TOWN OF KITTERY, ME — UNAPPROVED
PLANNING BOARD MEETING — MARCH 24, 2016
Council Chambers

Meeting called to order: 6:00 pm

Pledge of Allegiance

Roll Call:
Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Secretary Debbie Driscoll-Davis, Robert Harris, Deborah Lynch, Mark Alesse, Dutch Dunkelberger
Board members absent: None
Staff present: Chris Di Matteo, Town Planner

Minutes: March 10, 2016
Line 92-93 – replace sentence with "Mr. Dunkelberger noted due to his limited time on the Planning Board, he did not make a definitive decision on the suitability of the project and he would abstain from voting."
Line 293 – replace "pathway" with "Right-of-Way"
Line 315 – replace "unnecessary" with "necessary"
Line 341 – replace the phrase "that could only rented" with "that could only be rented"
Line 415 – replace "those" with "these"
Line 416 – add before the end of sentence the phrase "and should not be part of Planning Board consideration."
Line 467 – replace "Ms." with "Mr."

Mr. Dunkelberger moved to approve the March 10, 2016 minutes, as amended.
Ms. Lynch seconded.
Motion passed 6-0-1.

Public Comment: Ms. Grinnell opened the floor for public comment. Hearing none; Ms. Grinnell closed the floor for public comment.

OLD BUSINESS

ITEM 1 – Kittery Foreside Committee
Action: TBD. The Planning Board will hold a discussion on the need, scope, and direction of the proposed revitalization of the Kittery Foreside Committee.

Ms. Grinnell commented that this agenda item has been discussed on several previous agendas. She stated the main objective is for the Planning Board to decide whether the Kittery Foreside Committee would be revitalized or not. Her notes from the January 22, 2016 Planning Board meeting suggested two options; 1) revitalize the committee without changing the Town Code, or 2) hire an outside consultant to perform review.

Mr. DiMatteo mentioned that the Planning Board needs to be clear on how staff should proceed. He suggested that the staff could draft an amendment to the Town Code to reflect removal of the Kittery Foreside Committee yet retain the standards that the Planning Board would then enforce, when applicable.

Alternatively, Mr. Di Matteo suggested that the Kittery Foreside Committee could remain in the Town Code as to some extent an advisory committee. The staff could draft a charge on that existing ordinance for the Planning Board to review and Town Council to form. The original Kittery Foreside Committee was referenced as a design and review committee. According to Town Council meeting minutes, the committee was disbanded because it ran its course. Thereafter, discussion was had on whether a design committee could remain active, but records are not clear if that topic was revisited or the Town Council formulated that committee. Mr. Di Matteo confirmed these happenings occurred roughly 10 years ago.

Mr. Dunkelberger questioned whether the Kittery Foreside Committee functions as a body under a charter within the Town Code. Mr. Di Matteo responded that the charge previously mentioned is synonymous to the charter in question. He added that this charge may have once been drafted, but not approved.

Mr. Dunkelberger rendered his opinion that the Kittery Foreside Committee would be a useful body both from a review and advocacy standpoint. This entity would act as an advisory committee or commission to the Planning Board and should be charged as a review and advocate for projects that occur within Foreside community.

Mr. Di Matteo felt that would be feasible. He recommended identifying the conditions and qualifications for those committee members. Tighter parameters could lead to potential difficulties in creating a board. Mr. Dunkelberger expressed that he does not agree with previously proposed requirements for the proposed board members because different skill sets can still be valuable in practice. As long as individual skill gaps are identified, the board could be created successfully without strict qualification requirements. This should be written into the charge as such. Mr. Di Matteo agreed with this notion.

Mr. Di Matteo asked if there is a need to express design opinion on how the standards are being applied. If so, would that have to be based in an advocacy role requiring residency in the area. He questioned if the two focuses could operate separately so that one association would concentrate on advocating design opinions and the other third party would apply the actual design to regulatory standards. Mr. Dunkelberger felt that the two focuses could be combined and has personally experienced such situations when voting for a project that he did not support, but met the legal criteria.

