE 16.8.7.1.C}~~

153
154
155 ~~F. All required approvals of a sewage disposal system must be secured before official submission of a final plan. {Moved and Modified, SEE 16.8.7.1.D}~~

156

158 **16.8.7.2 Subsurface Wastewater Disposal System**

159
160 A. The developer shall submit plans for subsurface wastewater disposal designed by a Maine Licensed Site
161 Evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater
162 Disposal Rules, and this Code. Subsurface wastewater disposal systems must be constructed according to the
163 approved plan. {MODIFIED & MOVED FROM 16.8.7.2}
164

165 B.G. All first-time subsurface wastewater subsurface sewage disposal systems must be installed in
166 conformance with the State of Maine Subsurface Wastewater Disposal Rules and this Code. The Maine
167 Subsurface Wastewater Disposal rules require new systems, excluding fill extensions, to be constructed no less
168 than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The
169 minimum setback distance for a new subsurface disposal system may not be reduced by variance. {Moved to item

170 1 below} The following also apply:

171 1. The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.
172 {MODIFIED & MOVED FROM 16.8.7.1.G above}

173 42. Clearing or removal of woody vegetation necessary to site a first-time system and any associated fill
174 extensions, must may not extend closer than is allowed in Table 16.9 Minimum Setbacks from Wetlands and
175 Water Bodies for Subsurface Sewage Disposal one hundred (100) feet, horizontal distance, from the normal high
176 water line of a water body or the upland edge of a wetland. {MODIFIED & MOVED FROM 16.8.7.1.G.1}

177 2. Holding tanks are not allowed for a first-time residential use in the Shoreland Overlay Zone. {MOVED &
178 MODIFIED, SEE 16.8.7.3.B.2}

179
180 C. Replacement of subsurface wastewater disposal systems (SWDS) for existing legal uses:

181 1. Where no expansion of use is proposed, the SWDS must comply with 16.8.7.2 and Table 16.9 to the extent
182 practicable and otherwise are allowed per the Maine Subsurface Wastewater Disposal Rules; or

183 2. Where expansion of use is proposed, the SWDS must comply with 16.8.7.2 and Table 16.9.

184 {NEW}
185

186 **16.8.7.2 Design and Standards.**

187 A developer must submit plans for sewage disposal designed by a Maine licensed site evaluator in full
188 compliance with the requirements of the State of Maine Plumbing Code and/or Subsurface Wastewater Disposal
189 Rules. {MOVED AND MODIFIED, SEE 16.8.7.2.A}
190

191 **16.8.7.3 Public Sewer Connection Required.**

192 Where a public sanitary sewer line is located within one thousand (1,000) feet of a proposed development at its
193 nearest point, the developer must connect with such sanitary sewer line with a main as required by the sewer
194 department, and provide written certification to the Board from the department that the proposed addition to
195 service is within the capacity of the system's collection and treatment system. {MOVED AND MODIFIED, SEE
196 16.8.7.1.B}
197

198 **D. 16.8.7.4 Private Subsurface Wastewater Disposal Systems; on Unimproved Lots Created after April 26,**
199 **1990.**
200

201 A. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for
202 subsurface sewage wastewater disposal systems, i.e. test pit data and other information as required by the State
203 of Maine Subsurface Wastewater Disposal Rules and this Code. In addition:

204 1. Additionally, on lots with a limiting factor identified as being within twenty-four (24) inches of the surface, a
205 second site with suitable soils must be shown as a reserve area for future replacement should the primary site
206 fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback
207 requirements of the Subsurface Wastewater Disposal Rules and this Code. {MODIFIED FROM 16.8.7.4.A }
208

209 2.B. In no instance may a primary or reserve disposal area be permitted on soils or on a lot which requires
210 requiring a First-Time System Variance Request from per the State of Maine Subsurface Wastewater Disposal
211 Rules.

212
213 3.C. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points
214 within the each disposal area (primary and reserve sites) to assure ensure that the proposed disposal area system
215 can be located on soils and slopes which that meet the criteria of the State of Maine Subsurface Wastewater
216 Disposal Rules and the State Plumbing Code. Passing test pits must have a minimum of fifteen (15) inches of
217 existing natural mineral soil above the limiting factor, except in the Shoreland and Resource Protection Overlay
218 Zones where passing test pits must have a minimum of twenty-one (21) inches of natural mineral soil above the

219 limiting factor. All passing and failing test pits must be shown on plan.

220
221 E. The developer shall install advanced pre-treatment to subsurface wastewater disposal systems that are located
222 inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of
223 Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF
224 staff. {NEW}

225 **16.8.7.3 Holding Tanks**

226
227
228 A. Holding tanks are not allowed for a first-time residential use. {MODIFIED & MOVED FROM 16.8.7.1.G.2}
229

230 **Chapter 16.2 DEFINITIONS**

231 **16.2.2 Definitions**

232
233
234 ~~**Subsurface sewage disposal system** means a collection of treatment tank(s), disposal area(s), holding tank(s)~~
235 ~~and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices~~
236 ~~and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or~~
237 ~~beneath the surface of the earth. The term does not include any wastewater discharge system licensed under 38~~
238 ~~M.R.S. §414, any surface wastewater disposal system licensed under 38 M.R.S. §413, §1A, or any public sewer.~~
239 ~~The term does not include a wastewater disposal system designed to treat wastewater which is in whole or in part~~
240 ~~hazardous waste as defined in 38 M.R.S. §13.1.~~

241
242 **Septic System** (see Subsurface wastewater disposal system)

243
244 **Subsurface wastewater disposal system** means any system designed to dispose of waste or wastewater on or
245 beneath the surface of the earth. These include but are not limited to septic tanks, disposal fields, holding tanks,
246 pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such purposes. This definition
247 does not include any discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system,
248 or any municipal or quasi-municipal sewer or wastewater treatment system. (see also: Wastewater and Domestic
249 wastewater)

250
251 **Wastewater** means any domestic wastewater, or other wastewater from commercial, industrial or residential
252 sources that has attributes similar to those of domestic wastewater. This term specifically excludes hazardous or
253 toxic wastes and materials. (Applicable only to Title 16)

254
255 **Domestic wastewater** means any wastewater produced by ordinary living uses, including liquid waste containing
256 animal or vegetable matter in suspension or solution, or the water-carried waste from the discharge of water
257 closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes of human
258 origin.

Town of Kittery Ordinance Revision Memorandum

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 5/4/2015	Title: Lots
Town code section: Title 16, §16.8.16	History: Amendment

ENCLOSURE: CODE AMENDMENT

1
2 **PURPOSE OF PROPOSAL:**
3 Add clarity through changes to sentence structure and general formatting.
4

5 **SUMMARY OF PROPOSAL/AMENDMENT:**
6
7 16.8.16.2.A (lines 28-30) Lot shape requirements have been modified slightly to improve clarity as
8 was recommended by the Maine Municipal Association's legal department.
9

10 **JUSTIFICATION:**
11
12 • This proposal would improve clarity and promotes consistency in applying the code.
13

14
15
16 **FISCAL IMPACT:** None
17

18 **CODE AMENDMENT**

19 **CHAPTER 16.8 DESIGN AND PERFORMANCE STANDARDS**

20 **Article XVI. Lots**

21 **16.8.16.1 Dimensions.**

22 The lot size, width, depth and shape and orientation and the minimum building setback lines must be appropriate
23 for the location of the development and for the type of development and use contemplated. The lot configuration
24 should be designed to maximize access to solar energy for building sites with suitable orientation.
25

26 **16.8.16.9~~2~~ Lot Shape.**

27
28 A. The ratio of lot length to width shall ~~shall~~ **must** not be more than three to one. Flag ~~shaped~~ lots **are prohibited**, and
29 ~~Other~~ odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size
30 requirements are **also** prohibited. ~~{MOVED AND MODIFIED FROM 16.8.16.9.A}~~
31

32 B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook
33 or coastal wetland as these features are defined in **Code Title** 38, M.R.S. §480-B, none of the lots created within
34 the subdivision may have a lot depth to shore frontage ratio greater than five to one.
35 ~~{MOVED FROM 16.8.16.9.B}~~
36
37

38 ~~16.8.16.2 Off-street Parking. {MOVED AND RENUMBERED; 16.8.16.8 BELOW}~~

39 ~~Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street~~
40 ~~parking and service facilities for vehicles required by type of development and use contemplated.~~
41

42 ~~16.8.16.3 Land Subdivision. {MOVED AND RENUMBERED; 16.8.16.10 BELOW}~~

43 ~~The subdividing of land must conform to the requirements of Chapter 16.3.~~
44

45 **16.8.16.4~~3~~ Double/Reverse Frontage Lots.**

46 Double frontage and reverse frontage lots are to be avoided except where essential to provide separation of
47 residential development from traffic arteries or to overcome specific disadvantages of topography and
48 orientation. A planting screen easement of at least ten (10) feet, across which there may be no right of access, is
49 to be provided along the lot lines abutting such a traffic artery or other disadvantageous use.
50

51 **16.8.16.5~~4~~ Side-lot Lines.**

52 Side-lot lines must be substantially at right angles or radial to street lines.
53

54 **16.8.16.6~~5~~ Substantially Larger Lots.**

55 Where a tract is subdivided into lots substantially larger than the minimum size required in the zone in which a
56 subdivision is located, and where no covenants exist to preclude lots from resubdivision, the Board may require
57 that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements
58 contained in these standards.
59

60 **16.8.16.7~~6~~ Multiple Frontages.**

61 When lots have frontage on two or more streets, the plan and deed restrictions must indicate vehicular access to
62 be located only on the least-traveled way.
63

64 **16.8.16.8~~7~~ Divided Lots.**

65 If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements
66 for lot size, it may not be combined with a lot on the other side of such barrier to meet the minimum lot size
67 unless in conformance with Article II of Chapter 16.7.
68

69 ~~16.8.16.9 Lot Shape. {MOVED, MODIFIED AND RENUMBERED; 16.8.16.2 ABOVE}~~

70
71 ~~A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in~~
72 ~~which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.~~
73

74 ~~B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook~~
75 ~~or coastal wetland as these features are defined in Code 38, M.R.S. §480-B, none of the lots created within the~~
76 ~~subdivision may have a lot depth to shore frontage ratio greater than five to one.~~

77
78 **16.8.16.28 Off-street Parking.**

79 Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street
80 parking and service facilities for vehicles required by type of development and use contemplated.
81 {MOVED AND ONLY AMENDED SECTION NUMBER}

82
83 **16.8.16.409 Access to Arterial Street.**

84 Where a major subdivision abuts or contains an existing or proposed arterial street, no residential lot may have
85 vehicular access directly onto the arterial street. This requirement must be noted on the plan and in the deed of
86 any lot with frontage on the arterial street.

