



KITTERY TOWN PLANNING BOARD MEETING

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

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

AGENDA for Thursday, July 23, 2015

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

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – 7/9/2015

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.

PUBLIC HEARING/OLD BUSINESS

ITEM 1 – Town Code Amendments – 16.7.8 Land Not Suitable for Development; 16.8.7 Sewer System and Septic Disposal; 16.8.11.5 Application Procedure; 16.8.16 Lots; 16.9.1.4 Soil Suitability; 16.2.2 Definitions; and associated zones in 16.3.2.

Action: review amendment, hold a public hearing, and make recommendation to Town Council. The proposed amendments: 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 2 – Town Code Amendment – 16.9.1.3 Prevention of Erosion; 16.2.2 Definitions

Action: review amendment, hold a public hearing, and make recommendation to Town Council. 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.

OLD BUSINESS

ITEM 3 – Kittery Neighborhood Bicycle/Pedestrian Planning

No formal action. The Kittery Area Comprehensive Transportation System (KACTS) and the Town of Kittery are working together, with consultants Sebago Technics and Alta Planning + Design, to study the Route 1 Bypass from Memorial Circle to the Sarah Mildred Long Bridge and develop a long-term vision for improving bicycle and pedestrian safety. This is an opportunity for the Board to review and discuss the options developed thus far, prior to a public workshop with other stakeholders.

NEW BUSINESS

ITEM 4 – Kittery Foreside Demolition Moratorium Request

No formal action. A number of residents presented a proposal for a moratorium on demolition of buildings in the Kittery Foreside area.

ITEM 5 – Kittery Economic Development Committee Discussion

No formal action. The Economic Development Committee has been invited to discuss its work with the Planning Board and how the two groups can better collaborate. The EDC is also invited to provide comment on the bicycle/pedestrian planning effort.

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.

ITEM 6 – Board Member Items / Discussion

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

ITEM 7 – Town Planner Items:

- A.TBD

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**

UNAPPROVED
July 9, 2015

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

6 Board members present: Vice Chair Karen Kalmar, Mark Alesse, Robert Harris, David Lincoln,
7 Deborah Lynch.

8 Members absent: Chair Ann Grinnell, Secretary Deborah Driscoll Davis.

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

10
11 Pledge of Allegiance

12
13 Minutes: June 25, 2015

14 **Mr. Alesse moved to approve the minutes of June 25, 2015 as written.**

15 **Mr. Lincoln seconded.**

16 **Motion carried: 5-0-0**

17
18 Minutes: June 30, 2015 Site Walk

19 Mr. Alesse noted that the minutes did not include the address of the site walk.

20 **Mr. Alesse moved to approve the minutes of June 30, 2015 as amended.**

21 **Mr. Lincoln seconded.**

22 **Motion carried: 5-0-0**

23
24 Public Comment: Ms. Kalmar provided an opportunity for public comment. No members of the
25 public presented comment.

26
27 **Item 1 – 42 State Road Mixed Use Development – Preliminary/Final Site Plan Review**

28 Action: hold a public hearing; approve or deny plan. Owner/applicant Aaron Henderson, HGC, LLC
29 requests consideration of plans for a mixed use development consisting of three (3) commercial office
30 units and five (5) residential units at 42 State Road (Tax Map 3, Lots 5, 6, and 7) in the Business – Local
31 1 (B-L1) Zone. Agent is Jeff Clifford, Altus Engineering, Inc.

32
33 Agent Jeff Clifford provided an overview of the project, including the following points:

- 34 • The three existing lots will be combined and existing buildings will be demolished
- 35 • The proposed structure will be three stories, 15,660 square feet, and contain three commercial and
36 five residential units
- 37 • Parking was a key consideration in the design and the required number of spaces have been
38 provided
- 39 • There is an entrance on Love Lane and an entrance on State Road, but no exit will be permitted
40 onto Love Lane
- 41 • Stormwater treatment is accomplished with pervious pavers in the upper lot and underground
42 storage, all of which flows into the State-owned system and across State Road into the wetland
- 43 • The applicant requests three waivers: regarding parking islands, street trees, and erosion and
44 sedimentation design review

45
46 Mr. Clifford also responded to comments made by staff and peer reviewer CMA Engineers to resolve
47 remaining concerns.

48
49 Ms. Kalmar opened the public hearing.

50

51 Earldean Wells, Conservation Commission Chair, asked for clarification about the use of concrete or
52 grass in front of the building. Mr. Di Matteo explained that the change from the plan presented is to use
53 concrete around the seating area rather than grass.

54
55 Ms. Wells also asked whether snow will be stored on site or removed. Mr. Clifford said that they
56 anticipate removing snow from the site and will add a note to that effect.

57
58 Ms. Kalmar closed the public hearing.

59
60 **Mr. Alesse moved to grant conditional preliminary and final Site Plan approval for Aaron**
61 **Henderson, HGC, LLC’s proposed mixed residential/commercial development at 42 State Road,**
62 **Tax Map 3, Lots 5, 6, and 7 in the Business – Local 1 (B-L1) Zone.**

63 **Mr. Harris seconded.**

64
65 Ms. Kalmar asked the applicant to consider using a “Not an Exit” sign at Love Lane rather than “Do Not
66 Enter” as proposed. Mr. Di Matteo added that the “no parking” sign should read “No Parking Here to
67 Corner” and be placed at the Love Lane entrance.

68
69 Mr. Di Matteo also asked the Board to include conditions of approval that the Maine Department of
70 Transportation approve the proposed improvements within the right-of-way and that design of the
71 retaining wall, if needed, be submitted to the Town for peer review.

72
73 **Motion carried: 5-0-0**

74
75 Ms. Kalmar read the findings of fact.

76
77 **KITTERY PLANNING BOARD**
78 **FINDINGS OF FACT -**
79 **for**
80 **42 State Road**
81 **Mixed Use Development**

APPROVED

82
83 Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the
84 Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and
85 required by the Planning Board.

86
87 **WHEREAS:** Aaron Henderson, HGC, LLC, owner and applicant requested approval for a mixed use
88 site development consisting of three (3) commercial office units and five (5) single-family residential
89 units at 42 State Road, Tax Map 3, Lots 5, 6, and 7 in the Business – Local 1 (B-L1) Zone.

90
91 Hereinafter the “Development”.

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

92

Sketch Plan Review	Held, not complete	5/8/14
Site Visit	Held	5/22/14
Site Visit	Held	2/4/15
Sketch Plan Review	Held, approved	2/12/15
Preliminary Plan Review	Held, accepted	6/11/15

Public Hearing	Held	7/9/15
Preliminary/Final Plan Approval	Approved	7/9/15

93

and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”).

1. Subdivision Review Application and Drainage Analysis, Altus Engineering, received May 21, 2015
2. Existing Conditions Plan, North Easterly Surveying, November 12, 2014.
3. Site Preparation Plan, Site Plan, Grading Plan, Utility Plan, Landscape Plan, Site Lighting Photometric Analysis, Erosion Control Notes, Detail Sheets, Architectural Drawings, Altus Engineering, received May 21, 2015, with a revision date of 7/2/2015
4. Lot Plan, Altus Engineering, November 11, 2014.
5. Site Plan, Altus Engineering, January 28, 2015.

94

<p>NOW THEREFORE, based on the entire record before the Planning Board as presented and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:</p>
<p>FINDINGS OF FACT</p> <p>Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:</p>
<p>A. Development Conforms to Local Ordinances.</p>
<p><i>The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.</i></p>
<p>The site consists of three existing, nonconforming lots of record that will be combined to create one conforming lot of 26,220 square feet where a minimum of 20,000 square feet is required in the Business – Local 1 Zone. The proposed uses of offices and dwellings/apartments are permitted uses in the zone.</p>
<p>The proposed Development appears to conform to Title 16. The Board finds this standard has been met.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>B. Freshwater Wetlands Identified.</p>
<p><i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i></p>
<p>None have been identified. The Board finds this standard is not applicable.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>C. River, Stream or Brook Identified.</p>
<p><i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same</i></p>

<i>meaning as in 38 M.R.S. §480-B, Subsection 9.</i>
None have been identified. The Board finds this standard is not applicable..
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient.
<i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
The Kittery Water District provided a letter of evaluation verifying its capacity to supply water to the proposed project. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
E. Municipal Water Supply Available.
<i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
The proposed development will not cause an unreasonable burden on the municipal water supply currently servicing the property. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
F. Sewage Disposal Adequate.
<i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
The Kittery Sewer Department Superintendent has provided a letter verifying capacity to accept 2400 gallons per day of wastewater. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available.
<i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
The proposed development accommodates a dumpster. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected.
<i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
The development is not within 250 feet of any wetland. The Board finds this standard is not applicable.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
I. Groundwater Protected.

