



# 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](http://www.kittery.org)

**AGENDA for Thursday, June 25, 2015**

**6:00 P.M. to 10:00 P.M.**

## **CALL TO ORDER**

## **ROLL CALL**

## **PLEDGE OF ALLEGIANCE**

## **APPROVAL OF MINUTES of June 11, 2015**

**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.

## **OLD BUSINESS / PUBLIC HEARINGS**

### **ITEM 1 – Town Code Amendment – 16.5.2.4 Permit Period, Appendix A Schedule 16 Land Use and Development Fees.**

Action: review amendment, hold a public hearing and make recommendation to Town Council. 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 2 – Town Code Amendments – 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.**

Action: review amendment, hold a public hearing, and make recommendation to Town Council. Amendments to the Town Code to: address soil suitability as it pertains to septic disposal systems and other development standards; update soil suitability standards; address regulations for sewer and subsurface wastewater disposal systems; address changes to net residential acreage calculations and associated definitions; reformat and clarify language.

### **ITEM 3 – Board Member Items / Discussion**

- A. Cluster Development Code Review
- B. Committee Updates
- C. Action List
- D. Other

### **ITEM 4 – Town Planner Items:**

- A. KACTS Route 1 Bypass Bicycle & Pedestrian Planning Update

## **NEW BUSINESS**

### **ITEM 5 – Town Code Amendment – 16.9.1.3 Prevention of Erosion; 16.2.2 Definitions**

Action: review amendment, schedule a public hearing. The proposed amendment allows the Town to take enforcement actions related to the contractor certification requirements of 38 M.R.S.A. Section 439-B Contractors certified in erosion control; “Excavation contractor” will be defined.

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

NOTE: ACTION LISTED IN ABOVE AGENDA ITEMS IS FOR REFERENCE ONLY AND THE BOARD MAY DETERMINE A DIFFERENT ACTION. DISCLAIMER: ALL AGENDAS ARE SUBJECT TO REVISION ONE WEEK PRIOR TO THE SCHEDULED TOWN PLANNING BOARD MEETING. TO REQUEST A REASONABLE ACCOMMODATION FOR THIS MEETING CONTACT STAFF AT (207) 475-1323.

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

**APPROVED**  
**June 11, 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, Deborah Lynch  
8 Members absent: Ms. Grinnell arrived at 6:30 and Ms. Kalmar chaired the meeting until then.  
9 Staff present: Chris Di Matteo, Town Planner; Elena Piekut, Assistant Town Planner; Duncan  
10 McEachern, Town Attorney

11  
12 Pledge of Allegiance

13  
14 Minutes: May 28, 2015

15 **Ms. Davis moved to approve the minutes of May 28, 2015 as written.**  
16 **Mr. Lincoln seconded.**  
17 **Motion carried: 7-0-0**

18  
19 Minutes: June 2, 2015 Site Walk at Yankee Commons

20 **Ms. Davis moved to approve the minutes of June 2, 2015 as written.**  
21 **Mr. Lincoln seconded.**  
22 **Motion carried: 7-0-0**

23  
24 Minutes: June 2, 2015 Site Walk at 9 Mill Pond Road

25 **Ms. Davis moved to approve the minutes of June 2, 2015 as written.**  
26 **Mr. Lincoln seconded.**  
27 **Motion carried: 7-0-0**

28  
29 Minutes: May 28, 2015 Workshop (Cluster Development)

30 **Ms. Davis moved to approve the minutes of May 28, 2015 as written.**  
31 **Mr. Lincoln seconded.**  
32 **Motion carried: 7-0-0**

33  
34 Public Comment: Ms. Kalmar opened the public comment section. Hearing none, she closed it.  
35

36 **ITEM 1 – Yankee Commons Mobile Home Park Expansion – Subdivision Preliminary Plan Review**

37 Action: hold a public hearing, approve or deny preliminary plan. Owner/applicant Real Property Trust  
38 Agreement requests consideration of plans for a 78-lot expansion of the Yankee Commons Mobile Home  
39 Park for the property located at US Route 1, Tax Map 66, Lot 24 in the Mixed Use (MU) and Residential  
40 – Rural (R-RL) Zones. Agent is Thomas Harmon, Civil Consultants.

41  
42 Mr. Harmon introduced himself, applicant's agent Gary Beers, Jay Stephens of Civil Consultants, and  
43 Brian Rayback of Pierce Atwood. He provided an overview of the project, including the following points:

- 44 • 77 lots for mobile homes plus one for offices and common space are proposed
- 45 • Will be served by public water and sewer
- 46 • There will be 4,200 feet of paved road, 20 feet wide with two-foot shoulders
- 47 • The question of providing sidewalks is unresolved; they request a waiver
- 48 • Significant amount of open space
- 49 • Wetlands on site will be buffered

- 50 • A “significant amount of material” will be taken off site from the “ledge knoll” to create a
- 51 “consistent, shallow grade”
- 52 • Have changed alignment of existing road to avoid wetland but have 900 square feet of wetland
- 53 impact
- 54 • Have Maine DEP approval for the site
- 55 • There is a vernal pool near Route 1, decided to avoid it and provide a divided road instead of two
- 56 roads
- 57 • Maine law allows a 25% disturbance within 250-foot setback from vernal pool
- 58 • Stormwater treatment has been approved by DEP
- 59 • There will be a “considerable amount” of blasting, the DEP must approve a blasting plan
- 60 • The Army Corps of Engineers has reviewed as part of DEP application, approval was received in
- 61 2011, and development is nowhere near the 75-foot buffer they required; the only species of
- 62 concern in the vernal pool is fairy shrimp, which do not use the uplands
- 63

64 Ms. Kalmar opened the public hearing.

65

66 Don Moore of the Conservation Commission asked about vernal pool information. Mr. Harmon explained  
67 that the approval letter contains some. Mr. Moore asked for more information. He said they have  
68 reviewed the DEP’s letter and while it looks at separate issues, it does not look at the big picture. He  
69 wants to know about the impact of blasting on groundwater and wetlands. Mr. Harmon said drainage  
70 patterns will not be altered from the existing condition, as shown on the grading plan.

71

72 Ms. Kalmar closed the public hearing.

73

74 Town Attorney Duncan McEachern was asked to address legal questions surrounding the proposal,  
75 particularly the meaning of “environmental suitability” from state statute, as well as the court order  
76 regarding the Board’s earlier denial of the project.

77

78 Mr. McEachern provided background and described several legal aspects and considerations, including:

- 79 • The Court heard an appeal of the Planning Board’s denial, two major issues were the amount of
- 80 ledge removal and whether it is incidental, and that mobile home parks are not a permitted use in
- 81 the Mixed Use Zone
- 82 • The Board found that the earth removal was not incidental; the Court found that the removal is
- 83 incidental to the expansion and is to be treated as such, and remanded back to the Board
- 84 • *Bangs v. Town of Wells* established the need to give “due consideration” to a mobile home park
- 85 *expansion*
- 86 • State statute pre-empts Town regulation, in particular mobile home park lot sizes
- 87 • The applicant has the burden of proof regarding meeting standards
- 88 • The Board must make findings that the development meets local standards, particularly the
- 89 findings required by 16.10 [16.10.8.3.4]
- 90 • For example, although ledge removal was deemed incidental to the project, the Board must still
- 91 look at noise, dust, traffic, etc.
- 92 • The Court found the Town’s prohibition of expansion of a mobile home park in the Mixed Use
- 93 Zone invalid based on the State statute
- 94 • It doesn’t mean the Town must permit all mobile home and manufactured housing project in the
- 95 Zone, but they need to be given “reasonable consideration”
- 96 • “Environmental suitability” is not defined, although there are some standards described in the
- 97 statute, but requires factual findings by the Board
- 98 • Although ledge removal does not require a mineral extraction permit, “the quantity and character”
- 99 of materials to be removed is still relevant to the Town’s consideration of the expansion

100  
101 Ms. Kalmar asked about setbacks. Mr. McEachern explained that the State statute says a municipality  
102 cannot use setbacks to require larger lots than the minimum, or that would exclude mobile homes. On the  
103 other hand, an applicant could argue that larger (double-wide, triple-wide) homes cannot fit, but there is  
104 no guarantee that a municipality must accommodate homes that large. Ms. Davis added that planning for  
105 outbuildings doesn't require the Town to decrease setbacks.

106  
107 Mr. Lincoln asked about the volume of material being removed and the traffic impact.  
108 Mr. McEachern responded that he's seen 200,000 cubic yards, but that CMA engineers point out that it  
109 expands. He said the Board has to consider traffic impact based on evidence provided by the applicant.

110  
111 Mr. Alesse asked Mr. McEachern to expand on the Court's conclusion that the Board didn't give  
112 "reasonable consideration" to the proposal. Mr. McEachern explained that by ending the process with the  
113 question of mineral extraction, full consideration was not given. *Bangs v. Wells* was very similar as an  
114 existing nonconforming use expansion. Although a mobile home park is not an allowed use, *expansion*  
115 must be given consideration.

116  
117 Mr. Di Matteo described how due consideration would have been given if the Board had approved rather  
118 than denied the preliminary plan and made findings on each standard at the final plan review.

119  
120 Mr. McEachern explained that the Legislature was mindful that there are communities that would do  
121 everything they could to prevent mobile home parks. He read from the section of the law regarding  
122 "reasonable consideration."

123  
124 Mr. Alesse used the Conservation Commission's concern about groundwater as an example of  
125 determining environmental suitability.

126  
127 Mr. Di Matteo explained his understanding with the help of the Maine Municipal Association that  
128 "environmental suitability" was intended to prevent municipalities from forcing mobile homes to  
129 marginal areas.