87
88 **16.8.16.310 Land Subdivision.**

89 The subdividing of land must conform to the requirements of Chapter 16.3.
90 {MOVED AND ONLY AMENDED SECTION NUMBER}

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**Town of Kittery
Ordinance Revision Memorandum**

Originator(s): A. Grinnell, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: TBD Joint Workshop Meeting: 5/4/2015	Title: Soil Suitability
Town code section: Title 16, §16.9.1.4	History: Amendment

ENCLOSURE: CODE AMENDMENT

PURPOSE OF PROPOSAL:

The proposal would bring clarity to the law with respect to soil assessment and would codify what is current and best practice.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.9.1.4.C (lines 51-64)

This section would codify current best practices as endorsed by the Maine Association of Professional Soil Scientists.

Current section 16.9.1.4.C (lines 85-94)

This section, which contains lot-size restrictions, would be deleted since the minimum land area per dwelling unit has been proposed to include similar restrictions.

Section 16.9.1.4.E (lines 75-76)

This section would require soil reports, class A high-intensity soil surveys and soil mapping for cluster developments and other high-intensity land uses.

Section 16.9.1.4.F (lines 79-83)

This section would permit the Planning Board to grant a waiver from the above requirements for a low-intensity, non-clustered development upon the applicant's request. The Board would be required to consider the report of the Peer Review Engineer prior to granting a waiver.

JUSTIFICATION:

- The current code lacks clarity in describing various soil assessment requirements. It is hard to understand and implement. The amendment would correct these problems.
- Small building projects may not be made to meet the same high standards that are required of high-intensity developments.
- The amendment would permit the Board to grant regulatory relief on a case-by-case basis which will save the applicant both time and money.
- The proposal would amend the ordinance to use current terminology and is consistent with the recommendations of the Maine Association of Professional Soil Scientists.

FISCAL IMPACT: None

CODE AMENDMENT

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT

16.9.1.4 Soil Suitability.

A. The requirements and standards of the State of Maine Department of Environmental Protection, Department of Health and Welfare, the latest edition of the State Plumbing Code and this Code must be met.

B. All land uses must be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental effects, including, but not limited to, severe erosion, mass soil movement, improper drainage, and water pollution to surface water and groundwater, whether during or after construction. {MOVED FROM 16.9.1.4.E}

~~B.C.~~ Any proposed ~~subdivision~~ development requires a soil ~~survey report~~ report covering the ~~development~~ based on information from the Maine Natural Resources Conservation Service (NRCS). Where subsurface wastewater disposal is required and ~~Where the~~ Soil ~~Survey for York County~~ or information from the Maine NRCS shows soils with severe restrictions for development, a Class A ~~(High Intensity)~~ Soils report Survey must be provided by an ~~accredited~~ a soils scientist, registered certified in the state of Maine, ~~using the standards of high intensity soil mapping as established by the Society of Soil Scientists of Northern New England~~ The survey must be based on the Maine Association of Professional Soil Scientists Standards for Soil Survey, Revised 3/2009 or subsequent revision. ~~must be provided.~~ In addition to evaluating soil properties, the soil scientist shall analyze and document characteristics of surrounding land and water areas, maximum groundwater elevation, presence of ledge, drainage conditions and any other data deemed appropriate by the soil scientist or required by the Planning Board. The soil scientist shall include recommendations for the proposed use to counteract soil limitations where any exist. A Class A Soil Survey must include a written Soil Narrative Report accompanied by a Soil Map that depicts soil delineations and symbols identified in the report. The Soil Map must be prepared at the same scale as that of the development plan with wetlands and floodplain depicted on both. {MOVED AND MODIFIED FROM 16.9.1.4.E}

D. When constructing a new dwelling unit on soils identified with severe restrictions, requiring subsurface wastewater disposal and on lots not subject to subdivision regulation, a Class A (High Intensity) Soil Survey is not required. However, the site's soil suitability must be assessed and documented in a soil report by a Maine certified soil scientist, a Maine certified geologist or Maine licensed site evaluator. Prior to the issuance of a Building Permit, the soil report must be submitted to the Code Enforcement Officer (CEO) and soil conditions reviewed for conformance with this Code. {MOVED AND MODIFIED FROM 16.9.1.4.E}

E. Cluster residential and cluster mixed-use, commercial or industrial development and similar intensive land uses require a Class A (High Intensity) Soil Survey by a Maine certified soil scientist. {NEW AND CURRENT PRACTICE}

F. Where non-clustered development is limited in scale and intensity the developer may request the Class A (High Intensity) Soil Survey required by 16.9.1.4.E. above be waived by the Planning Board. The Board may grant said waiver only after consideration by the town's Peer Review Engineer of the developer's explanation as to why a Class A Soil Survey is not warranted. In the event a Class A Soil Survey is not required, the site's soil suitability must be sufficiently assessed to ensure compliance with this Code. {NEW}

~~C.~~ Lot size determination is as follows:

~~1. Areas containing hydric soil may be used to fulfill twenty five (25) percent of the minimum lot size required by this Code, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all buildings and required utilities such as sewage disposal and water supply (including primary and reserve leach field locations within required zoning setbacks).~~

~~2. Lots served by municipal water and sewer may use areas of poorly drained soil to fulfill up to fifty (50) percent of the minimum required lot size.~~

~~3. No areas of surface water, wetlands, right-of-way, or easement, including utility easements or areas designated as very poorly drained soil may be used to satisfy minimum lot sizes, except as noted above.~~

96 {DELETED}

97

98 ~~D~~G.If the soil report classification is challenged by the applicant, an abutter, a landowner, the CEO, or the
99 Conservation Commission, petition must be made in writing to the Planning Board. With such petition, or a
100 challenge by the Planning Board, the Planning Board shall determine whether a certified ~~qualified~~ soil scientist
101 should conduct an on-site investigation and at whose expense. The soil scientist shall present evidence in
102 written form to the Planning Board, which evidence forms the basis for the Board's decision.
103

104 ~~E. All land uses must be located on soils in or upon which the proposed uses or structures can be established~~
105 ~~or maintained without causing adverse environmental impacts, including, severe erosion, mass soil movement,~~
106 ~~improper drainage, and water pollution, whether during or after construction. Proposed uses requiring~~
107 ~~subsurface waste disposal, and commercial or industrial development and other similar intensive land uses,~~
108 ~~require a soils report based on an on-site investigation and must be prepared by state-certified professionals.~~
109 ~~Certified persons may include Maine certified soil scientists, Maine registered professional engineers, Maine~~
110 ~~certified geologists and other persons who have training and experience in the recognition and evaluation of soil~~
111 ~~properties. The report must be based upon the analysis of the characteristics of the soil and surrounding land~~
112 ~~and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent~~
113 ~~data which the evaluator deems appropriate. The soils report must include recommendations for a proposed use~~
114 ~~to counteract soil limitations where any exist. (MODIFIED AND MOVED TO 16.9.1.4.B, C & D ABOVE)~~
115
116

**Town of Kittery
Planning Board Meeting
May 28, 2015 – 7:00-8:00 PM**

Title 16.8.11 – Cluster Residential and Cluster Mixed-Use Development

A joint workshop of the Planning Board, Kittery Open Space Advisory Committee (KOSAC), and the Kittery Conservation Commission to review current cluster residential and cluster mixed use development provisions in Title 16 and discuss their merits and limitations as well as alternatives used by other towns for consideration in future amendments.

AGENDA

1. The Current Code – its merits and limitations
2. Staff Suggestions
3. Discussion and Next Steps

Background

The State statute authorizing variance from dimensional standards is attached. The current Town Code provides standards for cluster subdivisions in Title 16, Chapter 8 Design and Performance Standards, Article XI Cluster Residential and Cluster Mixed-Use Development. The language of that article and a table of examples applying it as written is attached at the end of this document. A copy of the article with staff comments is also attached.

Cluster developments, also known as conservation developments or open space subdivisions, are intended to allow for subdivision development while conserving a portion of the mother parcel. Dimensional standards are relaxed to allow for more flexibility and innovation in the layout of lots, and to enable a plan with a comparable or increased number of lots despite a reduction in available land area.

Developers benefit from cluster development over conventional subdivision by obtaining the same number of lots for sale (or more) with less investment in infrastructure. Allowing smaller lots and frontages means more development can be concentrated on the land most suited for it. The lots may be more highly valued than they would be otherwise.

Higher assessed values are also a benefit to the municipality. Shorter roads and utilities allow for more efficient provision of services. The open spaces conserved—often containing wetlands—maintain the performance of ecosystem services such as flood regulation, while also providing residents and others with recreational opportunities. Residents are able to enjoy a small, traditional neighborhood rather than the sprawling suburban layouts that have fallen out of favor yet are allowed, if not mandated, by conventional subdivision regulation and large lot sizes.

The Current Code

Kittery’s code holds cluster developments to the standards outlined in Article XI of Chapter 8, Design and Performance Standards – Built Environment. The attached table of examples uses several examples to illustrate how the current code is applied. Cluster development is the “default” method of subdivision in Kittery, and conventional designs require a special exception from the Planning Board. However, the conventional subdivision standards also call for a 15% retention of open space.