<p><i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i></p>
<p>The site is serviced by public sewer. The Board finds this standard is not applicable.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>J. Flood Areas Identified and Development Conditioned.</p>
<p><i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency’s Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i></p>
<p>The property is not located within a flood prone area. The Board finds this standard is not applicable.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>K. Stormwater Managed.</p>
<p><i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i></p>
<p>CMA: The applicant has prepared a stormwater design and associated analysis and report that is logical and complete, and meets the requirements of the LUDC. The design was prepared by Altus Engineering and reviewed by CMA Engineers.</p>
<p>The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate stormwater management. The Board finds this standard has been met.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>L. Erosion Controlled.</p>
<p><i>The proposed development will not cause unreasonable soil erosion or a reduction in the land’s capacity to hold water so that a dangerous or unhealthy condition results.</i></p>
<p>The Contractor shall follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA engineers will be notified to observe application during construction (see conditions of approval #2).</p>
<p>The proposed development conforms to Title 16.8.8 Surface Drainage and will provide for adequate erosion and sediment control measures on site. The Board finds this standard has been met.</p>
<p style="text-align: center;">Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining</p>
<p>M. Traffic Managed.</p>
<p><i>The proposed development will:</i></p> <ol style="list-style-type: none"><i>1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use</i>

<i>of the highways or public roads existing or proposed; and</i>
2. <i>Provide adequate traffic circulation, both on-site and off-site.</i>
An analysis of the traffic generation and sight distances has been completed, supporting the proposed development
The proposed development conforms to Title 16.8.9 Parking, Loading and Traffic and will provide for adequate traffic circulation. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
N. Water and Air Pollution Minimized.
<i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i>
<ol style="list-style-type: none">1. <i>Elevation of the land above sea level and its relation to the floodplains;</i>2. <i>Nature of soils and sub-soils and their ability to adequately support waste disposal;</i>3. <i>Slope of the land and its effect on effluents;</i>4. <i>Availability of streams for disposal of effluents;</i>5. <i>Applicable state and local health and water resource rules and regulations; and</i>6. <i>Safe transportation, disposal and storage of hazardous materials.</i>
1. The development is located outside of a Flood Hazard Area. 2 thru 6. Not applicable to the proposed development.
It does not appear the proposed development will result in undue water or air pollution The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
O. Aesthetic, Cultural and Natural Values Protected.
<i>The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i>
There is no significant change proposed in the use of the property that would have an undue adverse impact on aesthetic, cultural or natural values.
The property does not include any significant aesthetic, cultural or natural values that require protection. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
P. Developer Financially and Technically Capable.
<i>Developer is financially and technically capable to meet the standards of this section.</i>
The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan. The Board finds this standard has been met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and

the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

96

Waivers: As submitted by the applicant on 7/9/15.

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

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. If it is evident that a retaining wall will need to be constructed, drawings and specifications prepared by a Maine-licensed Professional Engineer must be submitted to the Town's peer-review engineer for their review and approval prior to any related earthwork.
5. Approval by Maine DOT for improvements proposed with the Route 1/State Road right-of-way.
6. All Notices to Applicant contained in the Findings of Fact (dated: July 9, 2015).

Conditions of Approval (Not to be included on the final plan):

7. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation of final Mylar.

97

98 Notices to Applicant: (not to be included on the final plan)

99

- 100 1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with
101 review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and
102 abutter notification.
- 103 2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or
104 variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
- 105 3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and
106 all related state/federal permits or legal documents that may be required, must be submitted to the
107 Town Planning Department. Date of Planning Board approval shall be included on the final plan in
108 the Signature Block.
- 109 4. The owner and/or developer, in an amount and form acceptable to the town manager, must file with
110 the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way
111 improvements and site erosion and stormwater stabilization, including inspection fees for same.
- 112 5. This approval by the Town Planning Board constitutes an agreement between the Town and the
113 Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any
114 Conditions of Approval.

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

115
116 **Vote of 5 in favor 0 against 0 abstaining**
117

118 APPROVED BY THE KITTERY PLANNING BOARD ON July 9, 2015
119

120
121
122

Ann Grinnell, Planning Board Chair
123

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

124
125
126 **Item 2 – 73 Tower Road – Shoreland Development Plan Review**

127 Action: hold a public hearing; approve or deny plan. Owners/applicants Robert & Megan Ramos request
128 consideration of a shoreland development plan to demolish an existing, non-conforming single-family
129 dwelling and construct a new, more conforming single-family dwelling at 73 Tower Road (Tax Map 58,
130 Lot 42) in the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250’), and
131 Resource Protection Overlay (OZ-RP) Zones. Agent is Robert MacDonald, Detail Design Builders, LLC.
132

133 Bob MacDonald presented the proposal and addressed a number of points, including:

- 134 • The proposed structure reduces area and volume within the 100-foot setback from the water
- 135 • It is possible to build the new house outside of all setbacks but factors such as slope, soils and
- 136 septic disposal, ledge, vegetation, and floodplain make it impractical
- 137 • It is not possible to locate the new building within the conforming area and stay out of the
- 138 proposed floodplain
- 139 • The proposal decreases devegetated area

140
141 Ms. Kalmar opened the public hearing.
142

143 Mary Thron of 71 Tower Road, former owner of 73 Tower Road, explained how trees were removed
144 without a permit when she owned the property. She said that she does not believe 40 percent of the
145 volume was removed. The trees were originally planted by a previous owner to obscure an abutter’s view
146 and were damaged by storms and salt spray. She hopes the required planting schedule is sensible and does
147 not further block the abutter’s view.
148

149 Earledean Wells, Conservation Commission Chair expressed concern about erosion on the site and the
150 need for Shoreland Resource Officer Jessa Kellogg to inspect it. Mr. Di Matteo explained that his
151 understanding from the Shoreland Resource Officer was that without evidence that the proposal would
152 worsen the condition, it’s not a priority. However, Ms. Kellogg has been asked to approve a planting plan
153 for the property and may be able to investigate at that time. Ms. Wells said that the standard in question is
154 16.10.10.2.D.2.
155

156 Ms. Kalmar closed the public hearing.
157

158 Mr. Alesse asked that the applicant only be required to plant trees that are appropriate to the site.
159 Mr. Lincoln thinks replanting is an “impractical requirement.”
160

161 Ms. Kalmar asked the Board for consensus on whether the house is sited to meet the setback to the
162 “greatest practical extent.” All present agreed that the proposed site is the most practical.

163
164 **Mr. Linclon moved to approve with conditions the Shoreland Development Plan application dated**
165 **May 21, 2015 from Robert and Megan Ramos for 73 Tower Road (Tax Map 58, Lot 42) in the**
166 **Residential – Rural Conservation and Shoreland Overlay Zones.**

167 **Mr. Harris seconded.**

168 **Motion carried: 5-0-0**

169
170 Ms. Kalmar read the findings of fact.

171
172 **FINDINGS OF FACT**
173 **For 73 Tower Road**
174 **Shoreland Development Plan Review**

175
176 **WHEREAS:** Robert and Megan Ramos request approval of their Shoreland Development Plan for
177 reconstruction of an existing, nonconforming structure located at 73 Tower Road (Tax Map 58, Lot 42) in
178 the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250’) and Resource
179 Protection Overlay (OZ-RP) Zones, hereinafter the “Development,” and

180
181 Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;

182

Shoreland Development Plan Review	6/11, 7/9
Site Walk	6/30
Public Hearing	7/9

183
184 And pursuant to the Application and Plan and other documents considered to be a part of the plan review
185 decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the
186 “Plan”):

- 187
188 1. Shoreland Development Plan Application, May 21, 2015.
189 2. Shoreland Development Plan, Frank Emery, PLS, May 5, 2015 revised June 3 and June 11, 2015.
190 3. Architectural Plans, Detail Design Builders, May 27, 2015.

191
192 **NOW THEREFORE**, based on the entire record before the Town Planning Board and pursuant to the
193 applicable standards in the Land Use and Development Code, the Town Planning Board makes the
194 following factual findings and conclusions:

195
196 **FINDINGS OF FACT**

197
198 **Chapter 16.3 LAND USE ZONE REGULATIONS**

16.3.2.17. D Shoreland Overlay Zone
<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>
<u>Findings:</u> Existing conditions on the 30,469-square-foot lot include 3,959 square feet (13%) of devegetated area. 3,836 square feet (12.6% of the lot) is proposed to be devegetated area.
<u>Conclusion:</u> This standard appears to be met.

Vote: 5 in favor 0 against 0 abstaining

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200
201

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 waterbody.

The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

202

16.7.3.5.6 Nonconforming Structure Reconstruction. (Effective 2/28/15)

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

B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and Expansion and 16.7.3.6.1 Nonconforming Structure Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location.

C. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure may be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation must be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

D. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause by the owner by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (12) months of the established date of damage, destruction, or removal.

E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the

criteria in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

Finding: The existing nonconforming structure will be destroyed by more than 50% of its market value. D is not applicable. The proposed structure does not expand in area or volume within the required setback from the water and does not increase nonconformity.

Conclusion: With the proposed conditions (#5), the standards of 16.7.3.5.6 appear to be met.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.5.4 Nonconforming Structure Relocation

B. In determining whether the structure relocation meets the setback to the greatest practical extent, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), must consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

Finding:

1. Lot. The lot is 30,469 square feet, which is comparable to adjacent properties but nonconforming to the 80,000-square-foot minimum.
2. Slope. The lot slopes toward the ocean and toward the road. The existing house is built into the slope, with a portion of the basement level accessible from the outside.
3. Soil erosion. Increased soil disturbance increases the potential for soil erosion. Proposed development limits the total amount of necessary excavation and thus the increased potential for soil erosion.
4. Other Structures. There are no other structures on the property. Structures on abutting properties meet the side setbacks and are nonconforming to the 100-foot setback from the ocean.
5. Septic System. The applicant proposes an expansion of the existing septic system.
6. Vegetation. No removal of vegetation is proposed or permitted.

Conclusion: The structure relocation meets the setback to the greatest practical extent.

Vote: 5 in favor 0 against 0 abstaining

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204

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: The proposed reconstruction *reduces* floor area and volume within the setback from the water.

Conclusion: The requirements of this section appear to be met.

Vote: 5 in favor 0 against 0 abstaining

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206
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208

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

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

1. Maintain safe and healthful conditions;

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

Conclusion: This requirement appears to be met.

Vote: 5 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: 5 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: The applicant has submitted a HHE 200 septic system application for the proposed expansion to the existing septic system.

Conclusion: This requirement appears to be met.

Vote: 5 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.

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: 5 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. Vegetation will be increased. There are no points of access.

Conclusion: The requirement appears to be met.