130  
131 Mr. Alesse said that it "stretches his understanding of those words" when the volume of mineral  
132 extraction "suggests strongly" that the location is environmentally unsuitable.

133  
134 Mr. Lincoln wants to know cubic yards and number of truckloads.

135  
136 Mr. Di Matteo referred to a guide to the "new mobile home park law" published in 1989 and excerpted in  
137 notes to the Board. He found that Kittery's setbacks match those in the State's model ordinance. Mr. Di  
138 Matteo withdrew his comment #1 in the staff review notes regarding density, as it is addressed in the  
139 statute.

140  
141 He added that the findings of fact at final review stage will also consider subdivision law, a traffic impact  
142 analysis should answer some questions, and that he learned from the Army Corps of Engineers that a  
143 general permit is required.

144  
145 Ms. Grinnell brought up the applicant's request for a waiver from providing sidewalks. Ms. Kalmar  
146 suggested the Board wait for more information.

147  
148 Ms. Davis asked about the applicant's statement that the park will be 55-plus. Mr. Beers said the park will  
149 be 55-plus and they are willing to state that in a note on the plan. He said they did their best to be  
150 consistent with elderly housing, cluster residential, and Mixed Use Zone standards but only mobile home

151 park standards apply. Ms. Davis suggested certain provisions for the elderly be considered. Mr. Beers  
152 agreed to commit to a 55-plus development with a note on the plan.

153  
154 Mr. Kalmar summarized the need for an Army Corps of Engineers permit for the vernal pool, for a  
155 traffic impact analysis, for comment from the Maine Department of Transportation regarding truck traffic,  
156 and to address the Conservation Commission’s concerns regarding groundwater.

157  
158 **Ms. Davis moved to continue the preliminary plan review for a 78-lot expansion of the Yankee**  
159 **Commons Mobile Home Park located at US Route 1, for owner/applicant Real Property Trust**  
160 **Agreement, Tax Map 66, Lot 24 and 25, not to exceed 90 days.**

161 **Mr. Lincoln seconded.**

162 **Motion carried: 7-0-0**

163  
164

---

165 **ITEM 2 – 9 Mill Pond Road – Shoreland Development Plan Review**

166 Action: hold a public hearing; approve or deny plan. Owners/applicants Eric Stites and Katherine  
167 Peternell request consideration of a shoreland development plan for an addition to and second story  
168 expansion of an existing, nonconforming single-family dwelling located at 9 Mill Pond Road, Tax Map  
169 23, Lot 6A in the Residential – Urban (R-U), Shoreland Overlay (OZ-SL-250’), and Resource Protection  
170 Overlay (OZ-RP) Zones. Agent is Tom Emerson, Studio B-E.

171  
172 Mr. Emerson provided an overview of the project.

173  
174 **Ms. Kalmar moved to accept the Shoreland Development Plan application dated April 23, 2015**  
175 **from Eric Stites & Katherine Peternell for 9 Mill Pond Road (Tax Map 23, Lot 6A) in the**  
176 **Residential – Urban, Shoreland Overlay, and Resource Protection Overlay Zones.**

177 **Ms. Davis seconded.**

178 **Motion carried: 7-0-0**

179  
180 Ms. Grinnell opened the public hearing. Hearing no comment, she closed it.

181  
182 Ms. Kalmar asked for clarification about the requested revision to the plan. Mr. Di Matteo explained that  
183 the lower third of the expansion analysis table included on the plan contains unnecessary and confusing  
184 numbers, and so a condition of approval should be to revise that table.

185  
186 **Ms. Kalmar moved to grant conditional approval for the Shoreland Development Plan application**  
187 **dated April 23, 2015 from Eric Stites and Katherine Peternell for 9 Mill Pond Road (Tax Map 23,**  
188 **Lot 6A) in the Residential – Urban, Shoreland Overlay, and Resource Protection Overlay Zones.**

189 **Mr. Lincoln seconded.**

190 **Motion carried: 7-0-0**

191  
192 Ms. Kalmar read the Findings of Fact *[portions highlighted below]*.

193  
194 **FINDINGS OF FACT**  
195 **For 9 Mill Pond Road**  
196 **Shoreland Development Plan Review**

197  
198 **WHEREAS:** Eric Stites and Katherine Peternell request approval of their Shoreland Development Plan  
199 for an addition to and second story expansion of an existing, nonconforming structure located at 9 Mill  
200 Pond Road (Tax Map 23, Lot 6A) in the Residential – Urban, Shoreland Overlay, and Resource  
201 Protection Overlay Zones, hereinafter the “Development,” and

202  
203  
204

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

Shoreland Development Plan Review	5/14, 6/11
Site Walk	6/2
Public Hearing	6/11

205  
206  
207  
208

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

209  
210  
211  
212

1. Shoreland Development Plan Application, April 23, 2015.
2. Shoreland Development Plan, Easterly Surveying, April 22, 2015; revised May 28, 2015.
3. Architectural Plans, Studio B-E, received April 23, 2015.

213  
214  
215  
216

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

217  
218

**FINDINGS OF FACT**

219  
220

**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, except in the following zones...*

**Findings:** Existing conditions on the 12,370-square-foot lot include 4,045 square feet of devegetated area (32.7%). The applicant proposes to replace a paved walkway with pervious pavers. Although for regulatory purposes this is still counted as devegetated area, in effect it lessens the existing impact of the development.

The existing nonconforming condition is 32.7% devegetated and must not be increased.

**Conclusion:** This standard appears to have been met.

**Vote: 7 in favor 0 against 0 abstaining**

221  
222  
223

**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:** This is an existing, nonconforming lot with an existing single-family dwelling structure located entirely within 100 feet of a coastal wetland. It appears to be nonconforming to one side setback.

The proposed development does not increase nonconformity.

**Conclusion:** The requirement appears to be met.

**Vote: 7 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 is no more nonconforming than the existing condition.

**Conclusion:** The requirement appears to be met

**Vote: 7 in favor 0 against 0 abstaining**

224

**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] below.*

*A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.*

*B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.*

*C. Whenever a new, enlarged or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.2 – Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.5.3, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.*

**Finding:**

*A. This proposal is the only expansion of the structure since January 1, 1989. The proposed increase in floor area is 28.47%. The proposed increase in volume is 29.54%.*

**Conclusion:** 16.7.3.6.1.A appears to be met. B and C are not applicable.

**Vote: 7 in favor 0 against 0 abstaining**

225  
226  
227  
228

**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;**

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

**Vote: 7 in favor 0 against 0 abstaining**

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

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters.

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

**Vote: 7 in favor 0 against 0 abstaining**

**3. Adequately provide for the disposal of all wastewater;**

Finding: The dwelling is served by public sewer.

Conclusion: The requirement is not applicable.

**Vote: 7 in favor 0 against 0 abstaining**

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

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

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: 7 in favor 0 against 0 abstaining**

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

Finding: Shore cover is not affected by this development. There are no points of access.

Conclusion: The requirement appears to be met.

**Vote: 7 in favor 0 against 0 abstaining**

**6. Protect archaeological and historic resources;**

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: The requirement appears to be met.

**Vote: 7 in favor 0 against 0 abstaining**

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

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>8. Avoid problems associated with floodplain development and use;</b> <u>Finding:</u> The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>9. Is in conformance with the provisions of this Code;</b> <u>Finding:</u> The proposed development appears to be in conformance with the provisions of this Code. <u>Conclusion:</u> This requirement appears to be met.
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<b>10. Be recorded with the York County Registry of Deeds.</b> <u>Conclusion:</u> 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.
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>

229  
230 Based on the foregoing Findings, the Planning Boards finds the applicant has satisfied each of the review  
231 standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan  
232 Application for Eric Stites and Katherine Peternell, owners and applicants, for an additional to and second  
233 story expansion of an existing, nonconforming single family dwelling located at 9 Mill Pond Road (Tax  
234 Map 23, Lot 6A) subject to any conditions or waivers, as follows:

235  
236 **Waivers:** None

237  
238 **Conditions of Approval** (not to be included on final plan):

- 239 1. Minor plan revisions as described in staff review notes will be made prior to signing.  
240

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

- 242 1. No changes, erasures, modifications or revisions may be made to any Planning Board approved  
243 final plan. (Title 16.10.9.1.2)
- 244 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated  
245 with site and building construction to ensure adequate erosion control and slope stabilization.
- 246 3. Prior to the commencement of grading and/or construction within a building envelope, as shown  
247 on the Plan, the owner and/or developer must stake all corners of the envelope. These markers  
248 must remain in place until the Code Enforcement Officer determines construction is completed  
249 and there is no danger of damage to areas that are, per Planning Board approval, to remain  
250 undisturbed.
- 251 4. All Notices to Applicant contained herein (Findings of Fact dated 6/11/15).

252  
253 The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of  
254 Fact upon confirmation of compliance with any conditions of approval.

255  
256 **Vote of 7 in favor 0 against 0 abstaining**

257  
258 APPROVED BY THE KITTELY PLANNING BOARD ON \_\_\_\_\_ 6/11/15 \_\_\_\_\_  
259

260 **Notices to Applicant:**

- 261
- 262 1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer  
263 Review Engineer, and submit for Staff review prior to presentation of final mylar.
- 264 2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the  
265 permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements  
266 and abutter notification.
- 267 3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents  
268 that may be required, must be submitted to the Town Planning Department for signing. Date of  
269 Planning Board approval shall be included on the final plan in the Signature Block. After the signed  
270 plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be  
271 submitted to the Town Planning Department.
- 272 4. This approval by the Town Planning Board constitutes an agreement between the Town and the  
273 Developer, incorporating as elements the Development Plan and supporting documentation, the  
274 Findings of Fact, and any Conditions of Approval.

