



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, March 27, 2014 6:00 P.M. to 10:00 P.M.

CALL TO ORDER –ROLL CALL – PLEDGE OF ALLEGIANCE– APPROVAL OF MINUTES – 2/27&3/13/2014

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

OLD BUSINESS

ITEM 1 – (15 minutes) – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: review amendment and make recommendation to Town Council for adoption. An amendment to the Town Code to address the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations and associated definitions, Title 16.2.2.

ITEM 2 – (15 minutes) – Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration, Title 16.10.9.1.5 Requests for Extension and Title 16.9.3.8 Expiration of Wetlands Alteration Approval.

Action: discuss proposed amendment and schedule a public hearing. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

ITEM 3 – (45 minutes) - Board Member Items / Discussion

- A. Town Planning and Development Program Briefing Book
- B. Town Council/ Planning Board Workshop results;
- C. Action List;
- D. Review By-Law changes;
- E. Other.

ITEM 4 – (30 minutes) - Town Planner Items:

- A. Destination Marketing Program- Kittery Gateway recommendation
- B. Quality Improvement Overlay Zone
- C. Quality Improvement Plans for Kittery Shore and Harbors
- D. Town Council Joint Workshop scheduled for April 7, 2014: Town Planning Board, Economic Development Committee, and Comp Plan Update Committee.
- E. Other town code amendments

NEW BUSINESS

ITEM 5 – (30 minutes) – Town Code Amendment – Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone and Chapter 7, Article 3 Nonconformance in Title 16 Land Use Development Code.

Action: review amendment and schedule a public hearing. An Amendment includes changes to the town's Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

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 PLEASE CONTACT STAFF AT (207) 475-1323 OR (207) 475-1307.

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

UNAPPROVED
February 27, 2014

4
5 Meeting called to order at 6:03 p.m.

6 Board Members Present: Tom Emerson, Karen Kalmar, Mark Alesse, Deborah Driscoll Davis, Susan
7 Tuveson, Ann Grinnell

8 Members absent: Bob Melanson

9 Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

10
11 Chairman Emerson opened the meeting and noted there is a quorum, but four like votes will be
12 needed for approval.

13
14 Pledge of Allegiance

15
16 Minutes:

17 None available

18
19 Public Comment:

20 Steve Workman, 10 Bridge Street, advocating pedestrian walkways at the Sara Long Bridge. He has
21 participated on all the bridge committees, and noted the Eastern Trail connection. A shared use path
22 outside of the roadway on the upstream side creating safe connections on the Kittery side was proposed.
23 There is a safe connection down the Albacore Parkway on the Portsmouth side to the Market Street
24 Extension, part of the Portsmouth Gateway project. He was concerned the pedestrian use had been
25 excluded from the current design. Following a June 2013 meeting with MDOT staff, a suspended
26 sidewalk was proposed, and stated a shared use path was too costly. This proposed suspended sidewalk
27 would not be next to the rail bed and would be caged. It is now proposed that the suspended walk will be
28 factored into the current design, at approximately \$2 million, for future construction. He discussed various
29 transportation plans under review in Portsmouth. He asked stake holders to reconvene to discuss the
30 MDOT plan to defer the addition of a suspended walk but to consider inclusion in the current bridge
31 design. He asked the Board to support this further level of review and discussion between all parties.
32 Discussion followed regarding the costs of the train beds and total bridge costs.

33
34 There was no further public comment.

35
36 Public Hearing

37
38 **ITEM 1 – Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use**
39 **Development Code.** Action: review amendment and make recommendation to Town Council.

40 *Amendment includes changes to 16.7.3.5.10. Contiguous Non-Conforming Lots* that would allow for more
41 consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

42 Public Hearing opened at 6:23 p.m.

43 David Jones, Attorney, noted the proposed amendment, 16.7.3.5.12, clearly separates lots in and out of the
44 shoreland zone and preserves the common sense approach to expand a lot within the shoreland zone, and
45 urged the Board to adopt the proposed changes.

46 There was no further testimony. The Public Hearing closed at 6:26 p.m.

47 Board members discussed the numbering, punctuation and grammar of the proposed amendment. Mr.
48 DiMatteo explained the DEP minimum lot size of 20,000 sq feet in the shoreland zone.

49 Mr. Emerson requested the changes discussed be highlighted and returned for final review.

50

51 Ms. Grinnell moved to continue review of Title 16.7.3 Nonconformance.

52 Ms. Driscoll Davis seconded

53 Motion carried by all members present

54

55 Mr. Mylroie brought up the MDEP requested revisions to the Shoreland Zones in the 2000 and 2010
56 orders. Mr. DiMatteo stated this will be on the March agenda for further review.

57

58 **OLD BUSINESS**

59

60 **ITEM 2 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.**

61 Action: review amendment and schedule a public hearing. An amendment to the Town Code to address
62 the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in
63 Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed
64 amendment also includes changes to the net residential area calculations.

65 Earledean Wells, Conservation Commission, noted the following issues relative to proposed language to
66 16.7.8.1, and Board discussed:

- 67 - including view easement exclusion from gross area;
- 68 - impact of new FEMA flood plain definitions and rules;
- 69 - excluding a percentage of setbacks and buffers from wetlands, streams, ponds, etc. including
70 protection of man-made ponds/wetlands, etc;
- 71 - change 'non-residential' to 'commercial';

72 Mr. Emerson suggested adding a 50% exclusion to setbacks and finalizing following a public hearing.

73 Members concurred.

74

75 Ms. Tuveson moved to schedule a public hearing on this item

76 Ms. Driscoll Davis seconded

77 Motion carried by all members present

78

79 **BREAK**

80

81 Board members agreed to review Item 5 out of sequence.

82

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

84 A. Punch List Item;

85 Following the Board workshop, it was decided members will determine what items from the punch list will
86 be included on agendas. Mr. DiMatteo explained the inclusion of the determination of completeness
87 segment was brief, in order to move the applicant along. Detailed review of an application will always be
88 on the first meeting of each month. Prioritize punch list items (change name to 'Action List?').

89 Mr. Emerson explained items directed to staff from the Town Manager or Council is not controlled by the
90 Board, but the Board can determine priority on the punch list. It was recommended such requests
91 submitted to staff be communicated to the Board prior to substantive staff effort. Members discussed sign
92 ordinance revisions and the need for Board input prior to presentation of a final document.

93 Issues to discuss with Council at workshop:

- 94 - Council sponsorship of code amendments;
- 95 - Simplify Council reports - Board will prepare;
- 96 - Amendment proposals to Council will be reduced to twice each year. Discuss possibility of allowing
97 consideration of emergency amendments.
- 98 - Activities in Town (e.g. Economic Development, Quality Improvement, Destination Marketing) that
99 impact Board deliberation. Board members need to be involved in these meetings, and a list of these
100 activities is needed.

101

- 102 B. Review By-Law changes - Deferred;
- 103 C. Discuss legal issues associated with Waivers; Action TBD;
- 104 D. ‘Non-Conforming Structure Replacement outside the Shoreland Zone’; Action TBD;
- 105 E. Other

106 On the next agenda, the Board will discuss:

- 107 1. Action item lists,
- 108 2. Determine priority of items,
- 109 3. List of standing / advisory committees.

110

111 Ms. Kalmar asked to include 16.8.16.9, Flag Lots on the Action List.

112 Plan Expiration Period amendment will be included on the next agenda.

113

114 **ITEM 4 – Town Planner Items:**

- 115 A. Quality Improvement Plans for Kittery Shore and Harbors - Work in progress.
- 116 B. Sarah Mildred Long Bridge Plan Update Status-Interest in working with NH to add sidewalk.
- 117 C. Town Planning Board Briefing Book. Work in progress by Mr. Mylroie.
- 118 D. Other
 - 119 - Branding. (add to Action List)
 - 120 - Rotary / Rt. 236 design.

121

122

123 **NEW BUSINESS**

124

125 **ITEM 5 – Beatrice Way – Right-Of-Way Plan – Preliminary Plan Completeness Review**

126 Action: review and accept or deny preliminary plan application and schedule a public hearing. Owner
127 Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the
128 division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle
129 and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL)
130 Zone. Agent is Ken Markley, Easterly Survey Inc.

131 Ken Markley introduced Jeff Clark, Attorney for Richard Sparkowich, and responded to staff comments.

132 Mr. DiMatteo explained the review needs to determine whether the application is complete to take to a
133 public hearing for review. Mr. Markley explained the review is for a right-of-way plan and not a
134 subdivision plan.

135

136 Ms. Kalmar moved to accept the preliminary plan and schedule a public hearing

137 Ms. Tuveson seconded

138 Motion carried by all members present

139

140

141 Ms. Tuveson moved to adjourn

142 Ms. Grinnell seconded

143 Motion carried by all members present

144

145

146 The Kittery Planning Board meeting of February 27, 2014 adjourned at 9:06 p.m.

147 Submitted by Jan Fisk, Recorder, March 9, 2014

148

1 TOWN OF KITTEERY, MAINE
2 PLANNING BOARD MEETING
3 Council Chambers
4

UNAPPROVED
March 13, 2014

5 Meeting called to order at 6:04 p.m.
6 Board Members Present: Tom Emerson, Karen Kalmar, Bob Melanson, Mark Alesse, Deborah Driscoll
7 Davis, Susan Tuveson, Ann Grinnell
8 Members absent: none
9 Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Town Planner

10
11 Pledge of Allegiance

12
13 Minutes:
14 Mr. Melanson moved to approve the minutes of February 20, 2014 as amended
15 Ms. Kalmar seconded
16 Motion carried; 5 in favor; 2 abstentions

17
18 Public Comment: There was no public comment.

19
20 PUBLIC HEARING

21
22 ITEM 1 – Beatrice Way – Right-Of-Way Plan – Preliminary Plan Completeness Review
23 Action: hold public hearing and review plan application. Owner Operation Blessing LP, and applicant
24 Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the
25 previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site
26 identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken
27 Markley, Easterly Survey Inc.

28 Richard Sparkowich, Old Farm Road, Kittery, explained he and his wife are one-half of the Operation
29 Blessing Limited Partnership (OB LP) with a Board of Directors the other half. He summarized the
30 application for a single-lot right-of-way, and presented a plan to the Board. They have a buyer for the lot
31 but need a right of way to the lot to sell it and do not understand why they are subjected to subdivision
32 review, and should not be combined with the previously approved subdivision.

33 Mr. Mylroie explained the history of the approved subdivision and the creation of a non-conforming lot
34 without required frontage; flag lot definition; history of the Highpoint Circle and Beatrice Way
35 subdivisions, miscellaneous access ways, responsibilities, and area disputes; creating a right of way to
36 meet frontage and provide access to lots affected by the proposed division; use of portions of property
37 owned by OB LP for logging, not a permitted use in the zone.

38 Mr. Sparkowich noted OB LP owns Kittree Lane; explained he received a deeded right-of-way following
39 the Highpoint Circle development, engaged in a land swap to complete the development, and an
40 agreement to provide road access to the lot. Logging ceased 2 years ago and continuing work is clean-up
41 only. Currently a buyer is interested in the property for a single family home.

42
43 Public Hearing opened at 7:00 p.m.

44 Rachel Sparkowich: Feels like they have been on a merry-go-round forever. They have done what they
45 have been asked to do to the best of their ability. It seems there is never enough they can do and this has
46 been going on for 10 years. When is it going to end?

47 Joe Gasbarro, 11 Highpoint Circle, has attended Planning Board meetings since 2004. Rcalls when the 3-
48 lot subdivision was approved that any new right-of-way extending to Kittree Lane would be constructed
49 similar to Highpoint Circle, including sidewalks and street signage. The right-of-way he uses is owned
50 by Mr. Hansen and himself with a right for OB LP use. Why would the Town allow construction and

51 logging vehicles access via Highpointe Circle vs. Kittree Lane? Requested that what is left of Woods
52 Road be closed to vehicular traffic. Where does Beatrice Lane come in?

53
54 Gary Holmes, Kittery, President of Operation Blessing, practicing Attorney. OB LP is a 501(3)(c)
55 providing assistance to those in need. The only request is to allow a driveway to develop the property for
56 one house, and avoid a large-scale development. The remaining land will not be less non-conforming than
57 it already is. Now is the opportunity to do the right thing for the Sparkowich's and the neighbors.

58
59 Brett Taylor, Norton Road, stated he is the prospective buyer of the property. He explained he grew up in
60 Kittery and owns a Kittery business. It is not his intent to develop the land beyond a single home for his
61 family and preserve open space.

62
63 Maryann Ciali, 10 Kittree Lane. Would the developed property empty onto Kittree Lane? She and other
64 family members maintain Kittree Lane and ongoing heavy use is of concern. Will the new owner and
65 Beatrice Way subdivision help maintain Kittree Lane?

66
67 Public Hearing closed at 7:25 p.m.

68
69 Mr. Emerson summarized the issues:

- 70 1. Lot division and configuration;
- 71 2. Access and road design;
- 72 3. Where does one road/right-of-way start and end?
- 73 4. Use of OB LC remaining land including its use for logging as permitted by the state.

74
75 The Board has been asked to address #1 and #2, but how will a decision impact #3 and #4. He suggested
76 the Board see the site.

77 Mr. Sparkowich suggested modifying Woods Road to address the neighbors concern, noting again that
78 logging is done. Discussion followed regarding use of Old Farm Road, Kittree Land and Highpointe
79 Circle. Members requested a more detailed map showing these roads to their full length.

80
81 Ms. Tuveson moved to continue review of the application pending a site walk

82 Ms. Grinnell seconded

83 Board members discussed continuing or conducting another public hearing. A site walk was scheduled for
84 Tuesday, April 1 at 5:00 p.m. Parties will meet at the end of Highpoint Circle. Ms. Grinnell asked for a
85 more detailed map of the roads in the area. Mr. Emerson asked that anyone with deeds describing their
86 roadway rights and access in this area provide same to the Planning Department prior to March 27. Mr.
87 Markley stated he will provide a package for the Board.

