



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, April 24, 2014 6:00 P.M. to 10:00 P.M.

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 4/10/2014

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.

PUBLIC HEARING/OLD BUSINESS

ITEM 1 – (15 minutes) – 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. Action: hold public hearing, review amendment and make recommendation to Town Council for adoption. Amendment includes changes to the town's Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

OLD BUSINESS

ITEM 2 – (15 minutes) – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development.

Action: review amendment and make recommendation to joint workshop with Town Council, 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 3 – (45 min.)– Estes Bulk Propane Storage/U.S. Route 1 –Preliminary Site Plan Review

Action: review and approve findings of fact, Owner M&T Reality, Applicant Estes Oil & Propane Company, propose a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route 1, Tax Map 67, Lot 4, Mixed Use, Residential Rural and Shoreland and Resource Protection Overlay zones. Agent is Edward Brake, ATTAR Engineering.

ITEM 4 – (30 minutes) - Board Member Items / Discussion

- A. Action List; B. Code Amendments for May 5th Joint Workshop with Town Council;
- C. Committee Updates; D. Other.

ITEM 5 – (30 minutes) - Town Planner Items:

- A. Town Code amendment related to Quality Improvement Overlay Zone.
- B. Town Code amendment related to off-site right-of-way improvements.
- C. Town Code amendment related to standards for sign character and appearance.
- D. Other

NEW BUSINESS

ITEM 6 – (15 min.)– Quality Improvement Plan for Kittery Shore and Harbors

Action: review and schedule a public hearing, Town advisory committee is transmitting draft plan for Town Planning Board review, hearings and recommendation to Town Council for adoption. The QIP Plan is a specific plan that includes goals/policies and implementation strategies for improving/protecting the Town's shores and harbors. Town Planner, Gerald R. Mylroie, ACIP and consultant, Jonathan C. Edgerton, PE, Wright-Pierce will make a presentation.

ITEM 7 – (15 min.)– Sarah Mildred Long Bridge Plan Action: review and forward comments to Town Council / MDOT. MDOT has completed the 60% phase of the final construction plans for the SML Bridge. The plan includes the site improvements on the Kittery side of the bridge including a new signalized intersection at Bridge Street and related Route 1 By Pass and neighborhood street improvements. Town Planner, Gerald R. Mylroie, AICIP will describe the plan.

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
4

UNAPPROVED
April 10, 2014

5 Meeting called to order at 6:05 p.m.

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

8 Members absent: Bob Melanson

9 Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Town Planner

10
11 Pledge of Allegiance
12

13 Ms. Tuveson noted Item 5 has been postponed and interested parties may provide contact information for
14 this item.

15
16 Minutes:

17 Ms. Kalmar moved to approve the minutes of March 27, 2014 as submitted

18 Ms. Grinnell seconded

19 Motion carried with 4 in favor; 1 abstention (Tuveson)
20

21 Public Comment:

22 There was no public comment.
23

24 **ITEM 1 – Estes Bulk Propane Storage/U.S. Route 1 –Preliminary Site Plan Review**

25 Action: grant or deny preliminary plan approval. Owner M&T Reality, Applicant Estes Oil & Propane
26 Company, propose a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route
27 1, Tax Map 67, Lot 4, Mixed Use, Residential Rural and Shoreland and Resource Protection Overlay
28 zones. Agent is Edward Brake, ATTAR Engineering.

29 Mr. Brake introduced Ken Woods, ATTAR Engineering; Mike Estes, applicant and Jody Ameden,
30 Ameden Energy Consulting. Changes to the plan were highlighted: wetlands re-delineated and propane
31 tanks moved to center of property, away from abutting property lines; road has been shortened to just over
32 1,000 feet due to tank relocation; significant wildlife habitat area verified and mapped; wetland fill
33 increased to 14,455 sf; Tier 1 NRPA permit received; ACOE permit received, to be amended with new
34 information; increased undisturbed buffer zone to screen site from Route 1; total impervious area under
35 35,000 sf, with total disturbance area of 93,400 sf; open space meets 35% requirement, including 25%
36 open space at Route 1; stormwater calculations included, indicating no increased peak flow or adverse
37 impacts on downstream properties.

38 Ken Woods stated he walked the site on May 9, 2013 and April 4, 2014. He did not find any vernal pools
39 on the site. He explained the site investigation, noting if there is no vernal pool there will not be egg
40 masses. He provided the state definition of a significant vernal pool habitat:

41 *A vernal pool, also referred to as a seasonal forest pool, is a natural, temporary to semi-permanent body*
42 *of water occurring in a shallow depression that typically fills during the spring or fall and may dry during*
43 *the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish.*

44 *A vernal pool may provide the primary breeding habitat for wood frogs (Rana sylvatica), spotted*
45 *salamanders (Ambystoma maculatum), blue-spotted salamanders (Ambystoma laterale), and fairy*
46 *shrimp (Eubrachipus sp.), as well as valuable habitat for other plants and wildlife, including several rare,*
47 *threatened, and endangered species. A vernal pool intentionally created for the purposes of*
48 *compensatory mitigation is included in this definition.*

49 None of these pools exist on this site, and he believes the wetland scientist, Mike Cuomo, would concur.
50 Neither the ACOE or DEP requires an applicant to go off-site to identify vernal pools. However, if a

51 significant vernal pool has been identified and mapped off-site, this could be taken into consideration by
52 the DEP. He explained the buffers required by the DEP and ACOE if a vernal pool is on-site. Spring
53 Peepers are tree frogs and not an indicator of vernal pools, as are wood frogs.

54 Issues that need Board decision are:

- 55 - additional vernal pool survey, including off-site;
- 56 - special exception use;
- 57 - additional site walk;

58 Mr. Woods noted an off-site study with a 750 foot buffer radius would cover over 89 acres and would be
59 a significant cost to the applicant, where the DEP does not require this.

60

61 Mr. Emerson noted the Board has received emails and public comment and concerns regarding this
62 proposal. The definition of special exception includes 'promoting public good' and asked how this project
63 meets that criteria.

64 Mr. Brake summarized the Special Exception Use Narrative and explained the proposal will provide an
65 opportunity for increased employment through business expansion due to a reliable supply of propane,
66 resulting in better pricing for all customers in Kittery and southern Maine. In addition, lot development
67 generates tax revenue for the Town of Kittery.

68 Matt Howell, attorney, Estes Oil, the business investment will provide a significant increase in tax
69 assessments on this property and business. Taxes generated and used by the Town benefit the health,
70 safety and welfare of residents.

71 Discussion followed regarding nearby populations (within 250 feet and 50 people or more per NFPA
72 Guidelines); safety measures and requirements; whether the project meets the approval criteria for special
73 exception uses. Ms. Tuveson questioned whether any of the special exception uses permitted would meet
74 the approval criteria. Discussion followed regarding impact on adjacent property values.

75 Mr. Howell suggested if the primary concern of the Board is safety, the applicant would like to return at a
76 future time with the Fire Chief to address these concerns.

77 Ms. Tuveson recommended the Board decide on the Special Exception Use.

78

79 Ms. Kalmar moved to approve the Special Exception Use [in the matter of Estes Bulk Propane Storage].

80 Ms. Grinnell seconded

81 Mr. Howell noted if there is to be a denial, he needed to know what the basis for the denial is to base the
82 appeal. Ms. Driscoll noted it is not listed as a special exception use within the code, and it does not meet
83 the Factors for Consideration items B, E, G, I, L and P. Mr. DiMatteo suggested each item be addressed.

84

85 Title 16.6.6.1 Basis for Decision; Conditions: [the following items were discussed by Board members]

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

88 Mr. Emerson, Ms. Kalmar, Ms. Grinnell and Ms. Driscoll agreed the proposed project does not
89 support this criteria, especially with regard to the adjacent recreation area. Ms. Tuveson asked if the
90 Board is voting on each item. Ms. Driscoll stated no, this was discussion only.

91 2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the
92 zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent
93 use zones. Mr. Emerson: The proposed use does not appear to limit adjacent zone uses. Ms.
94 Grinnell disagreed. Ms. Driscoll and Mr. Alesse: Appears close to item 1.

95 3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or
96 its location. Ms. Driscoll: Remains to be determined. Mr. Emerson: Extension discussion has been
97 held regarding the safety of this use.

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

99 Ms. Kalmar noted this criteria applies to the impact on land values and the environment impact, etc.
100 as discussed and as noted in the Code (i.e. 16.6.6.2).

101

- 102 16.6.6.2 Factors for Consideration [the following items were discussed by Board members)]
103 A. The character of the existing and probable development of uses in the zone and the peculiar suitability
104 of such zone for the location of any of such uses; Mr. Emerson: this proposed industrial use could
105 potentially change the character of the area.
106
107 B. The conservation of property values and the encouragement of the most appropriate uses of land; Mr.
108 Emerson: The neighbors feel their properties will be affected.
109
110 C. The effect that the location of the proposed use may have upon the congestion or undue increase of
111 vehicular traffic congestion on public streets or highways; Mr. Emerson: It will change the nature, but
112 may or may not increase congestion. Ms. Driscoll: There has been concern about the way the sun hits
113 you when driving in this area, but would not increase traffic congestion.
114
115 D. The availability of adequate and proper public or private facilities for the treatment, removal or
116 discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be
117 caused or created by or as a result of the use); Mr. Emerson: This is not a high intensity use.
118
119 E. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases,
120 odors, smoke or soot; Ms. Driscoll: These tanks vent each time they are filled or gas is removed. Ms.
121 Ameden stated storage tanks do not vent unless overfilled, and are never filled beyond 85% without prior
122 authorization. Domestic tanks can be overfilled. There is a small amount of discharge through the hose
123 nozzle at disconnection. Any odors would not be ongoing.
124
125 F. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;
126 Mr. Emerson: This does not appear to be an issue.
127
128 G. Whether the operations in pursuance of the use will cause undue interference with the orderly
129 enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or
130 by other competent governmental agency; Mr. Emerson: A recreational facility is existing next door,
131 though it is not a Town facility. Mr. Alesse and Ms. Grinnell stated it did not matter. Take-Flight
132 operates for 9 months.
133
134 H. The necessity for paved off-street parking; Mr. Emerson: Not an issue.
135
136 I. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by
137 reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or
138 structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the
139 undue concentration or assemblage of person upon such plot; Mr. Emerson: Not an issue.
140
141 J. Whether the use, or the structures to be used, will cause an overcrowding of land or undue
142 concentration of population; or, unsightly storage of equipment, vehicles, or other materials; Mr.
143 Emerson: Not an issue, other than view of storage tanks.
144
145 K. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated
146 operation and expansion thereof; Mr. Emerson: Cannot speak to expansion, but the area appears
147 sufficient for the proposed use.
148
149 L. Whether the proposed use will be adequately screened and buffered from contiguous properties;
150 Mr. Emerson: Difficult to buffer from the zip line. Mr. Woods: Is it the Board's position that any special
151 exception use on this property must be screened from the 35-foot zip line towers next door? He read the
152 definition of screening: **Screening** means either, (1) a strip of at least ten (10) feet wide, densely planted

153 (or having equivalent natural growth) shrubs or trees at least four feet high at the time of planting, of an
154 evergreen type that will grow to a year-round dense screen at least six feet high in three years; or (2) an
155 opaque wall or barrier of uniformly colored fence at least six feet in height. Screening of either type
156 must be maintained in good condition at all times. There is probably not an existing special exception
157 use that would meet this definition for screening next to a 35-foot tower. Ms. Driscoll: The Board has
158 latitude under special exception use to request additional requirements, re: buffering.
159

160 M. The assurance of adequate landscaping, grading, and provision for natural drainage; Mr. Emerson:
161 Don't know if this is an issue.
162

163 N. Whether the proposed use will provide for adequate pedestrian circulation; Mr. Emerson: Not an
164 issue.
165

166 O. Whether the proposed use anticipates and eliminates potential nuisances created by its location; Mr.
167 Emerson: What is considered a nuisance?
168

169 P. The satisfactory compliance with all applicable performance standard criteria contained in Chapter
170 16.8 and 16.9. Mr. DiMatteo: This is essentially the Findings.
171

172 Mr. Mylroie: It would be beneficial if the staff could present this discussion to you in a Findings so the
173 applicant understands the action of the Board. Discussion followed regarding screening.