Cluster residential development is permitted in the following zones:

- Residential – Rural
- Residential – Suburban
- Residential – Kittery Point Village
- Residential – Urban
- Residential – Rural Conservation
- Business – Park (also permits cluster mixed use development)

The current method of determining how many lots are allowed is to consider the gross area of the parcel and subtract the land area that is not suitable for development, yielding net residential acreage. This figure is divided by the minimum land area per dwelling unit in the zone to determine a net residential density—the number of dwellings/lots permitted on the parcel. In a conventional subdivision, each subdivided lot would have to adhere to the minimum land area per dwelling unit, minimum lot size, frontage requirements, setbacks, etc.

The cluster development permits the Board to relax the above dimensional standards—except land area per dwelling unit—so that units/lots can be clustered while overall density is *not* increased. Where individual or shared septic systems are provided, State Minimum Lot Size Law mandates that 20,000 square feet per single family residence, or 8,000 square feet per bedroom in a multifamily residence, is maintained. Where public or private sewer is provided—which is required by 16.8.11.6.C—there is no minimum.

Conventional subdivisions in Kittery are required to conserve 15% as open space. Cluster subdivisions must set aside a minimum of 50% containing 30% of the net residential area. In other words, some of the uplands must be preserved. It is possible for this to result in a “trade” where some of the unsuitable land is included in the developed lots, but more likely it results in more than 50% ending up in conservation.

The attached table applies these current methods to:

1. A 10-acre lot with 7.5 acres of net residential area in the R-RL, R-S, R-KPV, R-U, and R-RC Zones
2. A 5-acre lot with 3 acres of net residential area in the R-S or R-U Zone
3. A 60-acre lot with 40 acres of net residential land area in the R-RL Zone

Concerns and Suggestions

The table of examples exercise, although purely mathematical, revealed that it's possible for development potential to be reduced by the cluster standards if sewer is not available or feasible in the Suburban zone, arguably the best location for new subdivisions. (A map of the current sewer expansion into that zone will be provided at the meeting.)

It also shows that either method of subdivision can have one of two effects: 1) lot sizes larger than the minimum or 2) open spaces larger than the minimum. These two effects lend credence to two concepts: that of a maximum lot size and that of a density bonus for conservation exceeding the minimum 50%. Maximum lot size is not yet a common concept, but has been adopted in the Town of Cape Elizabeth, MEⁱ and is recommended by GrowSmart Maine for rural areasⁱⁱ. A simple method for calculating a density bonus based on open space can be found in the Town of Effingham, NH open space subdivision ordinanceⁱⁱⁱ. The City of Newburyport, MA incentivizes historic preservation, affordable housing, and public water access through the carrot of a density bonus^{iv}.

There should be some mechanism for comparing a cluster development with a conventional layout. For an example, see the Newburyport ordinance.

Contiguity of open space should be addressed more clearly. Is the open space meant to be contiguous in itself, or contiguous with abutting land? Stronger wording would support recent efforts to create contiguity among different ownerships.

Additional specific comments can be found in the annotated code section attached.

References and Further Reading

Ordinances and publications referenced above are linked in the endnotes. The American Planning Association's model cluster development ordinance is attached for your consideration. Another model to consider was developed by the Kennebec Valley Council of Governments and can be found here: <http://www.meacc.net/resources/Model%20Subdivision%20Ordinance.pdf>.

ⁱ Town of Cape Elizabeth, Maine Zoning Ordinance. Dimensional Standards, page 146
http://www.capeelizabeth.com/government/rules_regs/ordinances/zoning/zoning.pdf

ⁱⁱ The Maximum Solution: Maximum Lot Size and Densities in Rural Zoning Districts
<http://www.growsmartmaine.org/sites/default/files/Maximum-Lot-Size-and-Densities-Rural-Zones.pdf>

ⁱⁱⁱ Town of Effingham, NH Zoning Ordinance. Final Plat Review Chart 1, page 49. <http://www.effinghamnh.net/wp-content/uploads/2015/03/ZO-Rev-15.3.10.pdf>

^{iv} City of Newburyport, MA Zoning Ordinance. Section XIV-L Increased in Permissible Density.
https://www.municode.com/library/ma/newburyport/codes/code_of_ordinances?nodeId=APXAZOORNE_SXIVOP_SPREDEOS

Next Steps

Staff can do more research, revise the current code, and/or draft new language with direction from the Board as to the highest priority concerns and goals for our subdivision regulations.

Cluster dimensional standards modification authority and limits

30-A §4301 Definitions

1-A. Cluster development. **"Cluster development" means a form of development that allows a subdivision design in which individual lot sizes and setbacks are reduced** in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture and the reduction in the size of road and utility systems.

30-A §4353 Zoning Adjustment

4-C. Variance from dimensional standards. A municipality may adopt an ordinance that permits the board to grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; [1997, c. 148, §2 (NEW).]

B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties; [1997, c. 148, §2 (NEW).]

C. The practical difficulty is not the result of action taken by the petitioner or a prior owner; [1997, c. 148, §2 (NEW).]

D. No other feasible alternative to a variance is available to the petitioner; [1997, c. 148, §2 (NEW).]

E. The granting of a variance will not unreasonably adversely affect the natural environment; and [1997, c. 148, §2 (NEW).]

F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435. [1997, c. 148, §2 (NEW).]

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional *limitations* on the granting of a variance from the dimensional standards of a zoning ordinance. **A zoning ordinance also may explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance.** This delegation of authority does not authorize the reduction of dimensional standards required under the mandatory shoreland zoning laws, Title 38, chapter 3, subchapter 1, article 2-B.

1 **Article XI. Cluster Residential and Cluster Mixed-Use Development.** (Ordained 9/24/12; effective 10/25/12)

2
3 **16.8.11.1 Purpose.**

4 To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine,
5 cultural and historic resources, land use patterns and recreation and open space, this Article is intended
6 to encourage and allow new concepts and innovative approaches to housing/commercial development
7 and environmental design so development will be a permanent and long-term asset to the Town, while in
8 harmony with the natural features of the land, water and surrounding development. Objectives include:
9

- 10 A. efficient use of the land and water, with small networks of utilities and streets;
11 B. preservation of open space and creation of recreation areas;
12 C. maintenance of rural character, preserving farmland, forests and rural viewsapes;
13 D. preservation of areas with the highest ecological value;
14 E. location of buildings and structures on those portions of the site most appropriate for development;
15 F. creation of a network of contiguous open spaces or 'greenways' by linking the common open
16 spaces within the site and to open space on adjoining lands wherever possible;
17 G. reduction of impacts on water resources by minimizing land disturbance and the creation of
18 impervious surfaces and stormwater runoff;
19 H. preservation of historic, archaeological, and cultural features; and
20 I. minimization of residential development impact on the municipality, neighboring properties, and the
21 natural environment.
22

23 **16.8.11.2 Permitted Zones.**

- 24
25 A. Cluster residential development is permitted in various zones as indicated in Chapter 16.3.
26
27 B. Cluster mixed-use development is permitted only in the Business Park (B-P) zone.
28

29 **16.8.11.3 Dimension Standards Modifications.**

30 Notwithstanding other provisions of this Code relating to dimensional standards, the Planning Board, in
31 reviewing and approving proposed residential or mixed-use development under this Article, may modify
32 said dimensional standards to permit flexibility in approaches to site design in accordance with the Code
33 standards. The Board may allow subdivision or site development with modified dimensional standards
34 where the Board determines the benefit of a cluster development is consistent with the Code. Such
35 modifications may not be construed as granting variances to relieve hardship.
36

37 **16.8.11.4 Property Ownership.**

38
39 Tracts or parcels of land involved in a development proposed under this Article must be in single
40 ownership; or, must be the subject of an application filed jointly by the owners of all properties included;
41 or, must have an applicant with vested interest in all property included. Pursuant to the requirements of
42 this Article, mobile home parks or mobile homes on individual lots are not eligible for cluster residential
43 development.
44

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13;1/27/14; and 1/28/15)

45 **16.8.11.5 Application Procedure.**

46 All development reviewed under this Article is subject to the application procedures in Chapter 16.10,
47 Development Plan Application and Review, and the following:

48

49 A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch
50 Plan:

51

52 1. Calculations and maps to illustrate:

53 a. proposed dimensional modifications and the dimensional standards required in the zone in which
54 the development will be located;

55 b. non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7);

56 c. net residential acreage and net residential density; and

57 d. open space as defined in Section 16.8.11.6.D.2 of this Article.

58

59 2. A map showing constraints to development, such as, but not limited to, wetlands, resource protection
60 zones, shoreland zones, deer wintering areas, side slopes in excess of thirty-three percent (33%),
61 easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and
62 existing utilities.

63

64 3. A written statement describing the ways the proposed development furthers the purpose and
65 objectives of this Article, including natural features which will be preserved or enhanced. Natural features
66 include, but are not limited to, moderate-to-high value wildlife and waterfowl habitats, important
67 agricultural soils, moderate-to-high yield aquifers and important natural or historic sites worthy of
68 preservation.

69

70 4. The location of each of the proposed building envelopes. Only developments having a total
71 subdivision or site plan with building envelopes will be considered.

72

73 B. An applicant with a project that includes proposed public open space must obtain Town Council
74 acceptance for the public land or easement following Preliminary Plan approval. Town Council
75 acceptance is contingent upon receipt of Final Plan approval by the Planning Board.

76

77 **16.8.11.6 Standards.**

78

79 A. The purpose and intent of this Code must be upheld for any reviews conducted under this Article.

80

81 B. A cluster mixed-use and cluster residential development must meet all requirements for a subdivision
82 (and site plan where applicable), and all other applicable federal, state and local ordinances, except as
83 modified by action of the Planning Board, where authorized.