Ms. Grinnell asked what would guide the proposed Kittery Foreside Committee functions. Mr. Dunkelberger answered that the ordinance would act as guidance for the committee to determine if a project meets the design review requirements. Ms. Grinnell questioned the effectiveness of this structure. Mr. Alesse suggested that instead this committee attend public hearings as an informal group.

Ms. Lynch asked whether a committee member would be required to be an architect residing in the Foreside. Mr. Dunkelberger answered that the requirements should not be that restrictive.

Mr. Dunkelberger suggested that this body, which is already set forth in the ordinance, would be officially required to provide the Planning Board a formal report stating their design opinion and legal acceptance.

Ms. Driscoll-Davis noted she would appreciate knowing Ms. Cathy Wolff's plan for the committee since she had requested to change the committee. Mr. Dunkelberger added that a discussion for changing the existing committee referenced in the Town Code is separate from the topic of how to structure the committee itself. Ms. Grinnell expressed that the purpose for the Kittery Foreside Committee no longer exists and somehow was not removed from the Town Code.

Mr. Di Matteo noted that the committee itself is not defined in the Town Code. It was a broad, redevelopment type of committee during the late 1990's. When development in the Foreside was finished, the intention was for a subset of that committee to be charged with continuing to review projects in the area for no more than one year. There is currently almost no foundation for a committee in any form to be built upon since records are lacking and Town Code is imprecise in regards to the Kittery Foreside Committee.

Ms. Grinnell asked Ms. Terry Lochhead to provide a statement. Ms. Grinnell cited a letter from Ray Smith dated September 12, 2005 to John Carter and the Town Council that read "the present members of the Kittery Foreside Committee consider that the charges assigned to this committee in February 1995 by the Kittery Town Council are now completed to such extent that this ad hoc committee can be closed out or reassigned." Ms. Kalmar added that a design review committee was then formed and that the Planning Board did not recommend to Town Council to reinstate Kittery Foreside Committee after one year. Mr. Di Matteo understood that it was not initially formed from the Town Council, but instead created directly by the Planning Board.

Cathy Wolff, 10 Old Armory Way

Ms. Wolff's statement included the following thoughts:

- Ms. Wolff recommended to quit focusing on how the Kittery Foreside Committee evolved and instead acknowledge that there was and still potential to provide value to the Foreside.
- Ms. Wolff thanked Mr. Di Matteo for the videos from January Planning Board meeting.
- All can agree that development pressure is destined to increase in the Foreside, especially given the high rate at which Portsmouth housing costs are increasing. That development should be significantly influenced by the feelings and values of the residents in Kittery Foreside. The consensus of those feelings would be the foundation for the review of the proposed committee. It would not approach designs from an architectural perspective. Information could be collected through this review committee or organization that hosts neighborhood meetings and focus groups. She pointed out that there are only 300 dwellings in the Kittery Foreside area.
- The 1/28/2015 Planning Board meeting suggested that any developmental changes should be rolled into the comprehensive plan. Ms. Wolff added that Foreside development may not wait for the comprehensive plan. The comprehensive plan may not consider the minor details and neighborhood desires that this committee would be concerned with.
- The discussion of advocacy was also discussed at the 1/28/2016 meeting to compare advocacy versus professional review. It was mentioned that straight advocacy is present when "there's no expertise" and that so-called "advocates and experts could not coexist on the same committee" because it changed the mission of the committee. Ms. Wolff did not completely understand or agree with her interpretation of the Planning Board's definition of advocacy. She reminded that most board members act as advocates. She was bothered by the feeling that advocacy in general is undesirable. She agreed that advocacy of a personal agenda or gain is definitely undesirable on an advisory committee or board. A professional's opinion she received noted that being in the business of development could conflict when supporting a moratorium.
- Ms. Wolff felt that it is vital that any group or committee to be charged would consist of only Foreside residents. She realized that this limits the pool for committee members, but feels that the neighborhood values within the Foreside vary greatly from other parts of Kittery.
- Ms. Wolff mentioned that a well-attended, neighborhood focus group met about two years ago at Lil's Café to discuss what the community wants to preserve, add, and change in the Foreside area.
- Ms. Wolff asked what can protect a negative design opinion from being dismissed because a project meets legal requirements.