174 Mr. Emerson asked if the motion should be withdrawn pending receipt of Findings from staff. Mr.
175 Mylroie stated the Board vote is usually based on Findings. Mr. DiMatteo: Conclusions can be added to
176 each criteria and voted upon. Mr. Howell: If there is criteria the applicant may address to the Board's
177 satisfaction, they will do so, but if a denial is evident, they would like to know to begin the appeal
178 process. Ms. Driscoll: What is fixable and what is not? Ms. Grinnell: The application does not meet the
179 definition for special exception use as it does not *promote the public health, safety, welfare, morals,*
180 *order, comfort, convenience, appearance, prosperity, or general welfare.* Ms. Driscoll: It does not meet
181 all the Factors for Consideration in 16.6.6.2. Mr. Mylroie: If appealed, the courts will look for the basis
182 of the decision, which should be clearly articulated in a set of Findings.
183

184 Motion fails; 1 in favor (Tuveson); 5 opposed; 0 abstentions
185

186 Mr. Howell asked what the specific reasons for denial were. Mr. Emerson stated this will be provided by
187 staff. Mr. Mylroie: Suggested a motion may be in order to deny the preliminary plan.
188

189 Ms. Grinnell moved to approve the preliminary plan for Estes Bulk Propane Storage facility, a 60,000
190 gallon bulk propane storage facility at their property south of 506 U.S. Route 1, Tax Map 67, Lot 4,
191 Mixed Use, Residential Rural and Shoreland and Resource Protection Overlay zones.

192 Ms. Kalmar seconded

193 Motion fails; 0 in favor; 6 opposed; 0 abstentions.
194

195 Mr. Emerson advised the Board to not discuss this item further outside of meetings.
196

197 Break
198
199
200

201 **ITEM 2 – Beatrice Way – Right-Of-Way Plan – Preliminary Plan Review**

202 Action: review plan application, approve site walk minutes. Owner Operation Blessing LP, and applicant
203 Richard Sparkowich, propose a new Right-Of-Way to allow the division of remaining land from the
204 previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane. The site
205 identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone. Agent is Ken Markley,
206 Easterly Survey Inc.

207 Ms. Kalmar moved to approve the site walk minutes of April 1, 2014 for the Beatrice Way ROW Plan

208 Ms. Grinnell seconded

209 Motion carried unanimously

210

211 Mr. Mylroie summarized issues before the Board:

212 1. How many lots are being created and what are anticipated future divisions?

213 2. Where is the 'front door' of the lot?

214 3. What is the access road for units; secondary access; road maintenance

215

216 Members discussed use of access roads, extension of Highpoint Circle, start of Kittree Lane; private vs.
217 public road access; pavement of Kittree Lane; gating of Kittree Lane from Highpoint Circle; cessation of
218 logging activities in the area; level of road construction to accommodate potential build out; waivers for
219 road construction standards and length; secondary accesses; completion of roadway to Class 2 standards
220 at time of building permit; cul de sac vs. hammerhead construction.

221 Mr. Sparkowich: Not prepared to shoulder cost of Class 2 road without some break; need waiver for road
222 length.

223 Mr. Emerson summarized the Board would like the Beatrice Way ROW designed as a Class 2 road.
224 Further discussions with the Fire Chief and Public Works are warranted regarding the extension of
225 Highpoint Circle and whether there can be a gate at Kittree Lane.

226

227 Ms. Kalmar moved to continue the application not to exceed 90 days.

228 Ms. Grinnell seconded

229 Motion carried unanimously

230

231

232 **OLD BUSINESS**

233

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

235 A. Kittery Town Planning & Development Briefing Book discussion

236 Items prioritized will be included in the Briefing Book. Briefing Book workshop at next meeting.

237 B. Action plan review and prioritization discussion

238 List will be clarified and discussed at the next meeting. Review Public Works CIP certification
239 procedure.

240 C. Comprehensive Plan Update Status

241 Plan is being updated by the Comp Plan Committee Chairman with a 30-day completion goal. Ms.
242 Tuveson noted her concern regarding the Plan being updated by one individual. Mr. Emerson stated other
243 groups (Conservation Commission; Economic Development Committee, etc.) should have first review of
244 the Plan prior to submittal to the Planning Board. Mr. Emerson will contact the Chairman requesting the
245 Plan be provided to the other groups, and following individual group input, the Update Committee will
246 review any subsequent changes prior to submittal to the Board.

247 D. Quality Improvement Plan for Kittery Shore and Harbors

248 E. Other

249 - Monthly updates from Board Members, re: committee (e.g. Economic Development, Comp Plan
250 Update).

251 - Request updates from other groups that do not have Board member representation;

- 252 - These reports will be discussed at the second monthly meeting.
- 253 - Other Board updates as needed, including website posting.
- 254 - Ordinance Revision format (Mark Alesse).
- 255 - Shoreland ordinance amendments are ready to forward for Council review.

256

257 **ITEM 4 – Town Planner Items**

258 A. Destination Marketing Program - Route 1BP to Kittery Gateway

259 Will provide status at next meeting; Chair of Route 1 BP group out of town. Board requested group
260 consider alternative names.

261 B. Quality Improvement Overlay Zone

262 Provision of flexibility for development in identified areas of town (in lieu of Contract Zoning). Ms.

263 Tuveson asked to be included in future discussions.

264 C. Sign Standards and Compliance - Not Discussed

265 D. Other

266 For discussion at April 24 Board meeting:

- 267 - Shore and Harbor Plan presentation
- 268 - Sarah Long bridge designs
- 269 - Memorial Circle design and recommendations

270

271

272 **ITEM 5 – Kittery Performing Arts Outdoor Concert Area — 76 Dennett Rd—Sketch Plan Review**

273 Action: review and accept or deny application and schedule a public hearing. Owner William Cullen, and
274 applicant Lee Consavage, Kittery Performing Arts Center, L3C, propose an outdoor recreation and
275 concert area off Dennett Road. The site identified as Tax Map 6 Lots 15B & 16A and Map 13 Lot 4, ±24
276 acres, in the Business Park - (B-PK) Zone.

277 Item postponed per applicant's request.

278

279

280 Ms. Tuveson moved to adjourn

281 Mr. Emerson seconded

282 Motion carried by all members present

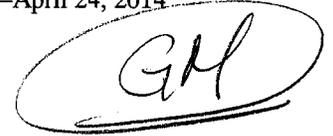
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284

285

286 The Kittery Planning Board meeting of April 10, 2014 adjourned at 9:24 p.m.

287 Submitted by Jan Fisk, Recorder, April 15, 2014



TOWN OF KITTERY MAINE
TOWN PLANNING AND DEVELOPMENT DEPARTMENT
TOWN PLANNING BOARD MEETING – TOWN PLANNER’S COMMENTS
Kittery Town Hall, 200 Rogers Rd., Kittery, Maine 03904 (207) 475-1307 www.kitteryme.org

Thursday, April 24, 2014
6:00 P.M. to 10:00 P.M.

To: Town Planning Board
From: Gerald R. Mylroie, AICP, Town Planner/Director Town Planning and Development
Date: April 16, 2014
Re: **TOWN PLANNER’S COMMENTS**
AGENDA for Thursday, April 24, 2014
6:00 P.M. to 10:00 P.M.

CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 4/10/2014

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.

PUBLIC HEARING

ITEM 1 – (15 minutes) – Town Code Title 16 Land Use Development Code Amendments Related to Shoreland Overlay Zone Development – 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 Zone. Action: hold public hearing, review amendment and make recommendation to Town Council for adoption. Amendment includes changes to the Town’s Shoreland zoning to comply with the Maine Department of Environmental Protection 2000 and 2010 conditional approvals.

- Comment:** Amendments respond to enabling improved land division as well as achieving consistency with State of Maine Shoreland Zoning requirements.
- Action:** Open public hearing / Hear comments.
Review draft.
Make decision.
- Decision** If ok, Move to approve the Town Code Title 16 Amendments (read) and forward to Town Council with a recommendation to approve as presented.
If not ok, move to continue to next meeting.

OLD BUSINESS

ITEM 2 – (15 minutes) – Town Code Amendment – Title 16.7.8 Land Not Suitable for Development. Action: review amendment and make recommendation to joint workshop with Town Council. 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.

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Action: review and approve findings of fact. Owner M&T Reality, Applicant Estes Oil & Propane Company, propose a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route 1, Tax Map 67, Lot 4, Mixed Use, Residential Rural and Shoreland and Resource Protection Overlay zones. Agent is Edward Brake, ATTAR Engineering.

ITEM 4 – (30 minutes) - Board Member Items / Discussion

- A. Action List
- B. Code Amendments for May 5th Joint Workshop with Town Council.
- C. Committee Updates
- D. Other

ITEM 5 – (30 minutes) - Town Planner Items:

- A. Town Code amendment related to Quality Improvement Overlay Zone.

Comment – Committee Work in Progress.

Action: Pending action on prior draft.

Decision: None at this time.

- B. Town Code amendment related to off-site right-of-way improvements.

Comment – Urgent to immediately improve development quality.

Pending action on prior draft.

Action: Discuss and schedule for a public hearing/ discuss with TC on May 5.

Decision: If ok, Move to schedule a public hearing.

- C. Town Code amendment related to standards for sign character and appearance.

Comment – Urgent to immediately improve development quality.

Pending action on recommendation.

Action: Discuss and schedule a public hearing.

Decision: If ok, Move to schedule a public hearing.

D. Other

- a. Memorial Circle – MDOT still reviewing consultants recommendations.
- b. Obtained \$20,000 grant from Kittery Area Comprehensive Transportation System Metropolitan Transportation Organization for Route 1 By Pass Streetscape/Pedestrian/ Bike Plan.
- c. ...

NEW BUSINESS

ITEM 6 – (10 min.)– Quality Improvement Plan for Kittery Shore and Harbor.

Action: review and schedule a public hearing. Town advisory committee is transmitting the draft plan for Town Planning Board review, public hearing and recommendation to Town Council for adoption. The QIP Plan is a specific plan that includes goals/policies and implementation strategies for improving/protecting the Town's shores and harbors. Town Planner, Gerald R. Mylroie, ACIP and consultant, Jonathan C. Edgerton, PE, Wright-Pierce will make a presentation.

Comment – Technical Advisory Committee draft plan ready for TPB consideration.

Action: Accept plan, discuss and schedule for a public hearing/ discuss with TC on May 5.

Decision: If ok, Move to schedule a public hearing.

ITEM 7 – (10 min.)– Sarah Mildred Long Bridge Plan.

Action: review and forward comments to Town Council / MDOT. MDOT has completed the 60% phase of the final construction plans for the SML Bridge. The plan includes the site improvements on the Kittery side of the bridge including a new signalized intersection at Bridge Street and related Route 1 By Pass and neighborhood street improvements. Town Planner, Gerald R. Mylroie, AICIP will describe the plan.

Comment – MDOT issued 60% phase plan. Opportunity for TPB to review and comment / offer recommendations/ could invite public comment.

Action: Discuss/ invite public comment/ draft findings/recommendations to Town Council for their consideration and possible transmittal to MDOT. Discuss with TC on May 5.

Decision: If ok, Move to schedule a public hearing.

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

END

Town of Kittery Maine Town Planning Board Meeting April 24, 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	HELD
YES	Schedule Public Hearing	Scheduled 4/24; ran in legal section in the Portsmouth Herald for Friday 4/11 and again for Wednesday 4/16	COMPLETE
YES	Public Hearing	Scheduled for 4/24/14	
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 recommending adoption by the Town Council. If the Board has issues with these changes Staff recommends addressing those issues with a separate amendment proposal since this proposal includes changes that are effectively law because they are part of the MDEP conditional approvals.

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.