84

85 C. Public or privately shared sewer and water must be provided unless it is demonstrated to the
86 Planning Board's satisfaction that alternative methods used result in a development that is compatible
87 with Section 16.8.11.

88

89 D. Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller
90 than twenty thousand (20,000) square feet per single family residence and eight thousand (8,000) square
91 feet per bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, Title 12 MRS
92 § 4807-A.

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13;1/27/14; and 1/28/15)

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E. Open Space Requirements:

1. Open space must contain at least 50% of the total area of the property, and no less than 30% of the total net residential acreage, as defined.

2. Total calculated open space must be designated as follows (See Open Space definitions Section 16.2): a. Open Space, Reserved; b. Open Space, Common; and/or c. Open Space, Public.

3. The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.

4. Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the Planning Board.

5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover as identified in applicant’s written statement. In the Business Park (BP) zone, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify the built and natural environments.

6. Open space should be in a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.

7. A portion of the open space should be in close proximity to other open spaces used for recreation (e.g. a common green, multi-purpose athletic field, gardens, and playgrounds).

F. In the Business Park (BP) zone, the maximum building height is forty (40) feet. If the Planning Board finds that provisions for fire safety are adequate to allow buildings of greater height, then the Board may allow a building height of up to sixty (60) feet as a part of the development plan review and approval process.

G. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.

H. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland must be a part of the commonly held land.

I. The developer must take into consideration the following points, and illustrate the treatment of buildings, structures, spaces, paths, roads, service and parking areas, recreational facilities, and any other features determined by the Planning Board to be a part of the proposed development.

1. Orientation. Buildings, view corridors and other improvements are to be designed so scenic vistas and natural features are integrated into the development. Buildings should be sited to consider natural light and ventilation.

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13;1/27/14; and 1/28/15)

142 2. Utility Installation. All utilities are to be installed underground, wherever possible. The Planning Board
143 must require the developer to adopt a prudent avoidance approach when permitting above ground
144 electrical service installations. Transformer boxes, pumping stations and meters must be located so as
145 not to be unsightly or hazardous to the public.

146
147 3. Recreation. Facilities must be provided consistent with the development proposal. Active recreation
148 requiring permanent equipment and/or modification of the site may not be located within the wetland
149 setback areas or contiguous reserved open space areas.

150
151 4. Buffering. Planting, landscaping, form and siting of building and other improvements, or fencing and
152 screening must be used to integrate the proposed development with the landscape and the character of
153 any surrounding development.

154
155 5. Development Setbacks.
156 Setbacks from wetlands and water bodies, must demonstrate compliance to Table 16.9 of Chapter
157 16.9.4.3. These setbacks must be permanently maintained as no cut, no disturb buffer areas. If the
158 setback areas are not of substantial vegetation to provide a sufficient buffer, the Planning Board may
159 require additional plantings.

160
161 J. The location of subsurface wastewater disposal systems and a reserve area, if required, must be shown
162 on the plan. The reserve areas must be restricted so as not to be built upon. The report of a site evaluator,
163 licensed by the state of Maine, must accompany the plan. If the subsurface disposal system is an
164 engineered system, approval from the Maine Department of Human Services, Division of Health
165 Engineering and the municipal plumbing inspector must be obtained prior to Planning Board approval.

166
167 **16.8.11.7 Open Space Dedication and Maintenance.**

168
169 A. Prior to approval of the final plan by the Planning Board, documents for open space must be
170 submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further
171 division of the open space; however, tracts or easements dedicated for public utilities, public access or
172 structures accessory to noncommercial recreation, agriculture or conservation may be permitted within
173 the open space.

174
175 B. The open space(s) must be shown on the development plan with appropriate notation on the face
176 thereof to indicate that:

- 177
178 1. The open space must not be used for future building lots; and
179
180 2. A part or all of the open space may be dedicated for acceptance by the Town.

181
182 C. If any, or all, of the open space is to be reserved for ownership by the residents and/or by commercial
183 entities, the bylaws of the proposed homeowner's or similar governing association for commercial owners
184 (in the Business Park zone), and/or the recorded covenants must specify maintenance responsibilities
185 and be submitted to the Planning Board prior to approval. See subsection A above.

186 D. Association Responsibilities.

- 187
188 1. Maintenance: The homeowner's association or similar association for commercial owners is
189 responsible for the maintenance of open space(s), and other common facilities unless and until
190 accepted by the Town. The stormwater management system must be maintained in accordance

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13;1/27/14; and 1/28/15)

191 with Section 16.8.8.2, Post-construction Stormwater Management. Associations must maintain
192 adequate funds to defray these expenses. The Planning Board shall require an initial capital fund
193 for associations to be paid by the developer to cover these expenses.
194

195 2. Inspection: Annually, by June 30, the developer or association must complete and submit to the
196 Code Enforcement Officer a Maintenance Compliance Report on a form prepared by the Code
197 Enforcement Officer certifying compliance with any open space use and protection requirements. Said
198 report must be completed by a Maine licensed civil engineer or certified soil scientist.
199

200 E. Transition of Responsibility. The developer must maintain control of such open space(s) and be
201 responsible for maintenance until development, sufficient to support any and all associations, residential
202 or commercial, has taken place. Responsibility and authority must be clearly defined and described in the
203 recorded covenants, and such information must be distributed to any and all associations in a timely
204 manner so the transition of responsibilities is seamless.
205

206 **16.8.11.8 Pre-Development Requirements.**

207 Prior to the beginning of site work, the applicant must file with the Town Planning Department all required
208 performance guarantees and inspection escrows in forms acceptable to the Town Manager in accordance
209 with Chapter 16.10.8.2.2.
210

Comments in red – Chris

Comments in blue – Elena

1 **Article XI. Cluster Residential and Cluster Mixed-Use Development.** (Ordained 9/24/12; effective 10/25/12)

2
3 **16.8.11.1 Purpose.**

4 To implement adopted Comprehensive Plan policies regarding the Town’s natural, scenic, marine,
5 cultural and historic resources, land use patterns and recreation and open space, this Article is intended
6 to encourage and allow new concepts and innovative approaches to housing/commercial development
7 and environmental design so development will be a permanent and long-term asset to the Town, while in
8 harmony with the natural features of the land, water and surrounding development. Objectives include:
9

- 10 A. efficient use of the land and water, with small networks of utilities and streets;
11 B. preservation of open space and creation of recreation areas;
12 C. maintenance of rural character, preserving farmland, forests and rural viewsapes;
13 D. preservation of areas with the highest ecological value;
14 E. location of buildings and structures on those portions of the site most appropriate for development;
15 F. creation of a network of contiguous open spaces or ‘greenways’ by linking the common open
16 spaces within the site and to open space on adjoining lands wherever possible;
17 G. reduction of impacts on water resources by minimizing land disturbance and the creation of
18 impervious surfaces and stormwater runoff;
19 H. preservation of historic, archaeological, and cultural features; and
20 I. minimization of residential development impact on the municipality, neighboring properties, and the
21 natural environment.
22

23 **16.8.11.2 Permitted Zones.**

- 24
25 A. Cluster residential development is permitted in various zones as indicated in Chapter 16.3.
26
27 B. Cluster mixed-use development is permitted only in the Business Park (B-P) zone.
28

29 **16.8.11.3 Dimension Standards Modifications.**

30 Notwithstanding other provisions of this Code relating to dimensional standards, the Planning Board, in
31 reviewing and approving proposed residential or mixed-use development under this Article, may modify
32 said dimensional standards to permit flexibility in approaches to site design in accordance with the Code
33 standards. The Board may allow subdivision or site development with modified dimensional standards
34 where the Board determines the benefit of a cluster development is consistent with the Code. Such
35 modifications may not be construed as granting variances to relieve hardship.
36

37 **16.8.11.4 Property Ownership.**

38
39 Tracts or parcels of land involved in a development proposed under this Article must be in single
40 ownership; or, must be the subject of an application filed jointly by the owners of all properties included;
41 or, must have an applicant with vested interest in all property included. Pursuant to the requirements of
42 this Article, mobile home parks or mobile homes on individual lots are not eligible for cluster residential
43 development.
44

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45 **16.8.11.5 Application Procedure.**

46 All development reviewed under this Article is subject to the application procedures in Chapter 16.10,
47 Development Plan Application and Review, and the following:

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49 A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch
50 Plan:

- 51
52 1. Calculations and maps to illustrate:
53 a. proposed dimensional modifications and the dimensional standards required in the zone in which
54 the development will be located;
55 b. non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7);
56 {amendment pending}
57 c. net residential acreage and net residential density; and
58 d. open space as defined in Section 16.8.11.6.D.2 {E.2?} of this Article.

59
60 2. A map showing constraints to development, such as, but not limited to, wetlands, resource protection
61 zones, shoreland zones, deer wintering areas, side slopes in excess of thirty-three percent (33%),
62 easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and
63 existing utilities.

64
65 3. A written statement describing the ways the proposed development furthers the purpose and
66 objectives of this Article, including natural features which will be preserved or enhanced. Natural features
67 include, but are not limited to, moderate-to-high value wildlife and waterfowl habitats, important
68 agricultural soils, moderate-to-high yield aquifers and important natural or historic sites worthy of
69 preservation.

70
71 4. The location of each of the proposed building envelopes. Only developments having a total
72 subdivision or site plan with building envelopes will be considered.

73
74 B. An applicant with a project that includes proposed public open space must obtain Town Council
75 acceptance for the public land or easement following Preliminary Plan approval. Town Council
76 acceptance is contingent upon receipt of Final Plan approval by the Planning Board.

77
78 **16.8.11.6 Standards.**

79
80 A. The purpose and intent of this Code must be upheld for any reviews conducted under this Article.

81
82 B. A cluster mixed-use and cluster residential development must meet all requirements for a subdivision
83 (and site plan where applicable), and all other applicable federal, state and local ordinances, except as
84 modified by action of the Planning Board, where authorized.