275 Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning  
276 Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section  
277 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

278  
279  
280

---

281 **ITEM 3 – State Road Mixed Use Development – Preliminary Site Plan Completeness Review**

282 Action: accept or deny preliminary plan application, schedule a public hearing. Owner/applicant Aaron  
283 Henderson, HGC, LLC requests consideration of plans for a mixed use development consisting of three  
284 (3) commercial office units and five (5) single family residential units at 42 State Road, Tax Map 3, Lots  
285 5, 6, and 7 in the Business – Local 1 (B-L1) Zone. Agent is Jeff Clifford, Altus Engineering, Inc.

286  
287 Jeff Clifford, owner Aaron Henderson, and landscape architect Woodburn & Company were in  
288 attendance.

- 289
- 290 Mr. Clifford provided a history and overview of the project, including:
- 291 • The sketch plan was approved and the Board held a site walk
- 292 • Creating enough parking for both uses was a concern but has been resolved without using shared  
293 parking
- 294 • Three existing lots will be combined
- 295 • The standards for the zone require the building to be close to the road
- 296 • The entrance on Love Lane will be one-way-in, while the entrance on State Road will be two-way
- 297 • Commercial is accessed from the front of the building and residential from the back
- 298 • Parking provided totals 32 spaces, which meets the needs of both uses
- 299 • There is a grade change from front to back necessitating a retaining wall at the side, and either a  
300 retaining wall or cut ledge at back property line
- 301 • All stormwater in back parking lot will be collected in pervious pavers, which flow to the side lot  
302 where there are underground storage chambers, which drain across State Road
- 303 • The applicant is providing an easement to the Town for stormwater drainage along State Road
- 304 • The front yard landscaping includes stone walls, plantings, and street trees; guywires in the front  
305 will blend in

- 306 • A buffer will be maintained on the residential property line
- 307 • A lighting plan is provided and the project is at final design level

308

309 Ms. Davis asked about a sidewalk on Love Lane. Mr. Clifford said it is not proposed, partly because of  
310 the paved stormwater drainage swale in that area. Mr. Di Matteo suggested “no parking” signage. Mr.  
311 Clifford and Mr. Di Matteo recall that the Public Works Commissioner was not in favor of a sidewalk.  
312 Ms. Kalmar supports the idea of striping and signing that area. Mr. Lincoln suggested that as an arterial  
313 way, sidewalks may be prohibited on Love Lane. He asked how exiting from the Love Lane entrance will  
314 be prevented. Mr. Clifford said only a sign is proposed.

315

316 Ms. Davis asked about the ownership of TD Bank as compared to the Town records used to generate a  
317 mailing to abutters.

318

319 Ms. Kalmar asked whether there will be dedicated parking for residents. Mr. Clifford explained that it is  
320 generally better to start without designated parking and establish it if needed.

321

322 Ms. Kalmar asked when the decision will be made whether to leave cut ledge or create a retaining wall at  
323 the back of the property. Mr. Clifford said it will be decided during construction and that it may be  
324 addressed with a condition of approval. Mr. Di Matteo noted that there is a provision in the ordinance  
325 dealing with changes in the field. Ms. Kalmar would like to make sure it returns to the peer review  
326 engineer.

327

328 Mr. Di Matteo asked about the provision of seating for pedestrians as required by ordinance. Mr. Clifford  
329 said that there is a seat wall. Mr. Di Matteo explained to the Board that because there is already a very  
330 complete set of plans, the Board can consider a preliminary and final plan approval at the next meeting.

331

332 Ms. Davis asked whether the applicant has considered a bike rack and Mr. Clifford said they would look  
333 at it.

334

335 **Ms. Kalmar moved to accept the preliminary plan application and schedule a public hearing for**  
336 **consideration of Aaron Henderson, HGC, LLC’s proposed mixed residential/commercial**  
337 **development at 42 State Road, Tax Map 3, Lots 5, 6, and 7 in the Business – Local 1 (B-L1) Zone**  
338 **for July 9, 2015.**

339 **Mr. Lincoln seconded.**

340 **Motion carried: 7-0-0**

341

342

---

343 **ITEM 4 – 28 Island Avenue – Shoreland Development Plan Review**

344 Action: accept or deny plan application; approve or deny plan. Owner/applicant Diane Knight requests  
345 consideration of a shoreland development plan for a second story expansion of an existing,  
346 nonconforming single-family dwelling located at 28 Island Avenue, Tax Map 1, Lot 9 in the Residential –  
347 Urban (R-U) and Shoreland Overlay (OZ-SL-250’) Zones. Agent is Anne Whitney, Architect.

348

349 Ms. Whitney explained that only volume will increase, as the dormer additions are within the existing  
350 roofline. Floor area and devegetated area will not change. The plan is being updated to contain more  
351 information for being recorded at the Registry of Deeds. 1,456 cubic feet will be added for an 8.8%  
352 increase in volume.

353

354 Ms. Whitney said she has added a note to the revised plan that any future increase in building area or  
355 impervious area will require a registered survey.

356

357 **Ms. Kalmar moved to accept the plan application and grant conditional approval for the Shoreland**  
358 **Development Plan Application dated Nay 7, 2015 from Diane Knight for 28 Island Avenue (Tax**  
359 **Map 1, Lot 9) in the Residential – Urban and Shoreland Overlay Zone.**  
360 **Ms. Davis seconded.**  
361 **Motion carried: 7-0-0**

362  
363 Ms. Kalmar read the Findings of Fact *[highlighted sections below]*.

364  
365 **FINDINGS OF FACT**

APPROVED

366 **For 28 Island Ave**  
367 **Shoreland Development Plan Review**  
368

369 **WHEREAS:** Diane Knight requests approval of a shoreland development plan for the addition of two  
370 second story dormers to an existing, nonconforming structure located at 28 Island Avenue, Tax Map 1,  
371 Lot 9 in the Residential – Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones, hereinafter the  
372 “Development,” and

373  
374 Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted:

Planning Board Review	June 11, 2015
Approval	

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

- 378 1. Shoreland Overlay Zone Project Plan Application, May 7, 2015.
- 379 2. Shoreland Development Plan, Anne Whitney Architect, May 6, 2015
- 380 3. Dormer Addition, Knight Stone Residence, Anne Whitney Architect, May 6, 2015

381  
382  
383 **NOW THEREFORE,** based on the entire record before the Town Planning Board and pursuant to the  
384 applicable standards in the Land Use and Development Code, the Town Planning Board makes the  
385 following factual findings and conclusions:

386  
387 **FINDINGS OF FACT**

388  
389 **Chapter 16.3 LAND USE ZONE REGULATIONS**

<b>16.3.2.17. D Shoreland Overlay Zone</b>
<i>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, except in the following zones...</i>
<b>Findings:</b> The proposed development does not increase devegetated areas on the lot.
<b>Conclusion:</b> This standard appears to have been met.
<b>Vote: 7 in favor 0 against 0 abstaining</b>

390  
391  
392

**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:** This is an existing, nonconforming lot with an existing single family dwelling structure that is nonconforming to the 100-foot setback from the protected resource. The proposed development increases nonconformity as permitted in 16.7.3.6.1 Nonconforming Structure Expansion.

**Conclusion:** The requirement appears to be met.

**Vote: 7 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.*

See 16.6.6.1 and its reference to 16.6.6.2 below.

**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: 7 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.*

The Board must also give consideration to the factors listed in 16.6.6.2.

**Finding:** The proposed development does not pose a concern.

**Conclusion:** The requirement appears to be met.

**Vote: 7 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 below.*

*A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream of the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.*

*B. If a replacement structure conforms to the requirements of Section 16.7.3.5.4 and Section 16.7.3.5.6 and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.*

*C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decisions on the criteria specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1.A, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.*

**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 8.8% increase in volume. B & C. Does not apply.

**Conclusion:** The requirement appears to be met.

**Vote: 7 in favor 0 against 0 abstaining**

393  
394  
395  
396

**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;**

**Finding:** The proposed development does not appear to have an adverse impact.

**Conclusion:** This requirement appears to be met.

**Vote: 0 in favor 0 against 0 abstaining**

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

**Finding:** Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction to avoid impact on adjacent surface waters.

**Conclusion:** This requirement appears to be met.

**Vote: 7 in favor 0 against 0 abstaining**

<p><b>13. Adequately provide for the disposal of all wastewater;</b> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>14. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</b> <u>Finding:</u> Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction to avoid impact on adjacent surface waters. <u>Conclusion:</u> This requirement appears to be met.</p>
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>15. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</b> <u>Finding:</u> Shore cover is conserved in accordance with this Code. There are no points of access. <u>Conclusion:</u> This requirement appears to be met.</p>
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>16. Protect archaeological and historic resources;</b> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>17. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;</b> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.</p>
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>18. Avoid problems associated with floodplain development and use;</b> <u>Finding:</u> The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.</p>
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>19. Is in conformance with the provisions of this Code;</b> <u>Finding:</u> The proposed development appears to be in conformance with the provisions of this Code. <u>Conclusion:</u> This requirement appears to be met.</p>
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>
<p><b>20. Be recorded with the York County Registry of Deeds.</b> <u>Conclusion:</u> 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.</p>
<b>Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining</b>

398 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review  
399 standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan  
400 Application of Diane Knight requests approval of a shoreland development plan for the addition of two  
401 second story dormers to an existing, nonconforming structure located at 28 Island Avenue, Tax Map 1, Lot  
402 9 in the Residential – Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones subject to an conditions or  
403 waivers, as follow:  
404

405 **Waivers: None**

406  
407 **Conditions of Approval** (to be included on final plan to be recorded):  
408

- 409 1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final  
410 plan. (Title 16.10.9.1.2)
- 411 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with  
412 site and building construction to ensure adequate erosion control and slope stabilization.
- 413 3. All Notices to Applicant contained herein (Findings of Fact dated June 11, 2015).
- 414 4. Future expansions will require the applicant to obtain a new Boundary Survey with Highest Annual  
415 Tide Information for Staff review.  
416

417 **Conditions of Approval** (NOT to be included on final plan to be recorded):

- 418 5. Revise plan per staff comments

419  
420 The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of  
421 Fact upon confirmation of compliance with any conditions of approval.