88 Ms. Tuveson amended her motion to continue review of the application to April 10.

89 Seconded by Ms. Kalmar

90 Motion carried unanimously

91
92
93

94 ITEM 2 – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.
95 Action: hold a public hearing and make recommendation to Town Council. An amendment to the Town
96 Code to address the applicability of the Soil Suitability Guide for Land Use Planning in the State of Maine
97 referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage.
98 The proposed amendment also includes changes to the net residential area calculations and associated
99 definitions in Title 16.2.

100
101 Public Hearing opened at 8:04 p.m.
102 John Watts, regarding 143 Brave Boat Harbor development. Question regarding proposed Title 16.7
103 General Development Requirements, Article VIII. Net Residential Acreage C: *All wetlands as defined in*
104 *Title 16.2 Wetland, as well as vernal pools, ponds, lakes, streams and other water bodies, including 50% of*
105 *all setbacks including buffer areas.* How can you take an additional 50% of buffer areas you can't use
106 anyway? Ms. Kalmar stated areas that cannot be reasonably built on are excluded. **If the setback is**
107 **considered somewhat poorly drained, 50% of the buffer would be available for the net calculations, though**
108 **the total buffer area cannot be built upon. Mr. Watts stated it sounds like an additional 50% will be taken**
109 **away from net available area by the way it is written.**
110 Public Hearing closed at 8:13 p.m.

111
112 Mr. Watts asked if a bonus could be granted for a pre-treatment system. Mr. Emerson stated that is the
113 direction, but the Board cannot enforce maintenance. Mr. Watts explained the use of specific sand should
114 be required for septic installation. The sand is available, but using the specified sand is not enforced. In
115 Massachusetts they require organic soils be placed in areas where septic systems are located in an effort to
116 protect and support the environment

117
118 Mr. Mylroie suggested as the Board reviews septic system amendments, sand specifications (ASTM) can
119 be addressed. He asked Mr. Watts to submit his suggestions via email for the Code Subcommittee.
120 Members discussed the pre-treatment suggestion by Mr. Watts and will include in their Subcommittee
121 discussions, and added to the Board's Action List.

122
123 Discussion followed regarding how to avoid deducting land area more than once. Suggested addition: No
124 land area affected by the multiple criteria in Title 16.7.8.1 A-K shall be deducted twice.
125 This will be further reviewed by the Code Subcommittee.

126
127 Mr. Melanson moved to send the proposed Title 16.7.8.1 back to the Code Subcommittee for
128 reconsideration, specifically to include an additional Title 16.7.8.2 and amending 2 to 3.
129 Ms. Grinnell seconded
130 Motion carried unanimously

131
132
133 OLD BUSINESS

134
135 ITEM 3 – Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use
136 Development Code. Discuss proposed amendment and make recommendation to Town Council.
137 Amendment includes changes to 16.7.3.5.10. Contiguous Non-Conforming Lots that would allow for more
138 consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.
139 Mr. DiMatteo noted the Board will need to address the MDEP 2000 and 2010 revisions that impact the
140 entire Article 7. Board members agreed this can be done separately from this revision as MDEP has
141 already reviewed this revision. Mr. Emerson stated this was brought to the Board by a member of the
142 public and should go to the Council now instead of waiting to include in a bundle to Council.
143

144 Ms. Grinnell moved to approve the addition of Title 16.7.3.5.12 as presented and forward with a
145 recommendation to Town Council for adoption.

146 Mr. Melanson seconded

147 Motion carried unanimously

148

149

150 ITEM 4 – Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration and Title 16.10.9.1.5
151 Requests for Extension. Discuss proposed amendment and make recommendation to Town Council.
152 Proposed amendment reduces the period of time in which extensions can be granted and modifies the
153 process for extension requests.

154 Discussion of need for definition for 'substantially complete'. Mr. Alesse submitted a suggestion for a
155 definition. Discussion followed regarding time limits for completion, and what happens to an approved
156 project once the time period expires. Mr. Emerson asked the Subcommittee to review this Article and
157 return to the Board.

158 Mr. Melanson moved that Title 16.10.9.1.4 and 16.10.9.1.5 be returned to the Code Subcommittee to
159 address calendar year, substantially complete, and five year extension for subdivision plans and return to
160 the Board.

161 Ms. Grinnell seconded

162 Ms. Tuveson noted 365 days falls before the final approval date. May wish to use months.

163 Motion carried unanimously.

164

165

166 ITEM 5 – Board Member Items / Discussion

167 A. Action plan review and prioritization discussion

168 Add for discussion:

169 - Septic pre-treatment bonus

170 - Use of specified materials/sand

171 Move Completed Items to separate page

172 How will items be prioritized (public requests probably being first on the list). This will be included on
173 the next meeting agenda.

174

175 B. Comprehensive Plan Update Status

176 The Committee is currently working on various sections including Transportation; format is still under
177 discussion; renewed interest in update by the Economic Development Committee; direction of process
178 needs to be clarified with Council in upcoming workshop;

179

180 C. Quality Improvement Plan for Kittery Shore and Harbors

181 Final draft under review/preparation; will become part of the Comp Plan.

182

183 D. Other

184 - Ms. Grinnell - Council Discussion Checklist:

185 Board members discussed the RTC template - could the format be simplified for ordinance submittals?;

186 Council sponsorship process/how to coordinate?; Phase 2 Destination Marketing?; Water District site;

187 EDC Advisory Committee - to who?

188

189 ITEM 6 – Town Planner Items

190 A. Kittery Town Planning & Development Briefing Book - Outlines roles and responsibility of Board
191 members and staff; activity in Kittery over the past four years; description of various Town programs and
192 resident Committees in place.

193

- 194 B. Destination Marketing Program - Route 1-BP to Kittery Gateway - Concern the identification of the
195 Bypass as the 'Gateway to Maine' is confusing - perhaps find another name; further discussion needed.
196
- 197 C. Quality Improvement Overlay Zone
198
- 199 D. Sign Standards and Compliance - Will be work shopped.
200
- 201 E. PNSY Bridge 1 Structural Repair Project - Send comments to Town Manager via website.
202 Redevelopment of old Navy prison and potential impact on Kittery. Meeting in Eliot at Regatta on April
203 9, 9:00 a.m.-2:00 p.m.
204
- 205 F. Other
206
207
- 208 Ms. Grinnell moved to adjourn
209 Mr. Melanson seconded
210 Motion carried by all members present
211
212
213
- 214 The Kittery Planning Board meeting of March 13, 2014 adjourned at 9:56 p.m.
215 Submitted by Jan Fisk, Recorder, March 20, 2014

**Town of Kittery Maine
Town Planning Board Meeting
March 27, 2014**

Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: review amendment and make recommendation to Town Council for adoption. An amendment to the Town Code to address the applicability of the *Soil Suitability Guide for Land Use Planning in the State of Maine* referenced in Title 16.7.8.1 Locations of Sewage, item 5, which pertains to soils related to septic sewage. The proposed amendment also includes changes to the net residential area calculations and associated definitions, Title 16.2.2.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion/	8/22/2013, 1/9/2014	HELD
	Workshop	December 3, 2013	HELD
	Planning Board Code Subcommittee (PBCS) Mtgs.	2/4/14; 2/12/14; 2/18/14, 3/19/14	
YES	Public Hearing	Review 2/27/14; PH held 3/13/14, continued, sent to Subcomm.	HELD
YES	Review/Recommendation to Town Council		PENDING

BACKGROUND

Through the review of recent subdivision projects, an issue with the application of Article VIII, 16.7.8.1. (Land Not Suitable for Development) has been raised. According to the Maine State Soil Scientist, the referenced document, *Soil Suitability Guide for Land Use Planning in the State of Maine*, is out of date and no longer applicable. The Planning Board initiated discussions on the issue with input from Bill Straub, CMA, Peer Review Engineer. He concurred that the use of the document for regulatory purposes is no longer appropriate.

This portion of the Town Code is referenced in Title 16.2 Definitions.

Net residential acreage means the gross available acreage less the area required for streets or access and less the areas of any portions of the site which are unsuitable for development as outlined in Article VIII of Chapter 16.7.

Since Title 16.7.8 is directly related to Net Residential Acreage, an opportunity is available to update the provision to be more in line with what many other towns require for determining Net Residential Acreage.

The Board last discussed the proposed amendment at the March 13, 2014 meeting where a public hearing was held. At the December 3, 2013 Workshop, the specifics related to the amendment and the issues surrounding soil suitability and its applicability to net residential area and septic were discussed. The Board made subsequent changes at the January 9 and February 27 Board meetings and the February 4, 12 and 18 meetings of the Code Subcommittee (PBCS), minutes of which were submitted at the last meeting.

The PBCS at their 3/19 meeting revised the amendment in response to questions raised at the 3/13 planning board meeting, minutes are attached.

REVIEW

The proposed amendment has undergone a great deal of review and editing. It is based on how other towns in Maine address soils associated with development suitability and the calculation of net residential acreage in general. Title 16.8.11.5 has been amended where “Land Not Suitable for Development” is currently referenced. The entire amendment also includes changes and additions to definitions associated to Net Residential Calculations. The most recent amendment includes additional language the Board requested at the March 13 meeting, to clarify the issue around double counting land area subtractions.

Land Not Suitable for Development

Staff reviewed the implications of deleting the current Article VIII *Land Not Suitable for Development* and have the following comments:

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

1. *Are situated below sea level;*

Currently the Planning Board may approve structures to be located on piers and wharves, 16.11.1.E, and residential development piers, 16.8.15.L. This item appears to be in conflict with the current Town Code. From a State and Federal permitting perspective, any activity in this area would require a permit from the Maine DEP, possibly the Maine Bureau of Parks and Lands, Submerged Lands Program, and the Army Corps of Engineers. The Current Town Code allows for this area to be regulated by the Kittery Port Authority.

Removing this item would correct an apparent conflict in the code and would not necessarily leave the potential for unchecked development. If the Planning Board would like to preserve or modify the intent of #1 they may consider amending the relevant portion(s) of Title 16, Chapter 11 Marine Related Development or Chapter 8, Article 15 Piers, Wharves, Marinas...with new language.

2. *Are located within the one hundred (100) year frequency floodplain as found in the definition;*

Currently the structures and associated development is allowed in the floodplain, Title 16.9.8 Floodplain Management, Section 8. Development Standards, and more specifically Planning Board may approve development in the floodplain per Title 16.9.8.10. The floodplain is included in the Resource Protection Overlay Zone (OZ-RP) when the area lies within the Shoreland Overlay Zone. The OZ-RP allows for development in varying degrees among permitted and special exception activities.

Removing this item would correct an apparent conflict in the code and would not necessarily leave the potential for unchecked development. If the Planning Board would like to preserve in part or modify the intent of #2 they may consider amending the relevant portion(s) of Title 16, perhaps in the specific base zone or in 16.9.8 Floodplain Management with language that supports the Board’s concerns, if any.

3. Are located on land which must be filled or drained, or on land created by diverting a watercourse, except the Planning Board may grant approval if central sewage collection and disposal system is provided.

Currently the Planning Board may approve structures and associated development on land which must be filled or drained, or on land created by diverting a watercourse when approving an application for a Wetlands Alteration, 16.9.3. The provision seems to be targeted at issues around installing individual subsurface wastewater systems within these types of conditions. Title 16.9.3.5 Prohibited Uses Within Regulated Wetlands prohibits the disposal and storage of waste. The State's subsurface waste water rules also prohibit the installation of a septic system in a wetland, require specific setbacks from wetlands. This is not the case, however, if there is the reconstruction of a legally existing system, where it is allowed to be closer to or within a wetland.

Removing this item would correct an apparent conflict in the code and would not necessarily leave the potential for unchecked development. If the Board feels something is lost when removing this provision, they may consider amending the Wetland Ordinance, title 16.9.3.

4. Has any part of the development located on filled tidal wetlands.

The original provision included: "In no instance shall the Board approve any part of a development located on filled tidal wetlands, or filled or drained great ponds (natural water body ten (10 acres or more in size)." This was also incorporated as part of what is now #3.

It is very unlikely that one can obtain a permit for this type of activity, filled tidal lands, when considering in the present context of state and federal permitting. In any event, if the Board finds this an important provision to preserve, prohibiting any development on such filled land, an amendment to, perhaps the Shoreland Overlay Zone and/or definitions should be considered.

5. Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability Guide for Land Use Planning in the State of Maine.

It is staff's opinion that this provision, even if referenced an updated soil rating source, is still not appropriate. Though the conditions may be not ideal, when suitable engineering methods are employed, however, construction is likely to be feasible. As discussed before at previous meetings and the December Workshop, this provision is targeted at subsurface wastewater systems and not general construction.

Removing this item would correct an apparent conflict in how the code has been applied over the years. If the Board finds it is important to prohibit development within the mentioned soil types they may consider amending title 16.9.1.4 Soil Suitability.

RECOMMENDATION

The amendment is based in part of what other towns require for calculating Net Residential Acreage and specific input by the Planning Board and Conservation Commission.

There has been a public hearing held. Another public hearing can be scheduled or the Board may want to consider requesting a joint workshop with Town Council prior to final recommendation.

1 **Proposed Amendment – EDITS THROUGH 3/19/14 PBSC MTG**

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

3
4 **16.7.8.1 — Locations and Sewage.**

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

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

14
15 **Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**

16
17 Article VIII. Net Residential Acreage

18
19 16.7.8.1 Net Residential Acreage Calculation

20 Net Residential Acreage determines the maximum number of dwelling units allowed on a parcel. To
21 calculate Net Residential Acreage the land area listed below must be subtracted from a parcel's gross
22 area. When land areas to be subtracted overlap, area therein shall be subtracted once.