82
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.~~

87
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>6,000 square feet</u>
113	<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>

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

115	Residential–Village (R-V) zone	8,000 square feet
116	Business-Park (B-PK) zone	10,000 square feet
117	Residential–Urban (R-U), Business-Local (B-L) and	
118	Business-Local 1 (B-L1) zones	20,000 square feet
119	Mixed Use (M-U), Residential–Rural (R-RL),	
120	Residential–Suburban (R-S) and	
121	Residential–Kittery Point Village (R-KPV) zones	40,000 square feet.
122	Residential-Rural Conservation (R-RLC) zone	80,000 square feet.
123	<u>Mixed-Use Badgers Island (MU-BI) zone</u>	<u>6,000 square feet*</u>
124	<u>* 3,000 square feet for the first two dwelling units</u>	
125	<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>

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

127	<u>Mixed Use-Badgers Island (MU-BI)</u>	<u>25 feet</u>
128	Residential-Village (R-V) and Residential Urban (R-U) zones	
129	<u>and Mixed-Use Kittery Foreside (MU-KF) zones</u>	<u>50 feet</u>
130	Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND),	
131	Business-Park (B-PK), Business-Local (B-L) and	
132	Business-Local 1 (B-L1) zones (shore frontage per lot)	150 feet
133	(shore frontage per dwelling unit)	50 feet
134	Residential-Rural (R-RL), Residential-Suburban (R-S),	
135	and Residential-Kittery Point Village (R-KPV)	
136	zones (shore frontage per lot)	150 feet
137	(shore frontage per dwelling unit)	100 feet

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

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

147
148 d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must
149 not exceed twenty (20) percent of the lot area, including existing development, except in the following
150 zones:

151
152 i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the
153 maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal
154 application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to seventy
155 (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a
156 water-dependent use.

157
158 ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where
159 the maximum lot coverage is seventy (70) percent.

160
161 iii. Notwithstanding the above limits, vegetated surfaces must exceed fifty (50) percent of the lot area
162 when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the
163 Residential - Urban Zone (R-U) and the Shoreland Overlay Zone.

164
165 iv. In the shoreland zone within the Mixed Use (M-U) zone, the maximum lot coverage shall be 20%.

166
167
168 2. Principal and Accessory Structures – Setbacks and Development.

169
170 a. All new principal and accessory structures (except certain patios and decks per Section
171 16.3.2.17.D.2.b, must be set back as follows:

172
173 i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water
174 bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater
175 wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water
176 bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside
177 Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E,, except
178 that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement.
179 In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except
180 for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which
181 case the setback requirements specified above apply.

182
183 ii. The water body, tributary stream, or wetland setback provision does not apply to structures which
184 require direct access to the water body or wetland as an operational necessity, such as piers and
185 retaining walls, nor does it apply to other functionally water-dependent uses.

186
187 b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at
188 least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the
189 upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks
190 must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.

191

- 192 c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken
193 from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or
194 “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published
195 on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement
196 as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located,
197 the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine
198 Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still
199 not reached, the applicant may appeal the matter to the Board of Appeals.
200
- 201 d. Public access to the waterfront must be discouraged through the use of visually compatible fencing
202 and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer.
203 The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery
204 along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as
205 an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in
206 height immediately upon planting.
207
- 208 e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to
209 place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the
210 Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for
211 the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80)
212 square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary
213 stream as practical and meet all other applicable standards, including lot coverage and vegetation
214 clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or
215 tributary stream than the existing principal structure.
216
- 217 f. The lowest floor elevation or openings of all buildings and structures, including basements, must be
218 elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence
219 of these, the flood as defined by soil types identified as recent flood-plain soils.
220
- 221 g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces,
222 must not exceed twenty (20) percent of the lot area, including existing development, except in the
223 following zones:
224
- 225 i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent.
226 The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot
227 coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no
228 practicable alternative exists to accommodate a water-dependent use.
229
- 230 ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND)
231 Zones where the maximum lot coverage is seventy (70) percent.
232 Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot
233 area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the
234 Residential - Urban Zone (R-U) and the Shoreland Overlay Zone
235
- 236 h. Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to
237 provide shoreline access in areas of steep slopes or unstable soils provided the:
238
- 239 i. structure is limited to a maximum of four feet in width;

240
241 ii. structure does not extend below or over the normal high-water line of a water body or upland edge of
242 a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural
243 Resources Protection Act, 38 M.R.S. §480-C); and

244
245 ii. applicant demonstrates that no reasonable access alternative exists on the property.

246
247 i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure
248 or use, or combination thereof, is constructed or established on a single parcel in the shoreland zone, all
249 dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

251
252 **Article III. Nonconformance** (Ordained 9-26-11; Effective 10-27-11)

253
254 **16.7.3.5.6 Nonconforming Structure Reconstruction.**

255
256 A. Any nonconforming structure which is located less than the required setback from a water body,
257 tributary stream, or wetland and which is removed, damaged or destroyed, ~~by any~~ regardless of the
258 cause, by more than 50% of the market value of the structure before such damage, destruction or
259 removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months
260 of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement
261 is in compliance with the water body, tributary stream or wetland setback requirement to the greatest
262 practical extent as determined by the Planning Board (in cases where the structure is located in a
263 Shoreland Overlay of Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance
264 with this Code.

265
266 B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the
267 reconstructed or replacement structure is less than the required setback it may not be any larger than the
268 original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair
269 and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or
270 replaced structure at its new location.

271
272 C. If the total amount of floor area and volume of the original structure can be relocated or ~~reconstructed~~
273 beyond the required setback area, no portion of the relocated or reconstructed structure may be replaced
274 or constructed ~~reconstructed at~~ less than the setback requirement for a new structure. When it is
275 necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with
276 Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any
277 structure that has been partially damaged must be made to the Code Enforcement Officer.

278
279 D. Any nonconforming structure which is located less than the required setback from a water body,
280 tributary stream, or wetland and removed, damaged or destroyed by any cause ~~through no fault of action~~
281 ~~by the owner~~ by 50% or less of the market value of the structure before such damage, destruction or
282 removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the
283 Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources
284 Protection Overlay Zone) within twelve (12) months of the established date of damage, ~~or~~ destruction.

285

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

290

291 **16.7.3.5.7 Nonconforming Use Expansion.**

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

294

295 A. uses in conformity with Chapter 16.7; and

296

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

301

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

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

312

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

316

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

320

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

324

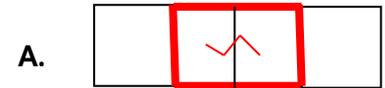
325 **16.7.3.5.9 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

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

333

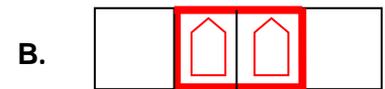
334 **16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

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



345

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



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

360

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



373

374 This subsection does not apply:

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

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

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

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

384

385 ~~D.C.~~ Single Lot Division.

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

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

393

394 **16.7.3.5.11 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

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

398

399 **16.7.3.5.12 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

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

403

404 **16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.**

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

406

407 **16.7.3.6.1 Nonconforming Structure Expansion.**

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

411

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

416

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

421
422 C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming
423 structure, the structure and new foundation must be placed such that the setback requirement is met to
424 the greatest practical extent as determined by the Planning Board, basing its decision on the criteria
425 specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does
426 not extend beyond the exterior dimensions of the structure, except for expansion in conformity with
427 Section 16.7.3.6.1.A, and the foundation does not cause the structure to be elevated by more than three
428 (3) additional feet, as measured from the uphill side of the structure (from original ground level to the
429 bottom of the first floor sill), it will not be considered to be an expansion of the structure.

430
431 **16.7.3.6.2 Nonconforming Use Change.**
432 An existing nonconforming use may be changed to another nonconforming use with the approval of the
433 Planning Board provided the proposed use has no greater adverse impact on any water body or wetland,
434 or on the subject and adjacent properties and resources, including water dependent uses in the
435 Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning
436 Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for
437 the determination of no greater adverse impact, the Planning Board may require written documentation
438 from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation,
439 water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to
440 waters, natural beauty, floodplain management, archaeological and historic resources, and commercial
441 fishing and maritime activities, and other functionally water-dependent uses.



443
444
445 **Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT**
446 **Article XXVIII. Single and Duplex Family Dwellings**

447
448 **16.8.28.1 Single and Duplex Family Dwellings in Resource Protection and Shoreland Overlay**
449 **Zones.**

450
451 In addition to the criteria specified in Section 16.6.6 and 17.10.8.3.4, applicable to the granting of a
452 special exception use request, the Planning Board may approve an application for a single or duplex
453 family dwelling special exception use request, where applicable, provided the applicant demonstrates all
454 of the following conditions are met:

455
456 A. There is no location on the property, other than a location within the Shoreland Overlay or Resource
457 Protection Overlay Zones, where a single family dwelling ~~the structure~~ can be built, or similarly for a
458 duplex in the Shoreland Overlay zone.

459
460 B. The lot on which the structure is proposed is undeveloped and was established and recorded in the
461 York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

462

**Town of Kittery Maine
 Town Planning Board Meeting
 April 24, 2014**

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

Action: review amendment and make recommendation to joint workshop with Town Council. 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, 4/1/14, 4/9/14, 4/16/14	
YES	Public Hearing	Review 2/27/14; PH held 3/13/14, continued, sent to Subcomm.	HELD
YES	Final 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, 18, and March 19 meetings of the Code Subcommittee (PBCS), minutes of which were submitted at the

last board meetings. The PBCS at their 4/1, and 4/19 meetings revised the amendment in response to questions raised at the 3/27 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 as well as a provision to clarify the issue around double counting land area subtractions.

The most recent amendment includes additional language the Board requested at the March 27 meeting, to address issues around the connection between “minimum land area per dwelling unit” and “net residential acreage”. This involves amending the zoning standards for the residential zones.

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 should be scheduled since the amendment has changed significantly. The Board should consider placing this on the joint workshop scheduled with Town Council for May 5, 2014. A second public hearing can be held by the Board afterwards.

Planning Board
Code Subcommittee
April 9, 2014
Town Hall
NOTES

Present: Chris DiMatteo, Ann Grinnell, Karen Kalmar, Susan Tuveson, Earledean Wells, Ron Beal (Altus Engineering)

DISCUSSIONS

Family divisions

Susan volunteered to research Maine law regarding family land divisions. She will contact the MMA if, after her review, she needs further information to determine whether these are protected by law.

Driveways re: item F proposed easements

Chris pointed out that the definition of driveway is "a vehicular access way less than 500ft in length *serving two lots or less*". The initial draft called for the subtraction of the area of 'driveways' that serve two *or more* dwelling units. It was suggested that we reconcile the NRA subtraction with the definition. A lengthy discussion ensued.

The committee decided to exempt proposed driveways from subtraction in order to avoid creating a disincentive for developers to create shared driveways. Sharing driveways can be a good way to reduce impervious surfaces.

Chris also noted that if a proposed access way would serve two or more lots it would often require an easement and, if so, its area would be subtracted.

Lot Area:

Information contained in the Soil Suitability code that describes Lot Area will be moved to 16.8.16 Lots. A definition of Lot Area should also be added to 16.2.

Holding tanks:

Earledean spoke about the proposed boat pump-out tank that the KPA intends to install at Pepperrell Cove. She expressed concern about the volume of effluent storage that would be involved as well as the potentially dire impact on surrounding waterways should there be a leak or other accident. She suggested that we be very careful in crafting language to accommodate such projects. She would prefer that such pump-outs be made directly to town sewer. Ann noted that there is not town sewer at Pepperrell Cove.

Chris spoke of the need to provide appropriate services to a working waterfront. Susan suggested that instead of focusing on fears about what might happen, that we should craft ordinance language that requires the most advanced equipment and a stringent safety and maintenance plan.

CHANGES SUGGESTED:

NRA: Format

Chris suggested addressing non-subdivisions in 16.2 definitions instead of making two 16.7.8 NRA items, one for subdivisions and one for non-subdivisions, as was agreed last time. He shared a draft definition of Land Area which would apply to non-subdivisions. The Land Area draft also included information about Lot Area. Karen suggested that the two definitions be separated. Lot Area information will be included in both 16.8.16 and 16.2.

The committee agreed that Land Area could be accommodated in the definitions, however, we will add a new 16.7.8.3: Residential Development Other than Subdivision. Chris will draft language that essentially cross-references the Land Area definition, so that someone looking at the NRA code would see that the rules differ for non-subdivisions and would then know where to find those rules.

NRA: item F. new language as follows:

All land in proposed rights-of-way including parking and travel ways. Driveways are excluded.

Definition of Land Area:

Remove items E, F and G. Make a separate definition and make new codes in 16.8.16.

HOMEWORK:

- Chris will send the revised NRA draft plus ancillary definitions, etc. to the PBCS by email. PLEASE PROOF CAREFULLY and send any corrections, questions etc. to Chris ASAP. It will go forward at earliest opportunity.
- Chris will send the most recent version of the septic code prior to our next meeting. PLEASE REVIEW and come prepared with any suggestions and questions you might have.