422 **Vote of 7 in favor 0 against 0 abstaining**

423  
424 APPROVED BY THE KITTELY PLANNING BOARD ON June 11, 2015  
425

426 **Notices to Applicant:**  
427

- 428 5. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer  
429 Review Engineer, and submit for Staff review prior to presentation of final mylar.
- 430 6. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the  
431 permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements  
432 and abutter notification.
- 433 7. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents  
434 that may be required, must be submitted to the Town Planning Department for signing. Date of  
435 Planning Board approval shall be included on the final plan in the Signature Block. After the signed  
436 plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be  
437 submitted to the Town Planning Department.
- 438 8. This approval by the Town Planning Board constitutes an agreement between the Town and the  
439 Developer, incorporating as elements the Development Plan and supporting documentation, the  
440 Findings of Fact, and any Conditions of Approval.

441

442 Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning  
443 Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section  
444 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

445

446 **ITEM 5 – 89 Route 236 – Sketch Site Plan Review**

447 Action: approve or deny sketch plan. Owner/applicant Rockwell Homes, LLC requests consideration of a  
448 sketch site plan for a single, 2,520-square-foot building containing business and professional offices and a  
449 drive-through-only restaurant at 89 Route 236, Tax Map 28, Lot 14-2 in the Commercial 2 (C-2) Zone.  
450 Agent is Ryan McCarthy, Tidewater Engineering & Surveying, LLC.

451

452 Mr. McCarthy introduced the owners of Rockwell Homes and provided an overview of the project,  
453 including:

- 454 • The lot was recently subdivided from a larger parcel and reviewed by the Planning Board
- 455 • The proposed building is 42 feet by 60 feet, containing three offices and an Aroma Joe’s drive-  
456 thru with no internal seating or service
- 457 • Because there is no seating associated with the restaurant, they propose no parking in relation to  
458 seating, only parking for employees
- 459 • Office space parking is provided and the applicant would like to explore a reduction in the future  
460 to only 15 spaces, considering that much of the “office” space is showroom space
- 461 • There is a shared entrance with the lot next door and the circulation is designed as a one-way loop
- 462 • A buffer will be maintained at the back of the lot but the applicant wishes to perform selective  
463 cutting at the front of the lot to improve visibility
- 464 • The property will be serviced by public water
- 465 • There is no sewer available; an on-site septic will serve the development
- 466 • There has been some initial coordination with the next-door owner, especially with consideration  
467 to the shared entrance and how it will suit them in the future

468

469 Ms. Davis asked about the proposed sign location and whether they have considered a shared sign for the  
470 shared entrance. Mr. McCarthy said they would look into it.

471

472 Mr. Alesse asked whether access or egress on Fernald Road was considered. Mr. McCarthy said they  
473 haven’t completed a traffic assessment yet but the entrance permit was approved by the Department of  
474 Transportation to line up with the other end of Fernald Road, opposite. Mr. Lincoln asked about the  
475 width. Mr. McCarthy said the current DOT permit is for 30 feet. Mr. Lincoln shares Ms. Davis’ concern  
476 about the sign.

477

478 Ms. Kalmar asked about the easement for a sidewalk required by the previous subdivision plan. Mr.  
479 McCarthy is interested in the Town’s plans for that section of road. Mr. Di Matteo said that the need for  
480 the sidewalk depends on what happens with the other lot and the plan should show that the sidewalk can  
481 be accommodated when needed.

482

483 Mr. McCarthy asked for guidance on parking and a possible reduction. Mr. Di Matteo explained that there  
484 is some flexibility, and they may provide parking information from other locations to substantiate the  
485 argument.

486

487 Ms. Davis suggested an interior crosswalk between parking and the building.

488

489 **Ms. Kalmar moved to approve the sketch plan application dated May 21, 2015 from Rockwell**  
490 **Homes , LLC for 89 Route 236 (May 28, Lot 14-2) in the Commercial -2 Zone.**

491 **Mr. Lincoln seconded.**

492 **Motion carried: 7-0-0**  
493  
494

---

495 **ITEM 6 – 73 Tower Road – Shoreland Development Plan Review**

496 Action: accept or deny plan application, approve or deny plan. Owner/applicant Robert Ramos requests  
497 consideration of a shoreland development plan to demolish an existing, non-conforming single-family  
498 dwelling and construct a new, more conforming single-family dwelling at 73 Tower Road, Map 58, Lot  
499 42 in the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250') and Resource  
500 Protection Overlay (OZ-RP) Zones. Agent is Robert MacDonald, Detail Design Builders, LLC.  
501

502 Mr. McDonald provided an overview of the project and described the proposal as less nonconforming than  
503 the existing structure. He explained how the building design has been modified and the calculations  
504 have been corrected since receiving staff notes the previous week.

505 Ms. Kalmar noted 16.7.3.5.6.C and its requirement to reconstruct a structure within the setbacks if  
506 possible. Discussion ensued regarding its applicability and practicality. Mr. MacDonald suggested that  
507 moving the house back from the shore would put it in FEMA's future floodplain.  
508

509 **Ms. Davis moved to accept the Shoreland Development Plan application dated May 21, 2015 from**  
510 **Robert and Megan Ramos for 73 Tower Road (Tax Map 58, Lot 42) in the Residential – Rural**  
511 **Conservation and Shoreland Overlay Zones, schedule a public hearing for July 9, and schedule a**  
512 **site walk for June 30 at 9:00 a.m.**

513 **Mr. Alesse seconded.**

514 **Motion carried: 7-0-0**

515

516 **ITEM 7 – Board Member Items / Discussion**

A. Committee Updates

B. Other

None.

517

518 **ITEM 8 – Town Planner Items:**

519 A. TBD

520

521 None.

522

523 **Ms. Davis moved to adjourn.**

524 **Mr. Alesse seconded.**

525 **Motion carried: 7-0-0**

526

527 The Kittery Planning Board meeting of June 11, 2015 adjourned at 8:45 p.m.

528

529 Submitted by Elena Piekut, Assistant Town Planner, June 15, 2015.

## Town of Kittery Planning Board Meeting June 25, 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	Pub 6/12, 6/17
YES	Review/Approval/ Recommendation to Town Council	Scheduled 6/25/15	

#### Background

Per Town Council's direction, staff proposes an amendment to 16.5.2.4 Permit Period to clear up the current confusion over renewal fees—the code refers to such a fee, but the schedule of fees does not include one. See May 28 notes for further background.

#### Review

Attached for the Board's consideration is an amendment that clarifies how permits are renewed and how fees are charged. 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.

Schedule 16 Land Use and Development Fees, in an Appendix A to the Town Code, is also revised to resolve this discrepancy, however revisions of the Appendix do not require formal hearing, recommendation, etc. in the same manner as a code amendment. The revision to the Appendix is presented here alongside the code amendment.

#### Recommendation

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

**...move to recommend to Town Council the Town Code Amendment for *Title 16.5.2.4 Permit Period, and Appendix A Schedule 16 Land Use and Development Fees* as written/revised...**

## 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 as determined by  
11 the Code Enforcement Officer upon expiration of the six (6) month renewal period, a new permit application  
12 and payment of all applicable fees must be 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 all applicable fees doubled.

**KITTERY TOWN CODE APPENDIX A – FEE SCHEDULES**

**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
<u>Renewal Fee**</u>	<u>\$25.00</u>
<u>Renewal Fee – Commercial/Industrial and larger than two-family**</u>	<u>\$100.00</u>

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.

\*\*Note: May include fees on value of construction, see expired permit example and Title 165.2.4 Permit Period.

**EXAMPLES:**

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

Base application fee of \$25.00 plus  $(\$148,000/\$1,000) \times \$12 = \$1,801.00$

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

Base application fee of \$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.

Base application fee of \$25.00 plus 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).

Renewal Permit/Expired Permit Example: Residential Addition = \$50,000.

Where renewal request is made prior to permit expiration: \$25.00 renewal fee

Where no renewal request is made prior to permit expiration: applicant reapplies

Where renewal period expires and substantial work has not commenced, applicant reapplies:

\$25.00 base application fee plus  $(\$50,000/\$1,000) \times \$12 = \$625.00$

Where renewal period expires and work has commenced but is not substantially complete:

\$25.00 base application fee plus value of work remaining  $(\$25,000/\$1,000) \times \$12 = \$325.00$

**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:

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

- 56 • Internal plumbing inspection (per fixture fee)
- 57 • External plumbing inspection (per septic system fee)
- 58 • Town electrical inspection (\$25.00 per inspection)
- 59 • State electrical inspection (per fixture fee)
- 60 • Sewer impact fees (\$2,000 per unit)
- 61 • Public safety impact fee
- 62 • Development exaction fee

**Town of Kittery  
Planning Board Meeting  
June 25, 2015**

**Town Code Amendments – 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.**

Action: review amendment, hold a public hearing, and make recommendation to Town Council.  
Amendments to the Town Code to: address soil suitability as it pertains to septic disposal systems and other development standards; update soil suitability standards; address regulations for sewer and subsurface wastewater disposal systems; address changes to net residential acreage calculations and associated definitions; reformat and clarify language.

**Background**

This group of amendments was developed over the course of several months and was most recently reviewed at the joint Town Council-Planning Board Workshop on May 4, 2015.