Vote: _ in favor _ against _ abstaining
6. <i>Protect archaeological and historic resources;</i> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> The requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use;</i> <u>Finding:</u> The existing development is within the floodplain. The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i> <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.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i> <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.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

209
210 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review
211 standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan
212 Application for Robert and Megan Ramos, owners and applicants, for reconstruction of a nonconforming
213 single-family dwelling located at 73 Tower Road (Tax Map 58, Lot 42) subject to any conditions or
214 waivers, as follows:

215
216 **Waivers:** None

217
218 **Conditions of Approval** (not to be included on final plan):

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

220
221 **Conditions of Approval** (to be included on final plan to be recorded):

- 222 1. No changes, erasures, modifications, or revisions may be made to any Planning Board approved
223 final plan. (Title 16.10.9.1.2)
- 224 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated
225 with site and building construction to ensure adequate erosion control and slope stabilization.
- 226 3. Prior to the commencement of grading and/or construction within a building envelope, as shown
227 on the Plan, the owner and/or developer must stake all corners of the envelope. These markers

228 must remain in place until the Code Enforcement Officer determines construction is completed
229 and there is no danger of damage to areas that are, per Planning Board approval, to remain
230 undisturbed.

231 4. All Notices to Applicant contained herein (Findings of Fact dated 7/9/15).

232 5. A replanting plan to mitigate past unpermitted tree removal in the Shoreland Zone showing tree
233 species, sizes, and planting locations will be submitted to and approved by the Town of Kittery
234 Shoreland Resource Officer, who will also confirm conformance to 16.10.10.2.D.2.

235
236 The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of
237 Fact upon confirmation of compliance with any conditions of approval.

238
239 **Vote of 5 in favor 0 against 0 abstaining**

240 APPROVED BY THE KITTERY PLANNING BOARD ON 7/9/15

241
242
243
244 _____
245 Ann Grinnell, Planning Board Chair

246 **Notices to Applicant:**

- 247
- 248 1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer
249 Review Engineer, and submit for Staff review prior to presentation of final Mylar.
 - 250 2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the
251 permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements
252 and abutter notification.
 - 253 3. One (1) Mylar copy of the final plan and all related state/federal permits or legal documents that may
254 be required must be submitted to the Town Planning Department for signing. Date of Planning Board
255 approval shall be included on the final plan in the Signature Block. After the signed plan is recorded
256 with the York County Registry of Deeds, a Mylar copy of the signed original must be submitted to
257 the Town Planning Department.
 - 258 4. This approval by the Town Planning Board constitutes an agreement between the Town and the
259 Developer, incorporating as elements the Development Plan and supporting documentation, the
260 Findings of Fact, and any Conditions of Approval.

261 Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning
262 Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section
263 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

264
265 _____

266
267 **Item 3 – 43 Tower Road – Shoreland Development Plan Review**

268 Action: accept or deny plan application; approve or deny plan. Owner/applicant Theodore H. Curtis Trust
269 requests consideration of a shoreland development plan for a 360-square-foot garage and 48-square-foot
270 breezeway addition to an existing, nonconforming single-family dwelling located at 43 Tower Road (Tax
271 Map 58, Lot 34) in the Residential – Rural Conservation (R-RLC), Shoreland Overlay (OZ-SL-250), and
272 Resource Protection Overlay (OZ-RP) Zones. Agent is Ken Markley, North Easterly Surveying, Inc.

- 273 Ken Markley provided an overview of the project, including the following points:
274 • The applicant proposes adding a breezeway and garage to a single-family home
275 • Nonconforming front setbacks are common on Tower Road, as the road was never well-
276 monumented
277 • The proposal takes advantage of the provision within the code to use 50% of the usual side
278 setback for a small garage
279 • 7.2% of the lot is devegetated and 11.7% is proposed
280 • They will use a silt fence and removal of trees is minimal

281
282 Mr. Markley also noted that he is in possession of two letters of support from abutters that will be
283 submitted to the Town.

284
285 **Mr. Lincoln moved to accept the Shoreland Development Plan application dated May 21, 2015**
286 **from Theodore H. Curtis Trust for 43 Tower Road (Tax Map 58, Lot 34) in the Residential – Rural**
287 **Conservation and Shoreland Overlay Zones.**

288 **Ms. Lynch seconded.**
289 **Motion carried: 5-0-0**

290
291 **Mr. Lincoln moved to grant conditional approval for the Shoreland Development Plan application**
292 **dated May 21, 2015 from Theodore H. Curtis Trust for 43 Tower Road (Tax Map 58, Lot 34) in the**
293 **Residential – Rural Conservation and Shoreland Overlay Zones.**

294 **Ms. Lynch seconded.**
295 **Motion carried: 5-0-0**

296
297 Mr. Alesse read the findings of fact.

298
299 **FINDINGS OF FACT**
300 **For 43 Tower Road**
301 **Shoreland Development Plan Review**
302

303 **WHEREAS:** Theodore H. Curtis Trust requests approval of their Shoreland Development Plan for an
304 attached garage expansion of an existing, nonconforming structure located at 43 Tower Road (Tax Map
305 58, Lot 34) in the Residential – Rural Conservation and Shoreland Overlay Zones, hereinafter the
306 “Development,” and

307
308 Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;
309

Shoreland Development Plan Review	7/9
Site Walk	N/A
Public Hearing	N/A

310
311 And pursuant to the Application and Plan and other documents considered to be a part of the plan review
312 decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the
313 “Plan”):

- 314
315 1. Shoreland Development Plan Application, May 21, 2015.
316 2. Existing Conditions Plan and Shoreland Development Plan, Easterly Surveying, June 16, 2015.
317

318 **NOW THEREFORE**, based on the entire record before the Town Planning Board and pursuant to the
319 applicable standards in the Land Use and Development Code, the Town Planning Board makes the
320 following factual findings and conclusions:
321

322 **FINDINGS OF FACT**

324 **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 27,205-square-foot lot include 1,955 square feet of devegetated area (7.2%).

Conclusion: With the proposed condition #1, this standard appears to be met.

Vote: 5 in favor 0 against 0 abstaining

325 **Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**

326 **Article III Nonconformance**

327 **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 Chauncey Creek. It is nonconforming to the front setback.

The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 5 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: 5 in favor 0 against 0 abstaining

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329
330

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 15.0%. The proposed increase in volume is 30.0%.

Conclusion: With the proposed condition #2, 16.7.3.6.1.A appears to be met. B is not applicable. C appears to be met.

Vote: 5 in favor 0 against 0 abstaining

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332
333
334

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

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

1. Maintain safe and healthful conditions;

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

Conclusion: This requirement appears to be met.

Vote: 5 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 to avoid impact on adjacent surface waters. The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

<p>3. Adequately provide for the disposal of all wastewater; <u>Finding:</u> There is no change requiring wastewater disposal. <u>Conclusion:</u> The requirement is not applicable.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat; <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> The proposed development does not appear to have an adverse impact. This requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters; <u>Finding:</u> Shore cover does not appear to be affected by this development. There are no points of access. <u>Conclusion:</u> The requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>6. Protect archaeological and historic resources; <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> The requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>7. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district; <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement is not applicable.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>8. Avoid problems associated with floodplain development and use; <u>Finding:</u> The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.</p>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>9. Is in conformance with the provisions of this Code; <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>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
<p>10. Be recorded with the York County Registry of Deeds. <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>
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

336 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review
337 standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan
338 Application for Theodore H. Curtis Trust, owner/applicant, for an addition to an existing, nonconforming
339 single-family dwelling located at 43 Tower Road (Tax Map 58, Lot 34) subject to any conditions or
340 waivers, as follows:

341
342 **Waivers:** None
343

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

- 345 1. Minor plan revisions as described in staff review notes will be made prior to signing.
346 2. The plan will be revised so that expansion of volume totals less than 30%.

347
348 **Conditions of Approval** (to be included on final plan to be recorded):

- 349 3. No changes, erasures, modifications or revisions may be made to any Planning Board approved
350 final plan. (Title 16.10.9.1.2)
- 351 4. Prior to the commencement of grading and/or construction within a building envelope, as shown
352 on the Plan, the owner and/or developer must stake all corners of the envelope. These markers
353 must remain in place until the Code Enforcement Officer determines construction is completed
354 and there is no danger of damage to areas that are, per Planning Board approval, to remain
355 undisturbed.
- 356 5. All Notices to Applicant contained herein (Findings of Fact dated 7/9/15).

357
358 The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of
359 Fact upon confirmation of compliance with any conditions of approval.

360
361 **Vote of 5 in favor 0 against 0 abstaining**

362
363 APPROVED BY THE KITTERY PLANNING BOARD ON 7/9/15

364
365
366 _____
367 Ann Grinnell, Planning Board Chair

368
369 **Notices to Applicant:**

- 370
371 5. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer
372 Review Engineer, and submit for Staff review prior to presentation of final mylar.
- 373 6. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the
374 permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements
375 and abutter notification.
- 376 7. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents
377 that may be required, must be submitted to the Town Planning Department for signing. Date of
378 Planning Board approval shall be included on the final plan in the Signature Block. After the signed
379 plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be
380 submitted to the Town Planning Department.

381 8. This approval by the Town Planning Board constitutes an agreement between the Town and the
382 Developer, incorporating as elements the Development Plan and supporting documentation, the
383 Findings of Fact, and any Conditions of Approval.