Terry Lochhead, 16 Old Armory Way

Ms. Lochhead's statement included the following thoughts:

- Ms. Lochhead thanked Mr. DiMatteo for the reading material pertaining to this topic and reiterated the evolution of the Kittery Foreside Committee.
- Ms. Lochhead felt that the proposed committee would benefit from having professional expertise and would also want to restrict the members to Foreside residents.
- The comprehensive plan incorporates interviews with leadership and various groups and she thought that this proposed committee should also be interviewed for the comprehensive plan.
- In response to the discussion of advocacy at the 1/28/2016 Planning Board meeting, she supposed the advocacy would be best served in a private sphere managed by a group of residents.

Ms. Kalmar stressed that she does consider the values of the community. She surmised a possible misunderstanding of the roles and limitations of the Planning Board. Unless there exist concrete criteria in the Town Code, there is no ability for the Planning Board to act on the recommendations of any individual or committee. Any person would be disappointed to find that Town Code can often supersede any form of advocacy or proposition. Ms. Kalmar suggested to share the collective values of the neighborhood with the Town Council to be built into the comprehensive plan since the integrity of the project will be written into Town Code. The Planning Board is a quasi-judicial board and it can not legally base a decision on an opinion. It can only determine whether a plan aligns with the Town Code.

Mr. Alesse felt that a generous amount of time has been spent discussing this topic. He suggested to use the neighborhood association to approach the Comprehensive Planning Committee. The idea presented is too unripe, unready, and undefined. He supported Ms. Kalmar's recommendations.

Ms. Driscoll-Davis expressed her support for anyone who lives in the Foreside because of high potential for change. The mixed use zoning may require protection that does not currently exist in the Town Code, which addresses some concerns that Ms. Lochhead and Ms. Wolff expressed. Ms. Driscoll-Davis suggested that a group be formed to present a collective vision for the Foreside to the comprehensive plan.

Mr. Dunkelberger suggested that they can help regulate as well as advocate. Although based on the presentation, he felt that the group is interested in only enforcing character which is not something the Planning Board enforces. The advocacy process could be initiated through the comprehensive plan which subsequently changes the ordinance in some way that defines preservation of character.

Ms. Lynch mentioned that Portsmouth residents are experiencing similar concerns in the demolition of certain buildings. She understood that Kittery Town Code should protect any project such as this from happening since the Town Code is not currently written for this measure.

Mr. Harris thought there is little flexibility for development given available open space of the Foreside. Most future development will require the renovation or demolition of an existing building.

Mr. Di Matteo proposed to remove from the Town Code any reference to the Kittery Foreside Committee and add a procedural measure that would require any design project to hold a preliminary meeting with the neighborhood committee. This would give the opportunity to share the neighborhood's views and values in the respective area. Other towns have had success with this type of moratorium.

Ms. Grinnell asked Mr. Di Matteo if that would be depicted in the Town Code. Mr. DiMatteo responded that the Town Code would require the design project to meet with either a formal association or hold a neighborhood meeting. Ms. Grinnell agreed with this notion.

Mr. Dunkelberger suggested that an internal staff procedure include notifying the neighborhood group of any project planned in the respective area and public hearing date(s). He noted that identifying this proposed group in the Town Code will end up imitating the existing Kittery Foreside Committee. Mr. Di Matteo noted there are no written standard operating procedures. Any contractor would question the requirement to meet with any abutters or neighborhood group if it didn't exist in the Town Code. For this condition to be effective, the Town Code should clearly identify the expectations and procedures to conduct a neighborhood meeting and it not be a Planning Board function. He added that this would occur during the sketch plan and prior to the first Planning Board meeting.

The board reached a consensus that reference to the Kittery Foreside Committee be removed from the Town Code.

Ms. Grinnell suggested to Ms. Wolff and Ms. Lochhead to formulate a group and approach the comprehensive plan as soon as possible. Ms. Driscoll-Davis recommended accessing the online site or completing the form posted at Town Hall to make suggestions for changes to the current Town Code.