- 23 A. All land located below the Highest Annual Tide elevation as published in the *Maine DEP Highest*
24 *Annual Tide (HAT) levels* for the most current year.
- 25 B. All land located within the floodplain as defined in Title 16.2, *Flood, One Hundred (100) Year.*
- 26 C. All wetlands as defined in Title 16.2 *Wetland*, as well as *vernal pools, ponds, lakes, streams and*
27 *other water bodies, including fifty (50) percent of the associated setbacks described in *Other**
28 *Buildings and Structures, Table 16.9 , Chapter 9 in this Title.*
- 29 D. All land located on filled tidal lands, per Title 16.2 *Tidal Land, Filled.*
- 30 E. All land located within existing easements, excluding view easements, and rights-of-way, as well as
31 *proposed rights-of-way, parking and associated travel ways, including driveways that service two*
32 *(2) or more dwelling units.*
- 33 F. All land isolated from the primary portion of the parcel by a road/street, existing land uses, or any
34 *physical feature, natural or manmade, such that it creates a barrier to the central development of*
35 *the site and no means of access is proposed nor likely to be provided in the future. However, to*
36 *demonstrate that identified isolated land may be considered developable for the purpose of this*
37 *calculation, the applicant must submit a plan and supporting documentation for the Board's*
38 *consideration.*
- 39 G. All land zoned commercial.
- 40 H. All land one (1) acre or more contiguous area with sustained slopes of 20% or greater.
- 41 I. All land identified as exposed bedrock, or soils with a drainage class of *poorly drained, and/or*
42 *very poorly drained* as defined in Title 16.2 *Soils.*
- 43 J. Fifty (50) percent of all *land characterized as drainage class* of *somewhat poorly drained*, unless
44 *public sewer is used*, in which case no land area is subtracted.
- 45 K. All land area within a cemetery/burying ground as defined in Title 16.2, including associated
46 *setback per MRS Title 13 §1371-A *Limitations on construction and excavation near burial sites.**

- 47 L. All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection
48 Overlay Zone not included in 16.7.8.1.A -K.
49

50 16.7.8.2 Documentation

51 The Net Residential Acreage calculation must be supported by verifiable information and accurate data
52 and shown on the subdivision plan or other plan when applicable.
53

54

55

56 **Title 16.2 Definitions**

57

58 Tidal Land, Filled: means portions of the submerged and intertidal lands that have been rendered by
59 human activity to be no longer subject to tidal action or below the natural low-water mark after October 1,
60 1975.

61

62 **Soils**

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

65

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

68 A soil's drainage class must be determined by a Maine Certified Soil Scientist and based on the most
69 recent Natural Resources Conservation Service Supplemental Key for the Identification of Soil Drainage
70 Class that reflects the Maine Association of Professional Soil Scientists, Key to Drainage Classes,

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

76 **Net residential acreage** means the land area identified for regulatory purposes as developable and is
77 means the gross available acreage less minus the area required for streets or access and less the areas
78 of any portions of the site which are unsuitable for development land area identified as outlined in Article
79 VIII of Chapter 16.7 Net Residential Acreage. The Net Residential Acreage Calculation is used to
80 determine the maximum number of dwelling units allowed on a parcel.
81

82

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

84

85 **16.8.11.5 Application Procedure.**

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

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

90

- 91 1. Calculations and maps to illustrate:

- 92 a. proposed dimensional modifications and the dimensional standards required in the zone in which the
93 development will be located;
- 94 b. non-buildable area (land not suitable for development area as defined in Article VIII of Chapter Title
95 16.7.8.1);
- 96 c. Net Residential Acreage and Net Residential Density; and
- 97 d. open space as defined in Section 16.8.11.6.D.2 of this Article.

**Town of Kittery Maine
 Town Planning Board Meeting
 March 27, 2014**

Town Code Amendment - Title 16.10.9.1.4. Approved Plan Expiration, Title 16.10.9.1.5 Requests for Extension and Title 16.9.3.8 Expiration of Wetlands Alteration Approval. Discuss proposed amendment and schedule a public hearing. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	1/23/14, Continued to 3/13/2014	
YES	Schedule Public Hearing		
YES	Public Hearing		
YES	Review/Recommendation to Town Council	1/23/14/Pending	

Background

The prior amendment was not approved by Town Council, see packet info from 1/23/14. This amendment review was continued by the Board for input by staff and a member of the Code Subcommittee, and continued again, 3/13/14, for input by subcommittee. The attached amendment reflects those changes. *16.9.3.8 Expiration of Wetlands Alteration Approval* was added to the amendment since it has similar language and issues.

Recommendation

With the addition of 16.9.3.8 another public hearing is needed.

1
2 The following amendments are recommended by Staff and PBCS review:

3
4 **Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW**

5
6 **Article IX. Post Approval**

7 **16.10.9.1 Post Approval Actions Required.**

8
9 **16.10.9.1.4 Approved Plan Expiration.**

10
11 A. ~~An approved subdivision plan's approval by the Planning Board will expire if work on the development~~
12 ~~has not commenced within one (1) year from Planning Board date of approval. or Where work has~~
13 ~~commenced within one (1) year of approval, is not substantially such approval will expire unless work is~~
14 ~~complete within three (3) years from of the original date of Planning Board approval. The Planning Board~~
15 ~~may, by formal action, grant extensions for an inclusive period from original approval date not to exceed~~
16 ~~ten (10) years.~~

17
18 B. ~~A non-subdivision~~ For all other development plans, ~~plan's approval by the Planning Board approval~~
19 ~~will expire if work on the development has not commenced within one (1) year from date of approval. or~~
20 ~~Where work has commenced within one year of approval, such approval will expire if work is not~~
21 ~~substantially complete within two years from of the original date of Planning Board approval. The~~
22 ~~Planning Board may, by formal action, grant extensions for an inclusive period from original approval~~
23 ~~date not to exceed three years.~~

24
25 C. The Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration
26 date upon written request by the developer for an inclusive period from the original approval date, not to
27 exceed five (5) years for a subdivision plan and three (3) years for all other development plans.

28
29 D. When a plan expires the applicant may re-apply subject to the current Town Code

30
31 **16.10.9.1.5 Requests for Extension.**

32 ~~The Planning Board may grant extensions to expiration dates upon written request by the developer, on a~~
33 ~~case-by-case basis. {Modified and moved to C. above}~~

34
35 **Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS - NATURAL ENVIRONMENT**

36 **Article III. Conservation of Wetlands Including Vernal Pools**

37
38 **16.9.3.8 Expiration of Wetlands Alteration Approval.**

39 Wetlands Alteration Approval will expire if work on the development has not commenced within one (1)
40 year of Planning Board date of approval. or is not substantially Where work has commenced within one
41 (1) year of approval, such approval will expire unless work is complete within two years of the original
42 approval date, the approval for work in the wetlands will expire. The Board may, by formal action, grant
43 extensions to the approval, not to exceed period specified in 16.10.9.1.4.C, provided the request is
44 submitted to the Board prior to the expiration of approval.

2012-2014
PLANNING BOARD ACTION ITEMS

DATE	ITEM	PRIORITY	ACTION TAKEN	DATE
Aug 9, 2012	16.10.9.2 REDEFINE FIELD CHANGES; Major/Minor	1	Ongoing	
Oct 11, 2012	REVIEW 16.10 (WORKSHOP ITEM #1 FROM 10/11/12 WORKSHOP) Plan Application Review	3		
	Post Building Permits on Web Site		Requested; Shelly Bishop; TBD	
	SUGGESTED ORDINANCE CHANGES BE AVAILABLE ONLINE	2		
	ABUTTER'S LIST TO PB EARLY ON, BEFORE PUBLIC HEARING	1	at sketch plan	4/25/2013
10/13/2012	DPW PROJECTS COME BEFORE PB; NEED UPDATED LIST	2	No DPW update submitted since October, 2012	4/25/2013
	BUSINESS OVERLAY ZONES: WHERE AND WHAT CHANGES; 16.3.2.20 Proposed Quality Improvement Overlay; form based code vs. individual ordinances (Bob M.)	1	Workshop; Sustain So ME; set up January 2014 workshop (1/24 AM)	4/25/2013
Feb 14, 2013	DEFINE COMMERCIAL RECREATION	2	In process	
	OUTDOOR SEATING/use of public ROW	1	Ongoing (Winter, 2014)	4/25/2013
Feb 28, 2013	UPDATE DESIGN STANDARDS FOR LED LIGHTING:	3		
3/28/2013	CONTINUE WORKSHOP WITH KCPC, KOSC REGARDING 1 - 3 ACRE RR; discuss LD 220 and LD 1810 and potential impact on property values and future land use regulation; restrict # building permits issued per year		May 15, 2013 Workshop; December 3, 2013 workshop, w Soil Suitability; what is status of LD 220 and 1810?	Ongoing
	WORKSHOP; Cluster Ordinance needs work USABLE OPEN SPACE RETAIN ROAD FRONTAGE (Buffers) TRAFFIC STUDIES	2	KOSC wants input	4/25/2013
Ongoing	PB Workshop Update (MMA?): training; education; conflict of interest; attendance/voting;	1	Retreat: January 10, 2014; MMA workshop 3/25/14	4/25/2013
Mar 28, 2013	Set up Workshop to discuss High Pointe Circle Issues: Road Extension & Gate and use of woods road; review prior approvals and minutes	2	Staff (GM) will attempt to resolve and report to KPB	4/25/2013
Apr 11, 2013	Format of Comp Plan		strike out and underline existing 3/25/2002 CP	4/25/2013 Complete
Apr 25, 2013	16.11.3 SHOREFRONT PLAN REVIEW	2	To Council for adoption	in progress
	ROADS / SIDEWALKS TO NOWHERE (ROW plans)	1	Ongoing	
10/24/13 Amendment	DPW Road Cuts; Title 5 amendment; approved by PB 10/24; to Council 11/25		Revise per Council Action	

MARCH, 2014

2012-2014
PLANNING BOARD ACTION ITEMS

	COUNCILOR DENNETT'S PROPOSED CHANGES TO KPB BY-LAWS	1	Markup provided; discussed 11/14; 12/12 (Susan 1/9)	Pending
	Shoreland definition			
	HAT - Highest Annual Tide: no Elevation 6			
8/22/2013	No site work while application before Planning Board; site dev pre-meeting; CMA construction inspection;	1	January 2014	
	Definition: Substantially complete re: development vs. building permits			
	Soil Suitability Guide; discontinue; how do other communities handle?		Workshop scheduled December 3, 2013	Ongoing
11/14/2013	Sidewalks 'to nowhere'; case by case basis; further discussion			
	Waivers; legal issue?		January 2014	
11/14/2013	Fines			
11/14/2013	16.7.3.5.6 Reconstruction periods			
11/14/2013	Structure replacement outside of shoreland zone (missing from code)	1		
11/14/2013	Federal standards, re: road design			
11/14/2013	Review flood hazard ordinance; 16.5.3.4		Coordinate w CMA	
12/12/2013	Structure replacement inside shoreland/excavation	1		
12/12/2013	Pedestrian / Bike paths			
12/12/2013	Minor subdivisions; density; septic			
1/23/2014	Outdoor Seating (extend to other zones)			
1/24/2014	Findings of Fact workshop			
2/27/2014	Extension of subdivisions/building permit periods	1		
2/27/2014	List of Committees/Boards to monitor ?			
2/27/2014	Flag Lots (16.8.-16.9)			
3/13/2014	Prioritize Action Items			
3/13/2014	Septic pretreatment requirement or density bonus			
3/13/2014	Proof of property materials (ie. sand from Alfred)			

MARCH, 2014

2012-2014
PLANNING BOARD ACTION ITEMS

COMPLETED ITEMS				
Complete	LEGAL NOTICES IN PACKET OR EMAILED TO PB MEMBERS	Complete	email to PB @ same time sent to publication	Complete
Complete	UNBUNDLE ZONING AMENDMENTS	Complete	4/25/2013	Complete
Complete	BUILDING PERMIT LIST IN PACKETS	On-going	Ongoing; monthly updates	Complete
Complete	FOLLOW UP ON CHANGE TO 16.8.24.2 F (LED lights)		APPROVED BY COUNCIL	3/25/2013
Complete	DISCUSS PUBLIC NOTICES; ABUTTER'S LIST EARLY, INCLUDE M/L AND PHYSICAL ADDRESS	Complete	Sales (assessor) close April 1; system update in Fall	
Complete	SPECIALTY FOOD AND BEVERAGE	Complete	Ordained; 6/10/13	Complete
Complete	Foreside workshop with Council	Complete	1/24/2014	
Complete	REVIEW REPORT TO COUNCIL (RTC) FORMAT	2	Jan 24, 2013	



Town of Kittery, Maine

Town Planning and Development Department
200 Rogers Road, Kittery, ME 0390
Telephone: (207) 439-0459 Fax: (207) 439-6806
www.kittery.org

KITTERY TOWN PLANNING BOARD BYLAWS

Adopted January 17, 1974
Revised and approved, November 19, 1987
Revised and Approved, May 23, 1991
Revised and Approved October 11, 2007
Revised and Approved February 28, 2008

[4/2013 edits per Frank Dennett, for discussion]

[12/2013 edit, Susan Tuveson]

[3/2014 edit, Susan Tuveson, per board comments]

The Planning Board of the Town of Kittery has been established under the Town Charter adopted 1967, according to HP 521-LD768, Revised Planning and Zoning Statutes in Maine, 1969, and other applicable State Statutes.

Section 1. The Planning Board ~~shall consist~~ shall consist of seven (7) ~~permanent~~ members appointed by the Town Council in accordance with the Town Charter adopted in 1967 and revised on June 11, 2002. ~~Members shall be residents of the Town for at least one (1) year prior to their appointment.~~ The term of office of a member is three (3) years. ~~The Town Clerk will swear in all members. All members will take and subscribe to the oath of office as administered by the Town Clerk or any other person authorized by law to administer an oath.~~ Upon appointment by the Town Council, and upon renewal of term, each member will take and subscribe to the oath of office as administered by the Town Clerk or any other person authorized to administer an oath.