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

387
388

Item 4 – Hampton Inn and Suites – Preliminary Site Plan Completeness Review

389 Action: accept or deny plan application; schedule a public hearing. Owner Kittery Trading Post Shops,
390 LLC and applicant 275 US Route 1, LLC request consideration of a site plan for redevelopment of 4.12
391 acres, consisting of an 83-room hotel, located at 275 US Route 1 (Tax Map 30, Lot 41) in the Commercial
392 – 1 (C-1) and Resource Protection Overlay (OZ-RP) Zones. Agent is Ryan Plummer, Two International
393 Group.
394

395

396 Ms. Kalmar and Mr. Di Matteo reminded the Board that the purpose of completeness review is to
397 determine that the application contains all required information, not to deliberate on whether the proposal
398 meets standards.
399

400

400 Rolf Biggers, BMA Architectural Group, property owner Bob Adams of Kittery Trading Post, and
401 Jacques Gagnon, PE of Oak Point Associates answered questions about the proposal and materials
402 submitted, clarifying:

403

- The site is the former Dansk building at the former Old Wilson Road
- A traffic engineer determined that the hotel use is less intensive than the existing use and that is addressed in the narrative; the engineer’s memo will be included in the final plan application
- The proposed building height complies with the maximum in the zone; if the building is proposed with a sloped roof, even at three stories rather than four, it will not comply
- The applicant proposes standard Hampton Inn signage that will comply with the Town Code; they also propose signage facing Interstate 95 and will ensure it conforms to any MaineDOT standards

410

411 Mr. Di Matteo suggested that the applicant review signage-related standards to ensure there is nothing the
412 Planning Board needs to approve prior to the sign permit application.
413

414

414 **Mr. Alesse moved to accept the preliminary site plan application dated June 18, 2015 from owner**
415 **Kittery Trading Post Shops, LLC and applicant Two International Group for redevelopment of**
416 **4.12 acres consisting of an 83-room hotel located at 275 US Route 1, Tax Map 30, Lot 41, in the**
417 **Commercial 1 (C-1) and Resource Protection Overlay (OZ-RP) Zones and schedule a public**
418 **hearing for August 20, 2015.**

419 **Mr. Harris seconded.**

420 **Motion carried: 5-0-0**

421

422

Item 5 – Spruce Creek Ventures, II – Minor Subdivision Sketch Plan Review

424 Action: approve or deny sketch plan. Owner/applicant Spruce Creek Ventures II requests consideration of
425 a three-lot subdivision of 3.02 acres located at 9 Cook Street and Old Post Road (Tax Map 3, Lot 77-A) in
426 the Residential – Urban (R-U) Zone. Agent is Chris Wilber, Chris Wilber Consulting.
427

428

428 Chris Wilber, PLS represented the applicant and provided an overview of the proposal, including:

429

- A 15-unit condominium project was proposed several years ago but the plan was shelved

- 430 • The lot has “quite a bit of constraints” to development: steep slopes and a 25-foot-wide access
- 431 used by two other lots
- 432 • Public water and sewer are available nearby
- 433 • All of the proposed lots are larger than the minimum lot size
- 434 • The plan is two develop two single-family homes and save the third lot, potentially for a duplex
- 435

436 Mr. Di Matteo noted that density is the goal for the Urban Zone, and the Board should discuss whether a
437 conventional or cluster subdivision is preferable on this lot, as only cluster developments are expressly
438 permitted. Discussion ensued regarding factors affecting the feasibility and desirability of either a cluster
439 subdivision or conventional subdivision.

440
441 **Mr. Alesse moved to approve the sketch plan application dated June 18, 2015 from owner/applicant**
442 **Spruce Creek Ventures II for a three-lot subdivision of 3.02 acres located at 9 Cook Street and Old**
443 **Post Road (Tax Map 3, Lot 77A) in the Residential – Urban (R-U) Zone.**

444 **Mr. Harris seconded.**

445
446 Further discussion ensued regarding open space requirements and access constraints on Bridge Street. The
447 Board came to a conclusion that they should see a sketch plan for a cluster subdivision as well as a
448 conventional one and discussed holding a site walk.

449
450 **Mr. Alesse withdrew the motion on the table.**

451
452 **Mr. Alesse moved to continue the sketch plan application dated June 18, 2015 from**
453 **owner/applicant Spruce Creek Ventures II for a three-lot subdivision of 3.02 acres located at 9**
454 **Cook Street and Old Post Road (Tax Map 3, Lot 77A) in the Residential – Urban (R-U) and**
455 **schedule a site walk for August 6 at 9:00 a.m.**

456 **Mr. Harris seconded.**

457 **Motion carried: 4-0-1 (Lincoln abstaining)**

458
459 _____

460
461 **Item 6 – 42 Pepperrell Road – Shoreland Development Plan Review**
462 Action: accept or deny plan application; approve or deny plan. Owners/applicants Brian and Jan Rodonets
463 request consideration of a shoreland development plan for replacing a porch and walkway with a
464 mudroom, adding 80 square feet to the existing office and garage at 42 Pepperrell Road (Tax Map 18, Lot
465 27) in the Residential – Kittery Point Village (R-KPV) and Shoreland Overlay (OZ-SL-250') Zone. Agent
466 is Brian Rodonets, Coastal Architects.

467
468 Brian Rodonets represented himself and described the project:

- 469 • The existing office/garage was built in 1989, within the 40 foot front setback with approval from
- 470 the Board of Appeals
- 471 • They propose adding a mudroom totaling 80 square feet in area
- 472 • The addition is not in the flood zone and is outside of the 100-foot setback from the ocean
- 473 • The existing building coverage is 6.8% and proposed is 7.0%, while 20% is allowed
- 474 • The addition is no more nonconforming to the front yard setback than the existing building
- 475 • He will add devegetated area calculations to the plan
- 476

477 **Mr. Alesse moved to accept the Shoreland Development Plan application dated June 19, 2015 from**
478 **Brian and Jan Rodonets for 42 Pepperrell Road (Tax Map 18, Lot 27) in the Kittery Point Village**
479 **and Shoreland Overlay Zones.**

480 **Mr. Lincoln seconded.**
481 **Motion carried: 5-0-0**

482
483 **Mr. Alesse moved to grant conditional approval for the Shoreland Development Plan application**
484 **dated June 19, 2015 from Brian and Jan Rodonets for 42 Pepperrell Road (Tax Map 18, Lot 27) in**
485 **the Kittery Point Village and Shoreland Overlay Zones.**

486 **Mr. Lincoln seconded.**
487 **Motion carried: 5-0-0**

488
489 Mr. Alesse read the findings of fact.

490
491 **FINDINGS OF FACT**
492 **For 42 Pepperrell Road**
493 **Shoreland Development Plan Review**

495 **WHEREAS:** Brian and Jan Rodonets request approval of their Shoreland Development Plan to replace a
496 porch and walkway with a mudroom, adding 80 square feet to an existing, nonconforming office/garage
497 structure located at 42 Pepperrell Road (Tax Map 18, Lot 27) in the Residential – Kittery Point Village
498 and Shoreland Overlay Zones, hereinafter the “Development,” and

499
500 Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted;

501

Shoreland Development Plan Review	7/9
-----------------------------------	-----

502
503 And pursuant to the Application and Plan and other documents considered to be a part of the plan review
504 decision by the Town Planning Board in this Finding of Fact consisting of the following (hereinafter the
505 “Plan”):

- 506
507 1. Shoreland Development Plan Application, received June 22, 2015.
508 2. Site Plan, Coastal Architects, June 19, 2015.

509
510 **NOW THEREFORE**, based on the entire record before the Town Planning Board and pursuant to the
511 applicable standards in the Land Use and Development Code, the Town Planning Board makes the
512 following factual findings and conclusions:

513
514 **FINDINGS OF FACT**

515
516 **Chapter 16.3 LAND USE ZONE REGULATIONS**

16.3.2.17. D Shoreland Overlay Zone
<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>
<u>Findings:</u> The existing <i>building coverage</i> is 6.8% and the proposed condition is 7.0%.
<u>Conclusion:</u> With the proposed condition #1, this standard appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

517
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Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS
Article III Nonconformance

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

Finding: The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 5 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: 5 in favor 0 against 0 abstaining

522

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 nonconformity 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: The existing structure is not located within the 100 foot setback from the ocean.

Conclusion: Standards A-C are not applicable.

Vote: 5 in favor 0 against 0 abstaining

523
524
525

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW
Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

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

1. Maintain safe and healthful conditions;

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

Conclusion: This requirement appears to be met.

Vote: 5 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 to avoid impact on adjacent surface waters. The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: There is no change requiring wastewater disposal.

Conclusion: The requirement is not applicable.

Vote: 5 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 to avoid impact on adjacent surface waters.

Conclusion: The proposed development does not appear to have an adverse impact. This requirement appears to be met.

Vote: 5 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 does not appear to be affected by this development. There are no points of access.

Conclusion: The requirement appears to be met.

Vote: 5 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: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i> <u>Finding:</u> The proposed development does not appear to have an adverse impact. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>Avoid problems associated with floodplain development and use;</i> <u>Finding:</u> The proposed development is not within the floodplain. <u>Conclusion:</u> This requirement appears to be met.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>Is in conformance with the provisions of this Code;</i> <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.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>Be recorded with the York County Registry of Deeds.</i> <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.
Vote: <u>5</u> in favor <u>0</u> against <u>0</u> abstaining

526
527 Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review
528 standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan
529 Application for Brian and Jan Rodonets, owners/applicants, for replacing a porch and walkway with a
530 mudroom, adding 80 square feet to an existing, nonconforming office/garage structure located at 42
531 Pepperrell Road (Tax Map 28, Lot 17) subject to any conditions or waivers, as follows:

532
533 **Waivers:** None
534

535 **Conditions of Approval** (not to be included on final plan):
536 6. Plan revisions as described in staff review notes will be made prior to signing.
537

538 **Conditions of Approval** (to be included on final plan to be recorded):
539 7. No changes, erasures, modifications or revisions may be made to any Planning Board approved
540 final plan. (Title 16.10.9.1.2)
541 8. Prior to the commencement of grading and/or construction within a building envelope, as shown
542 on the Plan, the owner and/or developer must stake all corners of the envelope. These markers
543 must remain in place until the Code Enforcement Officer determines construction is completed
544 and there is no danger of damage to areas that are, per Planning Board approval, to remain
545 undisturbed.
546 9. All Notices to Applicant contained herein (Findings of Fact dated 7/9/15).