ITEM 2 – Town Code Amendments – 16.8.11 - Cluster Residential and Cluster Mixed-Use Development. 16.8.11.1 Purpose; 16.8.11.3 Dimension Standards Modifications; 16.8.11.5 Application Procedure; 16.8.11.6 Standards; 16.8.20.1 Green Strip; 16.9.1.7 Buffer areas; and 16.2.2 Definitions

Action: Review amendment and schedule a Public Hearing. The proposed amendments provide clarity with regard to open space and other requirement standards in cluster residential and cluster mixed-use development.

Ms. Kalmar proposed the following changes:
Lines 15, 17, 154 – should date the Comprehensive Plan with the year 2002.
Line 189 – Ms. Kalmar questioned why the word "public" was previously removed. Mr. Di Matteo clarified that the definition of "streets" is all encompassing and if the notion to restrict it to public then it should be re-added. The board decided to make no changes.

Line 198 – replace "what is" with "those"
Line 203 – replace "such" with "permanent"

Ms. Driscoll-Davis proposed the following changes:
Line 138 – In recent training, view sheds are best described more specifically than corridors and to include photographs of what is intended to protect. She questioned whether this should be omitted for the time being. Mr. Dunkelberger did not see the risk associated to views sheds because the reference on Line 192, which allows the Planning Board to decrease the required buffer due to a view shed. Ms. Driscoll-Davis was concerned about the 100-foot buffers in situations that intend to preserve the view sheds.

Ms. Grinnell proposed the following changes:
Line 75 – replace "following" with "existing"
Line 75 – replace "amendended" with "amended"
Line 141-143 – remove the sentence "The Planning Board must require the developer to adopt a prudent avoidance approach when permitting above ground electrical service installations." since it does not clearly define what a "prudent avoidance approach" is.

Ms. Kalmar made a motion to schedule a public hearing for the proposed Town Code Amendments to the April 28, 2016 Planning Board meeting.
Ms. Driscoll-Davis seconded.
Motion passed 7-0-0.

Ms. Kalmar asked Mr. Di Matteo to submit the amendment to her to forward onto the Open Space Committee.

NEW BUSINESS

ITEM 3 – Town Code Amendments – Table 1 – chapter 16.8, Article IV – Design and Construction Standards for Streets and Pedestrian Ways

Action: Review amendment and schedule a Public Hearing. The proposed amendment eliminates the requirement for secondary access for secondary collectors street to be for emergency use only.

Mr. Dunkelberger questioned the purpose for this amendment. Ms. Kalmar explained that there exist no standards for emergency roads and secondary access is required for more than 201 trips per day.

Ms. Driscoll-Davis explained that this could effect certain plans, such as Shepherd's Cove. Mr. Di Matteo clarified that changes to Town Code are not retroactive to previously approved plans.

Mr. Di Matteo mentioned that the Town Code describes the classification of these streets. He would like to see secondary collectors not be very long dead ends. The Planning Board has provided waivers for street extensions without consideration for any interconnectivity. This eventually increases traffic on a single road having only one access point. This amendment may make it more feasible for a second egress for emergencies only. At a certain point, the Police and Fire need to see measurements to identify how far to travel in an emergency situation.

Ms. Driscoll-Davis thought the Fire department reviews each design plan for these measures. Mr. Di Matteo responded that this is often juggled amongst the Planning Board and developers then finally agreed upon at some middle point.

Mr. Dunkelberger noted that if the secondary collectors street is located on a major thoroughfare in a situation having only one existing access point, it may enable people to use the street more routinely than the intended emergency use only.

Mr. Di Matteo thought the notion is to provide a standard for access to these types of situations. In reality, these secondary areas usually do not have snow removed or are maintained. Mr. Dunkelberger suggested that

this be a condition of approval. Mr. Di Matteo felt it the long dead end streets ought to have at least one secondary thoroughfare.

Mr. Harris pointed that there exists one in Woodland Commons off Rte. 1 which does not end up getting cleared of snow. Ms. Driscoll-Davis added that Shepherd's Cove also has a similar situation.