NEXT MEETING: WED., APR. 16, 2014, 10:00AM Town Hall

Planning Board
Code Subcommittee
April 16, 2014
Town Hall
NOTES

Present: Chris DiMatteo, Ann Grinnell, Karen Kalmar, Susan Tuveson, Earledean Wells, brief visit from Heather Ross

DISCUSSIONS:

NRA: final draft/Ordinance Review Proposal

The final version of the Net Residential Acreage ordinance was reviewed. Only one further change will be made. At line 101, Chapter 16.3 Land Use Zone Regulations instead of citing "16.3.2.1 through 16.3.2.5", **Chris** will make a separate entry for each zone and include the new footnote(*) information regarding *minimum land area per dwelling unit*.

Chris and Karen will work together on the Ordinance Review Proposal. The subcommittee stated that the proposal should be as brief as possible, but decided it did not need to review the document before it is presented to the Board.

Subsurface Wastewater Disposal Systems' ASTMs

Heather came in to answer Susan's questions about manufacturers' ASTM requirements for SWD systems. Heather explained that the wrong sand can, in some systems, cause septic failure. However, she does not feel that we need a change to the code to require that the manufacturer's ASTMs be met because SWD systems are designed by a Licensed Site Evaluator in consideration of the conditions in the field and are inspected twice before they are covered.

This addition to the SWD code was proposed by a member of the public, but will not be included.

Holding tanks

Items related to holding tanks, public and private, will be separated from 16.8.7.2 and will become 16.8.7.3. Chris handed out a model holding tank ordinance and asked that **PBCS members** review it and come to the next meeting with ideas for draft language for the new 16.8.7.3. Holding Tanks.

Replacement SWDS rules

Chris will draft language for replacement SWD systems where expansion of use is proposed. This is to address Earledean's concerns about encroachment in S-OZ as well as wetland setbacks. The goal is to prohibit the enlargement of a SWD system's impact within such setbacks. Chris suggested that plans with SWD systems in the setbacks could be brought before the Board or that perhaps a holding tank might be a solution where setbacks would otherwise be encroached upon. He will bring his ideas to the next meeting for discussion.

Mandatory sewer hook-up

Is sewer hook-up mandatory in Kittery? Initial reading of the Town Code suggests that it is required where sewer is "available". Susan will ask George Kathios if this is true and will ask what is meant by "available" (how close must one be to the sewer line?). This could have bearing on the replacement of SWDSs near town sewer.

Family-gift land divisions

Susan shared MMA's response to her inquiry about family-gift land divisions with the committee. MMA does not believe that the Town has the authority to modify the State's definition of subdivision to include these exempted divisions. Susan will ask whether we can apply further standards to such divisions. One question might be, "After three lots are created by family-gift division, can the Town require that a road be built to create frontage and access?".

Notable events

Susan brought some of her DIVINE handmade chocolates to the meeting. Thank you SUSAN! Ann brought scrumptious cookies. Thank you ANN! Earldean invited members to help the Conservation Commission with clean-up at Seapoint on Saturday (9:00 AM - 11:00 AM). Maybe we can work off the treats.

Changes to 16.8.7.2 Subsurface Wastewater Disposal System

line 51: **The developer...**

line 57: add: **and this Code.** to the end of the sentence.

lines 59-61: delete the sentence beginning with the word **Prior**

line 64: substitute **first-time** for *new*

line 65: substitute **first-time** for *new*

line 66: delete the comma after the word *extensions*

line 67: delete the word *and* at the end of the sentence and add a period after *wetland*

line 68: delete (content will be in new 16.8.7.3)

line 69: NEW item D. to read:

Replacement subsurface wastewater disposal systems

1. Replacement subsurface wastewater disposal systems for existing legal uses where no expansion of use is proposed shall comply with 16.8.7.2 and Table 16.9 to the extent practicable and otherwise shall be allowed per the Maine Subsurface Wastewater Disposal Rules.

2. (a version of Chris's draft language for existing uses WITH proposed expansion will be included as item 2, see Replacement SWDS rules, above)

line 86: delete semi-colon after the word *Systems*

Next meeting: **Wed. April 23, 2014 10:00AM** Town Hall

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair; S. Tuveson, VC	Council Sponsor(s): J. Thompson, Chair
Council meeting date: TBD Joint Workshop Meeting: 5/02/14	Title: Land Not Suitable for Development (Current) Net Residential Acreage Calculation (Proposed)
Town code section: Title 16, §16.7.8	History: new proposal

ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE AND PLANNING BOARD REVIEW NOTES

1
2 PURPOSE OF PROPOSAL:
3
4 This proposal would amend the Town's Land Use and Development Code, Title 16 (LUDC) which in
5 its present form does not permit the Planning Board to approve most subdivision development where
6 septic systems are required.
7
8 SUMMARY OF PROPOSAL/AMENDMENT:
9
10 The proposal would amend the LUDC with regard to the calculation of Net Residential Acreage, which
11 establishes the maximum number of dwelling units allowed in a new subdivision.
12
13 It would repeal the statutory reliance upon an outdated reference known as *The Soil Suitability Guide*
14 *for Land Use Planning in the State of Maine* and would substitute standards that comply with the
15 Comprehensive Plan.
16
17 To arrive at Net Residential Acreage, the amendment would require subtracting the sum of all portions
18 of land wherein dwelling units cannot possibly be built due to wetlands, easements, burying grounds,
19 rights-of-way, etc., or where there are substantial constraints to development. In certain cases where
20 constraints are present, partial credit would be granted thus adding to the buildable net.
21
22 JUSTIFICATION:
23
24 Absent this amendment, few new subdivision developments are likely to be approved by the Planning
25 Board. The amendment would correct this serious problem.
26
27 The current ordinance prohibits septic systems on soils identified as "poor or very poor". The outdated
28 reference classifies most land in Kittery as "poor or very poor". The amendment is necessary before
29 subdivisions requiring septic systems may go forward.
30
31 The amendment was drafted after gathering information from a panel of local soil scientists and
32 engineers and reviewing similar ordinances from other towns in southern Maine.
33
34 This amendment would implement the Comprehensive Plan's requirement to manage density, to
35 protect natural resources and features and to preserve property values. It would be fair to developers
36 and does not burden small land owners because non-subdivision projects would be subject to fewer
37 deductions under the calculation for 'minimum land area per dwelling unit'.
38
39 FISCAL IMPACT:
40
41 None.

42 **Proposed Amendment – EDITS THROUGH 4/16/14 PBCS MEETING**

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

44

45 **16.7.8.1 — Locations and Sewage.**

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

47 1. Are situated below sea level;

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

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

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

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

54

55 **Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**

56

57 **Article VIII. Net Residential Acreage**

58

59 **16.7.8.1 Net Residential Acreage Calculation**

60 Net Residential Acreage determines the maximum number of dwelling units allowed on a parcel subject to
61 subdivision. To calculate Net Residential Acreage the land area listed below must be subtracted from a parcel's
62 gross area. Where land areas to be subtracted overlap, the area therein shall be subtracted once.

63 A. All land located below the Highest Annual Tide elevation as published in the *Maine DEP Highest Annual*
64 *Tide (HAT) levels for the most current year.*

65 B. All land located within the floodplain as defined in Title 16.2, *Flood, One Hundred (100) Year.*

66 C. All wetlands as defined in Title 16.2 *Wetland*, as well as vernal pools, ponds, lakes, streams and other
67 water bodies, including fifty (50) percent of the associated setbacks described in *Other Buildings and*
68 *Structures*, Table 16.9 , Chapter 9 in this Title.

69 D. All land located on filled tidal lands, per Title 16.2 *Tidal Land, Filled.*

70 E. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot
71 be built.

72 F. All land located within proposed rights-of-way including parking and travel ways. Driveways are excluded.

73 G. All land isolated from the primary portion of the parcel by a road/street, existing land uses, or any
74 physical feature, natural or manmade, such that it creates a barrier to the central development of the site
75 and no means of access is proposed nor likely to be provided in the future. However, to demonstrate
76 that identified isolated land may be considered developable for the purpose of this calculation, the
77 applicant must submit a plan and supporting documentation for the Board's consideration.

78 H. All land zoned commercial.

79 I. All land one (1) acre or more contiguous area with sustained slopes of 20% or greater.

80 J. All land identified as exposed bedrock, or soils with a drainage class of *poorly drained*, and/or very
81 *poorly drained* as defined in Title 16.2 *Soils.*

82 K. Fifty (50) percent of all land characterized as drainage class of *somewhat poorly drained*, unless public
83 sewer is used, in which case no land area is subtracted.

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

86 M. All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource Protection Overlay
87 Zone not included in 16.7.8.1.A -L.

88

89 **16.7.8.2 Documentation**

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

92

93 **16.7.8.3 Residential development not subject to subdivision**

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

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Title 16.2 Definitions

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

Soils.

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

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

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

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

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

Minimum land area per dwelling unit.

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

A. All land located below the Highest Annual Tide elevation as published in the Maine DEP Highest Annual Tide (HAT) levels for the most current year.

B. All wetlands as defined in Title 16.2 Wetland, as well as vernal pools, ponds, lakes, streams and other water bodies.

C. All land located on filled tidal lands, per Title 16.2 Tidal Land, Filled.

D. All land located within existing rights-of-way and other existing easements wherein dwelling units cannot be built.

Chapter 16.3 LAND USE ZONE REGULATIONS

Article II. Zone Definitions, Uses, Standards

16.3.2.1 Residential – Rural R-RL.

D. Standards

2. Dimensional Standards:

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

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

16.3.2.2 Residential – Suburban R-S.

D. Standards

2. Dimensional Standards:

Minimum land area per dwelling unit*

155 without public sewage disposal 40,000 square feet
156 with public sewage disposal 30,000 square feet
157 unless reduced in accordance with
158 Note A.
159

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

163 **16.3.2.3 Residential - Kittery Point Village R-KPV.**

164 **D. Standards**

165 2. Dimensional Standards:

166
167 Minimum land area per dwelling unit 40,000 square feet*

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

172 **16.3.2.4 Residential – Urban R-U.**

173 **D. Standards**

174 2. Dimensional Standards:

175
176 Minimum land area per dwelling unit 20,000 square feet*

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

181 **16.3.2.5 Residential - Village R-V.**

182 **D. Standards**

183 2. The following space standards apply:

184
185 Minimum land area per dwelling unit 4,000 square feet*

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

191 **16.3.2.6 Residential- Rural Conservation R-RC**

192 **D. Standards**

193 2. The following dimensional standards apply:

194
195 Minimum land area per dwelling unit 80,000 square feet*

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

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

202
203 **16.8.11.5 Application Procedure.**

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

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

- 207
208 1. Calculations and maps to illustrate:
209 a. proposed dimensional modifications and the dimensional standards required in the zone in which the
210 development will be located;
211 b. ~~non-buildable area (land not suitable for development as defined in Article VIII of Chapter 16.7~~ **All land area**
212 **identified in Title 16.7.8.1 Net Residential Acreage; and**
213 ~~not residential acreage and Net Residential Density; and~~
214 **d. open space as defined in Section 16.8.11.6.D.2 of this Article.**

215 **ENACTMENT ORDINANCE**
216 **Title 16.7.8 Net Residential Acreage**

217
218 **AN ORDINANCE** relating to amending Article VIII Land Not Suitable for Development in
219 Chapter 7, Title 16 Land Use Development Code, including net residential acreage and
220 associated code related to Chapter 2 Definitions and Chapter 3 Land Use Zoning
221 Regulations.

222
223 **WHEREAS**, The Kittery Town Council is authorized to enact this Ordinance, as specified in
224 Section 2.07 (3) of the Town Charter and 30-A M.R.S. §3001, pursuant to its powers that
225 authorize the town, under certain circumstances, to provide for the public health, safety and
226 welfare. The Council does not intend for this Ordinance to conflict with any existing state or
227 federal laws.