547
548 The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of
549 Fact upon confirmation of compliance with any conditions of approval.

550
551 **Vote of 5 in favor 0 against 0 abstaining**

552
553 APPROVED BY THE KITTERY PLANNING BOARD ON 7/9/15
554
555
556 _____
557 Ann Grinnell, Planning Board Chair
558

559 **Notices to Applicant:**
560

- 561 9. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer
562 Review Engineer, and submit for Staff review prior to presentation of final mylar.
- 563 10. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the
564 permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements
565 and abutter notification.
- 566 11. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents
567 that may be required, must be submitted to the Town Planning Department for signing. Date of
568 Planning Board approval shall be included on the final plan in the Signature Block. After the signed
569 plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be
570 submitted to the Town Planning Department.
- 571 12. This approval by the Town Planning Board constitutes an agreement between the Town and the
572 Developer, incorporating as elements the Development Plan and supporting documentation, the
573 Findings of Fact, and any Conditions of Approval.

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

577
578 **ITEM 7 – Board Member Items / Discussion**

A. Committee Updates
None

B. Other

579 Mr. Lincoln pointed out the need to keep pending applications organized and keep the Board informed as to
580 what can be discarded.

581
582 Mr. Harris acknowledged the Board's receipt of a letter from Rick Sparkowich of Operation Blessing, LP
583 regarding the pending subdivision application.

584
585 **ITEM 8 – Town Planner Items:**

586 None
587

588 **Mr. Alesse moved to adjourn.**

589 **Mr. Harris seconded.**

590 **Motion carried: 5-0-0**
591

592 The Kittery Planning Board meeting of July 9, 2015 adjourned at 8:37 p.m.
593

594 Submitted by Elena Piekut, Assistant Town Planner, July 14, 2015.

**Town of Kittery
Planning Board Meeting
July 23, 2015**

Town Code Amendments – 16.7.8 Land Not Suitable for Development; 16.8.7 Sewer System and Septic Disposal; 16.8.11.5 Application Procedure; 16.8.16 Lots; 16.9.1.4 Soil Suitability; 16.2.2 Definitions; and associated zones in 16.3.2.

Action: review amendment, hold a public hearing, and make recommendation to Town Council. The proposed amendments: 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, was reviewed at the joint Town Council-Planning Board Workshop on May 4, 2015, and was revised again May 28. The Planning Board held a public hearing June 25 and made one last revision. Due to an omission of 16.8.11.5 Application Procedure from advertisements of the public hearing, a second hearing was scheduled for July 23 and it has been advertised with that section included.

The one change requested by Ms. Kalmar was made at line 133.

Recommendation

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; 16.8.11.5 Application Procedure; 16.8.16 Lots; 16.9.1.4 Soil Suitability; 16.2.2 Definitions; and associated zones in 16.3.2. as written/revised...

**Town of Kittery
Ordinance Revision Memorandum**

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

ENCLOSURE: CODE AMENDMENT (PG. 2)

1

2 **PURPOSE OF PROPOSAL:**

3

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

6

7 **SUMMARY OF PROPOSAL/AMENDMENT:**

8

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

12

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

16

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

23

24 **JUSTIFICATION:**

25

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

29

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

33

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

38

39 **FISCAL IMPACT:**

40 None.

41

42 **PROPOSED AMENDMENT**

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

44

45 **16.7.8.1 — Locations and Sewage.**

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

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

54

55 **Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**

56

57 **Article VIII. Net Residential Acreage**

58

59 **16.7.8.1 Purpose**

60

61 To determine for regulatory purposes the land area suitable for dwelling units. This land area, the *net residential acreage*, is used to determine the maximum number of dwelling units allowed on a parcel that is

62 subject to subdivision. The total number of dwelling units allowed is equal to the *net residential acreage*

63 divided by the *minimum land area per dwelling unit* for a given land use zone.

64

65 **16.7.8.2 Net Residential Acreage Calculation**

66

67 To calculate net residential acreage the land area listed below must be subtracted from a parcel's gross

68 area. Where land areas to be subtracted overlap, the area therein is subtracted once.

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

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

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

16.7.8.3 Documentation

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

16.7.8.4 Exemptions to Net Residential Acreage Calculations

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

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

Chapter 16.2 DEFINITIONS

16.2.2 Definitions

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

Acreage means land area measured in acres.

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

Soils.

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

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

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

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

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

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

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

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

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

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

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

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

187 **16.3.2.1 Residential – Rural R-RL.**

188 **D. Standards**

191 2. Dimensional Standards:

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

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

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

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

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

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

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

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

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

214
215
216 2. Dimensional Standards:

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

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

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

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

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

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

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

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

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

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

245
246
247 2. Dimensional Standards:

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

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

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

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

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

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

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

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

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

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

268 **D. Standards**

269
270
271
272 2. Dimensional Standards:

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

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

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

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

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

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

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

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

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

293 **D. Standards**

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

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

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

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

16.3.2.6 Residential- Rural Conservation R-RC

D. Standards

2. The following dimensional standards apply:

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

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

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

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

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

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

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

i. Minimum percentage of Common Open Space 15%.

16.3.2.10 Business – Park B-P.

D. Standards.

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

i. Minimum Principal building separation as required by the Fire Chief, but not less than 10 feet.

Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

16.8.11.5 Application Procedure.

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

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

1. Calculations and maps to illustrate:

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

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

- 354 c. ~~net residential acreage and~~ **Net Residential Density**; and
 - 355 d. open space as defined in Section 16.8.11.6.D.2 of this Article.
 - 356
 - 357
-

Town of Kittery Ordinance Revision Memorandum

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

ENCLOSURES: CODE AMENDMENT (PG. 4)

1 PURPOSE OF PROPOSAL:

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

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

9
10 SUMMARY OF PROPOSAL/AMENDMENT:

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

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

18
19 JUSTIFICATION:

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

30 FISCAL IMPACT: None

31
32

Town of Kittery

Ordinance Revision Memorandum

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

ENCLOSURES: CODE AMENDMENT (PG. 5)

33 PURPOSE OF PROPOSAL:

34

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

38

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

42

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

45

46 SUMMARY OF PROPOSAL/AMENDMENT:

47

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

51

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

54

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

57

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

60

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

64

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

66

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

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JUSTIFICATION:

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

In addition:

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

FISCAL IMPACT:

None

101 **CODE AMENDMENT**

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

103 **Article VII. Sewage Disposal**

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

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

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

113
114
115
116
117
118 C. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service lines must extend to each lot's boundary line. Connections to town sewer must be installed in accordance to this Article and Title 13.1 Sewer Service System in the Kittery Town Code.
119
120
121 {MOVED FROM 16.8.7.1.E}

122
123 D. Proposal and construction drawings must be approved in writing by the town WTD. All required approvals must be secured before the start of final plan review.
124
125 {MOVED FROM 16.8.7.1.A & F}

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

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

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

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

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

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

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

156

158 **16.8.7.2 Subsurface Wastewater Disposal System**

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

164
165 B.G. All first-time subsurface wastewater subsurface sewage disposal systems must be installed in
166 conformance with the State of Maine Subsurface Wastewater Disposal Rules and this Code. The Maine
167 Subsurface Wastewater Disposal rules require new systems, excluding fill extensions, to be constructed no less
168 than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The
169 minimum setback distance for a new subsurface disposal system may not be reduced by variance.{Moved to item
170 1 below} The following also apply:

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

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

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

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

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

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

184 {NEW}

185
186 **16.8.7.2 — Design and Standards.**

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

190
191 **16.8.7.3 — Public Sewer Connection Required.**

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

197
198 **D. 16.8.7.4 Private Subsurface Wastewater Disposal Systems; on Unimproved Lots Created after April 26,**
199 **1990.**

200
201 A. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for
202 subsurface sewage wastewater disposal systems, i.e. test pit data and other information as required by the State
203 of Maine Subsurface Wastewater Disposal Rules and this Code. In addition:

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

208
209 2.B. In no instance may a primary or reserve disposal area be permitted on soils or on a lot which requires
210 requiring a First-Time System Variance Request from per the State of Maine Subsurface Wastewater Disposal
211 Rules.