85
86 C. Public or privately shared sewer and water must be provided unless it is demonstrated to the
87 Planning Board's satisfaction that alternative methods used result in a development that is compatible
88 with Section 16.8.11. *{this standard may warrant more details on how the Board determines its*
89 *satisfaction on the use of alternatives. Perhaps the addition of advanced treatment is required in some*
90 *manner. Item J should be moved to be in closer proximity of C and D or incorporated in one of these*
91 *standards referring to subsurface wastewater.}*

92

RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13;1/27/14; and 1/28/15)

93 D. Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller
94 than twenty thousand (20,000) square feet per single family residence and eight thousand (8,000) square
95 feet per bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, Title 12 MRS
96 § 4807-A.

97
98 E. Open Space Requirements:
99

100 1. Open space must contain at least 50% of the total area of the property, and no less than 30% of the
101 total net residential acreage, as defined.
102

103 2. Total calculated open space must be designated as follows (See Open Space definitions Section
104 16.2): a. Open Space, Reserved; b. Open Space, Common; and/or c. Open Space, Public.
105

106 3. The use of any open space may be further limited or controlled by the Planning Board at the time of
107 final approval, where necessary, to protect adjacent properties or uses.
108

109 4. Open space must be deeded in perpetuity for the recreational amenity and environmental
110 enhancement of the development and be recorded as such. Such deed provisions may include
111 deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and
112 their use as approved by the Planning Board.
113

114 5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock
115 outcrops, native plant life, and wildlife cover as identified in applicant's written statement. In the Business
116 Park (BP) zone, open space may be both man-made and natural. Man-made open space must be for the
117 development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify
118 the built and natural environments.
119

120 6. Open space should be in a contiguous form of unfragmented land to protect natural resources,
121 including plant and wildlife habitats. *{add information that provides more direction as to what the*
122 *expectation of 'contiguous' and 'unfragmented' is..}*
123

124 7. A portion of the open space should be in close proximity to other open spaces used for recreation
125 (e.g. a common green, multi-purpose athletic field, gardens, and playgrounds). *{another standard may be*
126 *warranted that has a similar goal but for 'reserved open space' and the ecological benefits of locating*
127 *proposed open space adjacent and abutting existing open space, leveraging an increased economy of*
128 *scale.}*
129

130 *{Another requirement that needs to be clearly expressed is a management plan that identifies the use(s)*
131 *of the open space, common or reserved, with specificity that allows to determine how the land will be*
132 *managed, maintained and monitored and what resources, including financial requirements, will be*
133 *necessary}*
134

135 F. In the Business Park (BP) zone, the maximum building height is forty (40) feet. If the Planning Board
136 finds that provisions for fire safety are adequate to allow buildings of greater height, then the Board may
137 allow a building height of up to sixty (60) feet as a part of the development plan review and approval
138 process.
139

140 G. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access
141 onto a public road existing at the time of development.

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H. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland must be a part of the commonly held land. *{This standard may need to be revised to clarify the intent. Is the focus waterfront access for boating and active recreation or is it conservation oriented?}*

I. The developer must take into consideration the following points, and illustrate the treatment of buildings, structures, spaces, paths, roads, service and parking areas, recreational facilities, and any other features determined by the Planning Board to be a part of the proposed development. *{Chris suggested that there is an opportunity in these regulations to address the preservation of vistas. Generally the intent of a cluster is to group buildings near the road, but this could be detrimental on scenic roads}*

1. Orientation. Buildings, view corridors and other improvements are to be designed so scenic vistas and natural features are integrated into the development. Buildings should be sited to consider natural light and ventilation. *{This could be worded more strongly. The Ellsworth ordinance reads, "Wherever possible, lots shall be laid out to coincide with building locations to maximize solar gain." It also considers orientation to maintain natural drainage patterns.}*

2. Utility Installation. All utilities are to be installed underground, wherever possible. The Planning Board must require the developer to adopt a prudent avoidance approach when permitting above ground electrical service installations. Transformer boxes, pumping stations and meters must be located so as not to be unsightly or hazardous to the public.

3. Recreation. Facilities must be provided consistent with the development proposal. Active recreation requiring permanent equipment and/or modification of the site may not be located within the wetland setback areas or contiguous reserved open space areas.

4. Buffering. Planting, landscaping, form and siting of building and other improvements, or fencing and screening must be used to integrate the proposed development with the landscape and the character of any surrounding development. *{This is very vague.}*

5. Development Setbacks.

Setbacks from wetlands and water bodies, must demonstrate compliance to Table 16.9 of Chapter 16.9.4.3 *{just 16.9.4}*. These setbacks must be permanently maintained as no cut, no disturb buffer areas. If the setback areas are not of substantial vegetation to provide a sufficient buffer, the Planning Board may require additional plantings. *{the clause underlined above has been a source of contention on some projects with regard to which setback per table 16.9 is actually 'permanently maintained as a no cut, no disturb buffer'. Staff has interpreted this to mean that if a dwelling is incurring a wetland setback then that setback, 50 or 100 feet depending on the wetland, is maintained as the said buffer regardless of any other smaller setbacks the development may incur such as roads and driveways. This provision should be revised to state the intent clearer and to add the expectation of clearly permanently marking the boundary so it is easily monitored and maintained.}*

J. The location of subsurface wastewater disposal systems and a reserve area, if required, must be shown on the plan. The reserve areas must be restricted so as not to be built upon. The report of a site evaluator, licensed by the state of Maine, must accompany the plan. If the subsurface disposal system is an engineered system, approval from the Maine Department of Human Services, Division of Health Engineering and the municipal plumbing inspector must be obtained prior to Planning Board approval.

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16.8.11.7 Open Space Dedication and Maintenance.

A. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.

B. The open space(s) must be shown on the development plan with appropriate notation on the face thereof to indicate that:

1. The open space must not be used for future building lots; and
2. A part or all of the open space may be dedicated for acceptance by the Town. {KLT suggested being included as an option.}

C. If any, or all, of the open space is to be reserved for ownership by the residents and/or by commercial entities, the bylaws of the proposed homeowner’s or similar governing association for commercial owners (in the Business Park zone), and/or the recorded covenants must specify maintenance responsibilities and be submitted to the Planning Board prior to approval. See subsection A above.

D. Association Responsibilities.

1. Maintenance: The homeowner’s association or similar association for commercial owners is responsible for the maintenance of open space(s), and other common facilities unless and until accepted by the Town. The stormwater management system must be maintained in accordance with Section 16.8.8.2, Post-construction Stormwater Management. Associations must maintain adequate funds to defray these expenses. The Planning Board shall require an initial capital fund for associations to be paid by the developer to cover these expenses.

2. Inspection: Annually, by June 30, the developer or association must complete and submit to the Code Enforcement Officer a Maintenance Compliance Report on a form prepared by the Code Enforcement Officer certifying compliance with any open space use and protection requirements. Said report must be completed by a Maine licensed civil engineer or certified soil scientist. {ensure this form exists. Why a soil scientist?}

E. Transition of Responsibility. The developer must maintain control of such open space(s) and be responsible for maintenance until development, sufficient to support any and all associations, residential or commercial, has taken place. Responsibility and authority must be clearly defined and described in the recorded covenants, and such information must be distributed to any and all associations in a timely manner so the transition of responsibilities is seamless.

16.8.11.8 Pre-Development Requirements.

Prior to the beginning of site work, the applicant must file with the Town Planning Department all required performance guarantees and inspection escrows in forms acceptable to the Town Manager in accordance with Chapter 16.10.8.2.2. {pending amendment? Check reference}

5/20/2015 EP			Conventional					Cluster				
ZONE	Lot Size EXAMPLE	NRA EXAMPLE	Min. LA/DU (sf)	15 % Open Space	Developed		Lot Size (sf)	Min. LA/DU	5 Acres of Open Space 50% including 30% of NRLA	5 Acres Available 4.75 of which are suitable	Lot Size (sf)	Sewered?
<i>Example: 10 acre lot reduced 25% to 7.5 ac NRLA</i>												
R-RL	10 ac	7.5 ac	40,000	1.5 ac	8.5 ac	8 lots	40,000-46,300 or more	Without sewer, 20,000 sf per single family residence or 8,000 sf per bedroom in a multi-family With sewer (public or private), Min. LA/DU based on NRA applies, but Board may modify dimensional standards	5 ac including 2.25 ac of upland	8 lots on 5 ac w/o sewer 8 lots on 5 ac w/ sewer	20,000-27,200 or more no min or max	No sewer in Zone Private Sewer Only
R-S	10 ac	7.5 ac	40,000 w/o sewer 30,000 w/ sewer	1.5 ac 1.5 ac	8.5 ac 8.5 ac	8 lots 10 lots	40,000-46,300 or more 30,000-37,000 or more		5 ac including 2.25 ac of upland	8 lots on 5 ac w/o sewer 10 lots on 5 ac w/ sewer	20,000-27,200 or more no min or max	Some Sewer in Zone Some Sewer in Zone
R-KPV	10 ac	7.5 ac	40,000	1.5 ac	8.5 ac	8 lots	40,000-46,300 or more		5 ac including 2.25 ac of upland	8 lots on 5 ac w/o sewer 8 lots on 5 ac w/ sewer	20,000-27,200 or more no min or max	No sewer in Zone Private Only
R-U	10 ac	7.5 ac	20,000	1.5 ac	8.5 ac	16 lots	20,000-23,000 or more		5 ac including 2.25 ac of upland	10 lots on 5 ac w/o sewer* 16 lots on 5 ac w/ sewer	~ 20,000 no min or max	Sewer in Zone Sewer in Zone
R-RC	10 ac	7.5 ac	80,000	1.5 ac	8.5 ac	4 lots	80,000-92,500 or more		5 ac including 2.25 ac of upland	4 lots on 5 ac w/o sewer 4 lots on 5 ac w/ sewer	20,000-54,500 or more no min or max	No sewer in Zone Private Only