228
229 **WHEREAS**, the current ordinance prohibits septic systems on soils identified as "poor or very
230 poor" by referencing the outdated *The Soil Suitability Guide for Land Use Planning in the*
231 *State of Maine* that classifies most land in Kittery as "poor or very poor"; and

232
233 **WHEREAS**, the amendment is necessary in order to adequately review subdivisions requiring
234 septic systems; and

235
236 **WHEREAS**, allow implementation of Comprehensive Plan goals to manage density, to protect
237 natural resources and features and to preserve property values; and

238
239 **WHEREAS**, the Town Council finds these ordinance provisions pursuant to and consistent
240 with the Kittery Comprehensive Plan, striking a reasonable balance among the Town's various
241 zoning goals;and

242
243 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN
244 CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO
245 TOWN CODE TITLE 16.7.3.5.12 ADJUSTMENT OF COMMON BOUNDARY LINE OF
246 NONCONFORMING LOTS CODIFIED IN THE TOWN CODE, AS PRESENTED.

247
248 **Approved as to form:** {NAME}, Town Attorney

249
250 **INTRODUCED** and read in a public session of the Town Council on the ___ day of _____,
251 2013, by:_____ {NAME} Motion to approve by
252 Councilor_____ {NAME}, as seconded by Councilor _____
253 {NAME} and passed by a vote of _____.

254
255 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
256 Maine on the ___ day of _____, 2014, _____ {NAME}, Chairperson

257
258 **Attest:** {NAME}, Town Clerk
259

**Town of Kittery
Planning Board Meeting
April 24, 2014**

Estes Bulk Propane Storage – Preliminary Plan Review.

Owner M&T Reality, and applicant Estes Oil & Propane Company is requesting consideration of their plans for a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route One., Tax Map 67, Lot 4, Mixed Use Zone, with a portion in the Residential Rural and Shoreland Overlay zones. Agent is Joe Cheever, ATTAR Engineering,

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
	Sketch Plan Review	March 14, 2013; scheduled for 4/11/13; applicant requested a continuance to 5/9/13;	Sketch Plan accepted: 5/9/13
NO	Site Visit	Site walk conducted 4/10/13 as part of Sketch (no minutes taken); 1/7 and 1/22 meetings were cancelled due to inclement weather.	
Yes	Preliminary Plan Review Completeness/Acceptance	Preliminary Plan received 11/7/13 (w/in 6 months of sketch plan acceptance); preliminary plan accepted as substantially complete	12/12/13
Yes	Public Hearing	Scheduled 1/9/14	HELD
Yes	Preliminary Approval	Review started 1/9/14, continued on 2/20/14 and 4/10/14: Approval Denied	DENIED
Yes	Final Plan Approval		

Applicant: Prior to the signing of the approved Plan any **Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS.** As per Section 16.4.4.13 - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.

Overview

Applicant is requesting Site Plan approval for the construction of two 30,000 gallon propane tanks for a bulk propane storage facility. The proposed development also includes a 24' x 30' garage, a 1,360-foot long 20-foot wide roadway, and associated drainage structures, pavement and earthwork. Site walks scheduled have been cancelled due to inclement weather. The Applicant has requested to forgo the site walk during the preliminary review phase and hold it during the final plan review phase.

The public hearing was held on 1/9/14 and the Board received a presentation from the Applicant's Fire Safety consultant and comments from Fire Chief David O'Brien who supported the report's conclusion that the proposed development is compliant with NFPA 58 and State Fire Codes. In addition, a letter dated August, 2013 from abutting property (Map 67 Lot 3) owner, Betty Crawford describing her concerns about the project was read into the record. Applicant submitted for 4/10 meeting revised plans and a narrative including responses to approval criteria for Special Exception Use, letter regarding sewer availability from the Town, and a stormwater management report. At the last meeting motions to approve the Special Exception Use and the Preliminary Plan failed.

Staff Review

Staff has prepared draft Findings of Fact based on the unimproved minutes attached and with input from Board Member Tuveson. The attached Findings are inconclusive in some instances and will likely need more input from the members prior to the Planning Board voting. Conclusions need to be support by the findings, facts that are part of the record. Where there was no discussion or the discussion did not result in a conclusion the response for the Conclusions below were marked as none or not applicable. The Board needs to clarify. An example is citing the Peer Review Engineer's review to support Conclusion #18.

Recommendation

Staff recommends board members review the draft Findings of Fact and modify, delete and/or add information related to facts and conclusions as they feel warranted. At the meeting, the members can as a Board discuss and decide what the final Findings include. Staff recommends that the Board discuss and vote on each finding. This would aid in determining consensus on changes to the document.

**UNAPPROVED
FINDINGS**

1
2 **KITTERY TOWN PLANNING BOARD**
3 **FINDINGS OF FACT and CONCLUSIONS**
4 **Estes Propane Storage**
5

6
7 Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer,
8 incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of
9 Fact, and any Conditions for or of Approval required by the Planning Board.

10
11 **WHEREAS, Owner** M & T Reality, LLC, and **Applicant** Estes Oil & Propane Company plan to
12 construct a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route
13 One, located on Tax Map 67, Lot 4, within the Mixed Use Zone, with a portion in the Residential
14 Rural and Shoreland and Resource Protection Overlay zones,

15 **Hereinafter the “Site”,** and

16
17 Pursuant to the Plan Review meetings conducted by the Planning Board as noted below; and pursuant to
18 the Project Application, Plan and other documents, the following is considered to be a part of the approval
19 by the Planning Board in this finding,

20 **Hereinafter the “Plan”:**

21 Application and supporting documents:

- 22 1. Preliminary Plan Application and supporting information (11/7/2013,
23 2. Supplemental information submitted (11/20/2013, 1/22/14, and 3/19/14)
24 3. Preliminary Site Plan and associated plans submitted, prepared by ATTAR Engineering, Inc
25 (11/7//2013 REV date: 3/19/14)
26 4. Fire Safety Analysis report prepared by Jody Pratt Ameden Energy Consulting LLC, dated 11/26/13.
27

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

31
32 **FINDINGS OF FACT**
33

- 34 1) Planning Board meetings held include: Sketch Plan Review: 3/14/13, 5/9/13 and 4/11/13;
35 Preliminary Plan Completeness Review: 11/7/13, 12/12/13; Preliminary Plan Review: 1/9/14
36 (Public Hearing), 2/20/14, and 4/10/14.
37 2) The Site is located. A portion of the property is also located in the Shoreland Overlay Zone and
38 the Residential Rural Zone.
39 3) *Warehousing/storage* as defined in Title 16.2 “Warehousing and storage means premises where
40 goods or materials are stored in an enclosed structure or in specific outdoor areas.”
41 4) Special Exception Use is defined in Title 16.2 as “...a use that would not be appropriate
42 generally or without restriction throughout the zoning district, but which, if controlled as to
43 number, area, location, or relation to the neighborhood, would promote the public health,
44 safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.
45 Such uses may be permitted in such zoning districts as special exceptions, if specific provision
46 for such special exceptions is made in Chapter 16.3.”
47 5) On April 10, 2014, Applicant appeared at the meeting of the Kittery Planning Board
48 accompanied by Edward Brake, EIT, and Kenneth Wood, PE, CWS, of Attar Engineering; Jody
49 Pratt, Ameden, Energy Consulting LLC; and Mr. Howell, Attorney at Law for the Applicant.

- 50 6) Title 16.6.4.4 Special Exception Request requires “The Planning Board will review, decide and
51 may approve an applicant’s Special Exception Use request where the proposed project requires
52 Planning Board review as defined in Section 16.10.3.2, or is located in a Shoreland or Resource
53 Protection Overlay Zone.
- 54 7) The Planning Board must find the proposed project and use meets the criteria set forth in
55 Section 16.10.8.3.4 and 16.6.6.1., Conditions, which criteria are the following:
- 56 A) Proposed use will not prevent the orderly and reasonable use of adjacent properties or of
57 properties in adjacent use zones.
 - 58 B) Use will not prevent the orderly and reasonable use of permitted or legally established
59 uses in the zone or adjacent zones.
 - 60 C) Safety, health, and the welfare of the Town will not be adversely affected by the proposed
61 use or its location.
 - 62 D) Use will be in harmony with and promote the general purposes and intent of this Code.
- 63 8) On April 10, 2014 the Planning Board discussed the criteria outlined in Title 16.6.6.2, Factors
64 for Consideration, following a motion to approve the Special Exception Use. The criteria are as
65 follows:
- 66 A) The character of the existing and probable development of uses in the zone and the
67 peculiar suitability of such zone for the location of any of such uses.
 - 68 B) The conservation of property values and the encouragement of the most appropriate uses
69 of land.
 - 70 C) The effect that the location of the proposed use may have upon the congestion or undue
71 increase of vehicular traffic congestion on public streets or highways.
 - 72 D) The availability of adequate and proper public or private facilities for the treatments,
73 removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or
74 otherwise, that may be caused or created by or as a result of the use.
 - 75 E) Whether the use, or materials incidental thereto, or produced thereby, may give off
76 obnoxious gases, odors, smoke or soot.
 - 77 F) Whether the use will cause disturbing emission of electrical discharges, dust, light,
78 vibration or noise.
 - 79 G) Whether the operations in pursuance of the use will cause undue interference with the
80 orderly enjoyment by the public of parking or of recreational facilities, if existing, or if
81 proposed by the Town or by other competent governmental agency.
 - 82 H) The necessity for paved off-street parking.
 - 83 I) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be
84 created by reason or as a result of the use, or by the structures to be used, or by the
85 inaccessibility of the property or structures thereon for the convenient entry and operation
86 of fire and other emergency apparatus, or by the undue concentration or assemblage of
87 persons upon such plot.
 - 88 J) Whether the use , or the structures to be used, will cause and overcrowding of land or
89 undue concentration of population; or, unsightly storage of equipment, vehicles, or other
90 materials.
 - 91 K) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably
92 anticipated operation and expansion thereof.
 - 93 L) Whether the proposed use will be adequately screened and buffered from contiguous
94 properties.
 - 95 M) The assurance of adequate landscaping, grading, and provision for natural drainage.
 - 96 N) Whether the proposed use will provide for adequate pedestrian circulation.
 - 97 O) Whether the proposed use anticipates and eliminates potential nuisances created by its
98 location.

- 99 P) The satisfactory compliance with all applicable performance standard criteria contained in
100 Chapter 16.8, and 16.9.
- 101 9) The Site abuts a commercial recreation facility, Take Flight, located to the north, Tax Map 64,
102 lot 4A, 506 Route One.
- 103 10) The Site abuts Woodland Commons Apartments, located on Ledgewood Drive to the
104 southwest, Tax Map 67, Lot 08-A.
- 105 11) Applicant testified that nearby populations and abutter property lines existed outside the 250-
106 foot/50 people or more recommended threshold, per the National Fire Protection Association
107 (NFPA).
- 108 12) According to the plan submitted by Applicant, the propane tanks are located 240 feet from the
109 nearest property line, and 660 feet from the nearest building.
- 110 13) Applicant testified that the storage tanks will incorporate automatic and redundant product
111 control measures to minimize the probability of a significant release of propane.
- 112 14) Ms. Pratt testified that propane tanks do not vent unless overfilled, and are never filled beyond
113 85% capacity without prior authorization.
- 114 15) Ms. Pratt testified that there is a small amount of gas discharge through the nozzle of the hose
115 upon disconnection from the tank. She stated any odors are temporary.
- 116 16) Ms. Pratt testified that spillage of gas during tank fill or discharge was not possible due to
117 safety construction of the hose and nozzle, defining it as a closed system that cannot leak.
- 118 17) Board Chair, Tom Emerson stated that the Board received emails, public comment and
119 concerns regarding this proposal.
- 120 18) The abutting commercial recreation facility, Take Flight, is not a Town or governmental agency
121 and that the facility is open for 9 months of the year.
- 122 19) Applicant's agent cited the Town Code's definition of Screening and state that it was
123 unreasonable to apply the standard in the context of the 35-foot poles that are part of the Take
124 Flight recreation facility.
- 125 20) The Town's Peer-Review Engineer's review of the plan application including the stormwater
126 management plan was submitted to the Board for review.
- 127 21) The Board declined to vote on individual Considerations and Factors for Consideration,
128 electing to approach the criteria for discussion purposes only.