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

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

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

225
226 **16.8.7.3 Holding Tanks**

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

230
231 **Chapter 16.2 DEFINITIONS**
232 **16.2.2 Definitions**

233
234 ~~**Subsurface sewage disposal system** means a collection of treatment tank(s), disposal area(s), holding tank(s)~~
235 ~~and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices~~
236 ~~and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or~~
237 ~~beneath the surface of the earth. The term does not include any wastewater discharge system licensed under 38~~
238 ~~M.R.S. §414, any surface wastewater disposal system licensed under 38 M.R.S. §413, §1A, or any public sewer.~~
239 ~~The term does not include a wastewater disposal system designed to treat wastewater which is in whole or in part~~
240 ~~hazardous waste as defined in 38 M.R.S. §13-1.~~

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

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

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

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

259
260

**Town of Kittery
Ordinance Revision Memorandum**

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

ENCLOSURE: CODE AMENDMENT

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

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

10 **JUSTIFICATION:**
11
12 • This proposal would improve clarity and promotes consistency in applying the code.
13
14

15
16 **FISCAL IMPACT:** None
17

18 **CODE AMENDMENT**

19 **CHAPTER 16.8 DESIGN AND PERFORMANCE STANDARDS**

20 **Article XVI. Lots**

21 **16.8.16.1 Dimensions.**

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

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

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

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

37
38 ~~16.8.16.2 Off-street Parking. {MOVED AND RENUMBERED; 16.8.16.8 BELOW}~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77

78 **16.8.16.28 Off-street Parking.**

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

81 {MOVED AND ONLY AMENDED SECTION NUMBER}

82

83 **16.8.16.409 Access to Arterial Street.**

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

87

88 **16.8.16.310 Land Subdivision.**

89 The subdividing of land must conform to the requirements of Chapter 16.3.

90 {MOVED AND ONLY AMENDED SECTION NUMBER}

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**Town of Kittery
Ordinance Revision Memorandum**

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

ENCLOSURE: CODE AMENDMENT

PURPOSE OF PROPOSAL:

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

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.9.1.4.C (lines 51-64)

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

Current section 16.9.1.4.C (lines 85-94)

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

Section 16.9.1.4.E (lines 75-76)

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

Section 16.9.1.4.F (lines 79-83)

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

JUSTIFICATION:

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

FISCAL IMPACT: None

CODE AMENDMENT

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT

16.9.1.4 Soil Suitability.

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

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

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

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

{MOVED AND MODIFIED FROM 16.9.1.4.E}

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

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

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

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

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

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

96 {DELETED}

97

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

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

**Town of Kittery
Planning Board Meeting
July 23, 2015**

ITEM 2

Town Code Amendment – 16.9.1.3 Prevention of Erosion; 16.2.2 Definitions

Action: review amendment, hold a public hearing, make recommendation to Town Council. 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	HELD
YES	Public Hearing (special notice requirements)	Scheduled for 7/23/2015	
YES	Review/Approval/ Recommendation to Town Council	Scheduled 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 31st 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. **UPDATE: MDEP will be holding a Contractor Certification course this fall, October 21st in the Kittery Town Council Chambers.**

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 recommend to Town Council for adoption, Title 16.9.1.3 Prevention of Erosion and Title 16.2.2 Definitions as written/amended.

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:~~ **The developer must:**

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~~ **applicable** indigenous, vegetation and install structures as soon
- 49 as possible 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~~ **must**
- 56 be endorsed by the York County Soil and Water Conservation District or found satisfactory by the
- 57 Town’s 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
- 62 Control ~~Best Management Practices (BMPs)~~ **Field Guide for Contractors**”, ~~March 2003~~ **2015 and as**
- 63 **amended**. The plan must be submitted to the permitting authority for approval and must include, where
- 64 applicable, 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.

**Town of Kittery
Planning Board Meeting
July 23, 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
	Report to Board	Report and presentation of options July 23	
	Public Meeting #2	TBD – Schedule for September 24?	

Update

See the attached descriptions and sections of three options presented by Sebago Technics for adding bicycle and pedestrian facilities the Bypass.

We have also invited Public Works Commissioner Norman Albert to provide an update on the improvements planned for Memorial Circle.

To address bike/ped concerns in other parts of Town, we have continued to correspond with the Bicycle Coalition of Maine regarding signage and education. The Maine DOT is giving free “STATE LAW: 3 FEET MIN TO PASS” signs to municipalities who can identify a good spot on a state road. The Bicycle Coalition has sent us a stack of literature on laws affecting cyclists, safety, etc.—if you have a spot to display some, stop by!

Recommendation / Board Action

This is an opportunity for the Board to review and discuss the options presented. In addition to the materials presented in this packet, there will be full size plans at the meeting. This board workshop should be followed by the second public/stakeholder’s workshop in August or September, before Sebago Technics and Alta Planning + Design finalize their plan. We recommend that all three options presented here are also presented to the public/stakeholders.

We recommend that the Board schedule the second public workshop for September 24.

Memorandum

14375

To: Christopher DiMatteo

From: Steve Sawyer

Date: July 15, 2015

Subject: Planning Board Materials for Upcoming Meeting July 23, 2015
Pedestrian and Bicycle Neighborhood Plan

CC: Myranda McGowan, KACTS

The Town of Kittery's Planning Board is looking for an update on the Pedestrian and Bicycle Neighborhood Plan as it relates most specifically to the Route 1 Bypass. This discussion is scheduled for July 23 at their regular meeting. Sebago has been asked to make a presentation at this meeting of the results of a "planning workshop" that was held at the Kittery Town Hall on May 26, 2015 with representatives of the Town staff, residents, Alta Planning + Design, MaineDOT, the Bicycle Coalition of Maine, and KACTS. This group of interested parties developed what they believed to be three viable options for the Town's consideration. These were as follows:

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 Share Use Path (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. Possibly add a sidewalk or pedestrian shoulder on one side for added overall width.

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'. See Attached Photo of a similar concept in Minneapolis, MN.

Cross sections for each of the above three options are attached hereto. Plan views for each have also been prepared, but will not be available until the PB meeting on the 23rd. Sebago will be making a presentation of each option and respond to any questions the PB may have.

General Comparisons

Given that a three-lane option is considered sufficient capacity for the corridor by traffic engineers, Option 1 is the ultimate design if bike and pedestrian facilities are to be incorporated into the corridor. However, this design may also be the most expensive. This option, as you can imagine requires the

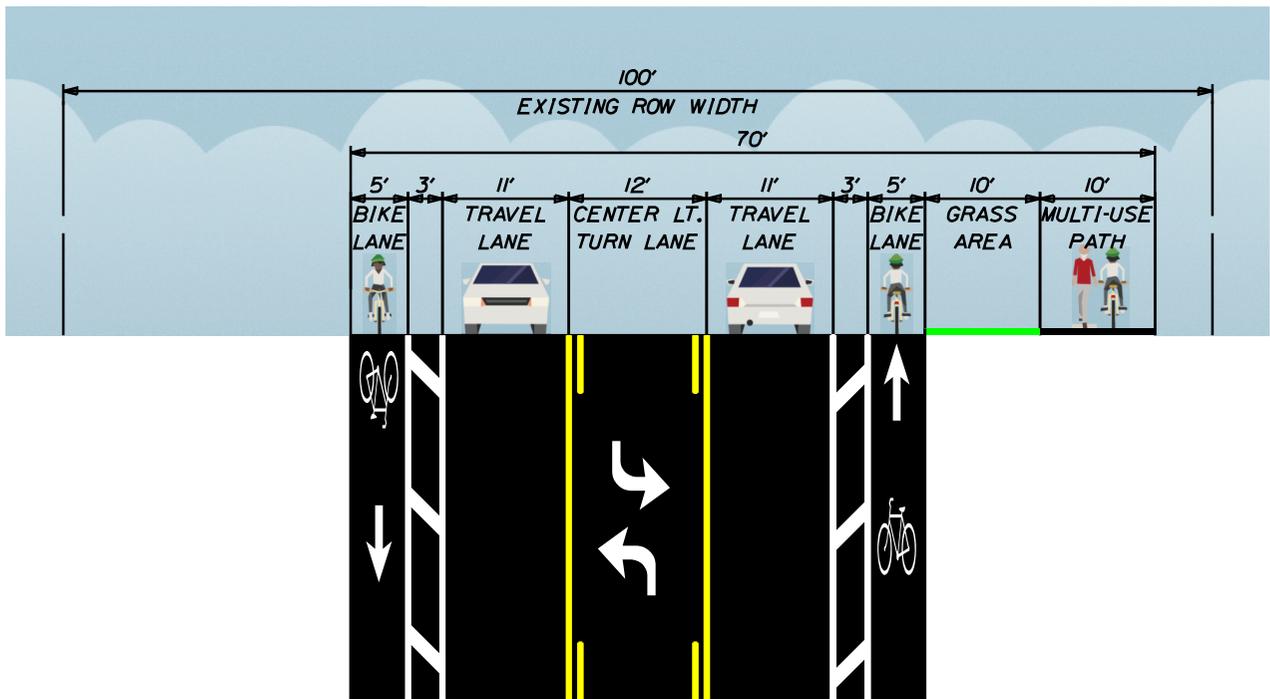
most width to add a sidewalk and bike lanes. Option 3 is the narrowest option and can be implemented for the most part with little more than new pavement markings in the short term. If this concept worked well, it could be converted into Option 1 in the longer term.

Other Interesting Information:

- MaineDOT Planning Division in Augusta is not opposed to reducing the number of lanes on the Bypass from 5 to 3 according to a MaineDOT representative.
- The existing RR underpass on the Bypass is owned by MaineDOT and they would be in favor of eliminating this structure since the RR line has been abandoned, if the Town could resolve any potential ROW issues. Apparently, the DOT looked at this recently and thought that the abutting property owners would have to be dealt with to do so and so they decided to do nothing in the near term.



Example of Option 3 - a buffered bike lane and a flush pedestrian path in Minneapolis, MN. This bike lane is two-way, the Kittery proposal is to be one-way on each side of the Bypass.