Section 2. At the first regularly scheduled meeting in December, the Board shall elect a ~~Chair, Vice chair, and Secretary~~ from its ~~regular~~ among its ~~members~~ membership, a Chair, Vice Chair, and Secretary. ~~for the ensuing year.~~ Term of service is one year.

37 Section 3. ~~The regular m-~~ Meetings of the Planning Board ~~shall be~~ ~~shall be~~ held in the Town
38 Office at 6:00 p.m., on the second and fourth Thursdays of each calendar month, except for
39 November and December ~~of each year~~, when the regular meetings ~~shall be~~ ~~shall be~~ held on the
40 second and third Thursdays. ~~of those months.~~ ~~When~~ ~~Where~~ a regularly scheduled Planning
41 Board meeting ~~falls~~ ~~occurs~~ on a holiday, the regular meeting for that date shall be set by the
42 Board at its last regular meeting prior to the holiday. The date, time or location of any regular
43 meeting may be changed by an ~~vote of the Board at a previous meeting upon an~~ affirmative vote
44 of four (4) members, ~~of the Board.~~ Taken at any regular meeting of the Board, in accordance
45 with (Maine meeting provision: cancellations) plus citation.

46
47 Section 4. Special meetings may be called by the Chair; ~~and, or,~~ in the case of ~~his/her~~ the
48 Chair's absence, disability or refusal; ~~to participate,~~ may be called by the Vice-Chair, or by four
49 (4) members of the Board. Notice of ~~said~~ ~~such special~~ meeting ~~shall be made~~ to Board
50 Members ~~shall must~~ be made by telephone at least 12 hours before the meeting-, ~~and by email~~
51 ~~with confirmation by return email within the same 12-hour time restriction.~~ The telephone call
52 ~~and text of the email shall will~~ shall set forth the matters, ~~or matters,~~ to be ~~discussed and/or~~ voted
53 on, and ~~nothing else shall may~~ other(s) shall be considered at such special meeting.

54
55 Section 5. ~~At the appointed time,~~ ~~The~~ the Chair, or in the absence of the Chair, the Vice-Chair,
56 shall ~~take the chair at the time appointed for the meeting,~~ call the members to order, ~~have the roll~~
57 ~~called~~ call the roll, lead the Pledge of Allegiance, and upon determining ~~whether~~ a quorum of
58 members is present, shall proceed with the business of the meeting. ~~Following roll call, the order~~
59 ~~of business shall be~~ The order of business shall be as follows: (a) approval of the minutes of the
60 preceding meeting, (b) public comment, (c) old regular business, (d) Board members' time, (e)
61 Planner's time, (f) new regular business, (g) adjournment.

62
63 Section 6. Minutes of all meetings, ~~and~~ workshops, ~~and site walks shall must~~ shall be recorded.
64 ~~Said minutes shall be reviewed, corrected and approved by the Board at the first meeting~~
65 ~~following transcription by the recorder.~~ Review, correction and approval by the Board of such
66 minutes shall occur at the first meeting following transcription by the recorder, and distribution
67 to Members. Upon approval, ~~Copies~~ ~~copies~~ of said approved minutes shall be furnished to the

68 Town Manager, Town Council Chair, ~~the Chair of the Zoning~~ Board of Appeals Chair, and the
69 Conservation Commission Chair. following approval.

71 Section 7. A quorum consists of four (4) members. ~~All decisions shall be made by~~ require a
72 ~~minimum of~~ Where only four members are present, all decisions must be made upon four (4) like
73 votes, except on procedural matters. Where more than four members are present, decisions shall
74 be made upon a minimum of four (4) like votes.

76 Section 8. ~~If a member has~~ Where a member may possess a conflict of interest pertaining to a
77 matter before the Board, ~~and is not allowed to vote on a~~ that member shall not be permitted to
78 vote on said matter, ~~that member shall~~ may and shall not be counted ~~by the Board in~~ for the
79 purpose of establishing the quorum ~~for~~ in the matter. ~~in which he or she has a conflict.~~ Public
80 disclosure of ~~such~~ any possible conflict shall be made before discussion of the agenda item in
81 question. To ~~an limited extent,~~ as determined by the Chair, members of the public may be
82 ~~allowed~~ permitted to comment on this matter at this time. A majority vote of the Board members
83 present, ~~(except the member being challenged)~~ minus the member under challenge, shall decide
84 whether ~~an~~ the alleged conflict ~~in question is~~ exists such that it: ~~(a) may reasonably interfere with~~
85 the affected member's ability ~~to hear and act on the item impartially;~~ and ~~(b)~~ to render an
86 impartial hearing and decision, and whether ~~it~~ such participation by the member in question
87 would ~~may~~ give the appearance ~~to the public of an inappropriate conflict of interest so as to~~
88 undermine public confidence in the fairness of the meeting and impartial treatment of the subject
89 matter.

91 Section 9. ~~Attendance of members is expected at~~ Members are expected to attend all regular and
92 special meetings. ~~If~~ Where a member is absent from more than three (3) consecutive regular
93 meetings, the Board may then vote to recommend to the Town Council that the position be
94 declared vacant.

96 Section 10. Site walks called by the Chair ~~or~~ and voted upon by a majority of the Board ~~in~~
97 ~~accordance with ordinance requirements~~ are considered public meetings and shall be properly
98 noticed to applicants, abutters and the general public according to requirements of ordinance.;

99 ~~however~~ No formal motions ~~shall may~~ be made, nor votes, shall be made or taken at a site walk.
100 ~~Public Public and abutter~~ notice shall ~~must~~ be given of all site walks, ~~and proper minutes taken.~~
101 Minutes of site walks shall be the responsibility of ~~the~~ the Planner, ~~or~~ Planner's designee, is
102 responsible for minutes of site walks and upon ratification ~~Site walk minutes shall must~~ shall be
103 included in the records of applications before the Board.

104

105 Section 11. At meetings ~~the~~ the Chair shall preserve order, may speak to points of order in
106 preference to other members, and shall decide all questions of order subject to appeal to the
107 Board by motion, regularly seconded, and no other business shall ~~may~~ shall be transacted until
108 the question on appeal is decided.

109

110 Section 12. The Chair shall declare all votes, but if any member doubts a vote, the Chair shall
111 cause a recount of the vote without debate.

112

113 Section 13. When a question is under debate, the Chair shall receive no motion but to adjourn,
114 or to move the previous question, or to lay on the table, or to postpone to a specified date, or to
115 refer to a committee or some administrative official, or to amend, or to postpone indefinitely:
116 which several motions shall have precedence in the order in which they stand arranged.

117

118 Section 14. The Chair shall consider a motion to adjourn as always in order, except on
119 immediate repetition; ~~and that the~~ motion, ~~and the motion to lay~~ to remain on the table, or to take
120 from the table, shall ~~must~~ shall be decided without debate.

121

122 Section 15. When a vote is passed, it shall ~~be is~~ shall be deemed in order for any member who
123 voted on the prevailing side; to move a reconsideration thereof at the same meeting, or at the
124 next succeeding meeting; ~~and w~~ When a motion of reconsideration is decided, that made and
125 seconded, the subsequent vote shall ~~is~~ shall be final. ~~and may~~ not be considered further.

126

127 Section 16. During a public hearing, at the time appointed on an agenda for a particular matter
128 before the Board, any other person in attendance at the meeting wishing to address the Planning
129 Board on an item, said item shall so signify by raising his/her a hand. ~~and, w~~ When recognized

130 by the Chair, and before addressing the subject matter of the hearing, such person shall approach
131 the lectern, or other designated place or manner for addressing the Board, shall state his or her
132 name and address for the record, and shall enter this same data in writing where and when
133 requested. ~~request permission to address the Board, stating his/her name, address and the subject~~
134 ~~matter on which they desire to address the Board.~~ At any other time during a meeting, the Chair
135 ~~may, at his/her~~ retains the discretion, ~~to~~ invite further public comment. In all cases, ~~the~~ Chair,
136 with consent of the Board, may set reasonable time limits on members of the public choosing
137 who choose to address the Board. Likewise, ~~the~~ Chair may also limit public testimony to that
138 deemed to be relevant and material to a pending issue the subject matter of the hearing, or other
139 Board concern.

140
141 Section 17. All meetings of the Board ~~shall be~~ shall be public. ~~However, the Board, upon~~
142 ~~majority vote,~~ The Board may recess for executive session, upon majority vote, consistent with
143 the Maine Right to Know Law statute, (MRSA Title 1, Sections 401-410), provided that the
144 motion to go into recess for executive session must indicate the precise nature of the business of
145 the executive to be conducted in such closed session, and include a citation of one or more
146 sources of including any and all relevant statutory or other authority that permits an executive
147 session for that business reference to such power to recess, and that final action not be taken by
148 the Board except in regular public sessions.

149
150 Section 18. These Bylaws may be revised by submission to the Board in writing of a proposed
151 change or changes, in writing to the Board, and scheduled for consideration in at least two
152 meetings of the Board. The change ~~shall be~~ shall be effective upon adoption ratification by the
153 Board.

154
155 Section 19. Planning Board meetings ~~shall be~~ shall be conducted according to Robert's Rules
156 of Order. Any and all conflicts shall be resolved in favor of these Bylaws.

157

158



Town of Kittery, Maine
Town Planning Board and
Town Planning and Development Department
200 Rogers Road, Kittery, ME 03904
Telephone: (207) 439-0459 Fax: (207) 439-6806
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Town of Kittery Maine

Destination Marketing Program

Adopted by Town Council May 23, 2011

Attached

1. Report To Town Council May 18, 2011
2. Enclosures
3. Town Council Minutes of April 25, 2011
4. Town Council Minutes of May 23, 2011

For questions, please contact:

Gerald R. Mylroie, ACIP, Town Planner
Director of Town Planning and Development



Town of Kittery, Maine
Town Planning Board and
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To: Jon Carter, Town Manager and Town Council
From: Town Planning Board via Gerry Mylroie, ACIP, Town Planner
Date: May 18, 2011

Re: **Report to Council** **ADOPTED May 23, 2011**
Kittery Destination Marketing Program – Update

Background

- Town Planning Board – Local Business efforts since December 2010; over 10 meetings and 100 business and property owners plus one web and one hard survey mailed to all Foreside business owners (encl 1); supported Historic Kittery-Maine’s First Port and Portside brand.
- Town Planning Board – Council Workshop, March 24, 2011(materials previously provided)
- Executive Summary – Recommendation, April 19, 2011 (not encl)
- Council Public Hearing, Phase I, April 25, 2011 (materials previously provided)
 - Motion to Approve (postponed to May 23, 2011):

“Move to approve adoption of Phase I of a Kittery Destination Marketing Program as recommended including:

- *Promote “Historic Kittery”;*
- *Rename the “Traffic Circle” as “Memorial Circle”;*
- *Name the business area around the intersection of Walker Street and State Road as Foreside Crossing;*
- *Brand the Trading Post and Outlet area Coastal 1 Kittery;*
- *Authorize the Town Manager and staff to meet with the Maine Department of Transportation and Maine Turnpike Authority to update signs to recognize and promote Kittery; and,*
- *Approve the use and installation of “welcome”, “directional”, and “destination” signs as shown in the attached exhibits subject to final approval as budgets permit.”*

Current Situation:

KITTERY DESTINATION MARKETING PROGRAM PHASE I:

Action detail to be implemented with approval:

Item 1:

Re-affirm the Town of Kittery Maine as the brand name and brand logo as the Town Seal.
Adopt the Town brand tag line as “Historic Kittery - Maine’s First Port - 1647”. (encl 2)

Item 2:

Kittery Memorial Circle – Re-name the current traffic circle to Kittery Memorial Circle and upgrade it to a ceremonial circle with granite curbing, lighted flag pole and lawn; a clean, elegant symbol of our gratitude for citizen service to our country. Other memorials would be relocated to appropriate settings.

Item 3:

Foreside Crossing - Brand the area generally including the area on either side of State Road (Memorial Drive) from the wetlands and vantage point of Memorial Bridge on the north to the Walker-Government street intersections and including the Navy Yard railroad track crossing, York Hospital site, TD Banknorth, Loco Coco’s, Water District site and gourmet food shops.) (map, encl 3)

Item 4: Coastal 1 Kittery – Brand the current Coastal Route 1 Kittery Trading Post/Outlet area from the KTP to Lewis Road. Use brand for marketing such as “Shop at Kittery Trading Post, Tanger or Premium Outlets or dine at the Weathervane or Robert’s at Coastal 1 Kittery – where you can “Shop+Eat+Stay+Play”.

Item 5:

I-95 Maine Turnpike Signs

Town will work with the MDOT and MTA to implement the following I-95 sign program:

Northbound sequence from New Hampshire to Kittery Memorial Circle

Pre-Exit 1	Green Sign:	Historic Kittery Maine – Next 3 Exits Fort McClary – Naval Museum- Fort Foster
Pre Exit 2	Blue Services Sign:	Gas – Food – Lodging – Supplies Kittery Town Center – Foreside - Trading Post and Outlets
Exit 1	Green Sign:	to 103 Navy Yard - Kittery Foreside – Eliot
Exit 2	Green Sign:	to US 1 and US 1 By-Pass Kittery Town Center – Memorial Circle - Foreside
Exit 3	Green Sign:	Coastal 1 Kittery - Trading Post & Outlets
Exit to Maine	Information Center	Add - Exit to Coastal 1 South

South Bound

Pre Exit 3	Green or Brown Sign:	Historic Kittery - Next 3 Exits
	Brown Sign:	Fort McClary – Naval Museum - Fort Foster - Foreside
Pre Exit 2	Blue Services Sign:	Gas – Food – Lodging – Supplies - Trading Post & Outlets
Exit 2	Green Sign:	to Kittery - S. Berwick - Trading Post & Outlets

Town/State Signs in Town

The Town will work with the MDOT to implement the following sign improvements in the Town:

Exit 1	to 103 Navy Yard - Kittery Foreside
--------	-------------------------------------

- Exit 2 to Coastal 1 Kittery – Trading Post & Outlets – Town Center
Kittery Community Center – Kittery Center Village
Kittery Point Village – Foreside
- Exit 3 to Coastal 1 Kittery
Intersection
236 & 103 Kittery Point Village – York – Foreside

Item 6:

Town and Destination Brand Logos and Signs:

Reflect the Town’s brand name and be consistent with the historic image as follows:

- The Town brand logo is the Town Seal
- Type face will be Times New Roman italics or similar.
- Town Welcome / Entrance signs will feature: Town Seal – Welcome – Historic Kittery – Maine’s First Port – 1647 (encl 4)
- All other Town signs for public buildings will have the Town Seal, same type face and historic/traditional color background and frame.