129
130 **BASED UPON THE FOREGOING FINDINGS OF FACT**, the Board makes the following :

131
132 **CONCLUSIONS**

- 133
134 1) The Applicant's proposed plan to construct two 30,000 gallon propane tanks to be used in the
135 development of a bulk propane storage facility meets the definition of where the use
136 *Warehousing/storage* is included as a Special Exception Use within the Mixed Use Zone.
- 137 2) Title 16.6.6.1.B.1 *Proposed use will not prevent the orderly and reasonable use of adjacent*
138 *properties or of properties in adjacent use zones; Conclusion:* a majority of the Board agreed
139 the proposed project did not support these criteria, citing the abutting commercial recreation
140 facility.
- 141 3) Title 16.6.6.1.B.2 *Use will not prevent the orderly and reasonable use of permitted or legally*
142 *established uses in the zone wherein the proposed use is to be located, or of permitted or*
143 *legally established uses in adjacent use zones; Conclusion:* this criterion is similar to
144 16.6.6.1.B.1.
- 145 4) Title 16.6.6.1.B.3 *Safety, the health, and the welfare of the Town will not be adversely affected*
146 *by the proposed use or its location. Conclusion:* [none].

- 147 5) Title 16.6.6.1.B.4 *Use will be in harmony with and promote the general purposes and intent of*
148 *this Code. Conclusion:* the project will have an impact on the environment.
- 149 6) Title 16.6.6.2.A *The character of the existing and probable development of uses in the zone*
150 *and the peculiar suitability of such zone for the location of any of such uses; Conclusion:*
151 proposed industrial use has the potential to change the existing character of the area.
- 152 7) Title 16.6.6.2.B *The conservation of property values and the encouragement of the most*
153 *appropriate uses of land. Conclusion:* neighbors' testimony confirms property values would
154 be impacted.
- 155 8) Title 16.6.6.2.C *The effect that the location of the proposed use may have upon the congestion*
156 *or undue increase of vehicular traffic congestion on public streets or highways. Conclusion:*
157 this is not an issue where traffic generated by the project is likely to increase traffic congestion
158 on the public street.
- 159 9) Title 16.6.6.2.D *Availability of adequate and proper public or private facilities for the*
160 *treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid,*
161 *gaseous or otherwise) that may be caused or created by or as a result of the use). Conclusion:*
162 not applicable to this application.
- 163 10) Title 16.6.6.2.E *Whether the use, or materials incidental thereto, or produced thereby, may*
164 *give off obnoxious gases, odors, smoke or soot; Conclusion:* [none]
- 165 11) Title 16.6.6.2.F *Whether the use will cause disturbing emission of electrical discharges, dust,*
166 *light, vibration or noise; Conclusion:* not applicable to this application.
- 167 12) Title 16.6.6.2.G *Whether the operations in pursuance of the use will cause undue interference*
168 *with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if*
169 *proposed by the Town or by other competent governmental agency; Conclusion:* the recreational
170 facility is not a Town or other competent governmental agency.
- 171 13) Planning Board discussed Title 16.6.6.2.H *The necessity for paved off-street parking;*
172 **Conclusion:** not relevant to this application.
- 173 14) Title 16.6.6.2.I *Whether a hazard to life, limb or property because of fire, flood, erosion or*
174 *panic may be created by reason or as a result of the use, or by the structures to be used, or by*
175 *the inaccessibility of the property or structures thereon for the convenient entry and operation*
176 *of fire and other emergency apparatus, or by the undue concentration or assemblage of person*
177 *upon such plot; Conclusion:* not relevant to this application.
- 178 15) Title 16.6.6.2.J *Whether the use, or the structures to be used, will cause an overcrowding of*
179 *land or undue concentration of population; or, unsightly storage of equipment, vehicles, or*
180 *other materials; Conclusion:* the appearance of the proposed propane tanks are an issue.
- 181 16) Title 16.6.6.2.K *Whether the plot area is sufficient, appropriate and adequate for the use and*
182 *the reasonably anticipated operation and expansion thereof; Conclusion:* not relevant to this
183 application.
- 184 17) Title 16.6.6.2.L *Whether the proposed use will be adequately screened and buffered from*
185 *contiguous properties; Conclusion:* this is an issue, due to the abutting commercial recreation
186 facility.
- 187 18) Title 16.6.6.2.M *The assurance of adequate landscaping, grading, and provision for natural*
188 *drainage; Conclusion:* [none]
- 189 19) Title 16.6.6.2.N *Whether the proposed use will provide for adequate pedestrian circulation;*
190 **Conclusion:** not relevant to this application.
- 191 20) Title 16.6.6.2.O *Whether the proposed use anticipates and eliminates potential nuisances*
192 *created by its location; Conclusion:* [none].
- 193 21) Title 16.6.6.2.P *The satisfactory compliance with all applicable performance standard*
194 *criteria contained in Chapter 16.8 and 16.9. Conclusion:* not relevant to this application.
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NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and Conclusions, and based thereon determines the proposed development *will* have significant detrimental impact and does not meet the criteria in *Title 16.6.6 Basis for Decision* required for a Special Exception Use, the Kittery Planning Board hereby votes to DENY approval of the preliminary plan for the above referenced property.

Vote of __ in favor __ against __ abstaining

DENIED BY THE KITTERY TOWN PLANNING BOARD ON APRIL 10, 2014.

Thomas Battcock-Emerson, Planning Board Chairman

16.6.2 Appeal of Planning Board, Board of Appeals, or Port Authority Decision.

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

ITEM
4

Title	Description	Public Hearing per (PB Mtg)	Date PB Approved	Council Ordained	Effective Date	*Notes*
16.10.8.2.1	Conditions-General (Off site improvements)	(8/22/13)				
16.10.9.1.4.A-B	Approved Plan Expiration	<u>10/24/13</u> - (8/22/13) <u>5-22-14</u> - (3/27/14)	10/24/2013			Amendments; second review
16.10.9.1.5	Requests for Extension	<u>5-22-14</u> - (3/27/14)				PH (TBD)
16.10.9.2	Field changes	(8/22/13) - Skipped				
16.10.9.3.8	Expiration of Wetlands Alteration Approval	<u>5-22-14</u> - (3/27/14)				PH (TBD)
16.3.17; 16.7.3; 16.8.28	DEP Changes to Shoreland Zone (1999 & 2010)	<u>4/24/14</u> (3/27/14)				
16.5.2.4	Permit period	<u>10/24/2013</u>	10/24/2013			Council recommended no changes to section
16.7.3.5.10	Adjustment of Common Boundary Line of Non-Conforming Lots (Thron/Arris proposal)	<u>3-13-14</u> - (10/24/13)	3/13/2014			
16.7.8	Net Residential Acreage (Land Not Suitable for Dev)	<u>3-13-14</u> - (9/26/13) (4/24/14)				Code Cmte revisions following PH;
16.8.7	Sewage Disposal	(3/27/14)				Amendments
16.8.10.9.L.4	Signs w/out Permit	(8/22/13)				
16.8.9.4.M	Off Street Parking	(8/22/13)				
Article XXIX	Outdoor Seating/Café	(10/24/13)				

Description	Description	Description	Description	Description	Description	Description
Title 12.1	Road openings/driveways	<u>10/24/2013</u>	10/24/2013			DPW requested no further action at this time
16.11	Marine Development	<u>10/24/2013</u>	10/24/2013	1/27/2014	2/27/2014	
16.8.24.2.F	LED's		2/28/2013	3/11/2013	4/12/2013	
	Specialty Food		4/25/2013	6/10/2013	7/11/2013	

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Title 16 Amendments –Development Related Off-Site Improvements

5 B

1 **REPORT TO TOWN PLANNING BOARD** **DRAFT**

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Responsible Individuals: **Date: May 16, 2013/updated July 25, 2013/April 16, 2014**

Tom Emerson, Chair, Town Planning Board Chair

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

Subject: Title 16 - Development Related Off-Site Improvements

Issue:

Will the Town Council move to approve an amendment to Town Code Title 16 to enable the improvement of off-site improvements related to an on-site development project?

Background:

- **Per Section 16.10.8.2 Planning Board Review and Decision – Final Plan Conditions of Approval, and 16.10.8.2.1 Conditions – General.**
Conditions of the Planning Board’s approval may include, but are not limited to, type of vegetation, increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and screens, period of maintenance sureties, deed rest guarantees which may be required.
- While this could be interpreted to include “off-site” improvements adjacent to the property (e.g., within a street right-of-way between the property line and a street curb) as well as “on-site” improvements to meet the Town Code such as the installation of sidewalks, street trees and others, if this is the intent, then clarification is requested.
- So for clarification, and insure the Town does obtain “off-site” improvements required by Town Code as well as those to mitigate impacts caused by the development such as traffic signals, signs, utility connections, street lights, and/or stormwater runoff infrastructure, an amendment is proposed.
- The purpose is to insure key off-site as well as on-site improvements paid for by the developer.
- Any improvements must be approved by the right-of way owner, typically the Maine Department of Transportation.
- A Town Code amendment is required.

Current Situation:

- Amendingrequires amending Town Code Title 16.
- The amendments to be approved by the Town Planning Board include:
 - Section 16.10.8.2.1 as discussed above.
- Purpose, findings, and intent are described in the attached.
- Amendments are in the proper form and format for passage.

Recommendation: Town Planning Board hold a public hearing, and move to forward Town Code/Title 16 amendments to Town Council with a recommendation to adopt as presented.

Enclosures:

1. Title 16 Amendments – Issue how does the Planning Board wish to amend?
2. Enactment ordinance (to do)

Title 16 Amendments –Development Related Off-Site Improvements

46 **Town Code Amendments**

47

48 **Title 16 LAND USE and DEVELOPMENT CODE**

49

50 **Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW**

51

52

53 **Article VIII. Planning Board Final Plan Action**

54

55

56 **16.10.8.2 Planning Board Review and Decision – Final Plan Conditions of Approval.**

57

58 **16.10.8.2.1 Conditions – General.**

59 Conditions of the Planning Board's approval may include, but are not limited to, type of vegetation,
60 increased setbacks and yard space, specifications for sewage and water supply facilities, buffers and
61 screens, period of maintenance sureties, deed restrictions, locations of piers, docks, parking or signs,
62 type or style of construction, off-site improvements required to meet Town Code requirements such as,
63 but not limited to, street curbs, sidewalks, and/or street trees as well as to mitigate off-site development
64 impacts from on-site development such as, but not limited to traffic signals, traffic directional signs, street
65 shoulders, water and/or sewer connections, and/or street lighting and, the amount of all performance
66 guarantees which may be required. All off-site right-of-way improvements must be approved by the right-
67 of-way property owner.

68

69 **16.10.8.2.2 Performance Guaranty Conditions.**

70 Where improvements for the common use of lessees or the general public have been approved, the
71 Planning Board must require a performance guaranty of amount sufficient to pay for said improvements
72 as a part of the agreement. The applicant must file with the Town, as a condition for approval of the final
73 plan, a performance guaranty in a form acceptable to the Town manager.

74 1. The amount must be at least equal to the total cost of furnishing, installing, connecting and completing
75 all street grading, paving, storm drainage and utilities and other improvements specified in the
76 development master plan and shown on the final plan, and must guarantee the satisfactory coordination
77 with other related phases of development and satisfactory completion of all specified improvements.

78 2. Where the Planning Board reviews and approves project phasing, the Planning Board may also require
79 the developer to provide performance assurances directly related to a particular phase or phases of the
80 project where it can be demonstrated that the uncompleted portions thereof do not detrimentally affect the
81 completed development or the current and ongoing development.

82 3. No phase of construction may commence until the required performance assurances have been met.

83 4. Performance guarantees must be based on professionally prepared cost estimates for all approved
84 infrastructure improvements, and include an inspection escrow agreement for site inspection equal to two
85 percent of construction costs.

86 (Ordained 9/26/11; effective 10/27/11)

87 **16.10.8.2.3 Process.**

88 A. Before the Planning Board grants approval of a final plan, the applicant must, in an amount and form
89 acceptable to the Town manager, file with the municipal treasurer an instrument to cover the full cost of
90 the required improvements.

91 B. A period of one year (or such other period as the Planning Board may determine appropriate, not to
92 exceed three years) is the guaranty time within which required improvements must be completed.