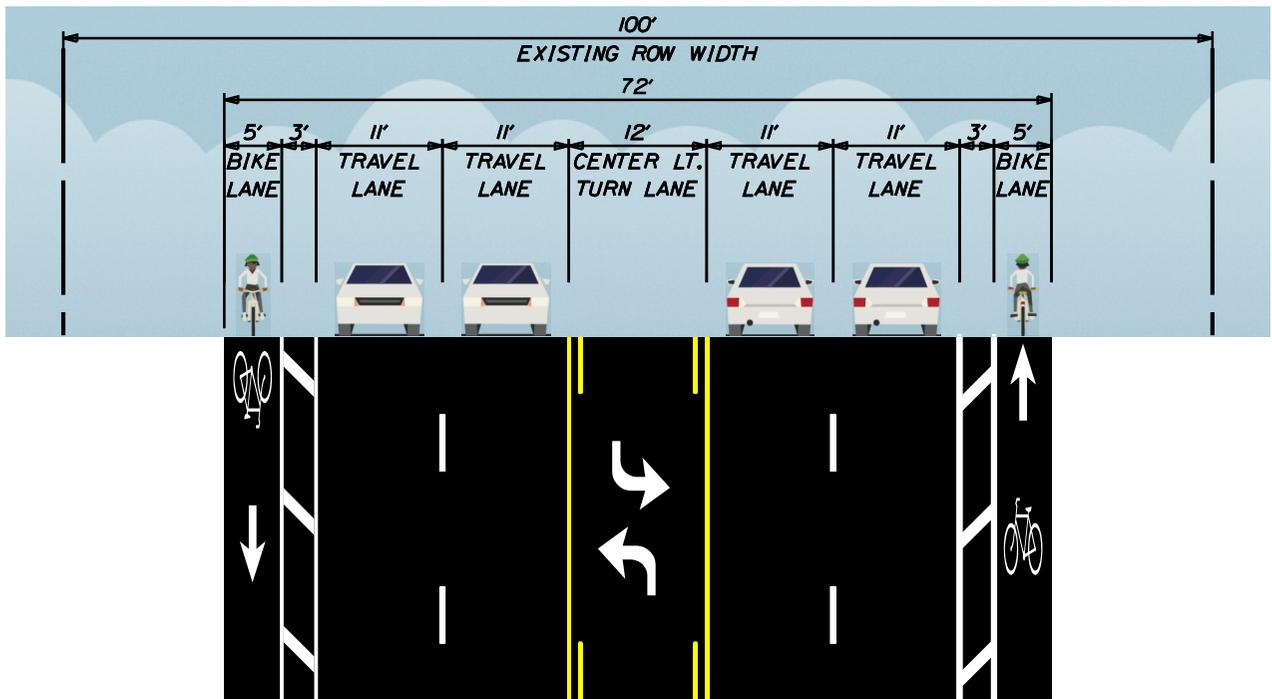
SEBAGO
 TECHNICS
 WWW.SEBAGOTECHNICS.COM

75 John Roberts Rd. 250 Goddard Rd.
 Suite 1A Suite B
 South Portland, ME 04106 Lewiston, ME 04240
 Tel. 207-200-2100 Tel. 207-783-5656

OPTION 1 SECTION
 PEDESTRIAN AND BICYCLE NEIGHBORHOOD PLAN

LOCATION: FOR:
 ROUTE 1 BYPASS MYRANDA MCGOWEN
 KITTERY, ME KACTS

SCALE: N.T.S.
 DATE: 07/23/15
 SHEET: 1 OF 3



SEBAGO
TECHNICS

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250 Goddard Rd. Suite B Lewiston, ME 04240 Tel. 207-783-5656
WWW.SEBAGOTECHNICS.COM

OPTION 2 SECTION
PEDESTRIAN AND BICYCLE NEIGHBORHOOD PLAN

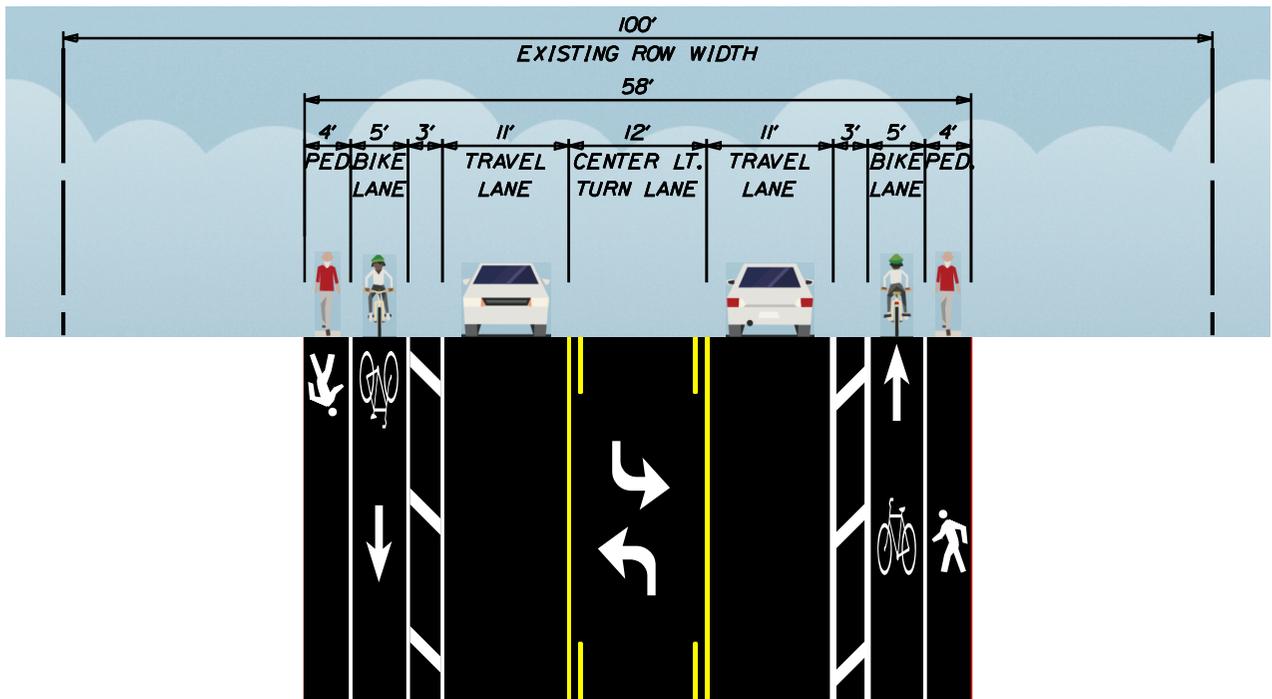
LOCATION:
ROUTE 1 BYPASS
KITTERY, ME

FOR:
MYRANDA MCGOWEN
KACTS

SCALE: N.T.S.

DATE: 07/23/15

SHEET:
2 OF 3



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75 John Roberts Rd. Suite 1A South Portland, ME 04106 Tel. 207-200-2100
250 Goddard Rd. Suite B Lewiston, ME 04240 Tel. 207-783-5656

OPTION 3 SECTION
PEDESTRIAN AND BICYCLE NEIGHBORHOOD PLAN

LOCATION:
ROUTE 1 BYPASS
KITTERY, ME

FOR:
MYRANDA MCGOWEN
KACTS

SCALE: N.T.S.

DATE: 07/23/15

SHEET:
3 OF 3

**Town of Kittery
Planning Board Meeting
July 23, 2015**

ITEM 4

Planning Board Business – Demolition Moratorium Proposal

No formal action required.

Background

On July 9, 2015, Ms. Cathy Wolff of 10 Old Armory Way submitted to the Planning Department a letter addressed to the Planning Board and a proposal for a moratorium on demolition of buildings in the Kittery Foreside neighborhood. A letter of support from Rep. Rykerson was also included and the proposal lists names of several other supporters. All are attached here for the Board's consideration.

The request by Ms. Wolff and others is for the Board to make a recommendation to Town Council that the Town of Kittery declare a 180-day moratorium on demolition of buildings over 50 years old that are located in the Kittery Foreside neighborhood. They propose boundaries for the Foreside area that encompass not only the Mixed Use – Kittery Foreside zoning district, but also portions of the Residential – Urban and Business – Local 1 Zones.

The proposal also requests support for a survey of architectural resources in the neighborhood and support for establishing a Foreside Demolition/Construction Review Committee.

Staff Review

Our research and comment at this time focuses on the procedure by which the Planning Board and Town Council may consider and enact a moratorium in accordance with Maine state statute and Kittery's Town Code and Town Charter.

M.R.S. Title 30-A, §4356 Moratoria is attached. It is part of the subchapter of Title 30-A which provides express limitations on municipal home rule authority. §4356 describes how a moratorium on development permits or licenses must meet one of two criteria and last no longer than 180 days (but may be extended for additional 180-day periods).

1. Necessity. The moratorium must be needed:

A. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or

B. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area.

Maine Municipal Association advises that, "Either of these rationales will suffice, though a municipality should cite both as justification for a moratorium if there is a factual basis for doing so. In order to create a record for a reviewing court in the event the ordinance is challenged, every moratorium ordinance should include a preamble that recites the facts which demonstrate the necessity for the moratorium. While factual justification is critical, courts will not second-guess a municipality's determination of necessity; a moratorium, like any other municipal ordinance, is presumed valid, and the challenger must establish "the complete absence" of any facts supporting the need for a moratorium (Minster v. Town of Gray, 584 A.2d 646 (Me. 1990))."

MMA's legal services department also confirmed for us that a moratorium ordinance may be enacted by the Town Council without Planning Board input—unless it is written as an amendment to the existing zoning ordinance, in which case a Planning Board public hearing and notice procedure would be followed.

Recommendation

The Town Council may vote on enacting a moratorium ordinance without any recommendation from the Planning Board; however, Ms. Wolff and Mr. Rykerson have addressed the issue to the Board as suggested by the Town Planner and it is appropriate for the Board to review the proposal. There is no requirement to act. If desired, the Board may draft an ordinance and/or offer a recommendation to the council.

Regardless of the Board's position, any moratorium presented to the Council for public hearing and vote must be written and formatted as an ordinance in its final form (Town Charter Article II Town Council, Section 2.14 Ordinances in General).

If the Board favors a moratorium and feels the need can be substantiated in accordance with §4356 §§1 Necessity, it may take on the task of drafting the ordinance and asking a member of the Town Council to introduce the ordinance for consideration, public hearing, and a vote. If the Town Council enacts it, it will be in effect for no more than 180 days and may only be extended if the Council finds that the need persists and that "reasonable progress" (study, planning, further ordinance amendment/development) is being made to alleviate that problem and need.