**Please refer to May 28, 2015 packet materials.  
No further revisions have been made.**

On May 28 the Planning Board scheduled a public hearing for June 25.

**Review**

As confirmed May 28, staff made revisions in response to the May 4 workshop comments with the exception of replacing “net residential acreage” with “net residential land area.” During revision, it became clear that replacing every instance of “acreage” with “land area” would create as much confusion as it intended to resolve. “Acreage” is by definition an area of land, typically but not necessarily measured in acres. Adding a definition of “acreage” ensures that Kittery measures acreage in acres, and adding a definition of “acre” ensures that there is no confusing an acre with a “builder’s acre.”

**Recommendation**

If the Planning Board is amenable to the proposed amendments along with any revisions they find are warranted, the Board may:

**Move to recommend to Town Council the Town Code Amendments for Title 16 Land Use and Development Code, 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. as written/revise...**

**Town of Kittery  
Planning Board Meeting  
June 25, 2015**

**Title 16.8.11 – Cluster Residential and Cluster Mixed-Use Development**

On May 28, the Planning Board held a joint workshop with the Conservation Commission and Kittery Open Space Advisory Committee (KOSAC) to review the current cluster residential and cluster mixed use development provisions in Title 16.

A very productive discussion yielded many concerns and ideas for solutions. Attached are written comments and suggestions from KOSAC, the Conservation Commission, and Planning Board members David Lincoln, Karen Kalmar, and Mark Alesse.

**Please refer to materials from May 28 meeting.**

We discussed using this meeting time to form a “plan of attack” for amending the codes related to cluster development. Where there are so many ideas for improvement, staff would be helped by prioritizing amendments and coming to consensus on what those amendments should accomplish. See Ms. Kalmar’s comments for a list of specific suggestions.

This is also a good time to consider looking at the standards for cluster *mixed use* development, which is required with few exceptions in the Business Park Zone. The Economic Development Committee has asked questions about what is required of developers in the Business Park, and whether that should change to encourage growth in that area. The Planning Board and EDC have discussed holding a joint workshop—perhaps this is an agenda item. Further, a second workshop on cluster development could invite the perspective of local agents who often prepare subdivision plans in Kittery and surrounding towns.

**MEMO:**

**Re: 5/28/15 Planning Board Workshop on Cluster Subdivision**

**Ideas/Suggestions regarding the Cluster Ordinance from KOSAC (Kittery Open Space Advisory Committee)**

- **Recommend increasing the required minimum Net Residential (Land Suitable for development) figure used to calculate open space from 30% to 50% in the RR-L and RC zones. Consider decreasing this minimum figure for the more populated portions of town (urban & mixed use).**
- **Create an overlay zone for the RR-L & R-C where density is decreased (eg. 1 dwelling unit per 2-4 acres). Allow the first 300' of the property from the road to be exempt from this change.**
- **Open space should be concentrated and consolidated and configured such that it avoids long "fingers" between lots. Siting of the open space should consider opportunities to connect with other open space. Landscape features with high ecological and cultural values should be sited within the open space.**
- **In addition to the Town of Kittery, add qualified nonprofit conservation organizations (eg. Kittery Land Trust) as possible holders of open space.**
- **Require the creation of a baseline document for the reserved and common open space at the time of permitting. This document should include surveys, soils data, photographs and description of the dominant vegetation and ecological and cultural features. These items should be incorporated into the written open space management plan.**



# Town of Kittery, Maine

## *Conservation Commission*

P.O. Box 808, Kittery, Maine 03904

DATE: June 8, 2015

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

FROM: Earldean Wells, Chairman

RE: Cluster Development Ordinance Update

The Kittery Conservation Commission reviewed the notes from the May 28, 2015 Workshop. While we need more time to digest what was reviewed at the Workshop and to review present ordinance language at length during future meetings, we would like to express our interest in continuing to participate in this Ordinance update process.

KCC feels strongly the Ordinance changes need to be written in a way that will guide developers toward developing plans that keep structures to the front of the property along the town road to reduce the road/driveway lengths within the development; limit the number of driveways to reduce the amount of impervious surfaces; preserve un-fragmented open space behind the structures; while keeping in mind the need to preserve Kittery's scenic road ways as described in the Comprehensive Plan. The language should make it clear how a Cluster Subdivision should look in the town of Kittery and that it is the intent of the ordinance that these expectations will be met.

Developers should be guided toward preserving and protecting Kittery's natural resources (shoreland, wetlands, vernal pools, wooded areas, outcroppings and other areas) using language that is clear from the onset that the intent is to allow development while protecting the environment. New single and multi-family septic systems must be safe for the environment, must be properly maintained, and all leach fields must be located near the structures they are connected to so that they are easily monitored for proper functioning. Stormwater systems must be properly maintained and monitored for proper functioning.

**From:** [Chris DiMatteo](#)  
**To:** [Elena Piekut](#)  
**Subject:** FW: OPEN SPACE vs DEVELOPMENT  
**Date:** Monday, June 01, 2015 7:41:17 AM

---

FYI

---

**From:** David Lincoln [mailto:dlincoln307@comcast.net]  
**Sent:** Friday, May 29, 2015 7:47 AM  
**To:** bob harris; Dave Lincoln; deb driscoll; mark.alesse@gmail.com; pbchair; those7@comcast.net  
**Cc:** Chris DiMatteo  
**Subject:** OPEN SPACE vs DEVELOPMENT

Fellow Members ... I found the workshop last night interesting..in that the conversation was about details, but I never really understood the **big picture**.

What would be helpful to me would be :

a/ a summary of what **sub-divisions exist NOW** ... what amount of land they consume..and how many lots are permitted

b, it would be illuminating to see how the above **listing breaks down between** REGULAR "subs" and clusters

c/ finally..plotting **these on a map**, would show where the land has been allotted

It comes to me that me **that mobile home and trailer parks** are relatively small consumers of land area..

d/ where are these and how many lots in each

This data would give me, and maybe the rest of the Board a common base of reference.

That would allow us to consider various proposals for ordinance change.

For those of you with P/B longevity : **Has the Town defined just how much open space it wants to maintain..and where that space should be ?**

D . Lincoln

## IMPROVING CLUSTER DEVELOPMENT (Karen)

### Urgent and easy

Require the applicant to visually illustrate a conventional subdivision to determine its actual yield on the subject parcel. Allow a 'bonus' for an additional number (or percentage) of houses above the conventional yield for a cluster subdivision.

Revise 16.8.11.3 Dimension Standards Modifications to reflect the limitations imposed by State law. "Dimensional standards means and is limited to lot size, lot coverage, frontage and setback requirements." (M RSA 30-A §4353 4-C and M RSA 30-A §4301).

Cluster Residential and Cluster Mixed-Use Ordinance (16.8.11)

- 16.8.11.6. Standards, E. Open Space #1. **Make this two items.** The gross *volume* of required open space should be separated from the requirement for the *composition* of that space. The Kittery Open Space Comm. (KOSC) suggests the composition of open space should include at least 50% of a parcel's upland area.
- Revise 16.8.11.1 Purpose, B. to include preservation of ***contiguous, unfragmented*** open space and creation of recreation areas.
- Define *contiguous and unfragmented open space* in 16.2.2. List criteria (minimum linear feet in any direction, minimum sf, other?) so that it can be enforced fairly.
- Revise 16.8.11.1. Purpose, C. to include: ***preserving backlots beyond (?)feet from the public roadway and buffering scenic roads.*** (KOSC/KCC recommendation)
- Revise 16.8.11.1 Purpose, D. to include: preserve areas of highest ecological value ***as identified by... (then add appropriate sources... (Beginning with Habitat, other MDEP, KOSC, local conservation organizations,?)***

Change Table 1 for Street Design/Second Access/Secondary Collectors to YES (**delete "can be emergency only"**). This would have the effect of requiring that streets mandated by 16.8.4.2.C (Streets/Layout) be built to proper street standards. There are currently no standards for emergency roads. **There should be a note that states that no emergency roads should be allowed unless required in writing by Kittery emergency services.** If required, there should be Code standards for such roads, suitable to their purpose.

Amend 16.8.11.6.1.4 (Cluster) Standards/Buffering clarify the composition of buffers.

Amend 16.8.11.6.1.5 (Cluster) Standards/Development Setbacks to clarify that where setbacks overlap the most restrictive applies.

Amend 16.8.20 currently Subdivision noise Pollution Buffer to include subdivision

buffers along scenic road frontage and property perimeters. (KOSC/KCC)

## **LONG RANGE**

Individualize requirements and standards for subdivisions depending on the zone in which they will be built.

Utilize GrowSmart Maine's density formula in rural zones.

16.7.6. Recreational Land Allocation. Three spaces 16.7.6.1. Size, 16.7.6.2 Character and Configuration and 16.7.6.3 Waterfront Inclusion are all "reserved for future use" in the LUDC. These may be useful for defining and requiring areas specified in 16.8.11.1.C Cluster Residential... Purpose.

TO: Planning Board  
FROM: Mark Alesse  
RE: Workshop on Cluster Residential and Cluster Mixed-Use Development

Below are the actions that were recommended at the workshop on sub-division development, which I put together from Elana's comprehensive minutes of the meeting. I think this condensed format makes follow up easier for both the staff and the PB.