Example: 5 ac lot reduced 40% to 3 ac NRLA

ZONE	Lot Size EXAMPLE	NRA EXAMPLE	Min. LA/DU (sf)	15 % Open Space	Developed		Lot Size (sf)	Min. LA/DU	2.5 Acres of Open Space 50% including 30% of NRLA	2.5 Acres Available 2.1 ac of which are suitable	Lot Size (sf)	Sewered?
R-S	5 ac	3 ac	40,000 w/o sewer 30,000 w/ sewer	0.75 ac 0.75 ac	4.25 ac 4.25 ac	3 lots 4 lots	40,000-61,700 or more 30,000-46,300 or more	Same as above	2.5 ac including 0.9 ac of upland	3 lots on 2.5 ac w/o sewer 4 lots on 2.5 ac w/ sewer	20,000-36,300 or more no min or max	Some Sewer in Zone Some Sewer in Zone
R-U	5 ac	3 ac	8,000 sf/bd w/o sewer 20,000	0.75 ac 0.75	4.25 ac 4.25 ac	16 bds** 6 lots	-- 20,000-30,900 or more		2.5 ac including 0.9 ac of upland	16 bds on 2.5 ac w/ sewer 5 lots on 2.5 ac w/o sewer* 6 lots on 2.5 w/ sewer	-- ~ 20,000 no min or max	Some Sewer in Zone Sewer in Zone Sewer in Zone

Example: 60 acre lot reduced 33% to 40 ac NRLA

ZONE	Lot Size EXAMPLE	NRA EXAMPLE	Min. LA/DU (sf)	15 % Open Space	Developed		Lot Size (sf)	Min. LA/DU	30 Acres of Open Space 50% including 30% of NRLA	30 Acres Available 28 of which are suitable	Lot Size (sf)	Sewered?
R-RL	60 ac	40 ac	40,000	9 ac	51 ac	43 lots	40,000-51,700 or more	Same as above	30 ac including 12 ac of upland	43 lots on 30 acres w/o sewer 43 lots on 30 acres w/ sewer	20,000-30,400 or more no min or max	No sewer in Zone Private Only

* The number of permissible lots cannot be achieved without sewer.

** Multi-unit dwellings of five to twelve units per building are a special exception use in the Suburban zone.

Lot size ranges represent the absolute minimum lot size and the maximum if the lots are equally sized. There is no absolute maximum.

NRA = Net Residential Acreage

LA/DU = Land Area per Dwelling Unit

ZONING PRACTICE

August 2007

AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER EIGHT

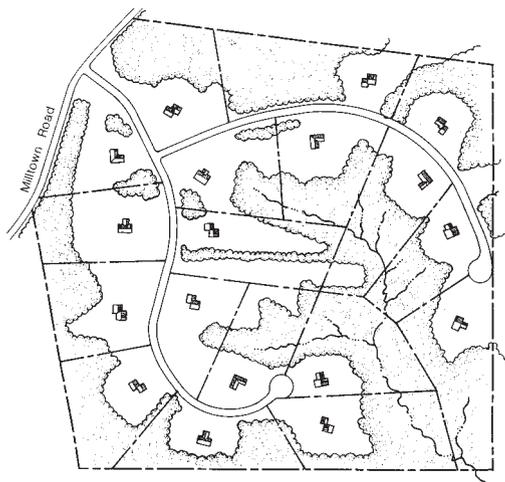
PRACTICE CLUSTER DEVELOPMENT



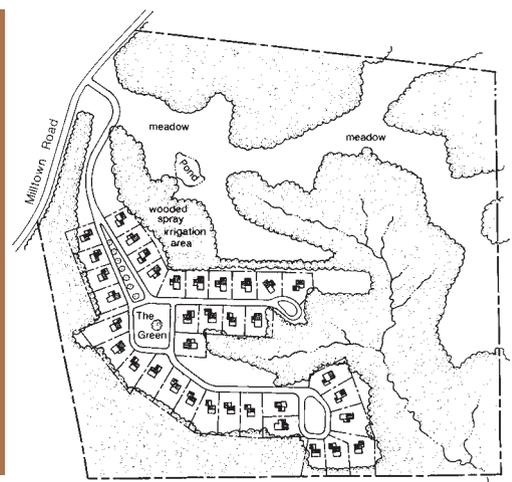
Cluster Development: Modern Application of an Old Town Form

By Stuart Meck, FAICP

Residential cluster development is a form of land development in which principal buildings and structures are grouped together on a site, thus saving the remaining land area for common open space, conservation, agriculture, recreation, and public and semipublic uses.



⊕ (Left) “Yield plans” to determine density: Under Pennsylvania’s Growing Greener program, conventional yield plans like this, demonstrating the feasibility of 18 two-acre lots in the two-acre-district, are no longer allowed. (Right) Village design under Growing Greener is an alternative option. It illustrates how lot yield could be doubled as a strong incentive for developers to produce layouts following certain hamlet design principles, including 70 percent of the unconstrained land remaining as permanent open space.



All images by Randall Arendt. Adapted from PAS Report 523/524: *Crossroads, Hamlet, Village, Town: Design Characteristics of Traditional Neighborhoods, Old and New*; revised edition, 2004.

In many respects, cluster development dates back to one of the earliest town forms. In primitive early settlements, dwelling units were often organized to form a common area or enclosure that residents could use together and readily defend if necessary.

In the United States, the 1928 development of Radburn, New Jersey, represented the first formal introduction of the cluster development concept. It drew on English town planning principles, notably those of the Garden Cities movement. In Radburn, single-family homes and garden apartments are sited in “superblocks” of 35 to 50 acres. The superblocks have no through traffic and are interspersed with parks and related green spaces on which the residences face. Clustering also became the basic site design concept in such contemporary new towns as Reston, Virginia, and Columbia, Maryland.

Cluster development has a number of distinct advantages over conventional subdivision

development. A well-planned cluster development concentrates dwelling units on the most buildable portion of the site and preserves natural drainage systems, vegetation, open space, and other significant natural features that help control stormwater runoff and soil erosion.

The common areas function as a trap for nutrients dissolved or suspended in stormwater runoff. Cost savings during construction are achieved by the reduction in street lengths and utility installations. Later savings can be realized in street and utility maintenance (less surface area that needs repaving and fewer feet of water and sewer line to maintain). Because dwelling units are placed closer together, refuse and other service vehicles do not have to negotiate over as much street mileage, thus reducing travel time.

Where clustering is accompanied by higher-density residential land uses and the provision of pedestrian pathways and bike-ways, especially those that link to off-site

activity centers, residents of the cluster development may walk and exercise more.

Clustering also enhances the sense of community, allowing parents better supervision of children playing in common areas and promoting social interaction among neighbors.

The model ordinance featured in this issue of *Zoning Practice* is intended to encourage developers to use cluster development as an alternative to conventional lot-by-lot development, and authorizes cluster development as of right either in all residential districts or in selected ones. Section 110 of the ordinance (see page 7) also offers density bonuses of up to 25 percent when a developer: (a) provides affordable housing as part of the cluster development (thereby helping the local government achieve housing goals that may have been established by the state) and (b) conveys land for open space, recreation, or other purposes that is accessible to the public.

Under Section 107 of the model (see page 6), the local planning commission has the primary responsibility for reviewing and approving a cluster development, although such a function could also be assigned to a hearing examiner. The model ordinance sets forth criteria for the commission to apply in deciding whether to approve the cluster development. (Remember that the responsibilities of the local planning commission vary from state to state.)

The model does not include a severability clause because it assumed this ordinance will be incorporated into a zoning code that will have one already.

This model is based on a sample ordinance appearing in *Nonpoint Source Pollution: A Handbook for Local Governments* by Sanjay Jeer, Megan Lewis, Stuart Meck, Jon Witten, and Michelle Zimet, Planning Advisory Service Report No. 476 (Chicago: American Planning Association, 1997). Local policy makers, such as mayors, city council members, and planning commissioners, can use this article to familiarize themselves with the contents of land development regulations, alternative ways to update such regulations, methods to incorporate smart growth objectives, and types of smart growth ordinances.

The model cluster development ordinance provides a starting point for discussion among policy makers as to the desirability and general approach to such regulations. In some cases, the model ordinance provides several regulatory alternatives among which policy makers can select or, by working with their planners, devise a hybrid approach that suits their community.

Professional planners can use the options discussed in the article to help policy makers understand land development regulation and how to meet smart growth objectives in the formulation of a town center ordinance. The article contains enough model language for planners to understand the technical and administrative complexities of smart growth



➞ Homes fronting directly onto parks: A view showing the direct relationship between houses and the formal open space. These lots have no street frontage and are accessed only by foot from the front, with driveways leading to rear service lanes. These homes possess greater “curb appeal” than similar houses fronting onto curbs and streets.

ordinances and get into the details of drafting and administering one for cluster developments. The primary smart growth principle addressed with cluster development is the preservation of open space and farmland. Secondary smart growth principles include creating distinctive and attractive places.

Model provisions are followed by commentary and remarks concerning the locally adopted ordinances used as a basis for drafting them.

THE MODEL TOWN CENTER ORDINANCE WITH COMMENTARY

101. Purpose

(1) It is the purpose of this ordinance to permit residential cluster development in order to:

(a) encourage creative and flexible site design that is sensitive to the land’s natural features and adapts to the natural topography;

(b) protect environmentally sensitive areas of a development site and preserve on a permanent basis open space, natural features, and prime agricultural lands;

(c) decrease or minimize nonpoint source pollution impacts by reducing the amount of impervious surfaces in site development;

(d) promote cost savings in infrastructure installation and maintenance by such techniques as reducing the distance over which utilities, such as water and sewer lines, need to be extended or by reducing the width or length of streets; and

(e) provide opportunities for social interaction and walking and hiking in open space areas.