93 RECODIFICATION - ORDAINMENT – 07/26/2010 (With amendments Ordained 9/26/11; 1/23/12; 5/30/12 and 9/24/12)

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95

Title 16 Amendments –Development Related Off-Site Improvements

- 96 C. The performance guaranty must include an amount required for recreation land or improvements as
- 97 specified.
- 98 **16.10.8.2.4 Condition Compliance.**
- 99 The Planning Board must instruct the Code Enforcement Officer not to issue an occupancy permit until all
- 100 conditions of the agreement have been satisfied.
- 101 **16.10.8.2.5 Conditions or Waivers.**
- 102 Conditions required by the Planning Board at the final plan review phase must have been met before the
- 103 final plan may be given final approval unless so specified in the condition or specifically waived, upon
- 104 written request by the applicant, by formal Planning Board action wherein the character and extent of
- 105 such waivers which may have been requested are such that they may be waived without jeopardy to the
- 106 public health, safety and general welfare.
- 107 **16.10.8.2.6 Conditions on Plan.**
- 108 The decision of the Planning Board plus any conditions must be noted on three copies of the final plan to
- 109 be recorded at the York County Registry of Deeds, when required. One copy must be returned to the
- 110 applicant, one retained by the Town Planner and one forwarded to the Code Enforcement Officer.
- 111 **16.10.8.2.7 Flood Avoidance Condition.**
- 112 If a structure is located within a flood area, the proposed plan must include a condition of plan approval
- 113 requiring that principal structures in the development will be constructed with their lowest floor, including
- 114 the basement, at least one foot above the one hundred (100) year flood elevation;
- 115 **16.10.8.2.8 Phasing Plan Condition.**
- 116 The Planning Board may permit phasing of a plan where it can be demonstrated to the Planning Board's
- 117 satisfaction such phasing would result in a safe and orderly implementation of the Plan.
- 118 A. Phasing is subject to any conditions deemed necessary to assure that a reasonable mixture of uses is
- 119 completed within each separate phase of the plan.
- 120 B Where projects are to be constructed in phases, phasing of stormwater management, water mains and
- 121 streets are part of the review process.
- 122 C. The Planning Board may permit construction of phases "out of order" only when the storm drainage
- 123 plan and the water plan, etc. have been reviewed and it has been demonstrated that the impact on both
- 124
- 125 **END**
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- 135 **Enactment – (to do)**

**REPORT TO KITTERY TOWN PLANNING BOARD -
TOWN CODE TITLE 16 AMENDMENT –
SIGN STANDARDS – CHARACTER AND APPEARANCE**

DRAFT

5.c.

53 Enclosure 1 DRAFT FOR TOWN PLANNING BOARD REVIEW

54

55 **Kittery Town Code Title 16 Land Use and Development Code**

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

57

58 **Article X. Signs**

59 **16.8.10.1 Purpose.**

60 | The purpose of this section is to implement the adopted Town Comprehensive Plan including its vision to
61 | preserve and enhance Kittery's New England small, seacoast and historic town character and
62 | appearance. The purpose also is to balance the need for adequate identification and advertising for land
63 | uses to promote the economic well-being of the Town with the need to protect the public safety and
64 | maintain and enhance the physical appearance of the community. This objective is to be achieved by:

65 | A. Establishing and enforcing sign and graphic design standards described in the Kittery Design
66 | Handbook that includes examples of acceptable materials and designs.

67 | B. Allowing adequate signage for the effective use of signs as a means of identifying, advertising and
68 | communication of land uses;

69 | CB. Establishing the appropriate bounds for location, size, number, type and use of signs to protect traffic
70 | safety, preserve property values and to promote visual order and clarity; and

71 | DC. Establishing procedures and regulations for the fair and consistent administration and enforcement of
72 | these sign restrictions.

73 **16.8.10.2 General Requirements.**

74 | A.-I. Any sign not expressly permitted herein is prohibited.

75 | B. All signs must reflect Kittery's historic seacoast past and comply with Kittery's characteristic styles in
76 | form, scale, material and color per the Kittery Design Handbook, hereby adopted as part of this Town
77 | Code. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox)
78 | Georgian, Federal and Classical Revival.

79

80 RECODIFICATION - ORDAINMENT – 07/26/2010 (With amendments Ordained 9/26/11; 1/23/12; 5/30/12 and 9/24/12)

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Town of Kittery Planning Board Meeting April 24, 2014

ITEM 6 – (15 min.)– Quality Improvement Plan for Kittery Shore and Harbors

Action: review and schedule a public hearing. Town advisory committee is transmitting draft plan for Town Planning Board review, hearings and recommendation to Town Council for adoption. The QIP Plan is a specific plan that includes goals/policies and implementation strategies for improving/protecting the Town’s shores and harbors. Town Planner, Gerald R. Mylroie, ACIP and consultant, Jonathan C. Edgerton, PE, Wright-Pierce will make a presentation.

PROJECT TRACKING

REQ'D	DESCRIPTION	COMMENTS	STATUS
Yes	Public Forums		June 5, 2013 November 7, 2013
	Draft Document		4/14/14

Following numerous meetings of the Shore & Harbor Committee, the 2013 Shore and Harbor Plan is presented in draft format (4/14/14) for your review and consideration.

**Town of Kittery
Planning Board Meeting
April 24, 2014**

ITEM 7 – (15 min.)– Sarah Mildred Long Bridge Plan Action: review and forward comments to Town Council / MDOT. MDOT has completed the 60% phase of the final construction plans for the SML Bridge. The plan includes the site improvements on the Kittery side of the bridge including a new signalized intersection at Bridge Street and related Route 1 By Pass and neighborhood street improvements. Town Planner, Gerald R. Mylroie, AICP will describe the plan.

PROJECT TRACKING

REQ'D	DESCRIPTION	COMMENTS	STATUS
	Public Informational Meetings		1/24/13 9/19/13

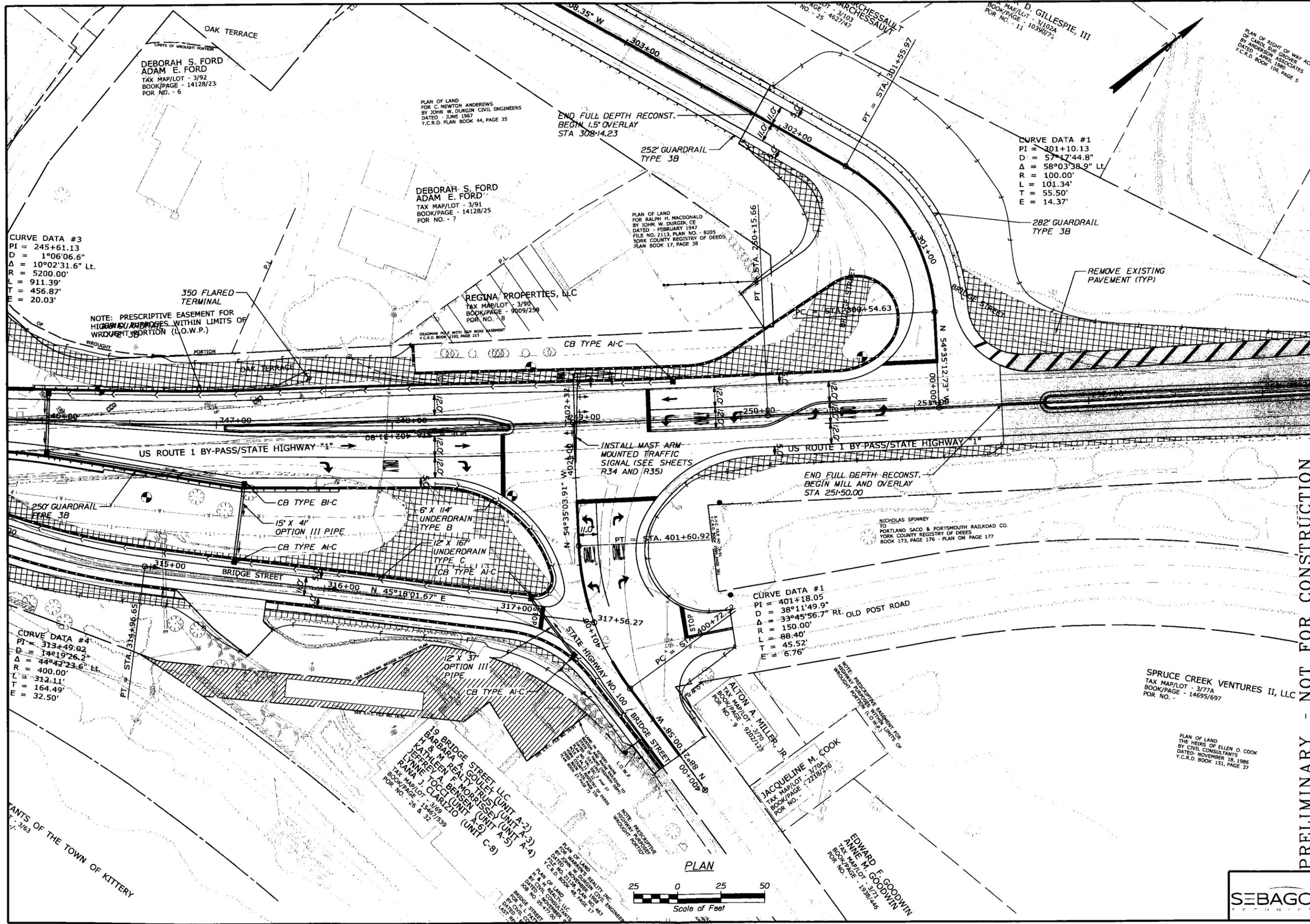
Plans are attached for your reference.

Date: 2/27/2014

Username: blyon

Division: HIGHWAY

Filename: ... \Sheet Files\015_HDPlan6.dgn



STATE OF MAINE		DEPARTMENT OF TRANSPORTATION		16710.00	
ROADWAY PLANS		PIN		16710.00	
ME 3641 NH 251/108		DATE			
PROJECT NUMBER		SIGNATURE		P.E. NUMBER	
SARAH MILDRED LONG BRIDGE					
PISCATAQUA RIVER					
PORTSMOUTH, NH					
KITTEERY, ME					
GENERAL PLAN VI					
SHEET NUMBER					
R15					
OF R99					