Destination Directional Signs and Logos:

Use the format for each Destination Directional sign as follows: (encl 5)

- Top - Town Seal – Welcome – Historic Kittery – Maine’s First Port
- Destination Name Sign
 - Directional Arrow
 - Destination Logo and Destination Name such as:
 - Shopping Bag Coastal 1 Kittery
 - Tall Ship Foreside
 - Lighthouse Kittery Point Village

Destination Signs:

Install small destination signs at the entrance of major destinations (brown background/yellow trim) (encl 6):

- Kittery Center Village (encl 7)
- Kittery Point Village/Pepperrell Cove
- Foreside

Town Welcome / Entrance Signs – Locations:

Install Town entrance / welcome signs at major transportation borders as budget permits including (encl 3):

- US 1 North – at York Town Line
- Sarah Long Bridge – at US 1 By-Pass
- I-95 off ramps – Exits 2 and 3
- Memorial Bridge – at State Road or re-named Memorial Drive (US 1)
- Route 236 – at Eliot Town Line
- Route 103 – at Eliot Town Line
- Route 103 – at York Town Line

Maps and Collateral Marketing Materials:

The Town has and will work with private business and property owners and citizens to update and have prepared maps and collateral materials.

KITTERY DESTINATION MARKETING PROGRAM PHASE II:

The Town Planning Board recommended additional Town and sub-area geographic “destination marketing” and planning and development considerations (Appendix A). Council review and consensus of these follow-on features is requested.

Recommendation: Approve adoption, as presented

1 Appendix: Phase II Considerations

6 Enclosures:

1. Survey of Foreside Business Owners.
2. Town Seal – Tag Line
3. Foreside Crossing Area Map
4. Welcome Sign Example – to include original town seal
5. Destination Directional Sign Example
6. Destination Entrance Sign Example
7. Petition by Business Owners and Tenants to be included as Kittery Center Village

END REPORT TO COUNCIL

APPENDIX A: PHASE II CONSIDERATIONS

Address Town and sub-area geographic “destination marketing” and Town planning and development Planning Board Recommendations as follows:

Adopt or re-affirm the following destination and related geographic area brands: (see attached Town Planning Board’s Kittery 2020 Destination Marketing Plan map.)

- **Town Center** – the area along the 236/103 corridor from Kittery Estates /Town Hall/Memorial Circle easterly along Rogers Road/236 to the Kittery Community Center with Spruce Creek on the north and Orchard Grove Cemetery ridge on the south and the sub-area brands:
 - **Town Municipal Center**
 - **Kittery Historic and Naval Museum**; with improved front yard and entrance.
 - **Kittery Community Center at Frisbee Common / Rogers Park**
- **Memorial Circle and Drive** – (State Road re-branded and linked with Memorial Bridge)
 - **Legion Pond** – neighborhood and business area around and generally parallel with current Old Post Road, Route 1, State Road from the south side of Memorial Circle ridge to north side of Walker Road with sub-brands:
 - **Legion Pond Corner** at Old Post Road and Dennett Road
 - **Legion Pond**
 - **Memorial Field**
- **Portside** – neighborhood and business area previously referred to as Downtown, Kittery Village, Foreside (DMP use e.g. “Visit Historic Kittery Portside - Shop + Eat + Stay + Play.”)
 - **Wallingford Square** – existing (DMP use e.g. Visit Wallingford Square in Historic Kittery Foreside – Shop + Eat + Stay + Play”.
 - **Rice Public Library**
- **Kittery Center Village** – area along the Rogers Road/Shapleigh (236/103) corridor from the Kittery Community Center at Frisbee Common with Spruce Creek on the north and Orchard Grove Cemetery ridge and Navy Yard railroad tracks on the south and the sub-area brands:
 - **Post Office Square.**
 - **Kittery Community Center and Rogers Park**
 - **Emery Field**
- **Kittery Point Village** – business area on 103 at Pepperrell Cove and surrounding neighborhood and sub-brands:
 - **Pepperrell Cove** e.g. Shop at Frisbee Market/ Enoteca in Kittery Point Village or Sail to the Pepperrell Cove Landing in Kittery Point Village.”
 - **Lewis Square or Mitchell School Corner** - neighborhood around Mitchell School and intersection of Pepperrell Road and Haley Road.
- **Gateway** - area around current Route 1 By-Pass from the Sarah Long Bridge to Memorial Circle with sub-area brands:
 - **South Gate** – the entrance area at north side of the Bridge.
 - **Gateway Boulevard** - (current US 1 By-Pass) maintaining its “thru traffic function” but with upgraded streetscape to a more historic traditional gateway boulevard with street trees, possible landscaped raised center islands and turning lanes, set back pedestrian walkways and lined with existing and other appropriate mixed uses with limited driveway curb cuts and signalized intersections.
- **Coastal 1 Kittery** – Sub-area brands:
 - **Pine Tree Center at Cutts Road** – area around intersection of Route 1 and Cutts Road.

- **North Gate / Landmark Hill or Northgate Village at Route 1** and Town boundary on the north; a neighborhood village center serving residents in Kittery and York.

Maine State Information Center – intersection of Route 1 and the MSIC entrance. This intersection greatly improved with “traffic calming roadway design feature (e.g. center island or rotary) to slow down traffic and create a special entrance to Kittery, improved historic signs and fall color trees and landscaping.

- **Westside** – area west of I-95 with sub-brands:
 - West Gate – area at the Route 236 Eliot Town Line.
 - Westside 236 Parkway – Route 236
 - Shapleigh – neighborhood around the Shapleigh School and Field.
- **Kittery Business Park** – west of I-95 between Dennett Road and the Westside/236 Parkway.

- **Other Destination Attractions / Current or Possible Brand Names and DMP Uses**

- Portsmouth Naval Shipyard in Kittery Maine
- Fort McClary
- Fort Foster
- Rachel Carson Wildlife Refuge
- Traip Academy in Historic Kittery Portside
- Traip Boat Launch
- Shapleigh School/Field in Shapleigh or Westside Kittery
- Mitchell School at Lewis Square or Mitchell Corner
- Rice Public Library in Historic Kittery Portside
- Town Dock at Wallingford Square in Historic Kittery Portside
- Emery Field in Kittery Center Village
- Town Barn Dock off Dennett Road
- Kittery Point Village Fire Station at Lewis Square
- Kittery Gateway Fire Station on Gorges Road
- Eastern Bicycle Trail
- Chauncy Creek Lobster Shack in Kittery Point
- Kittery Arts Center in Historic Kittery Foreside or Kittery Foreside Arts Center
- Auto Works off Memorial Drive in Historic Kittery Foreside
- Lobster Market in Kittery off Gateway Boulevard
- Taylor’s Fish Market on Westside 236 Parkway in Kittery
- Badgers Island in Historic Kittery Foreside
- Warren’s Lobster House in Historic Kittery Foreside.
- Kittery Memorial Cemetery
- Haley Road
- Lewis Farm
- Norton
- Bartlett
- Spinney’s Creek with Old Town Barn
- Morse Park
- Legion Pond
- Shapleigh

- **Other Steps**

- Traditional street lights with banners installed.
- Winter white lights on Town, Village or other business district street trees.

- Trolley Service provided within the Coastal 1 Kittery destination and between it and Kittery Point Village/Pepperrell Cove and Foreside's Wallingford Square, Foreside Crossing and Town Center / Town and Naval Museum.
- Quality improvement Plan preparation and implementation for each business destination area.
- Joint business marketing programs e.g. shop, eat, stay coupons, advertising, web postings, event coordination, etc.

END

KITTERY TOWN COUNCIL

COUNCIL CHAMBERS

April 25, 2011

1. Call to Order

Chairperson Spiller called the meeting to order at 7:00 P.M.

9. PUBLIC HEARINGS –

a. (040211-1) The Kittery Town Council moves to hold a public hearing to approve Phase I of a Destination Marketing Program.

Chairperson Spiller opened the public hearing. Town Planner Mylroie came to the podium and stated this issue came as a result of efforts started in the fall to help business development in the area and to minimize the potential impact on the businesses from the closure of the bridge. Town Planner Mylroie noted the first idea the group had come up with was developing a tagline for Kittery and the ideas were “Welcome to Historic Kittery, Maine” or “Maine’s First Port”. He continued the second idea was to rebrand the traffic circle to “Memorial Circle”. Town Planner Mylroie then noted the third idea was to come up with a consistent name for the Foreside area. He continued that as a result of discussions with business owners, the Foreside Committee and two surveys the preference was “Portside”. Town Planner Mylroie indicated they needed to provide more signage and direction to the area. He continued that he thought the name of the area should be decided by the town but they should pick one name and be consistent. Town Planner Mylroie stated the fourth idea was to rename the business area currently known as “Gourmet Alley”. He continued the consensus was to refer to the area as “Portside Crossing”. Town Planner Mylroie noted the fifth idea was to rebrand the outlet area to “Coastal Route 1”. He continued the final idea was to rename the Post Office Square area to “Kittery Center Village”. Town Planner Mylroie stated they were looking for Council’s approval so they could begin working with Maine DOT and Maine Turnpike Authority to begin working on signage and that he hoped there would be some cost sharing with the state on the signage.

Janet Gourley of Whipple Road came to the podium. Ms. Gourley stated as a member of the State Garden Club she supported changing the name of the traffic circle to “Memorial Circle”. Ms. Gourley continued she was a former member of the Foreside Committee and they had put a lot of work into revitalizing the area and that she did not support changing Foreside to Portside. She continued the name Foreside was very old and thought the historic name should be kept.

Elaine Peverly came to the podium. Ms. Peverly stated that Kittery was a very historic town and they needed to use all they could to further that and thought they should keep the name Foreside.

Vicky Wentworth came to the podium. Ms. Wentworth indicated that her father was the Chair of the Foreside Committee for 10 years. She continued she was hesitant to rename any areas of the town. Ms. Wentworth noted she understood the rebranding idea but thought the name Foreside should not be changed and that it might be more confusing to people if it was changed to Portside.

Ben Porter came to the podium. Mr. Porter indicated he was a member of the Foreside Design Review Committee and he had been working closely with Town Planner Mylroie on this issue. He continued Kittery was being faced with a potential bridge closure for 18 months at a minimum and needed to sustain business growth in the town. Mr. Porter stated it was essential to refer to the areas in Kittery with consistent names and that they needed to have better signage

and that he was in favor of the plan that had been laid out.

Susan Emery came to the podium. Ms. Emery stated she thought the town needed to promote its history and thought they should stay with the historic names already in place. She continued she thought the town should put it to a referendum for residents to vote on.

Tom Emerson came to the podium. Mr. Emerson stated he did not care what the areas were called but that the names needed to be consistent.

Lori Pratt, a business owner in the Foreside area, came to the podium. Ms. Pratt stated most of the business owners were ambivalent about the name of the area but that they needed signage.

Chairperson Spiller then closed the public hearing.

Councilor Dennett stated he was not adverse to getting more signage but was opposed to most of the other changes. Councilor Guy indicated he was not sure about changing the name of the Foreside area but thought that the marketing of Kittery was critical. Councilor Dow indicated he thought they needed to establish a name and start the signage process. He continued he thought they should keep the Foreside name. Councilor Beers thanked and gave compliments to Town Planner Myroie for his work on the issue. He also thanked the businesses and residents who had contributed their thoughts and efforts on the issue. Councilor Beers stated they needed to create an environment to retain a business structure. He continued he supported changing the traffic circle to “Memorial Circle” but would prefer to keep the Foreside name. Councilor Beers indicated he thought that “Portside Crossing” could be called “Foreside Crossing” and would then support the recommendation.

COUNCILOR BEERS MOVED TO APPROVE ADOPTION OF PHASE I OF A KITTERY DESTINATION MARKETING PROGRAM AS RECOMMENDED FOLLOWING:

- 1. PROMOTE HISTORIC KITTERY;**
- 2. RENAME THE “TRAFFIC CIRCLE” AS “MEMORIAL CIRCLE”;**
- 3. NAME THE BUSINESS AREA AROUND THE INTERSECTION OF WALKER STREET AND STATE ROAD AS FORESIDE CROSSING;**
- 4. BRAND THE TRADING POST AND OUTLET AREA AS COASTAL 1 KITTERY;**
- 5. AUTHORIZE THE TOWN MANAGER AND STAFF TO MEET WITH THE MAINE DEPARTMENT OF TRANSPORTATION AND MAINE TURNPIKE AUTHORITY TO UPDATE SIGNS TO RECOGNIZE AND PROMOTE KITTERY; AND,**
- 6. APPROVE THE USE AND INSTALLATION OF “WELCOME”, “DIRECTIONAL”, AND “DESTINATION” SIGNS AS SHOWN IN THE ATTACHED EXHIBITS SUBJECT TO FINAL APPROVAL AS BUDGETS PERMIT.**

Councilor Dennett asked for and received clarification that the use of the Town Seal would be the actual Town Seal and not the representation included in the packet. Councilor Dennett stated he could not vote in favor that evening but he had some issues with the proposal. Councilor Thomson indicated that he could not vote in favor that evening as he had issues with

the proposal as well. He continued he did not think that they needed to take action on the issue that evening and he thought they should take one more shot at making a cleaner more concise proposal.

COUNCILOR THOMSON MOVED TO POSTPONE ACTION UNTIL THE REGULAR MEETING SCHEDULED FOR MAY 23rd, SECONDED BY COUNCILOR DENNETT.