1. **Decide on the intention of the waterfront access provision.** Is it active recreation or conservation?
2. **Create a standard of maintaining existing vegetation** where possible. That was a goal of Lewis Farm. The wetlands are an easy one to use across the parcel. Some towns require a buffer around the whole parcel.
3. **Wetlands should be treated differently** than a water body for recreation.
4. **Water access for recreation should require that there is one communal dock**, not many individual ones, so that recreation is clustered too.
5. **Ban motorized boats where there's mud at low tide?**
6. **Contiguous open spaces should be the goal, so as to create a habitat and water resource protection, not islands of open space.**
7. **Require open space and special features be identified before the subdivision layout** is designed. Preserve in common the land with the greatest ecological and cultural value. Application procedures should spell out a methods to approach this.
8. **Draft an ordinance that names Kittery Land Trust (or other land trusts) as possible holder of open space.** This could include a funding mechanism from the town or the developers.
9. **Require the development to be designed with the proposed holder of the open space.**
10. **Subdivision common land should not be required to be open to the public.** Though this should be site specific.
11. **Active recreation areas should be accommodated** along with conservation.
12. **Create an inventory of all current open spaces and potential preserved open spaces** for the Code Enforcement Office, which contains GPS coordinates, pictures and existing conditions at time of permitting, so that encroachments can be identified. There should be a fee to cover the Code Enforcement time.
13. **Draft a proposal for setting a fine per violation** of protection of open spaces.
14. **Open space should be posted.**

15. **Strengthen the language required in the management plan** making it clear how it will be managed and by who, how it will be funded, and put it in homeowner's association covenants.
16. **Draft a proposal to design/fund and install permanent signage** to delineate open space.
17. **Require that stormwater buffers be demarcated by developers.** An individual homeowner can own a DEP buffer and in many cases they do so those are very important to understand. Snow shouldn't be stored on those.
18. **Draft a proposal to fund third party inspections of open spaces.** It's in the ordinance now. There's supposed to be an annual report to the town.
19. **Propose an increase of net residential acreage included in the open space from 30% to 50% in rural zones.** Where there is no sewer, cluster subdivision allows the lot size to be cut down by half (from 40,000sf to 20,000sf) so half of the net residential acreage can be saved. In the Suburban Zone and Mixed Use Zone, 50% is not necessary. These are areas where we want to infill and there is the infrastructure to support public safety with water and sewer.
20. **Revision of road length, emergency roads, and through-roads.** The code is so vague that emergency roads have only been used to circumvent road length limitations. Emergency roads be specifically limited to emergency services only. It's now codified that the intent is to have dead-end roads in residential areas. However, we need thoroughfares to get you from point A to point B, because when you have all dead ends the existing thoroughfares can't sustain the growth. Having streets that are connected disperses traffic. However, people will use through roads as a short-cut—Love Lane is a racetrack.
21. **Discuss the pros and cons of keeping development concentrated near roads** and infrastructure, consider an overlay zone in the first 300 to 500 feet from the road in rural areas where houses will be clustered, and beyond that require much less density (Wilson/KOSAC). This would result in losing the experience of a roadway as rural. Consider this especially with scenic byways like Rt. 103. Consider a limit on how far roads can penetrate into a site, say 500 feet. Do we allow development 500 feet in but preserve the 100 feet closest to the road? Should consider shared driveways and "stacked lots" to prevent eating up road frontage.
30. **Consider reducing the minimum land area per dwelling unit in the Suburban Zone,** where sewer service is expanding.
31. **Support the concept of maximum lot size and maximum density** presented by GrowSmart Maine, being used in in Cape Elizabeth. *[Note: this supports the recommendation to increase from 30% to 50% the net residential acreage included in the preserved open space. In every case except the Suburban Zone, the theoretical developer was left with more net residential land area than needed to meet the 20,000sf minimum lot size.]*
32. **Consider the requirement of comparing conventional sub-division density to cluster sub-division.**

**33. Consider allowing greater density based on historic preservation, affordable housing, and public access.** Effingham, NH encourages putting more land in open space by offering a bonus of more lots. We have something like this in the Mixed Use Zone.

**Town of Kittery  
Planning Board Meeting  
June 25, 2015**

**Kittery Neighborhood Bicycle & Pedestrian Planning - UPDATE**

KACTS and the Town of Kittery are working together on a bike/ped planning effort funded by KACTS. KACTS is the Metropolitan Planning Organization for this area, tasked with planning and programming federally funded transportation projects in Kittery, York, Eliot, South Berwick, Berwick, and Lebanon. Engineering and surveying firm Sebago Technics was hired as the consultant for the project and will be working further with Alta PLANNING + DESIGN, a firm that specializes in this area.

These groups, with involvement from the Town, identified a study area focused on the Route 1 Bypass, from Memorial Circle to the Sarah Long Bridge. A public workshop was held April 23 as an opportunity for all to provide input on the future transformation of the Bypass, i.e. number of vehicle lanes, sidewalks, landscaping, bike lanes, etc. in light of the new bridge. It was a very productive discussion and we have made progress since then as described below.

**Project Tracking**

REQ'D	ACTION	COMMENTS	STATUS
	Report to Board	1/21/15 progress report	PROVIDED
	Public Meeting #1	Held 4/23/15	HELD
	Public Meeting #2	TBD – Schedule for July 23 or August 27	

**Update**

See two attachments:

- 1) Memo from Sebago Technics on the small group meeting held in May (note: SUP is an acronym for shared-use path)
- 2) Comments from Jim Tasse of the Bicycle Coalition of Maine regarding signage and education, in response to Planning Board member Mark Alesse’s concerns about bike/ped safety townwide.

**Recommendation / Board Action**

The original intent was to complete the KACTS study by midsummer. At Chair Grinnell’s request, we asked for an extension to allow for more Board participation and time for consideration of this long-term guiding document. We were granted an extension to the fall—now the Board must consider how much meeting time to dedicate to this plan and when to hold a second public workshop. We suggest July 23; August 27 if the Board requires a session with the forthcoming materials from Sebago Technics prior to the public workshop.

In response to Mark’s concerns about safety and signage, the Board should review information provided by Jim Tasse. Perhaps with the current momentum around bike/ped planning, and the Bike Maine event coming up in September, it’s a good time for Kittery to host a presentation as Jim suggests. We recommend that if the Board would like to advocate for signage, that it be chosen from the MUTCD compliant signs. Staff will have to consult with the Department of Public Works to determine feasibility of cost and locations.

## *Memorandum*

14375

**To: Christopher DiMatteo**

**From: Steve Sawyer**

**Date: June 16, 2015**

**Subject: Summary of Planning Workshop Held May 26, 2015  
Pedestrian and Bicycle Neighborhood Plan**

**CC: Myranda McGowan**

---

A planning workshop was held at the Kittery Town Hall on May 26, 2015 with the following in attendance:

Phil Goff – Alta Planning + Design  
Steve Workman – Kittery  
Patrick Adams – MaineDOT  
Myranda McGowan – KACTS  
Norm Albert – Kittery  
Jim Tasse – BCM  
Chris DiMatteo – Kittery  
Brad Lyon – Sebago Technics  
Steve Sawyer – Sebago Technics

Sebago presented a 3-lane concept plan for the Route 1 Bypass to begin the conversation. After much discussion about alternatives and the need for and accommodation of pedestrians, the group settled on carrying three (3) alternatives forward for the Planning Board's consideration. These are:

**Option 1** - A three (3) lane option with 11' travel lanes and a 12' wide center turn lane, 5' wide bike lanes and a 3' buffer with a 10' wide SUP on the east (NB) side of the Bypass and a 10' green esplanade separating the bike lane and SUP. Total width equals 70'.

**Option 2** - A five (5) lane option with 5' bike lanes, and a 3' buffer. Travel lanes would be 11' and center turn lane 12'. Total width equals 72' with no sidewalks. Add a sidewalk or pedestrian shoulder on one side.

**Option 3** - A three (3) lane option with 11' travel lanes and a 12' wide center turn lane, 3' buffers, 5' bike lanes, and a 4' flush pedestrian path. Total width equals 58'.

## Other considerations –

- All options should show crosswalks between the gym and hotel - two
- Remove the raised median replace it with a flush painted island
- Remove the raised green median at the Gorges Street intersection – make flush
- Add possible connection from the Bypass down to Dennett Road
- Eliminate the bike boxes at the Bridge Street intersection
- Route SB bikes off the Bypass at Bridge Street through Oak Terrace rather than having them make left turns onto Bridge Street with the vehicles – signage required
- Provide dashed skip lines through the Bridge Street intersection for the bike lane NB
- Provide full width bike and travel lane NB at Bridge Street intersection rather than a shared bike and RT lane – if we use a shared bike lane/RT lane then paint the bike portion green
- DOT and Town were discussing changing the maintenance responsibility of the Bypass from the State to the Town and this did not happen
- There was a question as to who owned the RR underpass? – Maybe it should just be demolished and turned into a fill – less to maintain. DOT will check whether there would ever be a need in the future for extending rail service using this structure
- Centerline rumble strips should be considered for use in the corridor
- Ed Hanscom in DOT's Planning Group is reviewing the 3 lane option and is not opposed to it at this time according to Patrick Adams
- We need to keep in mind that pedestrians are supposed to walk against traffic if they are in the roadway
- We should examine the existing lighting in the corridor if we are planning pedestrian facilities – this would not be a requirement, but it is a best practice
- Check the length of the RT lane at the truck stop to see if it could be shortened
- Will there be a weight limit on the SML – 80K vs. 100K?
- Bike tourism is a growing interest in the area. The Bypass is one entry into Maine
- Chris will check the agenda for the June 25 PB meeting to see if this project could be discussed again. If not, then July 23<sup>rd</sup>.
- The group agreed that the best strategy would be for the Town to select the option they like first and then go to DOT for approval.
- Jim Tasse likes both Options 1 and 3

- Sebago should generate a Pro's and Con's matrix to accompany the 3 drawn up options for the PB – use a scoring of 1 to 5 for each element within the matrix