If the Board does not favor a moratorium or is unwilling to draft the ordinance and pursue Town Council support, Ms. Wolff and others will have two options to pursue their goal:

- 1) Have an ordinance in final form introduced by a member of the Town Council for public hearing and vote, or
- 2) Petition for the enactment of an ordinance in final form under Town Charter Article XI Initiative and Referendum. Such petition would require signatures from qualified voters totaling 10% of the number who cast votes in the last gubernatorial election.

The Planning Board may also make a report or recommendation to the Council regardless of its involvement in drafting a moratorium ordinance.

Additional resources from the Maine Municipal Association and others are available if the Board needs more information. The Town's Attorney has not yet been consulted.

Maine Revised Statutes

Title 30-A: MUNICIPALITIES AND COUNTIES HEADING: PL 1987, c. 737, Pt. A, §2 (new)

Chapter 187: PLANNING AND LAND USE REGULATION HEADING: PL 1989, c. 104, Pt. A, §45 (new)

§4356. MORATORIA

Any moratorium adopted by a municipality on the processing or issuance of development permits or licenses must meet the following requirements. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

1. Necessity. The moratorium must be needed:

A. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

B. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

2. Definite term. The moratorium must be of a definite term of not more than 180 days. The moratorium may be extended for additional 180-day periods if the municipality adopting the moratorium finds that:

A. The problem giving rise to the need for the moratorium still exists; and [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

B. Reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

3. Extension by selectmen. In municipalities where the municipal legislative body is the town meeting, the selectmen may extend the moratorium in compliance with subsection 2 after notice and hearing.

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

SECTION HISTORY

1989, c. 104, §§A45,C10 (NEW).

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 126th Maine Legislature and is current through August 1, 2014. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

C.W. Wolff
10 Old Armory Way
Kittery, Maine 03904
603-617-9704
cathywolff@gmail.com

RECEIVED
JUL 09 2015

BY:-----

July 9, 2015

Dear Ms. Grinnell, Ms. Kalmar, Mr. Alesse, Mr. Harris, Mr. Lincoln:

Enclosed is a proposal for a temporary demolition moratorium in Kittery's Foreside, plus an endorsement letter from Rep. Rykerson.

We believe that we continue to be on the edge of irreversible, domino development that could harm the character of the Foreside and, consequently, harm the residents and businesses drawn to the Foreside, at least in part, by that character.

We are asking you to suggest the town council declare a demolition moratorium immediately. Please note that this moratorium would only last until there was an approved plan for the Foreside's future (or, under state law, six months if no progress is made on that plan).

Please give this proposal your serious and immediate consideration. We look forward to it being on your agenda, perhaps at the July 23 meeting? In the meantime, we will continue to seek the endorsement and support of Foreside residents. Thank you.

Sincerely,



Cathy Wolff (see bottom of proposal for names of others already on the record in support of a moratorium)

cc: Chris DeMatteo



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: (207) 287-4469

Deane Rykerson

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Kittery Planning Board

9 July 2015

Planning Board and Kittery Town Planner:

As an original member of the Kittery Foreside Design Committee, I fully support a Foreside building demolition moratorium. This can be a great strategy when development pressures threaten to change the character of a neighborhood. I have seen such moratoriums work very successful in other locations. My caution in instituting such an ordinance is that penalties need to be included. I would also suggest that in order to expedite this process, the present Foreside zoning boundaries should be maintained. They could be adjusted in coming years.

Maintaining the fabric and historic resources of a community has been shown repeatedly to increase property values, enhance visitors' experiences, and inform future development and growth. Kittery's downtown has been severely altered with various planning mistakes in the past. The time to reevaluate is now. I also support an Architectural Resource Survey of this neighborhood with an added component of historic images and oral history. Several individuals in Kittery have already gathered some of this information.

We have a great opportunity to preserve our community and its resources. Let's grab that chance before it is lost.

Sincerely,

A handwritten signature in black ink that reads "Deane Rykerson" with a long horizontal flourish extending to the right.

Deane Rykerson
Maine House of Representatives

7-9-15

FORESIDE BUILDING DEMOLITION MORATORIUM PROPOSAL

Because when a neighborhood becomes popular it risks inappropriate, rapid development;

Because Kittery's Foreside neighborhood has a sense of history and a distinctive character that have contributed to its current popularity;

Because that character is dependent on a working waterfront, current housing stock, arts space, open space, and a social and economic mix of residents;

Because discussion, forums, and reports have laid the foundation to prepare a plan to preserve the Foreside's character;

Because landslide development – including demolition of viable existing buildings, destruction of a working waterfront, elimination of open space, and poor building design -- would do **irreversible harm** to the Foreside, and therefore to the people who have chosen, because of its character, to live or operate a business there;

Because current zoning ordinances do not sufficiently take into consideration the potential for creative reuse of existing buildings, maintenance of open space, the history of the Foreside, and the concerns of its residents;

The Kittery Planning Board recommends that:

A demolition moratorium, effective immediately, be declared in the Foreside neighborhood;

- ***The demolition moratorium would apply to all structures older than 50 years unless they posed a public health or safety concern. It would last until an ordinance-backed plan for the Foreside's future, is approved, or, as required by state law, for 180 days (6 months), with the understanding the town may renew the moratorium for another 180 days if a plan is still being developed.***
- ***Foreside boundaries for the moratorium would be designated by the Planning Office, but would definitely include all waterfront, Love Lane, and all streets intersecting with Government and Walker streets.***

The Planning Board further recommends that:

1) The town support a Foreside architectural resource survey, as outlined and guided by the Maine Historic Preservation Commission.

- ***Carried out by volunteers trained by the commission, the survey would be directed by an architectural historian contracted by the town.***
- ***Boundaries for the survey would be determined by the Planning Department with consideration that official Foreside borders may have to be trimmed due to financial considerations, but would include the Wallingford Square Area, Love Lane, and all streets intersecting with Walker and Government Streets.***

**2) A demolition/construction review committee – or some other mechanism -
- be established to make recommendations to the Planning Board on whether
a proposal is in keeping with the Foreside Plan and maintenance of the
neighborhood's character and history.**

Terry Lochhead

Tom Ryan

Cathy Wolff

Betty Garrett

Jill Beliah

Tracy Johnson

Beverly Dufrense

Susan Selden

Dina Dudarevitch

Douglass M Robertson

State Rep. Deane Rykerson

Andrew Pearson

Sarah Dennett

From: [Cathy Wolff](#)
To: [Elena Piekut](#); [Chris DiMatteo](#)
Subject: moratorium proposal supporters
Date: Thursday, July 16, 2015 12:06:33 PM

7-16-15

Hello -- Here's an updated list of people who support the proposal for an immediate moratorium on demolition of buildings in the Foreside. We'd appreciate it if you could include it in the packet for next week's Planning Board meeting.

Thank you. Cathy Wolff 603-617-9704

Terry Lochhead
Tom Ryan
Cathy Wolff
Betty Garrett
Jill Beliah
Tracy Johnson
Beverly Dufrense
Susan Selden
Dina Dudarevitch
Douglass M Robertson
Deane Rykerson
Andrew Pearson
Sarah Dennett

John P. Schnitzler

Laura Pope

Drika Overton

Nelson Linscott

Ellen Parent

Galen Beale

Janis Wolak

Larry & Vicky Elbroch

Shireen Khavari

Melanie Wilson

Heidi Reardon
Stan Campbell

Kathryn Davis

--

Cathy Wolff
10 Old Armory Way, Kittery, ME 03904
603-617-9704

KITTERY ECONOMIC DEVELOPMENT COMMITTEE

July 15, 2015

To: Kittery Planning Board

Re: July 23, 2015 Meeting between EDC and Kittery Planning Board

Chairperson Ann Grinnell,

The Kittery Economic Development Committee (EDC) appreciates the opportunity to meet with the Kittery Planning Board (PB) on July 23, 2015 to discuss the areas of Kittery where we feel there are opportunities for potential business growth. Kittery Town Council established the EDC with a charge of economic development planning, municipal site identification and development, and working with new business opportunities as they present themselves. The EDC is dedicated to helping create opportunities for economic development through desirable business growth, expansion, retention and attraction by working as partners to develop a climate conducive to maintaining the quality of life in this great community of Kittery, Maine.

Under the proposed charge, we feel that it is important that the areas of Kittery where we are focusing our attention for potential business development opportunities be discussed with the PB. That being said, the intent of our meeting for July 23rd is the following:

1. Identify to the PB the (3) distinct areas of business growth focus
 - a. Business Park
 - b. Northern Kittery – Route 1
 - c. Route 1 By-Pass
2. Speak to aspects within each of these areas that we believe under current zoning ordinances may potentially limit business development
3. Establish a go forward working relationship with the PB to help achieve our charge of ensuring sustainable business growth that offers value and enriches the standard of living of the citizens of Kittery.

Again, we on the EDC look forward our time together and building a strong relationship to serve the citizens of Kittery and the businesses of our community.

Respectfully,

George Dow
Chairman Economic Development Committee

2012-2015
PLANNING BOARD ACTION ITEMS

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

2012-2015
PLANNING BOARD ACTION ITEMS

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

2012-2015
PLANNING BOARD ACTION ITEMS

26	10/24/13 Amendment		DPW Road Cuts; Title 12 amendment; approved by PB 10/24/13; to Council 11/25/13	Staff	Revise per Council Action / Re-visit: January 2015; 1/15: Shared notification w/ DPW & Planning per CDM
27	10/24/2013		Definition: Substantially complete re: development vs. building permits (for May 2015 TC workshop)	Staff	Staff draft definition differentiating from bldg permits as appropriate

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