Ms. Driscoll-Davis suggested to consider that a public street with an adjacent private road should have the option to connect or not. Ms. Lynch asked if she meant limiting curve cuts. Mr. Di Matteo clarified that once a private road abuts a public road it is open for public access.

Ms. Earldean Wells, Conservation Commission, reminded that the definition of a driveway was supposed to be addressed two years ago since several approved plans are seen with driveways that have exceeded the requirement of no more than 500 feet for no more than 2 lots.

Mr. Di Matteo thought that looking at Class 1 versus Class 2 depicts how long a driveway can be before it is considered a road.

Ms. Lynch added that are several private roads that do not meet these standards.

Ms. Kalmar made a motion to schedule a public hearing for the proposed Title 16 Amendments to the April 28, 2016 Planning Board meeting.
Mr. Alesse seconded.
Motion passed 7-0-0.

ITEM 4 – ITEM 4 - Town Code Amendment – 16.3.2.17.D – Shoreland Overlay Zone Standards

Action: Review amendment and schedule a Public Hearing. The proposed amendment removes redundant language and improves consistency with regard to language and intention throughout the chapter.

Ms. Grinnell noted that Maine DEP has reviewed the proposal and confirmed that it does not change the intent of the existing code.

Ms. Driscoll-Davis asked the square footage requirements for lots between 10,001sq. ft. and 19,999 sq. ft. Mr. Di Matteo explained that if the condition in Section D.1.d.iii is not met, then the condition in Section D.1.d applies. He explained that it is trying to give an opportunity for smaller units to develop. Ms. Driscoll-Davis questioned why this much larger restriction exists for units above 10,000 sq. ft. Mr. Di Matteo will follow up with Maine DEP with regard to this reasoning.

Ms. Kalmar noted that there are two definitions for lot coverage: coverage lot/building and coverage lot/structure. She asked since the language for devegetated area is used that it should be called "coverage lot/structure and see devegetated area". Mr. Di Matteo suggested rather to remove lot coverage term with devegetated area to create a more direct relationship. He also suggested drafting a definition for devegetated area. He stated his interpretation of Maine DEP's viewpoint is to be concerned with anything not green and treat pavement as a structure.

Ms. Lynch asked why to limit the 20,000 sq. ft. threshold as much as the 10,000 sq. ft. threshold. Ms. Driscoll-Davis clarified that less than 20,000 sq. ft. could build upon 4,000 sq. ft whereas 10,000 sq. ft. would have 5,000 sq. ft.

Ms. Kalmar made a motion to schedule a public hearing for the proposed Town Code Amendment to the April 28, 2016 Planning Board meeting.
Mr. Dunkelberger seconded.
Motion passed 7-0-0.

ITEM 6 – Board Member Items / Discussion

Ms. Kalmar attended the Open Space Committee which she felt was very informative.

Ms. Grinnell discussed that the Planning Board will meet with Economic Development Committee (EDC) soon.

Mr. Alesse noted that the Kittery Port Authority (KPA) has created a new working group with the Portsmouth Naval Shipyard and the NH Port Authority. There will be quarterly meetings there are currently no known problems to discuss.

New lighting at Pepperell Cove has been approved.

Ms. Driscoll-Davis suggested the LED lighting standards could be improved in the Town Code. Ms. Lynch asked whether this applies to signage or lighting. Ms. Driscoll-Davis mentioned this would cover several different variables in LED lighting.

ITEM 7– Town Planner Items:

Code Enforcement Officers are receiving several complaints regarding chickens. The Town Code regarding animal control does not embrace anything other than canine. Staff would like to include an agenda item for the Planning Board to review. This could also be included in the workshop with Town Council to be held in May.

Mr. Alesse made a move to adjourn.
Mr. Dunkelberger seconded.
Motion carried 7-0-0.

The Kittery Planning Board meeting of March 24, 2016 adjourned at 7:32 p.m.

Submitted by Marissa Day, Minutes Recorder, on March 30, 2016.

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website at http://www.townhallstreams.com/locations/kittery-maine.