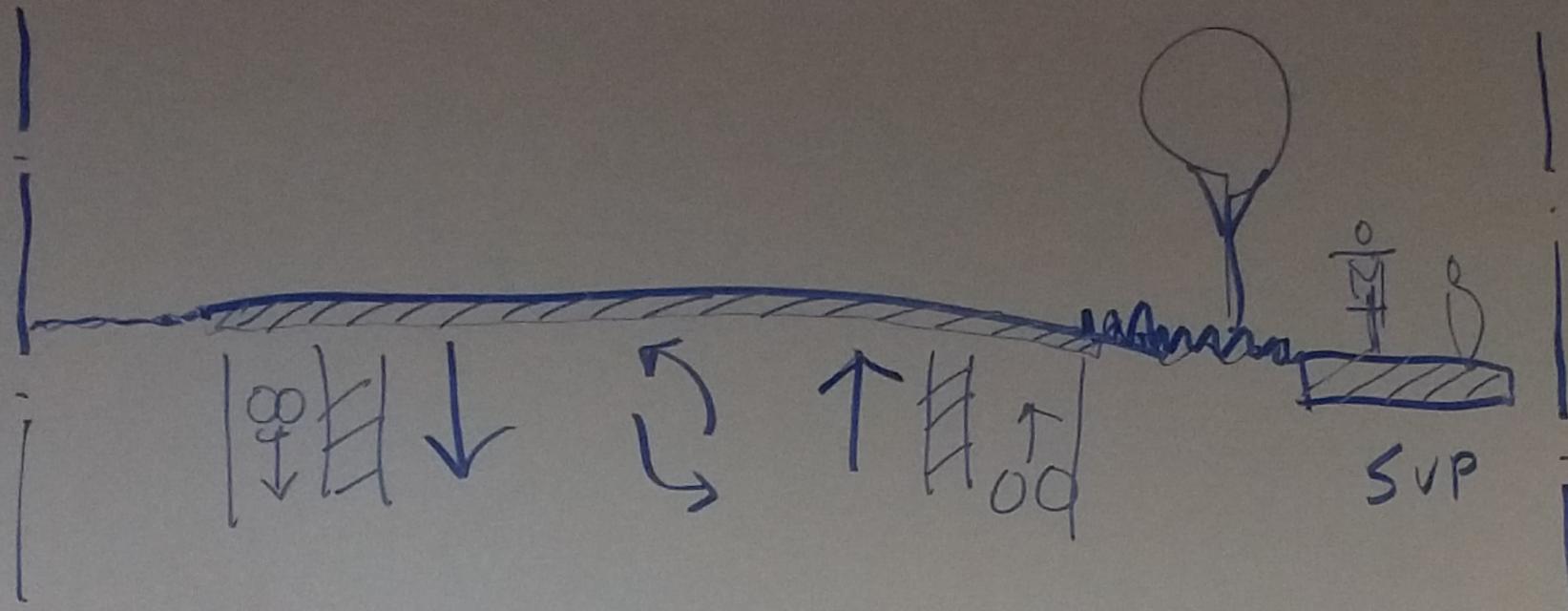
After the meeting Sebago went into the field to take some cross sectional measurements. These were as follows:

Total width edge of pavement to edge of pavement equals 68' at Coastal Fitness. Travel lanes and center turn lane are 11' wide currently

The RR underpass (SB exposed side of tunnel) – 11' lanes with total width 25' (1'-11'-11'-2' plus 2' median plus 2'-11'-11'-7' on NB side).

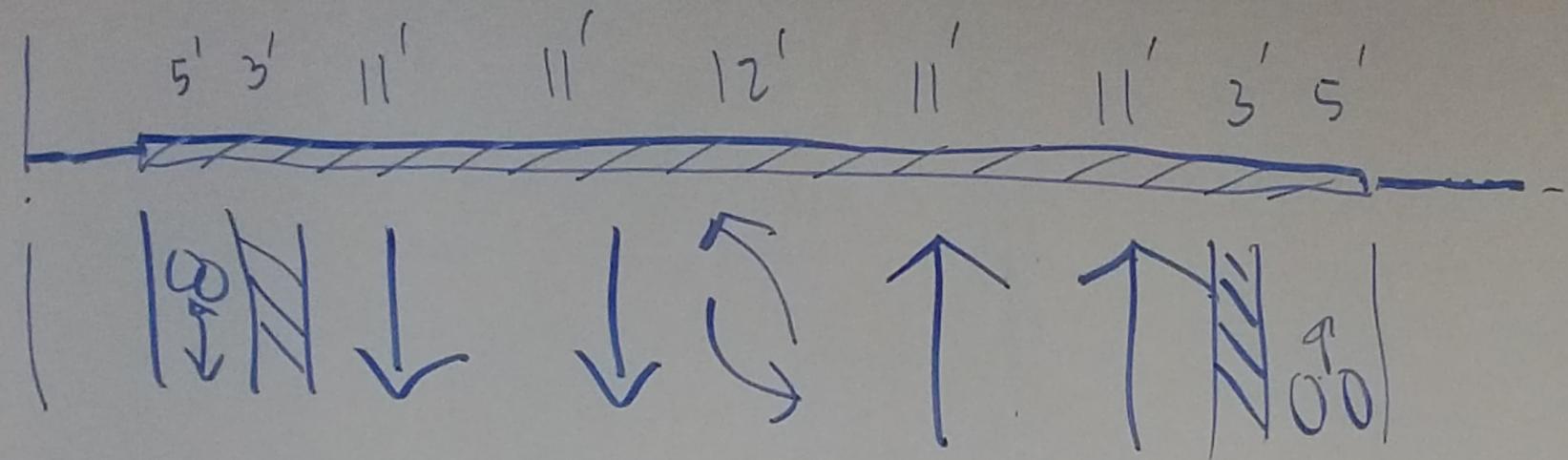
The RR underpass (NB exposed side of tunnel) – 2' median shoulder- 11'-11'-5' shoulder

①



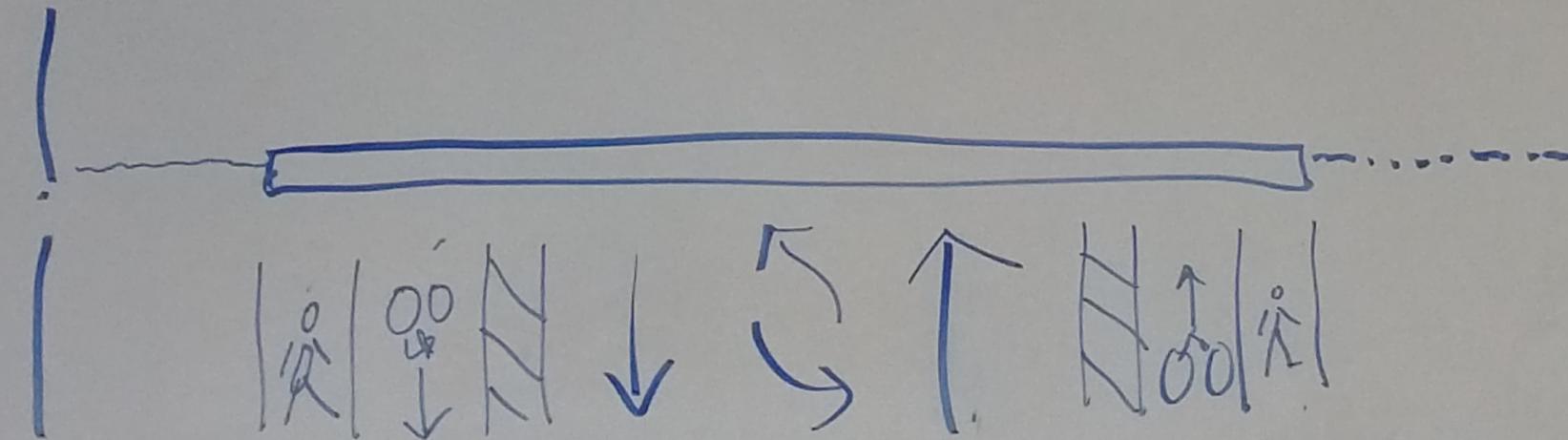
$$= 50' + 10' \text{ SUP}$$

②



$$= 71'$$

③



$$= 58'$$

**From:** [Jim Tasse](#)  
**To:** [Elena Piekut](#)  
**Cc:** [Abby King](#); [Chris DiMatteo](#); [Kim True](#)  
**Subject:** Re: FW: Safe biking/walking Signage  
**Date:** Tuesday, June 16, 2015 3:21:11 PM  
**Attachments:** [Signs for Maine Roads—all MUTCD compliant.docx](#)

---

Hi Elena:

With respect to roadway signage, we like the standardized signs that are presented in the Manual of Uniform Traffic Control Devices, which provides guidance for signage on any and all roads. I've attached a document that includes the signs that would address the issues you mention in your email. Happy to chat on this further.

You will note that I'm NOT recommending the Share the Road sign, as that sign sends an ambiguous message that is sometimes used by aggressive motorists who feel bicycles should not be in travel lanes--for them, "sharing" is bikes out of the way all the time. The Share the Road sign has been discontinued in Maryland, and bike advocates across the country tell similar tales of how this sign works against bicycle riders, when the usual intent is for the MOTORISTS to get the message to share the road. This is why the new MaineDOT sign spells out a specific operational responsibility. We feel it is much better than the Share the Road sign.

Signs are great because they do provide "point of use" education, but they can also contribute to a road environment that is confusing if there are too many of them. For this reason, we do recommend that signage be accompanied by education, which can take many forms. The BCM has resources that say all the same things as the flier you sent from Michigan, and we are happy to set you up with a couple hundred to share with residents. PSAs and other media approaches are also helpful, and perhaps even a bike safety forum in town would be an effective way to reach out to walkers and bicyclists.

The BCM also offers presentations on bike/ped safety for schools, clubs, worksites, community organizations etc--our "bread and butter" presentation is a 30-60min talk on the basics of bike/ped safety and operational best practices. We present this info to about 15,000 Mainers every year, and I have instructors in the Kittery region.