A ROLL CALL WAS TAKEN WITH COUNCILOR BEERS OPPOSED. MOTION PASSES 6/1.

May 23, 2011

KITTERY TOWN COUNCIL

COUNCIL CHAMBERS

1. Call to Order

Chairperson Spiller called the meeting to order at 7:00 P.M.

b. (040211-1) The Kittery Town Council moves to approve Phase 1 of a Destination Marketing Program.

Councilor Dennett indicated his problems with the proposed document which Town Planner Mylroie indicated would be changed.

COUNCILOR BEERS MOVED TO AMEND THE MAIN MOTION TO ADD ITEM 7 AUTHORIZING KITTERY CENTER VILLAGE AS PRESENTED, SECONDED BY COUNCILOR DOW.

A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR DENNETT OPPOSED. MOTION PASSES 6/1.

Chairperson Spiller stated the main concern was to get people from 95 and Route 1 to the businesses in town and that they needed clear, directional signage.

A ROLL CALL VOTE WAS TAKEN ON THE MAIN MOTION WITH COUNCILOR DENNETT OPPOSED. MOTION PASSES 6/1.

END

**Town of Kittery Maine
 Town Planning Board Meeting
 March 27, 2014**

Town Code Amendment – Chapter 2, Definitions, Chapter 3, Article 2, Section 17 Shoreland Overlay Zone, Chapter 7, Article 3 Nonconformance and Chapter 8, Article 28 Single and Duplex Family Dwellings in the Shoreland Overlay Zones in Title 16 Land Use Development Code.

An Amendment includes changes to the town’s Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	Scheduled 3/27	
YES	Schedule Public Hearing		
YES	Public Hearing		
YES	Review/Recommendation to Town Council		

Staff Comments

Background

It became evident while working with Michael Morse with the Maine Department of Environmental Protection (MDEP) on various Shoreland Zoning provisions that the Town is not fully in compliance with the State’s *Mandatory Shoreland Zoning Act*, pertaining specifically to MDEP conditional approvals, orders #5-99 (dated 12/29/1999) and #23-10 (dated 9/2/2010), see ATT. A and B. A modification to order #5-99 (5-99-A) was issued 8/4/2000 allowing the less restrictive provisions for Badger Island, see ATT. C. The conditions of approval noted in the 1999 and 2010 orders were never fully complied.

Review

Staff has initiated a review process with the State and have provided MDEP a draft that includes the required amendments. MDEP has reviewed the draft amendment and Staff has incorporated their comments in the amendment before the Board. The more significant change includes the land area per dwelling unit/lot size for the Mixed-Use Kittery Foreside zone. The base zone is 5,000 Square feet and the 1999 MDEP approval stipulated this be changed to 10,000 within the Shoreland zone.

Recommendation

With the latest changes in place, and with no other issues raised, the Board can proceed with scheduling a public hearing. If the Board does not concur with the proposed amendments and wants more information from the State the Board may want to schedule a workshop and invite the MDEP to discuss issues raised.

1 **Chapter 16.2 DEFINITIONS**

2 **16.2.2 Definitions.**

3

4 **Dwelling** means a building designed or used as the living quarters for one or more families. The term
5 does not include motel, rooming house, hotel, inn, club, trailer, or structures solely used for transient or
6 overnight occupancy.

7

8 **Dwelling unit** means a room or group of rooms forming a habitable unit for one family with facilities used
9 or intended to be used for living, sleeping, cooking, eating, and sanitary facilities. It comprises at least six
10 hundred fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling
11 unit, or a temporary, intra-family dwelling unit. The term does not include a trailer.

12

13 Dwelling unit (in the Shoreland and Resource Protection Overlay Zones) means a room or group of
14 rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters
15 for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include
16 mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-
17 period rented. Recreational vehicles are not residential units.

18

19 **Easement** means the authorization of a property owner for the use by another, and for a specified
20 purpose, of any designated part of the owner's property.

21

22

23 **Chapter 16.3 LAND USE ZONE REGULATIONS**

24 **Article II. Zone Definitions, Uses, Standards**

25 **16.3.2.13 Mixed Use MU.**

26

27 **D. Standards.**

28 1. All development and the use of land in the MU zone must meet the following standards. Kittery's
29 Design Handbook illustrates how these standards can be met. In addition, the design and performance
30 standards of Chapters 16.8 and 16.9 must be met.

31

32 2. Minimum Dimensional Standards.

33 The following apply:

34

35 Minimum lot size:

36 lots with frontage on Route 1	200,000 square feet
37 lots without frontage on Route 1	80,000 square feet

38

39 Minimum street frontage on road with access along	
40 U.S. Route 1, Haley Road, Lewis Road, or Cutts Road	250 feet
41 other streets or approved ways	150 feet

42

43 Minimum front yard	60 feet
-----------------------	---------

44 Minimum rear and side yards	30 feet
--------------------------------	---------

45 Maximum building height	40 feet
----------------------------	---------

46 Maximum height above grade of building-mounted signs	40 feet
---	---------

47

48 Minimum setback from water body and wetland water dependent uses	0 feet
---	--------

49		
50	Minimum setback from streams, water bodies and wetlands	in accordance with
51		Table 16.9, Section
52		16.3.2.17 and Appendix
53		A, Fee
54		
55	Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:	
56	dwelling unit with two or more bedrooms	5,000 square feet
57	dwelling unit with less than two bedrooms	4,000 square feet
58	residential care unit	2,500 square feet
59		
60	Minimum land area per bed for nursing care and convalescent	
61	care facilities that are connected to the public sewerage system	2,000 square feet
62		
63	Buffer to I-95 ROW	40 feet
64	Buffer to neighboring lot with an existing residence	
65	within 100 feet of the lot line	40 feet
66	Vegetated buffer to be maintained between the MU and R-RL zones	40 feet
67		

68 ~~**NOTE 1:** For single-family dwellings, one dwelling unit is allowed for each two hundred thousand~~
69 ~~(200,000) square feet of land area. A lot of record having a land area of more than two hundred thousand~~
70 ~~(200,000) square feet that was improved with a single-family dwelling as of April 1, 2004 may be divided~~
71 ~~into two lots with a single-family dwelling on each lot provided that each of the lots contains at least forty~~
72 ~~thousand (40,000) square feet of land area and meets the other dimensional standards of the zone.~~
73 ~~Sections 16.3.2.1 D.1 and D.2 as set forth in the Residential – Rural zone apply and no further subdivision~~
74 ~~is allowed.~~

75 For dwelling units that are part of a mixed-use building and are connected to the public sewerage system,
76 one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. Within
77 the Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty
78 thousand (40,000) square feet of land area within these zones. Except in the Resource Protection and
79 Shoreland Overlay zones, if the parking for the residential units is integrated into the building, the
80 minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square
81 feet.

83 ~~**NOTE 2:** For dwelling units that are part of a mixed-use building and are connected to the public~~
84 ~~sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable~~
85 ~~land area. If the parking for the residential units is integrated into the building, the minimum required~~
86 ~~buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet.~~

88 ~~**NOTE 3:** For elderly housing dwelling units that are connected to the public sewerage system, one~~
89 ~~dwelling unit is allowed for each fifteen thousand (15,000) square feet of buildable land area. Within the~~
90 ~~Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand~~
91 ~~(40,000) square feet of land within these zones. Except in the resource Protection and shoreland Overlay~~
92 ~~zones, if the parking If the parking for the elderly units is integrated into the building, the minimum~~
93 ~~required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet.~~

94

95 3. Retail Use Limitation.

96 Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not
 97 more than fifteen percent (15%) of the developable area of any lot or portion of a lot within the mixed use
 98 zone.
 99

100 **16.3.2.17 Shoreland Overlay Zone OZ-SL.**

101 **D. Standards.**

102 **1. Minimum lot standards**

103 **a. Minimum lot size by base zone, within the**

104	Residential–Village (R-V) zone	8,000 square feet
105	Residential–Urban (R-U) zone	20,000 square feet
106	Residential–Rural (R-RL), Residential–Suburban (R-S) <u>and</u>	
107	Residential–Kittery Point Village (R-KPV) zones	40,000 square feet
108	Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L)	
109	and Business-Local 1 (B-L1) zones	60,000 square feet
110	Residential-Rural Conservation (R-RLC) zone	80,000 square feet
111	Business-Park (B-PK) zone	120,000 square feet
112	<u>Mixed-Use Badgers Island (MU-BI) zone</u>	<u>same as the underlying</u>
113		<u>base zone</u>
114	<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>

115 **b. Minimum land area per dwelling unit by base zone, within the**

116	Residential–Village (R-V) zone	8,000 square feet
117	Business-Park (B-PK) zone	10,000 square feet
118	Residential–Urban (R-U), Business-Local (B-L) and	
119	Business-Local 1 (B-L1) zones	20,000 square feet
120	Mixed Use (M-U), Residential–Rural (R-RL),	
121	Residential–Suburban (R-S) and	
122	Residential–Kittery Point Village (R-KPV) zones	40,000 square feet.
123	Residential-Rural Conservation (R-RLC) zone	80,000 square feet.
124	<u>Mixed-Use Badgers Island (MU-BI) zone</u>	<u>same as the underlying</u>
125		<u>base zone</u>
126	<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>

127 **c. Minimum Shore frontage by base zone per lot and dwelling unit**

128	<u>Mixed Use-Badgers Island (MU-BI)</u>	<u>25 feet</u>
129	Residential-Village (R-V) and Residential Urban (R-U) zones	
130	<u>and Mixed-Use Kittery Foreside (MU-KF) zones</u>	<u>50 feet</u>
131	Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND),	
132	Business-Park (B-PK), Business-Local (B-L) and	
133	Business-Local 1 (B-L1) zones (shore frontage per lot)	150 feet
134	(shore frontage per dwelling unit)	50 feet
135	Residential-Rural (R-RL), Residential-Suburban (R-S),	
136	and Residential-Kittery Point Village (R-KPV)	
137	zones (shore frontage per lot)	150 feet

144 (shore frontage per dwelling unit) 100 feet
145 Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit) 250 feet

146 The minimum shore frontage requirement for public and private recreational facilities shall be the same as
147 that for residential development in the respective zone.
148

149 d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must
150 not exceed twenty (20) percent of the lot area, including existing development, except in the following
151 zones:

152
153 i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the
154 maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal
155 application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to seventy
156 (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a
157 water-dependent use.

158
159 ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where
160 the maximum lot coverage is seventy (70) percent.

161
162 iii. Notwithstanding the above limits, vegetated surfaces must exceed fifty (50) percent of the lot area
163 when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the
164 Residential - Urban Zone (R-U) and the Shoreland Overlay Zone.

165
166 iv. In the shoreland zone within the Mixed Use (M-U) zone, the maximum lot coverage shall be 20%.
167

168
169 2. Principal and Accessory Structures – Setbacks and Development.

170
171 a. All new principal and accessory structures (except certain patios and decks per Section
172 16.3.2.17.D.2.b, must be set back as follows:

173
174 i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water
175 bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
176 wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water
177 bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside
178 Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E,, except
179 that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement.
180 In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except
181 for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which
182 case the setback requirements specified above apply.

183
184 ii. The water body, tributary stream, or wetland setback provision does not apply to structures which
185 require direct access to the water body or wetland as an operational necessity, such as piers and
186 retaining walls, nor does it apply to other functionally water-dependent uses.

187
188 b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at
189 least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the
190 upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks
191 must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.

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c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

d. Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in height immediately upon planting.

e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80) square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.

f. The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.

g. 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. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.

ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent. Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone

h. Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided the:

- 240 i. structure is limited to a maximum of four feet in width;
241
242 ii. structure does not extend below or over the normal high-water line of a water body or upland edge of
243 a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural
244 Resources Protection Act, 38 M.R.S. §480-C); and
245
246 ii. applicant demonstrates that no reasonable access alternative exists on the property.
247
248 i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure
249 or use, or combination thereof, is constructed or established on a single parcel in the shoreland zone, all
250 dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.
251
-

252
253 **Article III. Nonconformance** (Ordained 9-26-11; Effective 10-27-11)

254
255 **16.7.3.5.6 Nonconforming Structure Reconstruction.**

256
257 A. Any nonconforming structure which is located less than the required setback from a water body,
258 tributary stream, or wetland and which is removed, damaged or destroyed, ~~by any~~ regardless of the
259 cause, by more than 50% of the market value of the structure before such damage, destruction or
260 removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months
261 of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement
262 is in compliance with the water body, tributary stream or wetland setback requirement to the greatest
263 practical extent as determined by the Planning Board (in cases where the structure is located in a
264 Shoreland Overlay of Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance
265 with this Code.
266

267 B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the
268 reconstructed or replacement structure is less than the required setback it may not be any larger than the
269 original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair
270 and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or
271 replaced structure at its new location.
272

273 C. If the total amount of floor area and volume of the original structure can be relocated or reconstructed
274 beyond the required setback area, no portion of the relocated or reconstructed structure may be replaced
275 or constructed ~~reconstructed~~ at less than the setback requirement for a new structure. When it is
276 necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with
277 Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any
278 structure that has been partially damaged must be made to the Code Enforcement Officer.
279

280 D. Any nonconforming structure which is located less than the required setback from a water body,
281 tributary stream, or wetland and removed, damaged or destroyed by any cause ~~through no fault of action~~
282 ~~by the owner~~ by 50% or less of the market value of the structure before such damage, destruction or
283 removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the
284 Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources
285 Protection Overlay Zone) within twelve (12) months of the established date of damage, ~~or~~ destruction.
286

287 E. In determining whether the structure reconstruction or replacement meets the setback to the greatest
288 practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria
289 in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation
290 present, if any.

291
292 **16.7.3.5.7 Nonconforming Use Expansion.**

293 Expansion of a nonconforming use of any structure or land area other than that occupied as such when
294 created is not permitted with the following exceptions:

- 295
296 A. uses in conformity with Chapter 16.7; and
297
298 B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay
299 Zone with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor
300 area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent
301 with the review standards in Section 16.3.2.17.D.2.