Remember to consult your state statutes to employ definitions that are consistent with those statutes. These definitions were drawn from different sources and, while useful, may differ from those already established by your state legislation. Definitions of “affordable,” “low-income household,” and “moderate-income household” may need to be changed to comply with current requirements of the applicable federal or state construction or rehabilitation program. In particular, the

THE MODEL CLUSTER DEVELOPMENT ORDINANCE

This issue of *Zoning Practice* provides an overview of the structure of cluster development regulations and is part of a larger effort by the American Planning Association on the development of model smart growth ordinances. The original report was prepared under the direction of APA’s research department in Chicago. Stuart Meck, FAICP, was the principal investigator and coauthor. He is the director of the Center for Government Services in the Edward J. Bloustein School of Planning and Public Policy at Rutgers University. Coauthor Marya Morris, AICP, a former APA senior research associate, is now a senior associate with Duncan Associates in Chicago. Rebecca Retzlaff, AICP, assistant professor in Auburn University’s community planning program, assisted the authors. Other coauthors include Kirk Bishop, executive vice president of Duncan Associates, Chicago, and Eric Damian Kelly, vice president of Duncan Associates and a professor of planning at Ball State University in Muncie, Indiana. The editor was James Hecimovich, the editor of APA’s Planning Advisory Service. Lisa Barton, design associate, designed the report. William R. Klein, AICP, APA’s director of research, provided overall project administration.

bracketed percentages may be modified to affect the scope of the definition.

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

Affordable means either a sales price that is within the means of a moderate-income household or a rental amount for housing that is within the means of a low-income household, as those terms are defined in this Section. In the case of dwelling units for sale, housing that is affordable is housing for which the mortgage, taxes, insurance, and fees are no more than [30] percent of the adjusted income for a household whose gross annual income is at or below [80] percent of the median for the area based on household size. In the case of rental housing, housing that is affordable is

limited to, reduction in lot areas, setback requirements, and bulk requirements, with the resultant open space being devoted by deed restrictions for one or more uses.

Cluster development, residential refers to a land development project in which the site planning technique of clustering dwelling units is employed.

Common open space is the portion of the site set aside in perpetuity as open space. This area may include coastal and freshwater wetlands, floodplains or flood-hazard areas, stream corridors, prime agricultural lands, habitats of endangered wildlife as identified on applicable federal or state lists, scenic views, historical or cultural features, archaeological sites, or other elements to be protected from development, as well as easements for public utilities.

recreational, open space, and or/mixed uses as are provided for in the zoning ordinance.

Lot means either: (a) the basic development unit for determination of area, depth, and other dimensional variations; or (b) a parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or map, and recognized as a separate legal entity for purposes of transfer of title.

Low-income household is one whose gross annual income does not exceed [50] percent of the area median as adjusted for household size.

Moderate-income household means a household whose gross annual income is less than [80] percent of the area median as adjusted for household size.

Net buildable area means the portion of the cluster development that may be developed or used for common open space, whether publicly dedicated or private, but excluding private streets, public streets, and other publicly dedicated improvements.

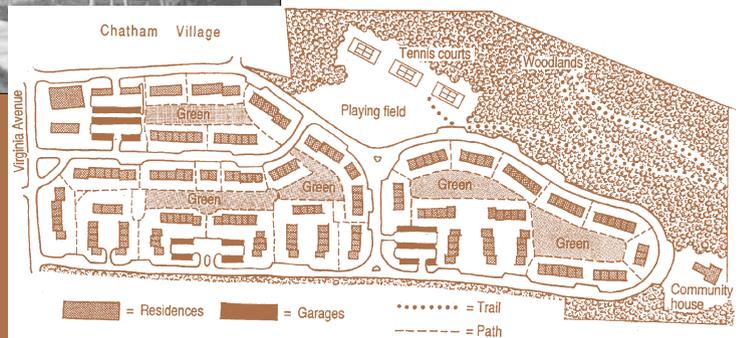
Site plan means the development plan for one or more lots on which is shown the existing and the proposed conditions of the lot.

Street, private is a local roadway serving only abutting lots, not publicly dedicated or maintained by the [local government] but meeting specific municipal improvement standards and providing access for service and emergency vehicles.

Street, public means all public property reserved or dedicated for street traffic.



⊕ (Above) A typical green at Chatham Village in Pittsburgh. Occupying the highest ground on this hilltop site, it is framed by buildings that are two stories high in front and three in the back, with garages on the lowest level. (Right) Homes in Chatham Village are accessed from the rear via a loop road, and face each other across smaller and more formal greens.



housing for which the monthly rental amount plus utility costs do not exceed [30] percent of the adjusted income for a household whose gross income is [50] percent of the area median household income adjusted for household size.

Buffer is land maintained in either a natural or landscaped state and used to screen or mitigate the impacts of development on surrounding areas, properties, or rights-of-way.

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Cluster (or Clustering) is a site-planning technique that concentrates buildings and structures in specific areas on a lot, site, or parcel to allow the remaining land to be used for recreation, open space, or preservation of features or structures with environmental, historical, cultural, or other significance. The techniques used to concentrate buildings may include, but shall not be

Development means the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mine, excavation, landfill or land disturbance; and/or any change in use, or alteration or extension of the use, of land.

Gross area is the total area of the site, including the net buildable area and public rights-of-way.

Infrastructure refers to the facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.

Land development project means a project in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned development and/or cluster development for residential, commercial, institutional,

Structure means anything constructed or erected that requires location on the ground or attached to something having location on the ground.

There is a fair degree of debate about whether the area of a cluster development should be limited. Because cluster development is fundamentally a design review process, in theory the approach should be applicable to a site of any size. However, it may be that, for smaller sites, a cluster development may not yield any appreciable benefits over conventional subdivisions. Consequently, the decision to authorize cluster development will depend on the policy preferences of the individual local government.

103. Applicability; General Provisions

(i) A residential cluster development shall be permitted [as of right in any residential zoning district pursuant to this ordinance or as of right in the following zoning districts: list district names]:

(a) All principal and accessory uses authorized in the applicable residential zoning district(s) shall be allowed in the cluster development. In addition, multifamily dwellings, duplexes, and town houses may be permitted for a cluster development located in a residential zoning district that does not otherwise allow attached dwelling units.

(b) Maximum lot coverage, floor area ratios, building height, and parking requirements for the applicable zoning district shall apply to the cluster development. Maximum lot coverage, floor area ratios, and parking requirements, however, shall be applied to the entire site rather than to any individual lot.

(2) The following provisions shall apply to any residential cluster development, regardless of the general requirements of the applicable residential zoning district:

(a) The minimum area of the cluster development shall be [two to five] acres.

In some states, the identification of floodplains and coastal or freshwater wetlands occurs routinely as part of the land development and subdivision review process. Optional language in Section 103(2)(g) above requires that at least 50 percent of the floodplains and wetlands must be included as part of the common open space. By including the land designated as common open space, the calculation of net buildable area gives credit for the land area in which floodplains and wetlands that meet state criteria are located. This is intended to serve as an incentive to employ clustering by allowing the area represented by lands in floodplains and wetlands to be used in determining the maximum number of dwelling units.

(b) No minimum width or depth of a lot shall apply.

(c) A minimum separation of [10] feet shall be provided between all principal buildings and structures.

(d) A minimum yard or common open space of at least [25] feet in depth shall be provided, as measured from all public streets and from the side and rear lot lines of the entire cluster development.

(e) Each lot shall have a minimum access of [12] feet to a public or private street. Such access may be shared with other lots.

(f) More than one principal building or structure may be placed on a lot.

(g) Not less than [25] percent of the site shall be conveyed as common open space in the manner provided for in Section [110]. [Where the site contains floodplains and/or coastal or freshwater wetlands, not less than [50] per-

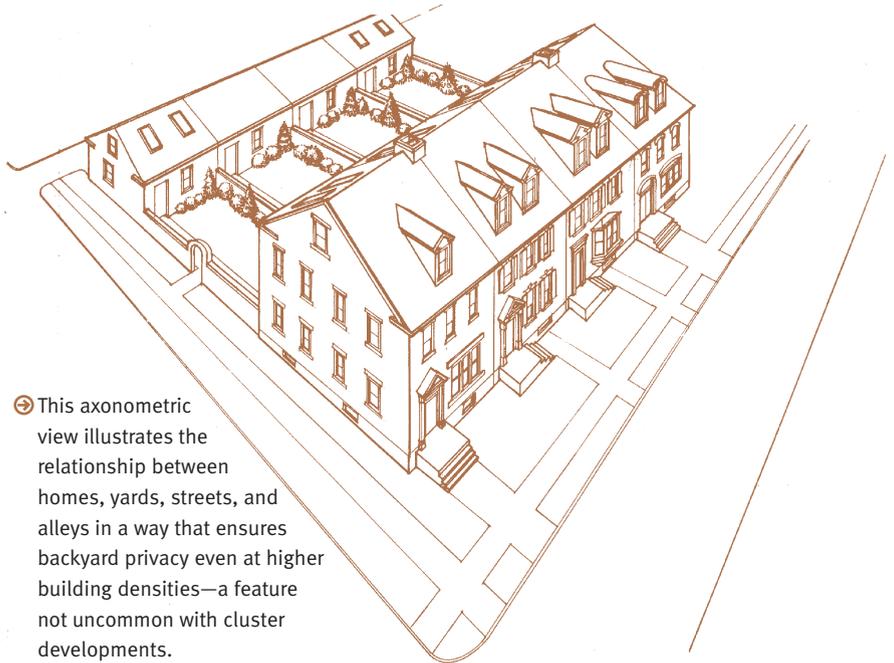
cent of such floodplains and/or wetlands shall be included in calculating the common open space.]

Uses other than residences may be located on the site. For example, the cluster development may include storage facilities, garages, and recreational buildings. Conceivably, a very large cluster development could also include sites for schools.