PRELIMINARY - NOT FOR CONSTRUCTION

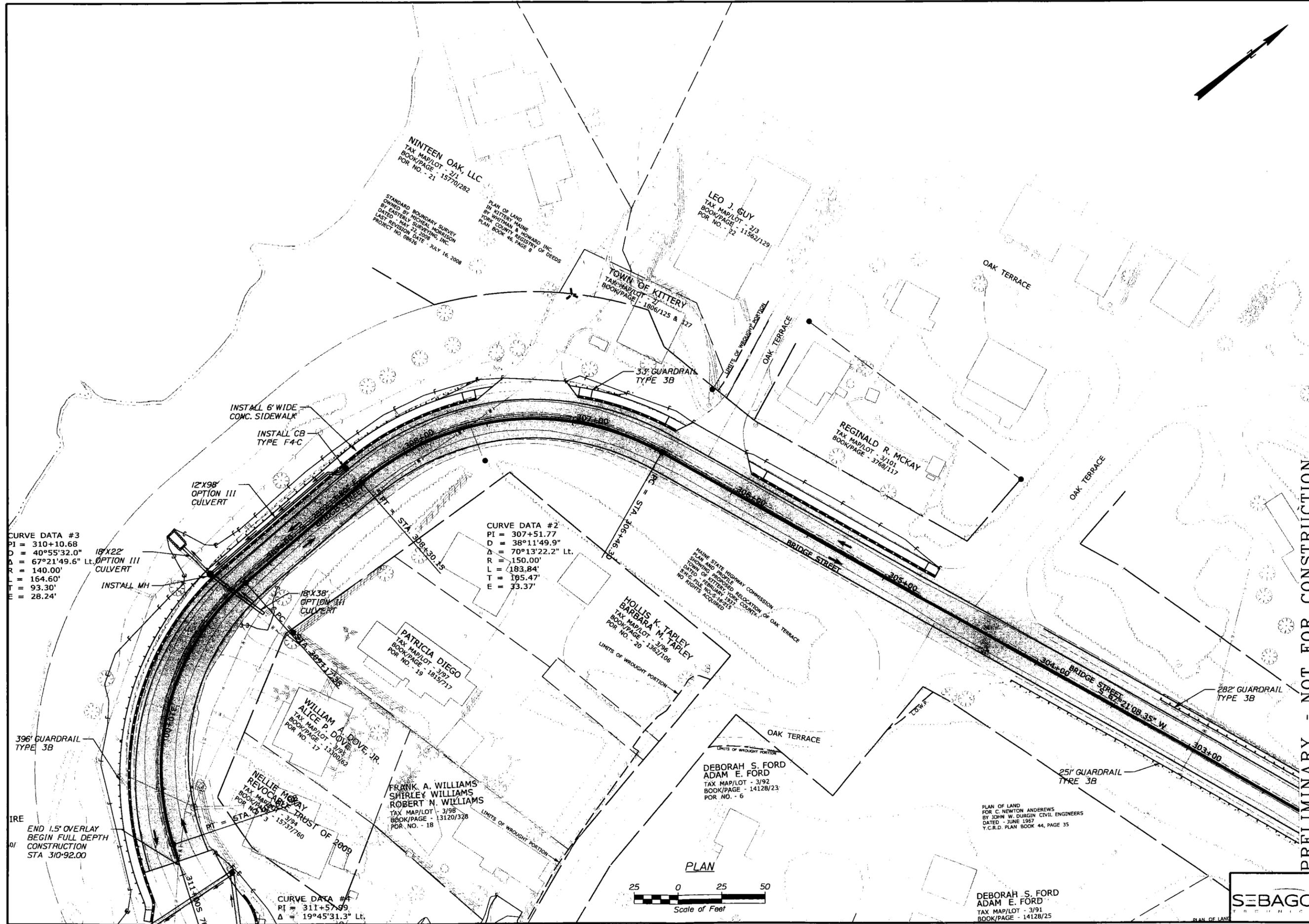


Date: 2/27/2014

Username: blyon

Division: HIGHWAY

Filename: ... \Sheet Files \D16_HDPlan8.dgn



STATE OF MAINE
 DEPARTMENT OF TRANSPORTATION
 16710.00
 PIN 16710.00
 ME 3641 NH 251108 ROADWAY PLANS

DATE	BY	SIGNATURE	P.E. NUMBER	DATE
02-28-14	B. LYON			
02-28-14	S. SAWYER			

PRELIMINARY - NOT FOR CONSTRUCTION
 SARAH MILDRED LONG BRIDGE
 PISCATAQUA RIVER
 KITTERY, ME

PORTSMOUTH, NH
 GENERAL PLAN VII

SHEET NUMBER
R16
 OF R99



DEBORAH S. FORD
 ADAM E. FORD
 TAX MAP/LOT - 3/91
 BOOK/PAGE - 14128/25

PLAN OF LAND
 FOR C. NEWTON ANDREWS
 BY JOHN W. DURGIN CIVIL ENGINEERS
 DATED - JUNE 1967
 V.C.R.D. PLAN BOOK 44, PAGE 35

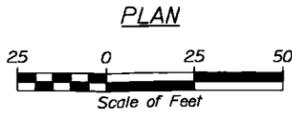
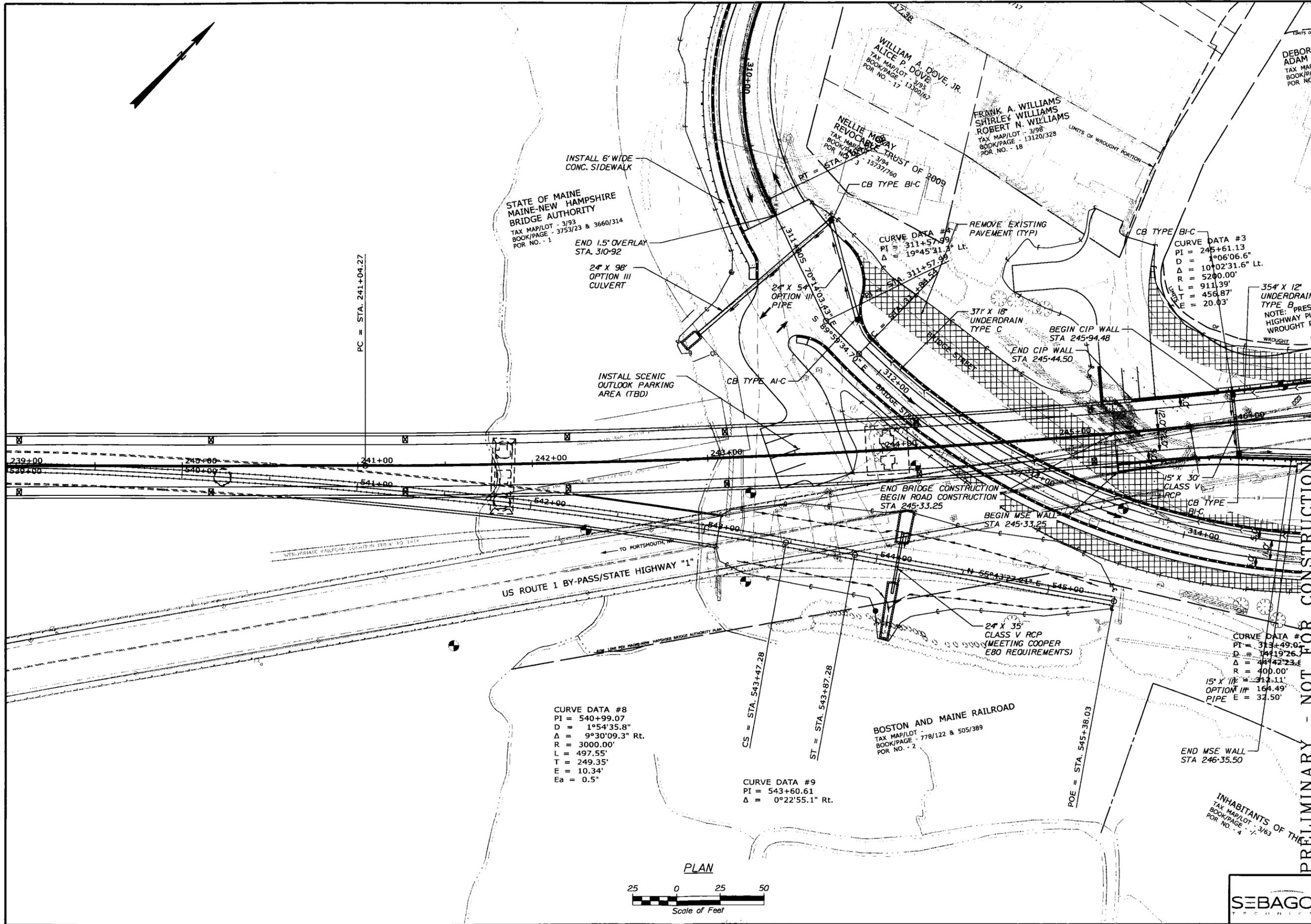


Date: 2/27/2014

Username: blyon

Division: HIGHWAY

Filename: ... \Sheet Files\014_HDPlan5.dgn



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION

16710.00

ME 3641 NH 25/108

PIN 16710.00

ROADWAY PLANS

DATE	BY	REVISIONS
02-28-14	B. LYON	DESIGN-DRAWN
02-28-14	S. SAWYER	CHECKED-REVIEWED
		REVISIONS 1
		REVISIONS 2
		REVISIONS 3
		REVISIONS 4
		REVISIONS 5
		REVISIONS 6
		REVISIONS 7
		REVISIONS 8

SARAH MILDRED LONG BRIDGE
PISCATAQUA RIVER
PORTSMOUTH, NH
KITTERY, ME

GENERAL PLAN V

PRELIMINARY - NOT FOR CONSTRUCTION

SHEET NUMBER

R14

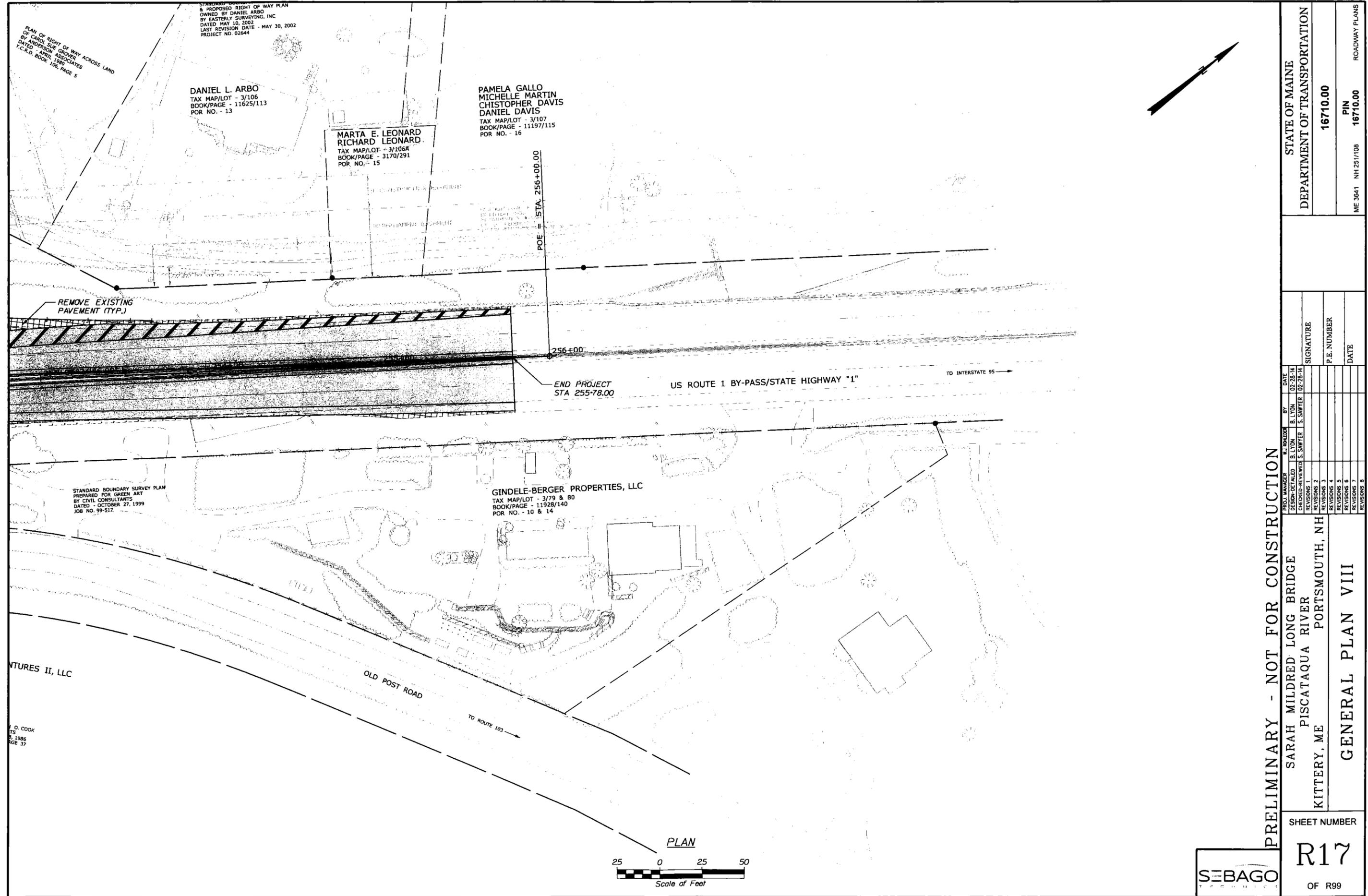
OF R99

Date: 2/27/2014

Username: blyon

Division: HIGHWAY

Filename: ...Sheet Files\017_HDPlan7.dgn



PRELIMINARY - NOT FOR CONSTRUCTION

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16710.00
PIN 16710.00
ME 3641 NH 251/108 ROADWAY PLANS

PROJ. MANAGER	BY	DATE	SIGNATURE	P.E. NUMBER	DATE
DESIGN-DETAILED	B. LYON	02-28-14			
CHECKED-REVIEWED	S. SMYTER	02-28-14			
REVISIONS 1					
REVISIONS 2					
REVISIONS 3					
REVISIONS 4					
REVISIONS 5					
REVISIONS 6					
REVISIONS 7					
REVISIONS 8					

SARAH MILDRED LONG BRIDGE
PISCATAQUA RIVER
PORTSMOUTH, NH
KITTERY, ME
GENERAL PLAN VIII

SHEET NUMBER
R17
OF R99