302
303 **C. 16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.**

304 The reviewing authority per subsections A B. and C below, may require evaluations be prepared by a
305 person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of
306 the applicant to bear the costs for such evaluations. In the event there are existing official maps, data
307 and/or reports for general use, the applicant is encouraged to submit copies of these documents to the
308 reviewing authority. In determining that no greater adverse impact will occur, the applicant may be
309 required to submit an evaluation in writing regarding the probable effects on public health and safety,
310 erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual
311 points of public access to waters, natural beauty, floodplain management, archaeological and historic
312 resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

313
314 A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of
315 use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the
316 proposed use does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

317
318 B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection
319 Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with
320 approval of the Board of Appeals provided the proposed use is not more nonconforming.

321
322 C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection
323 Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the
324 approval of the Planning Board per Section ~~16.7.3.5.2~~.[16.7.3.6.2](#).

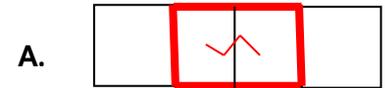
325
326 **16.7.3.5.9 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

327 A. Nonconforming Lots: In any district, notwithstanding limitations imposed by other sections of this
328 Code, single noncontiguous lots legally created when recorded may be built upon consistent with the
329 uses in the particular zone. These provisions apply even though such lots fail to meet the minimum
330 requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions
331 and other requirements, not involving area or width, of the lot conform to the regulation for the
332 zone in which such lot is located. Relaxation of yard and other requirements not involving area or width
333 may be obtained only through miscellaneous variation request to the Board of Appeals.

334

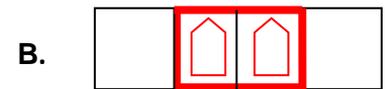
335 **16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

336 A. Contiguous Nonconforming Lots. If two or more contiguous
337 nonconforming lots or portions thereof are in single or joint
338 ownership of record, and if all or part of the lots do not meet the
339 dimensional requirements of this Code, and if one or more of
340 the lots are vacant or contain no principal structure, the lots
341 shall be combined to the extent necessary to meet the
342 dimensional requirements.~~common ownership and if a~~
343 ~~combination of such lots or a portion thereof constitutes a lot of~~
344 ~~nearer conforming size, such combination is deemed to~~
345 ~~constitute a single lot.~~



346

347 B. Contiguous Built Upon Nonconforming Lots. If two or
348 more contiguous lots or parcels are in a single or joint
349 ownership of record at the time of adoption of this Code, it all or
350 part of the lots do not meet the dimensional requirements of
351 this Code, and if a principal use or structure exists on each lot,
352 the non-conforming lots may be conveyed separately or
353 together, provided that the State Minimum Lot Size Law (12
354 MRSA §4807-A through 4807-D) and the State of Maine
355 Subsurface Wastewater Disposal Rules are complied with.



356 ~~If there exists a legally created principal structure on each of~~
357 ~~the contiguous nonconforming lots or portions thereof that~~
358 ~~would otherwise require the lots to be combined as provided~~
359 ~~herein, the contiguous lots need not be combined to create a~~
360 ~~single lot as required by Section A above.~~

361

362 C. Contiguous Partially Built Upon Lot. If two or more
363 contiguous lots or parcels are in a single or joint ownership of
364 record at the time of or since adoption or amendment of this
365 Code, if any of these lots do not individually meet the
366 dimensional requirements of this Code or subsequent
367 amendments, and if one or more of the lots are vacant or
368 contain no principal structure, the lots shall be combined to the
369 extent necessary to meet the dimensional requirements. ~~If one~~
370 ~~or more of the contiguous nonconforming lots is vacant or~~
371 ~~contains no principal structure, the lots must be combined to~~
372 ~~the extent necessary to meet the purposes of this Code as~~
373 ~~required by Section A above.~~



374

375 This subsection does not apply:

376 1. to any Planning Board approved subdivision which was recorded in the York County Registry of
377 Deeds on, or before July 13, 1977;

378 2.. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface
379 sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and
380 the State of Maine Subsurface Wastewater Disposal Rules; and

381 i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

382 ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17.D.1 are
383 reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square
384 feet of lot area.

385

386 ~~D.C.~~ Single Lot Division.

387 If two principal structures existing on a single lot legally created when recorded, each may be sold on a
388 separate lot provided the Board of Appeals determines that each resulting lot is as conforming as
389 practicable to the dimensional requirements of this Code. If three or more principal structures existing on a
390 single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board
391 determines that each resulting lot is as conforming as practicable to the dimensional requirements of this
392 Code.

393 (Ordained 1-23-12; Effective 2-23-12)

394

395 **16.7.3.5.11 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

396 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking
397 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the
398 requirements of this Code for both the original and addition or enlargement of the structure or use.

399

400 **16.7.3.5.12 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

401 The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps
402 are not to be considered part of the structure for such determination. Step landings may not exceed three
403 feet by three feet (3'x3') in size.

404

405 **16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.**

406 (Ordained 9-26-11; Effective 10-27-11)

407

408 **16.7.3.6.1 Nonconforming Structure Expansion.**

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

412

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

417

418 B. If a replacement structure conforms to the requirements of Section ~~16.7.3.6.1.A~~ 16.7.3.5.4 and
419 Section 16.7.3.5.6 and is less than the required setback from a water body, tributary stream or wetland,
420 the replacement structure will not be permitted to expand if the original structure existing on January 1,
421 1989, has been expanded by 30% in floor area and volume since that date.

422
423 C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming
424 structure, the structure and new foundation must be placed such that the setback requirement is met to
425 the greatest practical extent as determined by the Planning Board, basing its decision on the criteria
426 specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does
427 not extend beyond the exterior dimensions of the structure, except for expansion in conformity with
428 Section 16.7.3.6.1.A, and the foundation does not cause the structure to be elevated by more than three
429 (3) additional feet, as measured from the uphill side of the structure (from original ground level to the
430 bottom of the first floor sill), it will not be considered to be an expansion of the structure.

431
432 **16.7.3.6.2 Nonconforming Use Change.**

433 An existing nonconforming use may be changed to another nonconforming use with the approval of the
434 Planning Board provided the proposed use has no greater adverse impact on any water body or wetland,
435 or on the subject and adjacent properties and resources, including water dependent uses in the
436 Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning
437 Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for
438 the determination of no greater adverse impact, the Planning Board may require written documentation
439 from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation,
440 water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to
441 waters, natural beauty, floodplain management, archaeological and historic resources, and commercial
442 fishing and maritime activities, and other functionally water-dependent uses.

443

444

445

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

447 **Article XXVIII. Single and Duplex Family Dwellings**

448

449 **16.8.28.1 Single and Duplex Family Dwellings in Resource Protection and Shoreland Overlay**
450 **Zones.**

451

452 In addition to the criteria specified in Section 16.6.6 and 17.10.8.3.4, applicable to the granting of a
453 special exception use request, the Planning Board may approve an application for a single or duplex
454 family dwelling special exception use request, where applicable, provided the applicant demonstrates all
455 of the following conditions are met:

456

457 A. There is no location on the property, other than a location within the Shoreland Overlay or Resource
458 Protection Overlay Zones, where a single family dwelling ~~the structure~~ can be built, or similarly for a
459 duplex in the Shoreland Overlay zone.

460

461 B. The lot on which the structure is proposed is undeveloped and was established and recorded in the
462 York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

463

ATT. A



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGUS S. KING, JR.
GOVERNOR

December 29, 1999

MARTHA KIRKPATRICK
COMMISSIONER

David Schmidt, AICP
Town Planner
Town of Kittery
P.O. Box 808
Kittery, Maine 03904

COPY

Subject: CONDITIONAL APPROVAL of Kittery Shoreland Zoning Provisions (File #5-99)

Dear Mr. Schmidt:

Please find enclosed a copy of Department Order # 5-99 conditionally approving the amended Shoreland Zoning Ordinance for the town of Kittery, as amended on December 29, 1997 and March 18, 1998. The conditions of approval are binding on the Town and must be administered as part of the municipal ordinance. Should the ordinance be amended in the future to address the issues identified in the conditions, the Department can then fully approve the ordinance and repeal the conditions of approval.

The Department recognizes that the Town may wish to continue its discussions regarding the applicable frontage and lot size standards in the districts affected by this Order of Conditional Approval. The Department staff will be available to the town officials for such discussions. If the Town is able to persuade the Department that its current standards are appropriate, the Order of Conditional Approval can be modified at that time. However, due to the statutory 45 day period within which the Department must issue its decision regarding the ordinance amendments, this Order of Conditional Approval must be issued at this time.

Should you, or the other town officials, have any questions, please contact the Department's Shoreland Zoning Coordinator, Richard Baker, at 287-7730.

Sincerely,

Martha G. Kirkpatrick
Martha G. Kirkpatrick
Commissioner

enclosed: Department Order #5-99

cc: Phil McCarthy, Town Manager
Kittery Town Council
Kittery Planning Board
David VanWle, Director- Bureau of Land and Water Quality

ANDOVER	BANGOR	BORTLAND	BRESDEN
BRIDGEVILLE STATION	BROOKFIELD	BROOKFIELD	BROOKFIELD
CARROLL	CARROLL	CARROLL	CARROLL
CLAYTON	CLAYTON	CLAYTON	CLAYTON
CLAYTON	CLAYTON	CLAYTON	CLAYTON



STATE OF MAINE
 DEPARTMENT OF
 ENVIRONMENTAL PROTECTION
 17 STATE HOUSE STATION
 AUGUSTA, MAINE
 04333

ANDRUS KING JR.
 GOVERNOR

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF KITTERY
 KITTERY, YORK COUNTY
 KITTERY SHORELAND ORDINANCE
 FILE # 5-99

MANDATORY SHORELAND ZONING ACT
 38 M.R.S.A. SECTION 438-A(3)
 APPROVAL WITH CONDITIONS

Pursuant to the provisions of 38 M.R.S.A. sections 435-449, and 05-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective February 6, 1999, the Department of Environmental Protection has considered the provisions of the Kittery Land Use and Development Code Zoning Ordinance, as amended by the Town Council on December 29, 1997 and March 18, 1998, and fully received by the Department on November 16, 1999. The Department FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act requires the municipality of Kittery to establish zoning controls in areas within 250 feet of the normal high-water line of rivers and tidal waters; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines) as adopted by the Board of Environmental Protection (Board), unless special local circumstances justify deviation from those Guidelines.
2. Before a local shoreland zoning ordinance or any amendment thereto, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (Commissioner). The Commissioner may approve, approve with conditions, or disapprove a locally adopted ordinance. If a locally adopted ordinance is disapproved, or approved with conditions, such action must be preceded by notice to the municipality.
3. The Department's review of the Kittery ordinance amendments of December 29, 1997 and March 18, 1998 revealed the following deficiencies:
 - A. The Kittery ordinance fails to establish adequate minimum lot size, minimum lot area per dwelling unit, and minimum shore frontage requirements for the Badger Island urban and Kittery Foreside districts. The current pattern of development in the shoreland areas of those districts does not justify the town-adopted standards. The minimum lot size and the lot area per dwelling unit in the Badger Island urban district should be at least 7,000 square feet. In the Kittery Foreside district, the required lot area per dwelling unit should be at least 1,000 square feet. The shore frontage requirements for lot in both districts should be at least 50 feet. The shore frontage requirement per dwelling unit should be required.



TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99

MANDATORY SHORELAND ZONING ACT
38 M.R.S.A. SECTION 438-A(3)
APPROVAL WITH CONDITIONS

B. In the shoreland zone within the Mixed-use district the maximum lot coverage standard and the lot size standard per residential dwelling unit are inadequate. To be consistent with the shoreland zoning requirements the maximum lot coverage allowance must be 20% or less, and the lot size per dwelling unit must be no less than 40,000 square feet.

C. The standards for minimum lot size and minimum lot area per dwelling unit in the Village Residence district are less than justified by the current development patterns. The minimum lot size and minimum area per dwelling unit should be at least 8000 square feet.

D. There is no established shore frontage requirement in any shoreland district for public and private recreation facilities. The shore frontage requirement must be at least as great as that for a residential structure in the respective district.

4. In a letter dated December 15, 1999 the Town of Kittery was notified by the Commissioner that the Department was proposing to approve the Kittery ordinance with conditions. A copy of the proposed Order was included with that notification.

BASED on the above Findings of Fact, the Department makes the following CONCLUSIONS:

1. The Town of Kittery Land Use and Development Code Zoning Ordinance, as amended by the Town on December 29, 1997 and March 18, 1998 contains several deficiencies relating to minimum lot size, lot size per dwelling, lot coverage and shore frontage standards. The deficiencies can be alleviated by the Commissioner establishing standards consistent with the Department's Guidelines, or consistent with the current pattern of development where the pattern of development is inconsistent with those Guidelines.

THEREFORE, the Department approved the amendments to the Town of Kittery Land Use and Development Code Zoning Ordinance, adopted by the Town on December 29, 1997 and March 18, 1998, SUBJECT TO THE FOLLOWING CONDITIONS:

1. Within the shoreland zone in the Padger Island urban and the Kittery Foreside districts the minimum shore frontage requirement shall be 50 feet per lot. Also, at least 10 feet of shore frontage shall be required for each dwelling unit.