Hope this all helps some, please let me know if you need additional assistance. Happy to chat on this more.

Regards,

Jim

--

**James C. Tassé**  
**Bicycle Coalition of Maine**

**Maine Bicycle and Pedestrian Safety Program**  
*A Partnership of the Maine Department of Transportation  
and the Bicycle Coalition of Maine*

Signs for Maine Roads—all MUTCD compliant.

1. New Maine DOT Three foot sign 30x30 or 24x24"



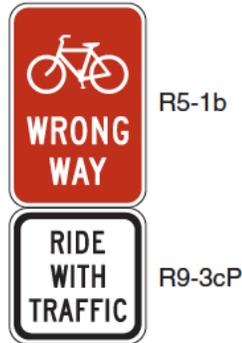
2. Bikes may use full lane, often used with Shared Lane Marking on pavement



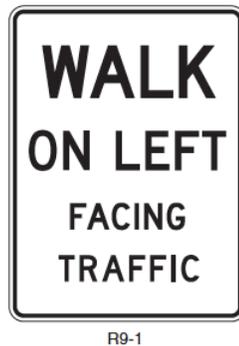
3. Pedestrians Present W11-2
4. Bicycles Present W11-1
5. Both Present W11-15



6. Bicycles Ride with Traffic (put on left side of road behind existing signage)



7. Walk Against Traffic (Note that Maine State Law requires this “when practicable”; the duty to pass them with a minimum of 3 ft applies wherever the pedestrian is)



8. A sampler of other Pedestrian Signs

Figure 2B-26. Pedestrian Signs and Plaques (Sheet 1 of 2)



**Town of Kittery  
Planning Board Meeting  
Meeting June 25, 2015**

**ITEM 5**

**Town Code Amendment – 16.9.1.3 Prevention of Erosion; 16.2.2 Definitions**

Action: review amendment and schedule a public hearing. The proposed amendment allows the Town to take enforcement actions related to the contractor certification requirements of 38 M.R.S.A. Section 439-B Contractors certified in erosion control.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
NO	Workshop		N/A
YES	Initial Planning Board Meeting	Scheduled by Staff 6/25/2015	
YES	Public Hearing (special notice requirements)	Recommended for 7/23/2015	
YES	Review/Approval/ Recommendation to Town Council	Recommended for 7/23/2015	

**Background**

Due to the high rate of erosion that occurs at areas disturbed by construction, the use of effective erosion control practices is critical to protecting the quality of Kittery's waters. Several contractors have recently been cited for improper or inadequate erosion and sedimentation control measures, indicating a need for greater awareness, education and enforcement to protect Kittery's vital shoreland resources.

The State of Maine enacted 38 M.R.S.A. Section 439-B Contractors certified in erosion control in 2007 with the certification requirement taking full effect on January 1, 2013. Contractors state-wide were made aware of the requirement and numerous training sessions were held each year all over the State over the six years they were given to become certified. The Maine Department of Environmental Protection (MDEP) has zero tolerance for uncertified contractors to be performing excavation within the shoreland zone.

Mike Morse, MDEP Assistant Shoreland Zoning Coordinator has explained that while it is a requirement for a certified contractor to be present on site, it is the municipality, not the State, that enforces the requirement through an adopted local ordinance. Adopting the certified contractor ordinance will bring the Town of Kittery into compliance with MDEP regulation and will ensure greater protection of natural resources.

For initial certification, the contractor must attend one 8-hour training course held by MDEP and the successful completion of a construction site evaluation. Construction site evaluations will be completed during the construction season by York County Soil and Water Conservation District personnel. Certifications are valid until December 31<sup>st</sup> of the third year after issuance. To maintain certification, a minimum of one 4-hour continuing education course within every three-year period thereafter will be required. Certification and continuing education courses are offered by MDEP on an annual basis at several locations throughout the state. MDEP will provide the initial training to local contractors here in Kittery if there are a minimum of 15 attendees.

**Review**

Attached for the Board's consideration is an amendment that describes when an excavation contractor is required to be certified in erosion control practices by MDEP, when the requirement will take effect, and who is exempt from this requirement. In addition, some minor changes were made to the Article to reflect the 2015 update of the 2003 Best Management Practices manual, retitled to *Maine Erosion and Sediment*

*Control Practices Field Guide for Contractors.* A definition for an excavation contractor based on the DEP's suggestion was also added to Title 16.2.2 Definitions for clarification.

### **Recommendation**

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

**...move to schedule a public hearing for Town Code Amendment, Title 16.9.1.3 Prevention of Erosion and Title 16.2.2 Definitions on July 23, 2015.**

---

## **Code Amendment**

### **16.9.1.3 Prevention of Erosion.**

A. No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the Town. This does not affect any extractive operations complying with the standards of performance specified elsewhere in this Code.

1. When an excavation contractor as defined in 16.2.2 performs an activity that requires or results in more than one (1) cubic yard of soil disturbance, the person responsible for management of erosion and sedimentation control practices on site must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently stabilized with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. Excavation contractors will have one (1) year from the date of the adoption of this subsection to comply with certification requirements.

2. The above requirement of 16.9.1.3.A.1 does not apply to a property owner performing work themselves, or a person or firm engaged in agriculture or timber harvesting when best management practices for erosion and sedimentation control are used; or municipal, state and federal employees engaged in projects.

B. All development must generally comply with the provisions of the "Environmental Quality Handbook Erosion and Sediment Control" published by the Maine Soil and Water Conservation Commission. Special consideration will be given to the following:

1. Select a site with the right soil properties, including natural drainage and topography, for the intended use;

2. Utilize for open space uses those areas with soil unsuitable for construction;

- 33
- 34 3. Preserve trees and other vegetation wherever possible;
- 35
- 36 4. Hold lot grading to a minimum by fitting the development to the natural contour of the land, avoid
- 37 substantial areas of excessive grade;
- 38
- 39 5. Spread jute matting, straw or other suitable material during construction in critical areas subject to
- 40 erosion;
- 41
- 42 6. Construct sediment basins to trap sediment from runoff waters during development. Expose as small an
- 43 area of subsoil as possible at any one time during development and for as short a period as possible;
- 44
- 45 7. Provide for disposing of increased runoff caused by changed land formation, paving and construction,
- 46 and for avoiding sedimentation of runoff channels on or off the site;
- 47
- 48 8. Plant permanent, and where application indigenous, vegetation and install structures as soon as possible
- 49 for the purpose of soil stabilization and revegetation;
- 50
- 51 9. All logging or woodlot roads must be located, constructed and maintained in conformance with the
- 52 erosion prevention provisions of “Permanent Logging Roads for Better Woodlot Management”, published
- 53 by the U.S. Department of Agriculture.
- 54
- 55 C. Where the Board has required a stormwater management and erosion control plan, said plan shall be
- 56 endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town’s
- 57 Engineering peer reviewer. (Ordained 9/26/11; effective 10/27/11)
- 58
- 59 D. All activities which involve filling, grading, excavation or other similar activities that potentially may
- 60 result in unstable soil conditions, and which require a permit, must be made known in a written soil
- 61 erosion and sedimentation control plan in accordance with the “Maine Erosion ~~&and~~ Sediment Control
- 62 ~~Best Management Practices (BMPs)~~ Field Guide for Contractors”, ~~March 2003~~ 2015 and as amended. The
- 63 plan must be submitted to the permitting authority for approval and must include, where applicable,
- 64 provisions for:
- 65
- 66 1. mulching and re-vegetation of disturbed soil;
- 67
- 68 2. temporary runoff control features such as ~~hay~~ straw bales, silt fencing, filter socks or diversion ditches;
- 69
- 70 3. permanent stabilization structures such as retaining walls or riprap.
- 71
- 72 E. To create the least potential for erosion, development must be designed to fit with the topography and
- 73 soil of the site. Areas of steep slopes where high cuts and fills may be required are to be avoided wherever
- 74 possible, and natural contours must be followed as closely as possible.
- 75

76 F. Erosion and sedimentation control measures apply to all aspects of the proposed project involving land  
77 disturbance, and must be in operation during all stages of the activity. The amount of exposed soil at  
78 every phase of construction must be minimized to reduce the potential for erosion.

79  
80 G. Any exposed ground area must be temporarily or permanently stabilized in accordance with the  
81 ““Maine Erosion ~~&and~~ Sediment Control Best Management Practices (BMPs) Field Guide for  
82 Contractors”, ~~March 2003~~ 2015 and as amended.

83  
84 H. Natural and man-made drainage ways and drainage outlets must be protected from erosion from water  
85 flowing through them. Drainage ways must be designed and constructed in order to carry water from a  
86 twenty five (25) year storm or greater, and be stabilized with vegetation or lined with riprap.

87  
88

---

89  
90 **16.2.2 Definitions.**

91 As used in this title:

92  
93 **Contiguous lots** means lots which adjoin at any line or point, or are separated at any point by a body of  
94 water less than fifteen (15) feet wide.

95  
96 **Contractor, excavation** means a person engaged in the action or process of excavating, or creating a  
97 cavity in the earth by means of cutting, digging or scooping. This excludes municipal, State and federal  
98 employees conducting work associated with their employment; timber harvesters conducting timber  
99 harvests; farmers conducting agriculture activities; or property owners performing work themselves.

100  
101 **Convalescent care facility** means a facility that is licensed by the State of Maine to provide nursing care  
102 to persons during periods of recovery or rehabilitation. The facility provides nursing care and related  
103 rehabilitation services. The facility does not provide hospital services except as incidental to the delivery  
104 of nursing care. A convalescent care facility does not include any facility that is defined as an eldercare  
105 facility.