104. Contents of Site Plan

(1) The preliminary and final site plan for a residential cluster development shall include, but shall not be limited to, the following information:

(a) The maximum number and type of dwelling units proposed



(b) The areas of the site on which the dwelling units are to be constructed or are currently located and their size (this may take the form of the footprint of the dwelling unit or a building envelope showing the general area in which the dwelling unit is to be located).

(c) The calculations for the permitted number of dwelling units, derived pursuant to Section [105]

(d) The areas of the site on which other proposed principal and accessory uses may be located and their size

This model assumes the local government will require sidewalks as part of the public improvements required for subdivision.

(e) The areas of the site designated for common open space and their size

(f) The areas of the site designated for parking and loading and the size of individual spaces

(g) The number and percentage of dwelling units, if any, that are proposed to be affordable

(h) The location of sidewalks, trails, and bike paths

(i) The number of acres that are proposed to be conveyed as common open space

(j) [Cite any other plans or information otherwise required by the local government for a major land development or subdivision in its land development or subdivision regulations, such as a plan for landscaping and screening.]

The calculations in Section 105 (2) below are intended to mirror those that a local government would normally employ for determining the maximum number of dwelling units permitted for nonclustered development. Some communities may subtract from the gross area of the cluster development land area in wetlands and

floodplains, which will reduce the maximum number of dwelling units in the development.

105. Calculation of Permitted Number of Dwelling Units; Density Bonuses

(1) Except as provided in paragraph (3) below, the maximum numbers of dwelling units proposed for a residential cluster development shall not exceed the number of dwelling units otherwise permitted for the residential zoning district in which the parcel is located.

(2) Except as provided in paragraph (3) below, the number of permitted dwelling units on a site shall be calculated in the following manner:

(a) Measure the gross area of the proposed cluster development site in acres and tenths of an acre.

(b) Subtract from the gross area determined in subparagraph (a) the area of public and private streets and other publicly dedicated improvements, measured in acres and tenths of an acre, excluding common open space

(whether or not it is conveyed pursuant to Section [110] below). The remainder shall be the net buildable area.

(c) Convert the net buildable area from acres to square feet (SF), using the equivalency of 43,560 SF = 1 acre.

(d) Divide the net buildable area by the smallest minimum lot size (in square feet) per unit for a dwelling unit permitted in the zoning district. This figure shall be rounded to the nearest lower number to establish the maximum number of dwelling units to be permitted in the cluster development.

The bonus provisions in Section 105 (3) below are a means by which a local government can ensure that new housing will benefit low- and moderate-income households and implement state goals for affordable housing. Indeed, should a local government decide it wants to more aggressively provide for affordable housing through cluster development (as well as open space conveyance) it might increase the density bonus from the suggested figure of 25 percent.

(3) The [local planning commission] may approve an increase of up to [25] percent of the maximum number of dwelling units in the cluster development, as calculated in paragraph (2) above, if:

Note that only when the common open space is both conveyed and is accessible to the public is a density bonus justified. If the common open space was simply conveyed to a private entity (as opposed to the local government), but there was no public access, a density bonus could not be approved.

(a) the percent of density bonus is no greater than the percent of dwelling units in the cluster development that are affordable units; and/or

(b) the percent of density bonus is no greater than the percent of the gross area of the cluster development that is both:

1. set aside as and conveyed as common open space pursuant to Section [110]; and
2. accessible to the public.

While these review criteria are intended to guide the planning commission in the evaluation of the proposed cluster development, they cannot replace a sensitive and creative site planner who has the responsibility of designing cluster development or an experienced professional planner whose responsibility it is to review the proposal and advise the planning commission on necessary design changes.

106. Procedures for Review

(1) The [local planning commission] shall review and approve a residential cluster development and any amendments thereto as a land development project in the manner provided for in [cite

applicable state statute], together with any ordinances and regulations adopted pursuant thereto and appearing in [cite applicable local land development regulations].

107. Review Criteria

(1) In reviewing a residential cluster development, the [local planning commission] shall determine whether:

(a) the site plan satisfies the requirements of Sections [103], [104], and [105];

(b) buildings and structures are adequately grouped so at least [25] percent of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designated as a single block and not divided into unconnected small parcels located in various parts of the development;



⊕ (Above) Terminal vista: “Reverse-frontage” lots should never be allowed to be created at the end of a cul-de-sac, causing the back end of houses to face directly onto the cul-de-sac “circle.” (Below) Neighborhood freeway design: The combination of excessively wide streets and the absence of shade trees is an unattractive combination, despite some engineers’ claims that wider streets are safer and that trees constitute “fixed deadly objects.”



(c) pedestrians can easily access common open space;

(d) the site plan establishes, where applicable, an upland buffer of vegetation of at least [50] feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes, and ponds;

(e) individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography;

(f) existing scenic views or vistas are permitted to remain unobstructed, especially from public streets;

(g) the site plan accommodates and preserves any features of historic, cultural, or archaeological value;

(h) floodplains, wetlands, and areas with slopes in excess of [25] percent are protected from development;

(i) the cluster development advances the purposes of this ordinance as stated in Section [101]; and

(j) [other, such as contiguity requirement for common open space].

(2) The [local planning commission] may, in its opinion, apply such special conditions or stipulations to its approval of a residential cluster development as may be required to maintain harmony with neighboring uses and to promote the objectives and purposes of the comprehensive plan and the zoning and subdivision ordinances.

(3) If the [local planning commission] finds that the requirements of paragraph (1) above are satisfied, it shall approve the residential cluster development, subject to any special conditions or stipulations pursuant to paragraph (2) above, any density bonus pursuant to Section [105], and any reductions [and/or waivers] pursuant to Section [108].

Most local governments have adopted standard design specifications for streets. This allows the planning commission to reduce street pavement widths in order to minimize impervious surfaces on the site, as well as to limit the portions of the site that must be regraded to accommodate wider streets. If a street proposed in a cluster development is to be used as a connector from an adjoining development or as a through street, it is probably not a candidate for a reduction in width. There is no firm rule, however, on when a reduction or waiver should be allowed, and determinations should be made on a case-by-case basis.

The 22-foot pavement width shown in brackets assumes a 15-foot travel lane and a seven-foot parking area. If parking were desired on both sides of the street, a 28-foot pavement would accommodate two seven-foot parking lanes and a 14-foot wide travel lane.

108. Reduction [and/or Waiver] of Certain Physical Design Requirements

(1) In approving a residential cluster development, the [local planning commission] may reduce the pavement width of any public or private streets that would otherwise be required by the [subdivision regulations or other design specifications for roads] to [22] feet.

(2) An applicant who wants the reduction of pavement width of public or private streets as provided for in paragraph (1) above, shall submit a statement of justification for the reduction [and/or waiver] along with the final site plan.

If the density bonus is to be given on the basis of a guarantee of the provision of affordable housing, there must be a mechanism to ensure that the housing, whether it is for sale or for rent, will remain affordable for a reasonable period of time. This is done through a

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deed restriction and mortgage lien approved by the local government's law director.

109. Controls on Resale and Re-rental of Affordable Housing Units Used as Basis for Density Bonus

(1) Affordable dwelling units used as the basis for approving a density bonus in Section [105] shall be subject to a deed restriction and a mortgage lien to ensure that newly constructed low- and moderate-income sales and rental units remain affordable to low- and moderate-income households for a period of not less than [30] years, which period may be renewed.

(2) The deed restriction and mortgage lien shall be approved by the [local government] law director and shall be enforceable by the [local government] through legal and equitable remedies.

110. Conveyance of Open Space

(1) Common open space provided by a residential cluster development shall be conveyed as follows:

(a) To the [local government] and accepted by it for park, open space, agricultural, or other specified use or uses, provided that the conveyance is approved by the [local planning commission] and is in a form approved by the [local government] law director; or

(b) To a nonprofit organization whose principal purpose is the conservation of open space, to a corporation or trust owned or to be owned by the owners of lots or dwelling units within the residential cluster development, or to owners of shares within a cooperative development. If such a corporation or trust is used, ownership shall pass with the conveyances of the lots or dwelling units. The conveyance shall be approved by the [local planning commission] and shall be in a form approved by the [local government's] law director.

(2) In any case, where the common open space in a residential cluster development is conveyed pursuant to subparagraph (1)(b) above, a deed restriction enforceable by the [local government] shall be recorded that provides that the common open space shall:

(a) be kept in the authorized conditions(s); and

(b) not be developed for principal uses, accessory uses (e.g., parking), or roadways.

CONCLUSION

This overview of the structure of cluster development is part of larger effort by the American Planning Association to develop model smart growth ordinances, including models that may be adapted by local governments to implement special planning policies (e.g., multimodal transportation, affordable housing, etc.). As used in this effort, smart growth ordinances and development codes mean regulations intended to achieve a variety of objectives (e.g., encouraging mixed uses, preserving open space and environmentally sensitive areas, providing a choice of housing types and transportation

modes, and making the development review process more predictable). In addition, because smart growth ordinances provide more transportation options and more compact, mixed use development, they inevitably have public health implications; they encourage walking, bicycling, and human interaction, with the potential to support more active, socially engaged lifestyles that result in better physical and mental health.

The following should have been included in About the Authors in last month's issue. *Zoning Practice* regrets the accidental error:

"This article is distilled by the authors from material in a forthcoming PAS Report, *Zoning as a Barrier to Multifamily Housing Development*, co-authored by Gerrit Knaap, Stuart Meck, Terry Moore, and Robert Parker, released by APA in July 2007. Copyright APA 2007. Research for the report was supported by the Lincoln Institute of Land Policy, the Fannie Mae Foundation, and the U.S. Department of Housing and Urban Development."

Single-family homes clustered around a common green. ©iStockphoto.com/ Joe Gough

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DOES YOUR CLUSTER
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HAVE THE ESSENTIALS?