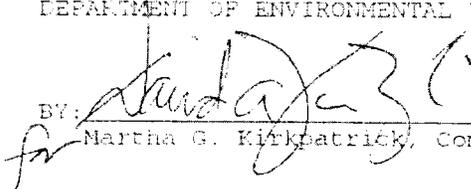
TOWN OF KITTEERY
KITTEERY, YORK COUNTY
KITTEERY SHORELAND ORDINANCE
FILE # 5-99

MANDATORY SHORELAND ZONING ACT
38 M.R.S.A. SECTION 439-A(1)
APPROVAL WITH CONDITIONS

2. In the Badger Island urban district, the minimum lot size standard shall be 7000 square feet. Also, for each dwelling unit within the District, 7000 square feet of lot area shall be required.
3. In the shoreland zone of the Kittery Foreside district the minimum lot size per dwelling unit shall be 10,000 square feet.
4. In the shoreland zone within the Mixed-use district, the maximum lot coverage shall be 20% and the minimum lot size per dwelling shall be 40,000 square feet, consistent with the Department's Guidelines.
5. In the Village Residence district, the minimum lot size and minimum lot area per dwelling unit shall be 8000 square feet.
6. The minimum shore frontage requirement for public and private recreational facilities shall be the same as that for residential development in the respective district.

DONE AND DATED AT AUGUSTA, MAINE, THIS 29 DAY OF DECEMBER, 1999.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
Martha G. Kirkpatrick, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

September 2, 2010

Gerry Mylroie, AICP
Town Planner
Town of Kittery
200 Rogers Road
Kittery, Maine 03904

Subject: CONDITIONAL APPROVAL #23-10,
 Shoreland Zoning Ordinance Amendments

Dear Mr. Mylroie,

Please find enclosed a copy of Department Order #23-10 conditionally approving the Town of Kittery Land Use and Development Code, as adopted on May 24, 2010. The conditions of approval are binding on the Town and must be administered as part of the municipal ordinance. Should the Ordinance be amended in the future to address the issues identified in the conditions, the Department can then fully approve the Ordinance and repeal the conditions of approval.

Thank you and the other municipal officials for your significant effort in adopting the nearly-compliant ordinance. Should you or the other Town officials have any questions, please contact me at 822-6328.

Sincerely

Mike Morse
Assistant Shoreland Zoning Coordinator
Bureau of Land and Water Quality

enclosed: Department Order #23-10

cc: Jonathan Carter, Town Manager
Heather Ross, CEO
Planning Board
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF KITTERY) MANDATORY SHORELAND ZONING ACT
YORK COUNTY) 38 M.R.S.A., SECTION 438-A(3)
LAND USE AND DEVELOPMENT CODE)
ORDER #23-10) CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.S.R.A., Section 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective March 24, 1990, and amended through May 1, 2006, the Department of Environmental Protection has considered the shoreland zoning provisions within the Land Use and Development Code for the Town of KITTERY, as adopted on May 24, 2010, and FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act (Act) requires the Town of Kittery to establish zoning controls in areas within 250 feet of the normal high water line of great ponds, and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of streams and tributary streams. Such zoning standards must be consistent with or no less restrictive than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, (Guidelines) as adopted by the Board of Environmental Protection (Board).
2. The Act specifies that before a locally adopted shoreland zoning ordinance or map, or amendments to that ordinance or map, is effective, it must be approved by the Commissioner of the Department of Environmental Protection (Department). The Department may approve, approve with conditions, or deny a locally adopted ordinance or map. If denied, or approved with conditions, such action must be preceded by notice to the municipality.
3. On July 20, 2010, the Town of Kittery submitted a copy of the Land Use and Development Code (Ordinance) as adopted on May 24, 2010, to the Department for review. The Ordinance includes numerous changes that affect shoreland zoning application. These changes were made in order to update the Town's Ordinance in an effort to make it consistent with the May 1, 2006 Guidelines.
4. The Department review of the Land Use and Development Code of the Town of Kittery revealed the following significant deficiencies:
 - A. Section 16.2.2, Definitions, fails to define the term "dwelling unit" consistent with the minimum Guidelines.
 - B. Section 16.3.2.13.D.Note 2 and Note 3 of the Ordinance do not incorporate the minimum lot size requirements of Department Order #5-99, and further departs from the minimum requirements when parking is integrated into the building.

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- C. The Ordinance lacks a provision requiring that the minimum lot dimensional requirements be met for each dwelling unit, principal structure, or use, on a parcel of land within the shoreland zone.
 - D. Section 16.7.3.5.1.B and Section 16.7.3.5.1.C of the Ordinance contain incorrect references related to non-conforming structure requirements.
 - E. Section 16.7.3.5.5 of the Ordinance is highly inconsistent with the State minimum requirements regarding the reconstruction or replacement of non-conforming structures.
 - F. The Ordinance provisions for non-conforming lots are largely deficient as they relate to the Resource Protection and Shoreland Overlay zones.
 - G. Article XXVIII and Section 16.8.28.1 of the Ordinance are inconsistent with the State minimum requirements as it allows for more than one single family dwelling to be considered under the special exception provision within the Resource Protection Overlay zone.
5. In a letter dated August 25, 2010, the Town of Kittery was notified by the Department about the deficiencies described in Finding 4.

Based on the above Findings of Fact, the Department makes the following CONCLUSIONS:

- 1. The Land Use and Development Code for the Town of Kittery, as amended on May 24, 2010, is substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R.A., Section 438-A, EXCEPT FOR the deficiencies described in Finding 4.
- 2. The Department can correct the deficiencies described in Finding 4 by approving the Kittery Ordinance with the condition that the Ordinance be changed to reflect the requirements described in Finding 4.

THEREFORE, the Department APPROVES the Land Use and Development Code for the Town of Kittery as adopted on May 24, 2010, WITH THE FOLLOWING CONDITIONS:

- 1. Section 16.2.2, Definitions, shall be amended to include the following:
 - “**Dwelling Unit (in the Shoreland and Resource Protection Overlay Zones)** means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.”

2. Section 16.3.2.13.D.Note 2 and Note 3 shall be amended to read as follows:
 “Note 2: For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones. Except in the Resource Protection and Shoreland Overlay zones, if the parking for the residential units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet.

 “Note 3: For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit is allowed for each fifteen thousand (15,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones. Except in the Resource Protection and Shoreland Overlay zones, if the parking for the elderly units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet.”
3. Section 16.3.2.17.D.2.i shall be incorporated into the Town of Kittery Land Use and Development Code and shall be as follows:

 “If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel in the shoreland zone, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.”
4. Section 16.7.3.5.1.B and Section 16.7.3.5.1.C of the Ordinance shall be amended in part with the following correct Ordinance references:

 “B. If a replacement structure conforms to the requirements of Section 16.7.3.5.5 and is less than the”

 and,
 “C. Whenever a new, enlarged, or replacement foundation...expansion in conformity with Section 16.7.3.5.1, above, and the foundation does not cause...”
5. The text in Section 16.7.3.5.5 of the Town of Kittery Land Use and Development Ordinance shall be deleted in its entirety and replaced with the following provision:

 “Non-conforming Structure Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or 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 or its designee in accordance with the purposes of this Ordinance. In no case shall 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 shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. 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 shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(2) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 12(C)(2) above, the physical condition and type of foundation present, if any.”

6. Section 16.7.3.5.11 shall be incorporated into the Town of Kittery Land Use and Development Code as follows:

“A. Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

B. Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

TOWN OF KITTEERY
YORK COUNTY
LAND USE AND DEVELOPMENT CODE
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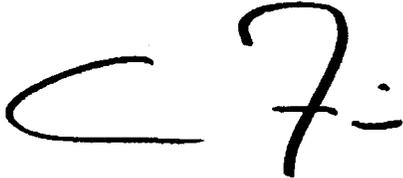
5 MANDATORY SHORELAND ZONING ACT
) 38 M.R.S.A., SECTION 438-A(3)
)
) CONDITIONAL APPROVAL

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on July 13, 1977, and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.”

7. Article XXVIII and Section 16.8.28.1 of the Town of Kittery Land Use and Development Code shall be amended to prohibit the granting of a special exception permit for a duplex within the Resource Protection Overlay zone. This Article and Section shall only apply to a single family dwelling on a parcel of land within this zone.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date, 2010.09.02 09:34:24 -04'00'

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGUS S. KING, JR.
GOVERNOR

MARTHA KIRKPATRICK
COMMISSIONER



August 7, 2000

David A. Schmidt
Town Planner
Kittery Town Hall
P.O. Box 808
Kittery, Maine 03904-0808

Re: Modification of Conditional Approval of Kittery Shoreland Zoning Standards

Dear David:

Attached is a copy of the approved modification to the Department's conditional approval of the Kittery shoreland zoning standards. This Order modifies Conditional Approval #5-99 by repealing certain limitations pertaining to Badger Island. The Order is consistent with our earlier discussions, and was drafted after receiving Beth Della Valle's assessment of the Town's comprehensive plan update.

If you have questions relating to the modified order, you may reach me at 287-7730.

Sincerely,

Richard P. Baker
Shoreland Zoning Coordinator

Cc: Beth Della Valle, SPO
Philip O. McCarthy, Town Manager
Planning Board
Sig Albert, CEO

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STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, MAINE
04333

ANGUS S. KING, JR.
GOVERNOR

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99-A

MANDATORY SHORELAND ZONING ACT
38 M.R.S.A. SECTION 438-A(3)
MODIFICATION OF CONDITIONAL APPROVAL

Pursuant to the provisions of 38 M.R.S.A. sections 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective February 13, 2000, the Department of Environmental Protection has considered the provisions of the Kittery Land Use and Development Code Zoning Ordinance, as amended by the Town Council on December 29, 1997 and March 18, 1998, and received by the Department on November 16, 1999. The Department FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act requires the municipality of Kittery to establish zoning controls in areas within 250 feet of the normal high-water line of rivers and tidal waters; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of the normal high-water line of streams. Such zoning standards must be consistent with or no less restrictive than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances (Guidelines) as adopted by the Board of Environmental Protection (Board), unless special local circumstances justify deviation from those Guidelines.
2. Before a local shoreland zoning ordinance or any amendment, thereto, is effective it must be approved by the Commissioner of the Department of Environmental Protection (Commissioner). The Commissioner may approve, approve with conditions, or disapprove a locally adopted ordinance. If a locally adopted ordinance is disapproved, or approved with conditions, such action must be preceded by notice to the municipality.
3. On December 29, 1999 the Commissioner approved the Kittery ordinance amendments of December 29, 1997 and March 18, 1998 subject to the following conditions:
 - a. Within the shoreland zone in the Badger Island urban and the Kittery Foreside districts the minimum shore frontage requirement shall be 50 feet per lot. Also, at least 50 feet of shore frontage shall be required for each dwelling unit.



TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
FILE # 5-99-A

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MODIFICATION OF CONDITIONAL APPROVAL

- b. In the Badger Island urban district, the minimum lot size standard shall be 7000 square feet. Also, for each dwelling unit within the District, 7000 square feet of lot area shall be required.
 - c. In the shoreland zone of the Kittery Foreside district the minimum lot size per dwelling unit shall be 10,000 square feet.
 - d. In the shoreland zone within the Mixed-use district, the maximum lot coverage shall be 20% and the minimum lot size per dwelling shall be 40,000 square feet, consistent with the Department's Guidelines.
 - e. In the Village Residence district, the minimum lot size and minimum lot area per dwelling unit shall be 8000 square feet.
 - f. The minimum shore frontage requirement for public and private recreational facilities shall be the same as that for residential development in the respective district.
4. Subsequent to the conditional approval of the Kittery Land Use and Development Code Zoning Ordinance amendments of December 29, 1997 and March 18, 1999, the town of Kittery provided information, including comprehensive planning documents, to the Department and to the State Planning Office's Community Planning and Investment Program for review. The manager of the Community Planning and Investment Program, upon review of Town's 1999 *Update of the Kittery Comprehensive Plan*, concluded that Kittery's approach to managing development on Badger Island is consistent with the Comprehensive Planning and Land Use Regulation Act (the Act). She notes that the City's encouragement of an extension of the compact pattern of development that already exists in the nearby mainland area, as an alternative to development in less highly developed, unserved, rural areas of the community, is precisely the type of strategy the State Planning Office sees as meeting the first goal of the Act. The State Planning Office does not view Kittery's approach as unreasonably affecting water quality, critical natural areas, or marine resources. Furthermore, the town has made efforts to preserve marine access and support for commercial and recreational boaters.

3.

TOWN OF KITTERY
KITTERY, YORK COUNTY
KITTERY SHORELAND ORDINANCE
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5. Badger Island is in close proximity to industrial and commercial facilities, both within the town of Kittery and the neighboring city of Portsmouth. It is serviced by town sewer and water lines. The Portsmouth Naval Shipyard is visible less than a mile from Badger Island.

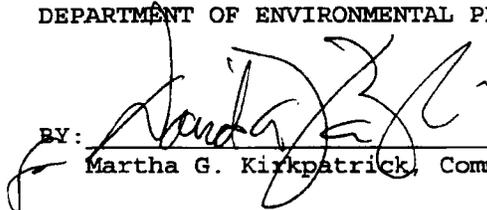
BASED on the above Findings of Fact, the Department makes the following CONCLUSIONS:

1. The town of Kittery has documented satisfactorily that its development standards for Badger Island, as contained in the Kittery Land Use and Development Code Zoning Ordinance, last amended on March 18, 1998, are consistent with its comprehensive plan. Furthermore, the town's plan for the island is consistent with the Comprehensive Planning and Land Use Regulation Act. Although the Town's shoreland standards for Badger Island are less restrictive than those in the Department's *State of Maine Guidelines for Municipal Shoreland zoning Ordinances*, the Town's regulatory scheme on a town-wide basis (including the Department's December 29, 1999 conditional approval of the Ordinance- #5-99) is sufficient for the Department to recind that portion of Conditional Approval # 5-99 that pertains to Badger Island.

THEREFORE, the Department modifies Conditional Approval # 5-99 as it pertains to Badger Island. Conditions specific to the Badger Island urban district, as contained in paragraphs 1 and 2 of the December 29, 1999 Conditional Approval are hereby repealed. All other conditions contained in that December 29 Conditional Approval, including those that pertain to other districts such as the Kittery Foreside, Mixed-use, and Village Residenc districts, shall remain in effect.

DONE AND DATED AT AUGUSTA, MAINE, THIS 4 DAY OF AUGUST, 2000.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
Martha G. Kirkpatrick, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES