



# KITTERY TOWN PLANNING BOARD MEETING

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

Phone: 207-475-1323 - Fax: 207-439-6806 - [www.kittery.org](http://www.kittery.org)

**AGENDA for Thursday, June 26, 2014**

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

**CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE – APPROVAL OF MINUTES – 6/12/2014**

**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 - Title 16.10.8.2.1 Conditions – General**

Action: hold public hearing, review amendment and make recommendation to Town Council for adoption. Proposed amendment adds off-site improvements to potential Planning Board conditions of approval.

## **OLD BUSINESS**

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

Action: review amendment and make recommendation to Town Council for adoption. Proposed amendment reduces the period of time in which extensions can be granted and modifies the process for extension requests.

**ITEM 3 – (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: 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.

**ITEM 4 – (15 minutes) Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development Code.** Action: review amendment and make recommendation to Town Council. Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

**ITEM 5 – (15 minutes) – Town Code Amendment - Title 16.8.10.1 Signs – Purpose and Title 16.8.10.2 Signs – General Requirements.** Action: review amendment and make recommendation to Town Council for adoption. Proposed amendment requires adherence to Kittery Design Handbook.

**ITEM 6 – (20 min) – Town Code Amendment – Title 16.7 Sewer System and Septic Disposal, 16.9.1.4 Soil Suitability, 16.8.16 Lots and 16.2.1 Definitions.** Action: review amendments and schedule a public hearing. Amendments to the Town Code to address soil suitability as it pertains to septic disposal systems and other development standards.

### **ITEM 7 – (15 minutes) - Board Member Items / Discussion**

A. Action List; B. Committee Updates; and C. Other.

### **ITEM 8 – (5 minutes) - Town Planner Items:**

A. Town Code amendment related to Quality Improvement Overlay Zone; and B. Other

## **NEW BUSINESS**

### **ITEM 9 – (15 minutes) – Annual municipal update of the Spruce Creek Watershed Improvement Project.**

As part of the 319 Clean Water Act grant requirements the Town of Kittery will update municipal staff annually on the progress of the Spruce Creek Watershed Improvement Project (SCWIP) currently in Phase III. Agent Emily DiFranco, project manager, FB Environmental Associates.

**ITEM 10 – (15 minutes) – Town Code Amendment - Title 16.8.10.2.C Signs – General Requirements.** Action: review amendment and schedule a public hearing. Proposed amendment allows for the limited use of Light-emitting diode (LED) lights in signage.

## **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  
June 12, 2014

5 Meeting called to order at 6:07 p.m.  
6 Board Members Present: Tom Emerson, Karen Kalmar, Deborah Driscoll Davis, Susan Tuveson, Ann  
7 Grinnell  
8 Members absent: Bob Melanson, Mark Alesse  
9 Staff: Gerald R. Mylroie, AICP, Town Planner; Chris DiMatteo, Assistant Planner  
10

11 Pledge of Allegiance  
12

13 Minutes: May 22, 2014

14 Ms. Kalmar moved to accept the minutes of May 22, 2014 as amended

15 Ms. Tuveson seconded

16 Motion carried 4-0  
17

18 Public Comment: None.  
19

## 20 PUBLIC HEARING

21

22 ITEM 1 –Work related to Pump Station 21 – Shoreland Development Plan Review.

23 Action: Hold a public hearing, approve or deny development plan. Owner Town of Kittery and applicant  
24 Kittery Wastewater Treatment Department, is requesting consideration of their plan to install a generator  
25 and associated concrete pad at a sewer pump station opposite 375 U.S. Route One on town property  
26 abutting the right-of-way, Tax Map 47, Lot 24A, Commercial 3 (C-3) Zone and Shoreland Overlay Zone.  
27 Agent is George Kathios, Superintendent of Sewer Services.

28 Mr. Mylroie: This is before the Board as it is in the Shoreland Overlay Zone; this improvement was  
29 approved in the recent bond and is an important public safety and environmental protection improvement.

30 George Kathios: This proposed station covers all service north of the pump station and is needed to  
31 insure that services continue uninterrupted due to a power outage to avoid environmental impact should  
32 there be a failure and overflow to the creek.

33 Ms. Tuveson: What is the power source for the generator?

34 Mr. Kathios: Diesel power; double lined tank to contain spillage.

35 Ms. Driscoll Davis: Can the station be screened.

36 Mr. Kathios: There is no one living in that area, but shrubs can be added for screening, if requested.  
37

38 The Public Hearing opened and closed at 6:14 with no public testimony  
39

40 Ms. Tuveson moved to approve The Kittery Wastewater Treatment Department's plan to install a  
41 generator and associated concrete pad at a sewer pump station (PS 21) opposite 375 U.S. Route One on  
42 town property abutting the right-of-way, adjacent to Tax Map 47 Lot 24A, Commercial 3 and Shoreland  
43 Overlay Zone, finding the use meets the intent of Title 16.10.10.2.D.

44 Ms. Kalmar seconded

45 Motion carried unanimously  
46  
47

48 ITEM 2 – Shepard’s Cove Subdivision – Modification to an Approved Plan – Preliminary Plan Review.  
49 Action: Hold a public hearing, approve or deny preliminary plan. Owner and applicant DLJ Corp., is  
50 requesting consideration of their plans to amend the previously approved 2004 subdivision plan, replacing  
51 a proposed 24 unit building with detached 5 single-unit buildings at their Elderly Housing Facility located  
52 off Rogers Road, Tax Map 22, Lot 21, Residential-Urban Zone and Shoreland Overlay Zone. Agent is  
53 Lewis Chamberlain, P.E., Attar Engineering, Inc.

54 Lew Chamberlain: Summarized the proposed modification to replace a 24-unit building with 5 units,  
55 resulting in a reduction in impervious area, sewer and water use, parking and drainage. Infrastructure is  
56 already on site; underdrain soil filters will be used to treat water runoff. There were two archaeological  
57 sites, with the Pettegrew site located in the area marked for construction. This area was never excavated.  
58 DLJ Corp. will hire Emerson Baker to provide archaeological investigation prior to construction.

59 Earledean Wells: Asked about tree removal. There had been prior tree removal, and the Association was  
60 fined for removal. She requests assurance that trees remaining in this area will not be removed following  
61 construction.

62 Ms. Driscoll Davis: Noted abutters along the emergency access road were not included on the abutters  
63 list.

64 Mr. DiMatteo: Abutters lying outside the 150-foot area would not be notified, but if the Board wishes to  
65 further notify those property owners another Public Hearing could be held.

66 Mr. Chamberlain: Abutters were notified within 150 feet as required by code.

67 Discussion followed as to whether another hearing should be held.

68

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

70 Scott Moffitt: The emergency access road has been a problem and should be maintained by Shepard's  
71 Cove; the road is crumbling and culverts are not included; the road is subject to movement and property is  
72 inundated with water due to changes in drainage patterns; easement plans were to include utility stubs.

73 Asking for the Association to maintain the road and take responsibility for negative impacts.

74 Public Hearing closed at 6:33 p.m.

75

76 Ms. Tuveson: Asked about sewer and water connections, lighting, landscaping and level spreaders.

77 Mr. Chamberlain: Units will be condominiums; town sewer and water is provided; there will be no  
78 lighting on the street, only on residences; street trees are not proposed; landscaping on-site to be  
79 determined; ; level spreaders are on all three discharges and will be included on the plan. There will be  
80 no changes in condo documents with the new units.

81 Ms. Kalmar: Show rear and side setbacks on parcel, identify common areas, and illustrate Pettegrew site.

82 Mr. Chamberlain: The Pettegrew site is off unit 4; the archaeologist observes excavations, and, if  
83 anything is found, archaeologist catalogs and reports to the town and Naval Museum. There is no DEP  
84 archaeological requirement. The modification to the DEP permit will be provided.

85 Ms. Driscoll Davis: Asked the tree area to remain in new development be identified; confirm drainage  
86 issues; address emergency road maintenance.

87 Ms. Tuveson noted standards in the Findings that remain to be addressed by the applicant. Discussion  
88 followed regarding homeowner's documents, maintenance of the emergency road and financial capability  
89 of the applicant.

90 Discussion followed regarding notifying individuals who may be interested and whether another public  
91 hearing is warranted.

92

93 Ms. Tuveson moved to grant preliminary plan approval

94 Ms. Grinnell seconded

95 Motion carried unanimously

96

97 Ms. Tuveson moved to schedule a second public hearing

98 Ms. Grinnell seconded

99 Motion carried unanimously

100 **OLD BUSINESS**

101

102 ITEM 3 – Watts Cluster Subdivision – Brave Boat Harbor Road — Sketch Plan Review

103 Action: Review and approve concept if in compliance with Town Code and provide direction to  
104 Applicant Owner and Applicant Jonathon & Kathleen Watts is requesting consideration of their plans for  
105 a 4-lot cluster subdivision at 143 Brave Boat Harbor Road, Tax Map 63, Lot 19, Residential Rural Zone,  
106 with a portion in the Shoreland Overlay Zone. Agents are Ken Markley, Easterly Surveying, Inc., and  
107 Scott Anderson, Verrill Dana, LLP.

108 Mr. Mylroie: This review will provide guidance to the applicant as they prepare their preliminary plan  
109 application and review the net residential calculations.

110 Ken Markley: The revised plan more accurately reflects the guidelines of the Soil Suitability Guide; staff  
111 recommended lot line changes for lots 3 and 4, allowing a ROW to lot 4 to be located away from the  
112 wetland areas; addressed soils series, explaining a series means all soils are not negative, but include soils  
113 that allow for septic design within the series.

114 Ms. Kalmar: Title 16.8.7.1.C states septic cannot be placed in soils rated poor or very poor.

115 Mr. Markley: Those supportive soils can be identified through mapping. A new Note 11 addresses this  
116 issue: *TEST PITS USED FOR SEPTIC AREAS WITHIN THE SHORELAND ZONE ARE INCLUSIONS AND ARE*  
117 *NOT RATED POOR OR VERY POOR. (TURNBRIDGE SOILS).*

118 Scott Anderson: The change to the lot lines for the ROW preclude a request for a reduction in wetland  
119 setbacks.

120

121 Ms. Tuveson moved to approve the sketch plan presented for the Watts Cluster Subdivision, Brave Boat  
122 Harbor Road, as revised June 11, 2014.

123 Ms. Driscoll Davis seconded

124 Motion carried unanimously

125

126

127 Ms. Kalmar moved to approve the minutes of the site walk, as amended

128 Ms. Tuveson seconded

129 Motion carried unanimously

130

131

132 ITEM 4 – Pearson Meadow Cluster Subdivision –Final Plan Review.

133 Action: Review and grant or deny final plan, Owner Gail Beverly Burns and applicant Chinburg Builders,  
134 Inc, is requesting consideration of their plans for a cluster subdivision to include nine new lots and one  
135 reserved lot on a 24.5 acre parcel located at 60 Wilson Road., Tax Map 54, Lot 14, within the Residential-  
136 Rural Zone and Resource Protection Overlay Zone. Agent is Jeff Clifford, P.E., Altus Engineering, Inc.

137 Ms. Kalmar requested to recuse herself. Chairman Emerson agreed, and reminded the applicant he would  
138 need four affirmative votes for final approval.

139

140 Mr. Clifford reviewed issues addressed in the May 29, 2014 letter, responding to Board requests:

141 1. The no-cut buffer along Wilson Road cannot encroach on existing utilities; deeds and easements are  
142 being written; the Burns property is encumbered by DEP buffers, but enforcement and responsibility  
143 is with the homeowners association; all easements will be included in homeowners documents.

144 2. Screening along roadway: Met with abutters and some trees will be removed and additional mixed  
145 species trees will be incorporated, set back from the curved road area;

146 3. Common open space: Identified gathering space at grassed soil filtration area south of lot 6, to  
147 include benches and plantings, with access from the cul-de-sac and woodland buffer.

- 148 4. Wetland mitigation: Wetland impact is 4,208 sf resulting in impact fees totaling \$16,832. With the  
149 available upland area, project could accommodate 14 total lots, but the project was kept at 9 new lots,  
150 which is a form of mitigation.  
151 5. Road standards: modifications to cul-de-sac pavement and row dimensions have been measured and  
152 are acceptable.  
153 6. Septic reserve areas: With more than 24 inches of soil, reserve beds are not required.  
154 7. Homeowners documents were submitted April 3, 2014  
155 8. Financial capability: The contractor would build the road to sell lots without bonding.  
156 Mr. DiMatteo: The ordinance requires a performance guarantee through a bond or escrow. The  
157 Town Manager has been contacted, and a draft escrow agreement will be submitted.  
158 9. List of miscellaneous plan revisions for final plan approval.  
159

160 Earldean Wells: The Findings of Fact does not include the mitigation fee.

161 Mr. Mylroie: This can be included as a condition of approval.

162 Mr. DiMatteo: All departments have approved the road name Pearson Place. Planning Board approval is  
163 required.  
164

165 Ms. Tuveson moved to grant final plan approval to the Pearson Meadows Cluster Subdivision.

166 Ms. Grinnell seconded

167 Motion carried unanimously  
168

#### 169 FINDINGS OF FACT 170

171 **WHEREAS:** Owner Gail Beverly Burns and applicant Chinburg Builders, Inc, is requesting consideration of their  
172 plan for a cluster subdivision, ten new lots and one reserved lot on a 24.5 acre parcel at 60 Wilson Road., Tax Map  
173 54, Lot 14, Residential-Rural and Resource Protection Overlay zones. Agent is Jeff Clifford, Altus Engineering,  
174 Inc.

175 Hereinafter the "Development".  
176

177 Action by the board shall be based upon findings of fact which certify or waive compliance with all the required  
178 standards of this title, and which certify that the development satisfies the following requirements:  
179

#### 180 **A. Development Conforms to Local Ordinances.**

181 *The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town*  
182 *Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making*  
183 *this determination, the municipal reviewing authority may interpret these ordinances and plans.*

184 **Vote of 4 in favor 0 against 0 abstaining**  
185

#### 186 **B. Freshwater Wetlands Identified.**

187 *All freshwater wetlands within the project area have been identified on any maps submitted as part of the*  
188 *application, regardless of the size of these wetlands.*

189 **Vote of 4 in favor 0 against 0 abstaining**  
190

#### 191 **C. River, Stream or Brook Identified.**

192 *Any river, stream or brook within or abutting the proposed project area has been identified on any maps*  
193 *submitted as part of the application. For purposes of this section, "river, stream or brook" has the same*  
194 *meaning as in 38 M.R.S. §480-B, Subsection 9.*

195 **Vote of 4 in favor 0 against 0 abstaining**  
196

#### 197 **D. Water Supply Sufficient.**

198 *The proposed development has sufficient water available for the reasonably foreseeable needs of the*  
199 *development.*

200 **Vote of 4 in favor 0 against 0 abstaining**

201

202 **E. Municipal Water Supply Available.**

203 *The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be*  
204 *used.*

205 **Vote of 4 in favor 0 against 0 abstaining**

206

207 **F. Sewage Disposal Adequate.**

208 *The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable*  
209 *burden on municipal services if they are utilized.*

210 **Vote of 4 in favor 0 against 0 abstaining**

211

212 **G. Municipal Solid Waste Disposal Available.**

213 *The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of*  
214 *solid waste, if municipal services are to be used.*

215 **Vote of 4 in favor 0 against 0 abstaining**

216

217 **H. Water Body Quality and Shoreline Protected.**

218 *Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed*  
219 *development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of*  
220 *that body of water.*

221 **Vote of 4 in favor 0 against 0 abstaining**

222

223 **I. Groundwater Protected.**

224 *The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality*  
225 *or quantity of groundwater.*

226 **Vote of 4 in favor 0 against 0 abstaining**

227

228 **J. Flood Areas Identified and Development Conditioned.**

229 *All flood-prone areas within the project area have been identified on maps submitted as part of the application*  
230 *based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood*  
231 *Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of*  
232 *it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard*  
233 *boundaries within the project area. The proposed plan must include a condition of plan approval requiring that*  
234 *principal structures in the development will be constructed with their lowest floor, including the basement, at*  
235 *least one foot above the one hundred (100) year flood elevation.*

236 **Vote of 4 in favor 0 against 0 abstaining**

237

238 **K. Stormwater Managed.**

239 *Stormwater Managed. The proposed development will provide for adequate stormwater management*

240 **Vote of 4 in favor 0 against 0 abstaining**

241

242 **L. Erosion Controlled.**

243 *The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold*  
244 *water so that a dangerous or unhealthy condition results.*

245 **Vote of 4 in favor 0 against 0 abstaining**

246

247 **M. Traffic Managed.**

248 *The proposed development will:*

- 249 1. *Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the*  
250 *highways or public roads existing or proposed; and*

251 2. *Provide adequate traffic circulation, both on-site and off-site.*

252 **Vote of 4 in favor 0 against 0 abstaining**

253

254 **N. Water and Air Pollution Minimized.**

255 *The proposed development will not result in undue water or air pollution. In making this determination, the*  
256 *following must be considered:*

257

258 1. *Elevation of the land above sea level and its relation to the floodplains;*

259 2. *Nature of soils and sub-soils and their ability to adequately support waste disposal;*

260 3. *Slope of the land and its effect on effluents;*

261 4. *Availability of streams for disposal of effluents;*

262 5. *Applicable state and local health and water resource rules and regulations; and*

263 6. *Safe transportation, disposal and storage of hazardous materials.*

264 **Vote of 4 in favor 0 against 0 abstaining**

265

266 **O. Aesthetic, Cultural and Natural Values Protected.**

267 *The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area,*  
268 *aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife*  
269 *or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to*  
270 *the shoreline.*

271 **Vote of 4 in favor 0 against 0 abstaining**

272

273 **P. Developer Financially and Technically Capable.**

274 *Developer is financially and technically capable to meet the standards of this section.*

275 **Vote of 4 in favor 0 against 0 abstaining**

276

277

278 **WETLAND ALTERATION FINDINGS OF FACT:** *A wetlands application has been prepared and submitted to the*  
279 *Town. The application appears to meet the requirements of the ordinance. The applicant makes the case for*  
280 *meeting the requirements of 16.9.3.9 (Mitigation Plan).*

281 **A.** *In making the final determination as to whether a wetland application should be approved, the Planning*  
282 *Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses*  
283 *similar to the one proposed.*

284 **Vote of 4 in favor 0 against 0 abstaining**

285

286 **B.** *It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this*  
287 *Code and the specific standards listed below to gain Planning Board approval to alter a wetland.*

288 **Vote of 4 in favor 0 against 0 abstaining**

289

290 **C.** *In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions.*

291 **Vote of 4 in favor 0 against 0 abstaining**

292

293 **D.** *When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified,*  
294 *clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development,*  
295 *but not prior to granting approval of a reasonable and **practicable mitigation plan**, (see Section 16.9.3.9) and*  
296 *not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).*

297 **Vote of 4 in favor 0 against 0 abstaining**

298

299 **E.** *The applicant must submit applicable documentation that demonstrates there is no practicable alternative*  
300 *to the proposed alteration of the wetland.*

301 **Vote of 4 in favor 0 against 0 abstaining**

302

303 F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board  
304 will consider if the alternatives discussed above in subsection A of this section accomplish the following project  
305 objectives: The proposed use will not:

- 306 1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release  
307 stormwater and surface water runoff;
- 308 2. Unreasonably increase the flow of surface waters through the wetland;
- 309 3. Result in a measurable increase in the discharge of surface waters from the wetland;
- 310 4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter,  
311 and nutrients;
- 312 5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or  
313 aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not  
314 significantly impede the natural migration of wildlife across the filled area;
- 315 6. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or  
316 surface waters discharged from the wetlands.
- 317 7. Result in a measurable alteration or destruction of a vernal pool.

318 **Vote of 4 in favor 0 against 0 abstaining**

319  
320 Title 16.8.3.1 - Street Naming Application:

321 The proposed street name, Pearson Place, has been accepted by Kittery Police, Fire and Public Works  
322 departments.

323 **Vote of 4 in favor 0 against 0 abstaining**

324  
325

326 NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on  
327 these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery  
328 Planning Board hereby grants Final Approval for the Development at the above referenced property, including  
329 any waivers/modifications granted or conditions as noted.

330

331 Waivers: The following waivers were granted May 8, 2014:

- 332 1. 16.8.5.1.3 (a & b) Roadway plan and profile drawing scale.
- 333 2. 16.8.11.6.G Cluster subdivision access onto a public road.
- 334 3. 16.8.11.6.I.5 Disturbance within 100-foot wetland buffer.

335

336 Dimensional Standards Modifications (per Article XI Clustered Residential Development, 16.8.11.3)  
337 (Standard A, Findings of Fact):

338

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

340

- 341 1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title  
342 16.10.9.1.2)
- 343 2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and  
344 building construction to ensure adequate erosion control and slope stabilization.
- 345 3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan,  
346 the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the  
347 Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that  
348 are, per Planning Board approval, to remain undisturbed.
- 349 4. All Notices/Instructions to Applicant contained in the Findings of Fact.

350 Conditions (Not to be included on the final plan)

- 351 5. Prior to start of any site development/construction, applicant shall pay wetland mitigation fees of \$16,832.
- 352 6. Drafts of all easements must be provided for staff review prior to signing of final plan.

353

354

355 Notices/Instructions to Applicant:

- 356
- 357 1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review,  
358 including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter  
359 notification.
- 360 2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or  
361 variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
- 362 3. One (1) mylar copy and two (2) paper copies of the final plan (recorded plan if applicable) and any and all  
363 related state/federal permits or legal documents that may be required, must be submitted to the Town Planning  
364 Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
- 365 4. The owner and/or developer, in an amount and form acceptable to the Town Manager, must file with the  
366 municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site  
367 erosion and stormwater stabilization, including infrastructure construction inspection fees.
- 368 5. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer,  
369 incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

370  
371 The Planning Board authorizes the Planning Board Chairman sign the Final Plan and the Findings of Fact upon  
372 confirmation of compliance with any conditions of approval.

373  
374 Vote of 4 in favor 0 against 0 abstaining

375  
376 Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the  
377 York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five  
378 (45) days from the date the decision by the Planning Board was rendered.

379  
380 Break

381  
382

383 ITEM 5 – Old Armory Way Mixed Use Development — Sketch Plan Review

384 Action: Review and approve concept if in compliance with Town Code and provide direction to  
385 Applicant Owner and Applicant Ken McDavitt is requesting consideration for plans to construct a 3-unit  
386 residential condominium with 12 commercial boat slips at the shorefront located at 15 Old Armory Way,  
387 Tax Map 4, Lot 51, and within the Mixed Use Kittery Foreside Zone and the Shoreland and Commercial  
388 Fisheries/Maritime Activities Overlay Zones. Agent is Edward Brake, Attar Engineering, Inc., Eliot,  
389 Maine.

390 Ken McDavitt: There will be parking spaces for the 3 condominium units, with 4 interior parking spaces  
391 under the units and one exterior space. Following, engineering review he will provide access point from  
392 parking to boat slips following further engineering.

393 Discussion followed on parking for residences and slip users and whether there is sufficient parking for  
394 the proposed use.

395 Ms. Driscoll Davis: Concerned about narrowness of Old Armory Way; though he may meet ordinance  
396 standards for parking, believes parking may occur on Old Armory Way, creating problems for emergency  
397 vehicles.

398 Mr. McDavitt: There are 12 boat slips proposed, requiring 1 space per slip. As a commercial use, the  
399 first 3 parking spaces required are exempt, leaving 9 spaces. Two slips are reserved for condominium  
400 owners, with those required parking spaces within the residential units. There are 10 commercial slips  
401 and 7 parking spaces for their use.

402 Ms. Grinnell: It seems you're taking extra credit with parking standards. What if the condominium does  
403 not own a boat and leases their slip space, or wish to use their interior parking area for storage?

404

405 Mr. DiMatteo: The ROW needs to be clearly marked and identified.  
406 Mr. Emerson: The Board will need to review the Condominium documents.  
407 Mr. McDavitt: I will retain one condominium and run the marine business. Power and water will be  
408 provided to the slips.  
409 Earledean Wells: The Conservation Commission is concerned about parking area runoff, snow storage,  
410 and overnight and guest parking; stormwater management plan is needed.  
411 Ms. Davis: Will the slips be used year round?  
412 Mr. McDavitt: Unless it is precluded in the documents, but he does not intend for them to be used year  
413 round, and does not anticipate all the slips will be used at one time.

414  
415 Discussion followed regarding KPA review of the project.  
416

417 Ms. Tuveson moved to approve the sketch plan for the Old Armory Way mixed-use development.

418 Ms. Kalmar seconded

419 Ms. Grinnell: So we are only approving the concept.

420 Ms. Kalmar: This application will need Kittery Foreside Committee and KPA review

421 Mr. McDavitt: Hopes to provide architectural designs after preliminary review, but before final review.

422 Mr. Emerson: Parking is still an open issue; the number of boat slips may have to be reduced.

423 Mr. DiMatteo: The Board cannot give preliminary approval without some architectural sketches.

424 Discussion followed regarding the Foreside Committee.

425 Motion carried unanimously

426

427 Review of site walk minutes was deferred.

428

429

430 ITEM 6 – Board Member Items / Discussion

431 Mr. Emerson: Foreside Meeting on June 16 2014 at 7:00 p.m.

432 Signage ordinance amendments will be on next Board agenda.

433

434 Ms. Grinnell was excused at 8:33 p.m.

435

436

437 ITEM 7 – Town Planner Items:

438 A. MS4 Stormwater Questionnaire: Appears there is no response area for Planning Board input.

439 B. Town Code Quality Improvement Overlay Zone: Meeting scheduled for Friday, June 20 at 8:00 a.m.  
440 Conference Room A. Ms. Kalmar requested participation.

441 C. Memorial Circle Plan – On-going; development of improvement cost estimates.

442 D. Kittery Foreside meeting: June 16 at 7:00.

443 E. Signs - Compliance issues, character and appearance, etc. to be discussed at next meeting.

444 F. FEMA – Flood Insurance Risk Maps Status; Council is still deciding upon funding the appeal process.

445 G. Capital Improvement Program Projects; Possible bonding; Board should discuss areas for consideration.

446 H. Town Code Outdoor Seating Program Extension; Consider expanding to other business zones.

447 I. Other:

448 - Branding of Kittery: Does the Board want to continue to exercise role in identify and branding  
449 business districts for recommendation to Council. Mr. Emerson: Our involvement is necessary. The  
450 Board just did not endorse the Gateway name itself, as this is ultimately the Council's role. If those  
451 individuals within a district wish to promote themselves the Board will listen, but it needs to be  
452 initiated by them. Ms. Tuveson: Why do we need to brand every inch of Kittery?

453 - Kittery Outlet Center: Addition of gables and cupolas [inaudible].

454 - Councilman Thompson requested a list of pending ordinance amendments for October target date.

455

456 NEW BUSINESS

457

458 [this item was reviewed out of sequence]

459

460 ITEM 8 – Knutel/56 Chauncey Creek Rd – Modification to an Approved Plan - Shoreland Development  
461 Review

462 Action: Accept or deny plan application and schedule site walk and/or public hearing. Owner and  
463 applicant Philip Knutel is requesting approval of their plans to expand an existing non-conforming  
464 building located on Chauncey Creek Rd., Tax Map 44, Lot 55, in the Kittery Point Village and Shoreland  
465 Overlay zones. Agent is Architect Tom Emerson, Studio B-E.

466 Chairman Emerson recused himself.

467 Ms. Tuveson summarized the request, noting this is not an expansion, but a modification of a previously  
468 approved expansion.

469 Mr. Emerson: The brick stoop is being removed for ease of access, to be replaced by a 7' x 3' stoop and a  
470 3-foot wide step, further back from road, and creates less impervious surface.

471

472 Ms. Kalmar moved to approve modification to the previously approved Shoreland Development Plan for  
473 Philip Knutel at 56 Chauncey Creek Road, Map 44 Lot 55, concluding the proposed improvements  
474 related to the front porch, associated steps and roof canopy meet all applicable standards including Title  
475 16.10.140.2.D, and authorize the Vice-Chair to sign the amended Findings of Fact and revised  
476 development plan to be recorded at the York County Registry of Deeds.

477 Ms. Grinnell seconded

478 Ms. Tuveson: Is the Board comfortable approving this project without a site walk or public hearing?

479 Members agreed they were.

480 Motion carried unanimously

481

482

483 ITEM 9 – Beatrice Way –Subdivision– Sketch Plan Review

484 Action: Review and approve concept if in compliance with Town Code and provide direction to Applicant  
485 Owner Operation Blessing LP, and applicant Richard Sparkowich, propose a new Right-Of-Way to allow the  
486 division of remaining land from the previously approved 3-lot subdivision located between Highpoint Circle  
487 and Kittree Lane. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL)  
488 Zone. Agent is Ken Markley, Easterly Survey Inc.

489 Mr. Markley: Taking Board and staff comments under consideration, the applicant is now requesting this  
490 application be reviewed as a conventional subdivision instead of a cluster subdivision.

491 Mr. Mylroie: Summarized how the applicant can meet his needs through a cluster subdivision application,  
492 without actually developing a cluster subdivision, but applying cluster standards to determine net residential  
493 acreage, open and common space, etc. [stepped away from microphone; inaudible]

494 Ms. Driscoll Davis: Uncomfortable with trying to predict what will be done in the future.

495 Ms. Tuveson: What is feasible in the future is not at issue before the Board now.

496 Ms. Kalmar: Title 16.8.16.6 allows the Board to require potential division of lots be shown.

497 Mr. Emerson: We need to determine if the existing lots belong with this proposed subdivision when  
498 determining net acreage for development.

499 Mr. Markley: This would be unfair; the applicant had originally come before the Board with a ROW  
500 application to divide the property, and were told to change to the current application before the Board. Now  
501 you're asking to include the existing duplex lots as part of a cluster application.

502 Mr. DiMatteo: This meets subdivision requirements as three lots are being created within a 5 year period.

503 Mr. Sparkowich: Referenced May 22, 2014 letter regarding inappropriateness of cluster subdivision  
504 provisions for the project. He summarized:

505 1. Clustering homes in the only developable area would require a road 2,000-3,000 feet long, with  
506 accompanying utilities, sidewalks, etc. which is not feasible;

- 507 2. The proposed cul-de-sac provides access to an easement to reach the large parcel and upland area for a  
508 single home;  
509 3. Frontage for the proposed lots and existing subdivision has been provided.  
510

511 Mr. Emerson: Is there a provision in the code for a simple lot division? Is there a provision for the Board to  
512 approve as a conventional subdivision?

513 Ms. Driscoll Davis: Does the Board have authority to restrict use of the easement beyond the proposed  
514 single home on the large lot? Does the owner of the easement lot have the right to know how the easement  
515 will be used?

516 Mr. Emerson: Yes the owner would, but that would be addressed in the future should there ever be any  
517 additional development on the large parcel.

518 Ms. Kalmar: If you force a cluster on this large parcel, the resources are impacted. If we review as  
519 proposed, the housing is where we want it and it meets the code now, and could be justified as a special  
520 exception. Item O in standards for subdivision review addresses the natural values and resources.

521 Mr. DiMatteo: Cluster development will preserve open space, but a conventional subdivision could provide  
522 conditions for preservation of the resource. Just because someone owns the property does not necessarily  
523 meet the goal of protecting the natural habitat.

524 Mr. Emerson: If we require a cluster subdivision it forces development into this habitat.

525 Mr. Mylroie: The intent is not to force a cluster, but to determine the maximum development allowed for  
526 future consideration, for instance setting 50% aside for open space.

527 Ms. Tuveson: Not sure it is fair to impose this upon the applicant. Agrees with Ms. Kalmar.

528 Mr. Emerson: Likes the way the land is parceled at this time. If there is to be additional development, they  
529 will have to deal with that in the future.

530 Mr. Markley: Requests Board intent to grant special exception so they can proceed.

531 Mr. Sparkowich: Met with individuals regarding the gate and no one wants one.  
532

533 Ms. Kalmar moved to grant approval of the sketch plan for Operation Blessing LP and direct the applicant to  
534 address the comments raised and to submit a special exception request with their preliminary plan  
535 application.

536 Ms. Driscoll Davis seconded

537 Motion carried unanimously  
538

539 Mr. Emerson: This is a paper cul-de-sac, as a hammerhead will be designed.

540 Mr. Markley: Correct. Additional changes requested:

- 541 1. Access to back lot shown;  
542 2. Setbacks shown;  
543 3. Emergency access road to cul-de-sac for existing units;  
544 4. Buffering to neighboring parcels;  
545 5. Building envelopes and open space.  
546  
547

548 Ms. Tuveson moved to adjourn

549 Mr. Emerson seconded

550 Motion carried by all members present  
551  
552  
553

554 The Kittery Planning Board meeting of June 12, 2014 adjourned at 9:35 p.m.

555 Submitted by Jan Fisk, Recorder, June 17, 2014

**Town of Kittery Maine  
Town Planning Board Meeting  
June 26, 2014**

**Town Code Amendment - Title 16.10.8.2.1 Conditions – General**

Action: hold public hearing, review amendment and make recommendation to Town Council for adoption. Proposed amendment adds off-site improvements to potential Planning Board conditions of approval.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	4/24/14; moved to schedule a PH	PENDING
YES	Schedule Public Hearing	Scheduled 6/26; ran in legal section in the Portsmouth Herald for Friday 6/13 and again for Wednesday 6/18	COMPLETE
YES	Public Hearing	Scheduled for 6/26/14	PENDING
	Town Council/Planning Board Joint Workshop		PENDING
YES	Review/Recommendation to Town Council		PENDING

**Background**

The proposed amendment provides clarity with regard to requiring “off-site” improvements adjacent to the property (e.g., within a street right-of-way between the property line and a street curb) when development projects incur such improvements. Currently the term “off-site improvements” is not included and so it can be construed that required improvements are limited to the development site and not the adjacent Right-Of-Way or an area not contiguous, such as a nearby intersection in need of a traffic signal due to the proposed development.

**Review**

The Planning board reviewed this proposed amendment at the April 24 meeting. There have been no changes since.

See attached Ordinance Revision Memorandum for details and the code amendment and enactment ordinance.

**Recommendation**

Staff recommends the Board, identifying no issues, move to recommend adoption by the Town Council.

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Planning Board Review and Decision – Final Plan Conditions of Approval
<b>Town code section:</b> Title 16, §16.8.10.2.1 & 2	<b>History:</b> Amendment

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

1 **PURPOSE OF PROPOSAL:**

2  
3 For clarification and to ensure the Town obtains “off-site” improvements required by Town Code as  
4 well as those improvements to mitigate impacts caused by the proposed development such as traffic  
5 signals, signs, utility connections, street lights, and/or stormwater runoff infrastructure.

6  
7  
8 **SUMMARY OF PROPOSAL/AMENDMENT:**

9  
10 Lines 40 to 44: In section 16.10.8.2.1 the addition of the term ‘off-site improvements’ and examples of  
11 such improvements are provided.

12  
13 Lines 54 and 57: the deletion of “master” and the addition of “Planning” are minor changes to provide  
14 clarity unrelated to the primary purpose of proposed amendment.

15  
16  
17 **JUSTIFICATION:**

18  
19 The proposed amendment provides clarity with regard to requiring “off-site” improvements adjacent to  
20 the property (e.g., within a street right-of-way between the property line and a street curb) when  
21 development projects incur such improvements. Currently the term “off-site improvements” is not  
22 included and so it can be construed that required improvements are limited to the development site and  
23 not the adjacent Right-Of-Way or an area not contiguous, such as a nearby intersection in need of a  
24 traffic signal due to the proposed development.

25  
26 **FISCAL IMPACT:**

27 None.

# CODE AMENDMENT

## Title 16 LAND USE and DEVELOPMENT CODE

### Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

#### Article VIII. Planning Board Final Plan Action

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

###### 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 restrictions, locations of piers, docks, parking or signs, type or style of construction, Conditions for off-site improvements required to meet Town Code requirements and may include, but are not limited to, street curbs, sidewalks, and/or street trees. Conditions to mitigate off-site development impacts from on-site development may include, but are not limited to traffic signals, traffic directional signs, street shoulders, water and/or sewer connections, and/or street lighting. ~~and, Also conditions may include~~ the amount of all performance guarantees which may be required. All off-site right-of-way improvements must be approved by the right-of-way property owner.

###### 16.10.8.2.2 Performance Guaranty Conditions.

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

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

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

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

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

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

###### 16.10.8.2.3 Process.

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

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

*ENACTMENT ORDINANCE*

Title 16.7.3.5.12 Adjustment of Common Boundary Line of Non-Conforming Lots

**AN ORDINANCE** amending Article VIII. Planning Board Final Plan Action in Chapter 10, Title 16 Land Use Development Code, including Planning Board Review and Decision – Final Plan Conditions of Approval.

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

**WHEREAS**, clarification is necessary to ensure the Town obtains off-site improvements constructed in the Right-Of-Way when required by Town Code as well as those off-site improvements necessary to mitigate impacts of the approved development plan.

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

**NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO TOWN CODE TITLE 16.10.8.2 PLANNING BOARD REVIEW AND DECISION – FINAL PLAN CONDITIONS OF APPROVAL CODIFIED IN THE TOWN CODE.

**INTRODUCED** and read in a public session of the Town Council on the \_\_ day of \_\_\_\_\_, 2014, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and passed by a vote of \_\_\_\_\_-.

**THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery, Maine on the \_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ {NAME}, Chairperson

**Attest:** Maryann Place, Town Clerk

**Town of Kittery Maine  
 Town Planning Board Meeting  
 June 26, 2014**

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

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	1/23/14, Continued to 3/13&5/22/2014;	COMPLETE
YES	Schedule Public Hearing	Scheduled 5/22; ran in legal section in the Portsmouth Herald for Sat.5/10 and again for Wednesday 5/14	COMPLETE
YES	Public Hearing	Scheduled for 5/22/14	HELD
	Town Council/Planning Board Joint Workshop	Scheduled for 6/2/14	HELD
YES	Review/Recommendation to Town Council	1/23/14; 5/22/14 to TC for joint wkshp	PENDING

**Background**

The prior amendment was not approved by Town Council, see packet info from 1/23/14. This amendment review was continued by the Board for input by staff and a member of the Code Subcommittee, and continued again, 3/13/14, for input by subcommittee. The attached amendment reflects those changes. *16.9.3.8 Expiration of Wetlands Alteration Approval* was added to the amendment since it has similar language and issues. With the addition of 16.9.3.8 another public hearing is warranted. The Planning Board discussed the amendment with Town Council at the June 2<sup>nd</sup> workshop and there were minor changes suggested regarding consistency and clarity.

**Review**

Staff conferred with board member Kalmar and has incorporated the following changes to address the comments from the June 2nd Joint Workshop (see attached Ordinance Revision Memorandum):

- 1) Lines 36: The plan's approval expiration rather than the plan's expiration was thought to be more appropriate. The proposed language 'An approved' is removed.
- 2) Line 38: The word 'such' is replaced by 'the' and repeated in front of the first occurrence of the word 'approval', to read '...within (1) one year of such approval, the approval will...'
- 3) Line 43: Insert the word 'is' prior to the proposed word 'has' and show strikethrough since it is existing text proposed to be deleted.
- 4) Line 52: Insert the words 'plan's approval' prior to 'expires' and add a period at the end of the sentence.
- 5) Lines 36 and 42/43: Staff recommends deleting 'will' and adding an 's' to the next word 'expire'. Per the 2009 *Maine Legislative Drafting Manual* the word 'will' should not be used if possible. The Board can also consider replacing the word 'if' with 'when' both sentences. Line 36/37 might read: 'A subdivision plan's approval **expires when** work has not commenced within one (1) year...'
- 6) Lines 70-72: Rather than reference the provision in 16.10.9.1.4.C that includes periods not to exceed when granting extensions, the recommendation was to repeat this language in 16.9.3.8. Minor formatting is included as well with the addition of A and B.

**Recommendation**

Staff recommends the Board, identifying no issues, move to recommend adoption by the Town Council.

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Approved Plan Expiration and Expiration of Wetlands Alteration Approval
<b>Town code section:</b> Title 16, §16.10.9.1.4, 16.10.9.1.5 and 16.9.3.8	<b>History:</b> amended proposal

**ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE, AND PLANNING BOARD REVIEW NOTE**

1 **PURPOSE OF PROPOSAL:**

2  
3 To provide clarity as to when and under what conditions an approved plan expires and the ability to  
4 obtain an extension.  
5

6  
7 **SUMMARY OF PROPOSAL/AMENDMENT:**

- 8  
9
- 10 1. The existing code language is ambiguous as to how to apply the conditions necessary to
  - 11 determine if a plan's approval is expired. The proposal separates the conditional clauses with
  - 12 two sentences.
  - 13 2. 16.10.9.1.5 Requests for Extension provides unnecessary redundancy with 16.10.9.1.4
  - 14 Approved Plan Expiration. The proposal deletes this section and creates a new subsection
  - 15 under 16.10.9.1.4 to address extensions.
  - 16 3. Clarity is provided as to what happens if a plan approval does expire.
  - 17 4. The length of time an approved subdivision plan can be potentially extended is reduced from
  - 18 10 years to 5 years.

19  
20 **JUSTIFICATION:**

21  
22 The proposal removes ambiguity making clearer to applicants the expectations for completion of  
23 approved development plans and easier for staff to administer the Code.  
24

25 **FISCAL IMPACT:**

26  
27 None

## CODE AMENDMENT

### Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

#### Article IX. Post Approval

##### 16.10.9.1 Post Approval Actions Required.

###### 16.10.9.1.4 Approved Plan Expiration.

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

B. A non-subdivision For all other development plans, plan's approval by the Planning Board approval will expire if work on the development is has not commenced within one (1) year from date of approval, or Where work has commenced within one year of approval, such approval will expire if work is not substantially complete within two (2) years from of the original date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed three years.

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

D. When a plan's approval expires the applicant may re-apply subject to the current Town Code.

###### 16.10.9.1.5 Requests for Extension.

The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis. (Modified and moved to C. above)

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### Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS - NATURAL ENVIRONMENT

#### Article III. Conservation of Wetlands Including Vernal Pools

##### 16.9.3.8 Expiration of Wetlands Alteration Approval.

A. Wetlands Alteration Approval will expire if work on the development has not commenced within one (1) year of Planning Board date of approval, or is not substantially Where work has commenced within one (1) year of approval, such approval will expire unless work is complete within (2) two years of the original approval date, the approval for work in the wetlands will expire. The Board may, by formal action, grant extensions to the approval provided the request is submitted to the Board prior to the expiration of approval.

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

**ENACTMENT ORDINANCE**

**Title 16.10.9.1.4 and 16.9.3.8**

**AN ORDINANCE** amending portions of Title 16, Land Use and Development Code pertaining to the expiration of approved development plans and wetlands alteration.

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

**WHEREAS**, the amendment clarifies when the approval for a development plan or wetland alteration expires; and

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

**NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO TOWN CODE TITLE 16.10.9.1.4 APPROVED PLAN EXPIRATION and 16.9.3.8 EXPIRATION OF WETLANDS ALTERATION APPROVAL CODIFIED IN THE TOWN CODE, AS PRESENTED.

**INTRODUCED** and read in a public session of the Town Council on the \_\_\_ day of \_\_\_\_\_, 2014, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and passed by a vote of \_\_\_\_\_-.

**THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery, Maine on the \_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ {NAME}, Chairperson

**Attest:** Maryann Place, Town Clerk

**Town of Kittery Maine  
 Town Planning Board Meeting  
 June 26, 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, 4/24 & 5/22/14	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	HELD
	Town Council/Planning Board Joint Workshop	Scheduled for 6/2/14	HELD
YES	Review/Recommendation to Town Council	5/22/14 to TC for Joint Workshop	PENDING

**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 implemented. (Attachments noted were submitted with the 5/22 packet)

**Review**

Staff conferred with board member Kalmar and has incorporated the following changes to address the comments from the June 2nd Joint Workshop (see attached Ordinance Revision Memorandum):

- 1) Lines 34-38: A single definition for dwelling unit is preferable. The proposed amendment was provided to the Maine DEP for review.
- 2) Lines 162 & 181: Changed ‘shall be’ to ‘is’. Per the 2009 *Maine Legislative Drafting Manual* ‘shall’ is not appropriate to “say what the law is or how it applies in the future.” (Part III, Chapter 2, Section I.A.(1)(d))
- 3) Lines 271-276: Initial comments were directed at the usage of ‘shall’. After review Staff is recommending a more substantial change to provide clarity to the restricted “mowing and pruning of the replanted native vegetation” that is included in the provision.
- 4) Lines 298 & 362: Substitute ‘must’ for the proposed usage of ‘shall’ to replace the word ‘will’. Per the 2009 *Maine Legislative Drafting Manual* ‘shall’ is not appropriate to express requirements. (Part III, Chapter 2, Section I.A.(2))
- 5) Line 469: A number 7 shown with a strikethrough was recommended to reflect the typo that exists in the current code.

**Recommendation**

With the latest changes in place, conditioned upon agreement by the Maine DEP, the Board can proceed with recommending adoption by the Town Council.

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> various provisions related to Shoreland Zoning
<b>Town code section:</b> Title 16, §16.3.2.17, 16.7.3.5.6 through 16.7.3.6.1, 16.8.28, and 16.2	<b>History:</b> amended proposal

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

1 PURPOSE OF PROPOSAL:

2  
3 The proposal allows for compliance with the State’s Mandatory Shoreland Zoning Act.  
4  
5

6 SUMMARY OF PROPOSAL/AMENDMENT:

7  
8 It became evident while working with Michael Morse with the Maine Department of Environmental  
9 Protection (MDEP) on various Shoreland Zoning provisions that the Town is not fully in compliance  
10 with the State’s Mandatory Shoreland Zoning Act, specifically to MDEP conditional approvals, orders  
11 #5-99 (dated 12/29/1999) and #23-10 (dated 9/2/2010), see ATT. A and B. A modification to order #5-  
12 99 (5-99-A) was issued 8/4/2000 allowing the less restrictive provisions for Badger Island, see ATT. C.  
13 The conditions of approval noted in the 1999 and 2010 orders were never fully implemented.  
14  
15

16  
17 JUSTIFICATION:

18  
19 The Town, per 38 M.R.S.A. SECTION 438-A(4), is obligated to adopt “zoning and land use ordinances  
20 that are consistent with or are no less stringent than the minimum guidelines adopted by the  
21 {Environmental Protection} Board”.  
22  
23

24 FISCAL IMPACT:

25  
26 None

## CODE AMENDMENT

### Chapter 16.2 DEFINITIONS

#### 16.2.2 Definitions.

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

**Dwelling unit** means a room or group of rooms forming a habitable unit for one family with facilities used or intended to be used for living, sleeping, cooking, eating, and sanitary facilities. It comprises at least six hundred fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling unit, or a temporary, intra-family dwelling unit. The term includes mobile homes and rental units regardless of the time period rented. ~~does not include a~~ Recreational vehicles and trailers are not dwelling units.

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

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### Chapter 16.3 LAND USE ZONE REGULATIONS

#### Article II. Zone Definitions, Uses, Standards

##### 16.3.2.13 Mixed Use MU.

#### D. Standards.

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

2. Minimum Dimensional Standards.

The following apply:

Minimum lot size:

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

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

Minimum front yard	60 feet
Minimum rear and side yards	30 feet
Maximum building height	40 feet
Maximum height above grade of building-mounted signs	40 feet

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

Minimum setback from streams, water bodies and wetlands in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee

Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:	
dwelling unit with two or more bedrooms	5,000 square feet
dwelling unit with less than two bedrooms	4,000 square feet
residential care unit	2,500 square feet

Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system 2,000 square feet

Buffer to I-95 ROW 40 feet

Buffer to neighboring lot with an existing residence

85 within 100 feet of the lot line 40 feet  
86 Vegetated buffer to be maintained between the MU and R-RL zones 40 feet  
87

88 **NOTE 1:** For single-family dwellings, one dwelling unit is allowed for each two hundred thousand (200,000)  
89 square feet of land area. A lot of record having a land area of more than two hundred thousand (200,000) square  
90 feet that was improved with a single-family dwelling as of April 1, 2004 may be divided into two lots with a single-  
91 family dwelling on each lot provided that each of the lots contains at least forty thousand (40,000) square feet of  
92 land area and meets the other dimensional standards of the zone. Sections 16.3.2.1 D.1 and D.2 as set forth in  
93 the Residential - Rural zone apply and no further subdivision is allowed.  
94

95 **NOTE 2:** For dwelling units that are part of a mixed-use building and are connected to the public sewerage-  
96 system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. If the  
97 parking for the residential units is integrated into the building, the minimum required buildable land area per-  
98 dwelling unit is reduced to fifteen thousand (15,000) square feet. For dwelling units that are part of a mixed-use  
99 building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty  
100 thousand (20,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay  
101 zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones.  
102 Except in the Resource Protection and Shoreland Overlay zones, if the parking for the residential units is  
103 integrated into the building, the minimum required buildable land area per dwelling unit is reduced to fifteen  
104 thousand (15,000) square feet.  
105

106 **NOTE 3:** For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit  
107 is allowed for each fifteen thousand (15,000) square feet of buildable land area. Within the Resource Protection  
108 and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land  
109 within these zones. Except in the resource Protection and Shoreland Overlay zones, if the parking for the  
110 elderly units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced  
111 to ten thousand (10,000) square feet.  
112

113 3. Retail Use Limitation.

114 Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not more  
115 than fifteen percent (15%) of the developable area of any lot or portion of a lot within the mixed use zone.  
116

117 **16.3.2.17 Shoreland Overlay Zone OZ-SL.**

118 **D. Standards.**

119 1. Minimum lot standards

- 120
- 121 a. Minimum lot size by base zone, within the
- |   |                           |
|---|---------------------------|
| 124 Residential–Village (R-V) zone                                      | 8,000 square feet         |
| 125 Residential–Urban (R-U) zone  | 20,000 square feet        |
| 126 Residential–Rural (R-RL), Residential–Suburban (R-S) <u>and</u>     |                           |
| 127 Residential–Kittery Point Village (R-KPV) zones                     | 40,000 square feet        |
| 128 Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) |                           |
| 129 and Business-Local 1 (B-L1) zones                                   | 60,000 square feet        |
| 130 Residential-Rural Conservation (R-RLC) zone                         | 80,000 square feet        |
| 131 Business-Park (B-PK) zone   | 120,000 square feet       |
| 132 <u>Mixed-Use Badgers Island (MU-BI) zone</u>                        | <u>6,000 square feet</u>  |
| 133 <u>Mixed-Use Kittery Foreside (MU-KF) zone</u>                      | <u>10,000 square feet</u> |
- 134
- 135 b. Minimum land area per dwelling unit by base zone, within the
- |   |                     |
|---|---------------------|
| 136 Residential–Village (R-V) zone                    | 8,000 square feet   |
| 137 Business-Park (B-PK) zone                         | 10,000 square feet  |
| 138 Residential–Urban (R-U), Business-Local (B-L) and |                     |
| 139 Business-Local 1 (B-L1) zones                     | 20,000 square feet  |
| 140 Mixed Use (M-U), Residential–Rural (R-RL),        |                     |
| 141 Residential–Suburban (R-S) <u>and</u>             |                     |
| 142 Residential–Kittery Point Village (R-KPV) zones   | 40,000 square feet. |

143	Residential-Rural Conservation (R-RLC) zone	80,000 square feet.
144	<u>Mixed-Use Badgers Island (MU-BI) zone</u>	<u>6,000 square feet*</u>
145	<u>* 3,000 square feet for the first two dwelling units</u>	
146	<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>

147  
148

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

150	<u>Mixed Use-Badgers Island (MU-BI)</u>	<u>25 feet</u>
151	Residential-Village (R-V) and Residential Urban (R-U) zones	
152	<u>Mixed-Use Kittery Foreside (MU-KF) zones</u>	<u>50 feet</u>
153	Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND),	
154	Business-Park (B-PK), Business-Local (B-L) and	
155	Business-Local 1 (B-L1) zones (shore frontage per lot)	150 feet
156	(shore frontage per dwelling unit)	50 feet
157	Residential-Rural (R-RL), Residential-Suburban (R-S),	
158	and Residential-Kittery Point Village (R-KPV)	
159	zones (shore frontage per lot)	150 feet
160	(shore frontage per dwelling unit)	100 feet
161	Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit)	250 feet

162 The minimum shore frontage requirement for public and private recreational facilities is the same as that for  
163 residential development in the respective zone.

164

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

167

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

173

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

176

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

180

181 iv. In the shoreland zone within the Mixed Use (M-U) zone, the maximum lot coverage is 20%.

182

183

184 2. Principal and Accessory Structures – Setbacks and Development.

185

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

188

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

198

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

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

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

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

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

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

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

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

ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.

Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone

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

i. structure is limited to a maximum of four feet in width;

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

iii. applicant demonstrates that no reasonable access alternative exists on the property.

261 i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure or use,  
262 or combination thereof, is constructed or established on a single parcel in the shoreland zone, all dimensional  
263 requirements shall be met for each additional dwelling unit, principal structure, or use.  
264

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265  
266 **Article III. Nonconformance** (Ordained 9-26-11; Effective 10-27-11)  
267

268 **16.7.3.5.4 Nonconforming Structure Relocation.**  
269

270 C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure,  
271 ~~the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or~~  
272 ~~Resources Protection Overlay Zone.), may require replanting of native vegetation to compensate for the~~  
273 ~~destroyed vegetation~~ **is required,** and **The Board of Appeals or Planning Board (in cases where the**  
274 **structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.)** may restrict mowing  
275 **around** and pruning of the replanted native vegetation to encourage a more natural state of growth. Replanting  
276 will ~~be~~ **is** required as follows:  
277

278 **16.7.3.5.6 Nonconforming Structure Reconstruction.**  
279

280 A. Any nonconforming structure which is located less than the required setback from a water body, tributary  
281 stream, or wetland and which is removed, damaged or destroyed, ~~by any~~ **regardless of the** cause, by more than  
282 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or  
283 replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction,  
284 or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary  
285 stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board (in  
286 cases where the structure is located in a Shoreland Overlay of Resources Protection Overlay Zone) or Code  
287 Enforcement Officer, in accordance with this Code.  
288

289 B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the  
290 reconstructed or replacement structure is less than the required setback it may not be any larger than the  
291 original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or  
292 Expansion **and 16.7.3.6.1 Nonconforming Structure Expansion**, as determined by the nonconforming floor area  
293 and volume of the reconstructed or replaced structure at its new location.  
294

295 C. If the total amount of floor area and volume of the original structure can be **relocated or** ~~reconstructed~~ beyond  
296 the required setback area, no portion of the **relocated or** reconstructed structure may be **replaced or constructed**  
297 ~~reconstructed~~ at less than the setback requirement for a new structure. When it is necessary to remove  
298 vegetation to **replace or** reconstruct a structure, vegetation will ~~shall~~ **must** be replanted in accordance with  
299 Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure  
300 that has been partially damaged must be made to the Code Enforcement Officer.  
301

302 D. Any nonconforming structure which is located less than the required setback from a water body, tributary  
303 stream, or wetland and removed, damaged or destroyed by any cause ~~through no fault of action by the owner by~~  
304 50% or less of the market value of the structure before such damage, destruction or removal, may be  
305 reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases  
306 where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve  
307 (12) months of the established date of damage, ~~or~~ destruction, **or removal.**  
308

309 E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical  
310 extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section  
311 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.  
312

313  
314 **16.7.3.5.7 Nonconforming Use Expansion.**

315 Expansion of a nonconforming use of any structure or land area other than that occupied as such when created  
316 is not permitted with the following exceptions:  
317

- 318 A. uses in conformity with Chapter 16.7; and
- 319
- 320 B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone
- 321 with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume,
- 322 during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards
- 323 in Section 16.3.2.17.D.2.

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

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

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

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

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

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

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

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

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



B. Contiguous Built Upon Nonconforming Lots. If two or more contiguous lots or parcels are in a single or joint ownership of record



370 at the time of adoption of this Code, it all or part of the lots do not  
371 meet the dimensional requirements of this Code, and if a principal use  
372 or structure exists on each lot, the non-conforming lots may be  
373 conveyed separately or together, provided that the State Minimum Lot  
374 Size Law (12 MRSA §4807-A through 4807-D) and the State of Maine  
375 Subsurface Wastewater Disposal Rules are complied with.

376 If there exists a legally created principal structure on each of the  
377 contiguous nonconforming lots or portions thereof that would  
378 otherwise require the lots to be combined as provided herein, the  
379 contiguous lots need not be combined to create a single lot as  
380 required by Section A above.

381  
382 C. Contiguous Partially Built Upon Lot. If two or more contiguous  
383 lots or parcels are in a single or joint ownership of record at the time of  
384 or since adoption or amendment of this Code, if any of these lots do  
385 not individually meet the dimensional requirements of this Code or  
386 subsequent amendments, and if one or more of the lots are vacant or  
387 contain no principal structure, the lots shall be combined to the extent  
388 necessary to meet the dimensional requirements. If one or more of  
389 the contiguous nonconforming lots is vacant or contains no principal  
390 structure, the lots must be combined to the extent necessary to meet  
391 the purposes of this Code as required by Section A above.



392 This subsection does not apply:

- 393 1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on,  
394 or before July 13, 1977;
- 395 2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface  
396 sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State  
397 of Maine Subsurface Wastewater Disposal Rules; and
- 398 i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or  
399 ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17.D.1 are  
400 reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of  
401 lot area.

402  
403  
404 **D.G. Single Lot Division.**

405 If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot  
406 provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional  
407 requirements of this Code. If three or more principal structures existing on a single lot legally created when  
408 recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as  
409 conforming as practicable to the dimensional requirements of this Code.

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

411  
412 **16.7.3.5.11 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

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

416  
417 **16.7.3.5.12 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

418 The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps are not to  
419 be considered part of the structure for such determination. Step landings may not exceed three feet by three feet  
420 (3'x3') in size.

421  
422  
423 **16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.**  
424 (Ordained 9-26-11; Effective 10-27-11)

425  
426 **16.7.3.6.1 Nonconforming Structure Expansion.**

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

430  
431 A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-  
432 water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will  
433 not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the  
434 lifetime of the structure.

435  
436 B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A 16.7.3.5.4 and Section  
437 16.7.3.5.6 and is less than the required setback from a water body, tributary stream or wetland, the replacement  
438 structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded  
439 by 30% in floor area and volume since that date.

440  
441 C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the  
442 structure and new foundation must be placed such that the setback requirement is met to the greatest practical  
443 extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.4 B,  
444 Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior  
445 dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1.A, and the foundation  
446 does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill  
447 side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be  
448 an expansion of the structure.

449  
450 **16.7.3.6.2 Nonconforming Use Change.**

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

461

462

463

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

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

466

467 **16.8.28.1 Single and Duplex Family Dwellings in Resource Protection and Shoreland Overlay Zones.**

468

469 In addition to the criteria specified in Section 16.6.6 and 176.10.8.3.4, applicable to the granting of a special  
470 exception use request, the Planning Board may approve an application for a single or duplex family dwelling  
471 special exception use request, where applicable, provided the applicant demonstrates all of the following  
472 conditions are met:

473

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

477

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

*ENACTMENT ORDINANCE*

480 Title 16.3.2.17 Shoreland Overlay Zone and ancillary ordinance provisions in  
481 Chapters 16.2.2, 16.3.2, 16.7.3, and 16.8.28

482  
483 **AN ORDINANCE** relating to amending portions of the Town’s Shoreland Zoning provisions in  
484 Title 16, Land Use and Development Code pursuant to Maine Mandatory Shoreland Zoning  
485 Act.

486  
487 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in  
488 Section 2.07 (3) of the Town Charter and 30-A M.R.S. §3001, pursuant to its powers that  
489 authorize the town, under certain circumstances, to provide for the public health, safety and  
490 welfare. The Council does not intend for this Ordinance to conflict with any existing state or  
491 federal laws.

492  
493 **WHEREAS**, the amendment allows for compliance with the State’s Mandatory Shoreland  
494 Zoning Act, pursuant to Maine Department of Environmental Protection conditional approvals,  
495 orders #5-99 (12/29/1999), #23-10 (9/2/2010), and #5-99-A (8/4/2000); and

496  
497 **WHEREAS**, the Town Council finds these ordinance provisions pursuant to and consistent  
498 with the Kittery Comprehensive Plan, striking a reasonable balance among the Town’s various  
499 zoning goals;

500  
501 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN  
502 CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO  
503 TOWN CODE TITLE 16.3.2.17 SHORELAND OVERLAY ZONE AND ANCILLARY  
504 ORDINANCE PROVISIONS IN CHAPTERS 16.2.2, 16.3.2, 16.7.3, and 16.8.28 CODIFIED IN  
505 THE TOWN CODE, AS PRESENTED.

506  
507 **INTRODUCED** and read in a public session of the Town Council on the \_\_ day of \_\_\_\_\_,  
508 2014, by: \_\_\_\_\_ {NAME} Motion to approve by  
509 Councilor \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_  
510 {NAME} and passed by a vote of \_\_\_\_\_-.

511  
512 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,  
513 Maine on the \_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ {NAME}, Chairperson

514  
515 **Attest:** Maryann Place, Town Clerk

**Town of Kittery Maine  
 Town Planning Board Meeting  
 June 26, 2014**

**Town Code Amendment - Chapter 7, Article 3 Nonconformance, Title 16 Land Use Development Code.** Amendment includes changes to 16.7.3.5.10. *Contiguous Non-Conforming Lots* that would allow for more consistent adjustment to lot-lines. Applicants Mary Thron and Ray Arris, Kittery residents.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	Held 6/27/13; 10/24/13; 1/23/14; & 3/13/14	COMPLETE
YES	Schedule Public Hearing	Scheduled for 2/27/14	COMPLETE
YES	Public Hearing	2/27/14 Public Hearing	HELD
	Town Council/Planning Board Joint Workshop	Scheduled 6/2/14	HELD
YES	Review/Recommendation to Town Council	3/13/14 to TC for joint wkshp	PENDING

**Staff Comments**

**Background**

On February 12, 2013, Mary Thron and Raymond J Arris received approval from the BOA to alter a lot line between two contiguous non-conforming lots. The applicant’s original goal was to simply transfer property from one non-conforming lot (M58 L42) to the abutting non-conforming lot (M58 L42A) to accommodate a new septic field without the need of an easement. The BOA did not grant this request because the outcome would make an existing nonconforming lot more nonconforming. Property M58 L42 is currently 35,415 square feet in size, less than the 80,000 square feet required in the Residential Rural Conservation zone. Transferring land would reduce the already undersized lot making the property more non-conforming. The BOA, however, granted an equal land swap, creating an irregular (zig-zag) property line between the lots, something the applicant is trying to avoid with this proposed code amendment.

In addition to Title 16, the State’s Mandatory Shoreland Zone (MRSA 38, Chapter 3, and Subsection 435-449) applies to those properties located within the Shoreland and Resource Protection Overlay Zones. The State’s minimum standards prohibit the creation of a “more non-conforming” condition. At the June 2<sup>nd</sup> joint workshop comments and changes regarding format and substance were made and recommended. Changes were also suggested to the summary and justification sections of the memorandum, highlighted in yellow.

**Review**

Staff conferred with board member Kalmar and has incorporated the following changes to address the comments from the June 2nd Joint Workshop (see attached Ordinance Revision Memorandum):

- 1) Lines 42, 71, 90 & 92: remove the hyphen in words ‘non-conformance’ and ‘non-conforming’ for consistency.
- 2) Lines 72 & 74: substitute ‘exist’ for ‘existing’

- 3) Lines 79 – 88: show the current code sections in their original location and indicate through strikethrough and notation that the provisions are proposed to be moved and renumbered.
- 4) Lines 96-97 & 102-103: It was suggested that the CEO's ability to approve any changes was precluded by sections A.2 and A.3. The additional clauses, identifying that the CEO first determines that the lot is more nonconforming prior to either boards' review or approval, addresses this comment.
- 5) Lines 151-153: Revised the Enactment Ordinance to reflect comments/suggestions regarding the describing the proposed amendment.

### **Recommendation**

With the latest changes in place, and with no other issues raised, the Board can recommend adoption to the Town Council.

# Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Adjustment of Common Boundary Line of Non-conforming lots.
<b>Town code section:</b> Title 16, §16.7.3.5.10 through 12	<b>History:</b> new proposal

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

1 PURPOSE OF PROPOSAL:

2  
3 The proposal would simplify the process by which to approve limited adjustments to lot lines of  
4 developed, legally nonconforming lots within and outside the Shoreland Overlay zone.

5  
6 SUMMARY OF PROPOSAL/AMENDMENT:

7  
8 Section 16.7.3.5.12. A.1 (line 86) would permit the Code Enforcement Officer to approve a simple,  
9 equal swap of land when there is no **net** change to the **square** area of **either** the new **adjusted** legally  
10 nonconforming lot.

11  
12 Section 16.7.3.5.12.A.2 (line 88) would permit the Board of Appeals to approve adjustments to lot lines  
13 outside the Shoreland Overlay zone, even if the resulting lot size would be made more non-  
14 conforming. This would only apply if the new lots are 20,000 sq. feet or greater (if connected to  
15 septics); or 5,000 sq. feet or greater (if connected to town sewer).

16  
17 Section 16.7.3.5.12.A.3 (line 93) would permit the Planning Board to approve adjustments to lot lines  
18 that result in a more non-conforming lot within the Shoreland Overlay zone, if the resulting lots  
19 conform as much as is practicable to the Maine Department of Environmental Protection (MDEP)  
20 Mandatory Shoreland zoning minimum lot standards and shoreline requirements.

21  
22 Under no circumstances could the resulting lots be smaller than 20,000 sq. feet or have less than 100  
23 feet of shoreline. If the lots currently conform to the minimum standard (30,000 sq. feet or greater, with  
24 150 feet of shoreline) they would have to remain conforming. If both lots currently do not meet MDEP  
25 minimum standards, **lot lines** would not be permitted to be adjusted.

26  
27 JUSTIFICATION:

28  
29 This amendment would give the town needed flexibility to approve lot size changes, while protecting  
30 the environment within the Shoreland Overlay zone.

31  
32 Current law does not permit the Town to make minor lot size adjustments to legally non-conforming  
33 developed lots, even if there are good reasons to do so.

34  
35 This amendment is needed to permit lot adjustments that would result in **less irregular lot lines and**  
36 **more practical access to utilities or existing structures.** ~~or as is the case in the origin of this proposal,~~  
37 ~~the rebuilding of a septic system in an area with more suitable soils to protect the environment.~~

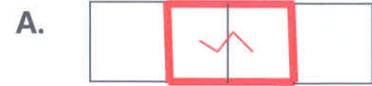
38  
39 FISCAL IMPACT:

40 None.

**CODE AMENDMENT**

41  
42 **16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

43 A. Contiguous Nonconforming Lots. If two or more contiguous  
44 nonconforming lots or portions thereof are in common ownership and  
45 if a combination of such lots or a portion thereof constitutes a lot of  
46 nearer conforming size, such combination is deemed to constitute a  
47 single lot.



48  
49 B. Contiguous Built Upon Nonconforming Lots. If there exists a  
50 legally created principal structure on each of the contiguous  
51 nonconforming lots or portions thereof that would otherwise require  
52 the lots to be combined as provided herein, the contiguous lots need  
53 not be combined to create a single lot as required by Section A above.



54  
55 C. Contiguous Partially Built Upon Lot. If one or more of the  
56 contiguous nonconforming lots is vacant or contains no principal  
57 structure, the lots must be combined to the extent necessary to meet  
58 the purposes of this Code as required by Section A above.



59  
60 This subsection does not apply:

- 61 1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on,  
62 or before July 13, 1977;
- 63 2.. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface  
64 sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State  
65 of Maine Subsurface Wastewater Disposal Rules; and
  - 66 i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
  - 67 ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are  
68 reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of  
69 lot area.

70  
71 **16.7.3.5.11C. Single Lot Division of a Nonconforming Lot.**

72 If two principal structures ~~existing~~ exist on a single lot legally created when recorded, each may be sold on a  
73 separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the  
74 dimensional requirements of this Code. If three or more principal structures ~~existing~~ exist on a single lot legally  
75 created when recorded, each may be sold on a separate lot provided the Planning Board determines that each  
76 resulting lot is as conforming as practicable to the dimensional requirements of this Code. (Ordained 1-23-12;  
77 Effective 2-23-12)

78  
79 **16.7.3.5.11 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

80 ~~A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking~~  
81 ~~spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements~~  
82 ~~of this Code for both the original and addition or enlargement of the structure or use. {MOVED AND~~  
83 ~~RENUMBERED 16.7.3.5.13}~~

84  
85 **16.7.3.5.12 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

86 ~~The addition of steps and landings exterior to the structure does not constitute expansion. Such steps are not to~~  
87 ~~be considered part of the structure for such determination. Step landings may not exceed three feet by three feet~~  
88 ~~{3'x3'} in size. {MOVED AND RENUMBERED 16.7.3.5.14}~~

89  
90 **16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots.**

- 91  
92 A. The common property line of two nonconforming lots of record, each with legally created principal structures,  
93 can be adjusted if:
  - 94 1. the Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than  
95 the existing lots with respect to the dimensional requirements of this Code; or

96 2. where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the  
97 proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each  
98 resulting lot is as conforming as practicable to the dimensional requirements of this Code; and

99 a. each resulting lot is not less than 20,000 S.F. in lot size when not served by public sewer; or

100 b. each resulting lot is not less than the smallest residential lot permitted under the town's land use base  
101 zones, Title 16.3, when served by public sewer; or

102 3. where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the  
103 proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each  
104 resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP)

105 Mandatory Shoreland Zoning minimum lot standards for principal structures and uses<sup>1</sup>; and

106 a. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in shore frontage<sup>2,3</sup>;  
107 and

108 b. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal  
109 structures and uses remains conforming to those requirements<sup>1</sup>; and

110 c. common boundary lines may not be adjusted when both subject lots are non-conforming according to  
111 the State's minimum lot dimensional requirements.<sup>1</sup>

112  
113 <sup>1</sup> Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot  
114 Standards; adjacent to Tidal Areas: 30,000 S.F. lot size with 150 feet of shore frontage; and adjacent to  
115 Non-Tidal Areas: 40,000 S.F. lot size with 200 feet of shore frontage.

116 <sup>2</sup> Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same single or joint  
117 ownership

118 <sup>3</sup> Adherence to State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and State of  
119 Maine Subsurface Wastewater Disposal Rules or public sewer is required

120  
121 B. It is not the intention of the above subsection (*Adjustment of Common Boundary Line of Non-Conforming Lots*)  
122 to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and  
123 Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming lot  
124 of record, not applicable to the joining of lots.

125 {NEW}

126  
127 **16.7.3.5.113 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

128 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking  
129 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements  
130 of this Code for both the original and addition or enlargement of the structure or use. {MOVED AND ONLY

131 AMENDED SECTION NUMBER}

132  
133 **16.7.3.5.124 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

134 The addition of steps and landings exterior to the structure does not constitute expansion. Such steps are not to  
135 be considered part of the structure for such determination. Step landings may not exceed three feet by three feet  
136 (3'x3') in size. . {MOVED AND ONLY AMENDED SECTION NUMBER}

137

*ENACTMENT ORDINANCE*

Title 16.7.3.5.12 Adjustment of Common Boundary Line of Non-Conforming Lots

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**AN ORDINANCE** amending Article III Nonconformance in Chapter 7, Title 16 Land Use Development Code, including the adjustment of common boundary line of developed non-conforming lots.

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

**WHEREAS**, permitting boundary line adjustments to nonconforming developed lots would result in more practical access to utilities or existing structures, **permitting boundary line adjustments to nonconforming developed lots would result in less irregular lot lines. It would also allow more appropriate placement of or access to utilities and structures while ensuring compliance with the intent of Chapter 16-7 and the State’s Mandatory Shoreland Zoning Act;** and

**WHEREAS**, the current code, 16.7.3.5.10.C, 16.7.3.5.11 and 16.7.3.5.12, requires minor format changes for clarity and to accommodate the new provision related to 16.7.3.5.12 *Adjustment of Common Boundary Line of Nonc onforming Lots;* and

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

**NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO TOWN CODE TITLE 16.7.3.5.12 ADJUSTMENT OF COMMON BOUNDARY LINE OF NONCONFORMING LOTS CODIFIED IN THE TOWN CODE, AND INCIDNENTAL CHANGES TO 16.7.3.5.10.C, 16.7.3.5.11 AND 16.7.3.5.12, AS PRESENTED.

**INTRODUCED** and read in a public session of the Town Council on the \_\_\_ day of \_\_\_\_\_, 2014, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and passed by a vote of \_\_\_\_\_-.

**THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery, Maine on the \_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ {NAME}, Chairperson

**Attest:** Maryann Place, Town Clerk

**Town of Kittery Maine  
Town Planning Board Meeting  
June 26, 2014**

**Town Code Amendment - Title 16.8.10.1 Signs – Propose and Title 16.8.10.2 Signs – General Requirements.** Action: review amendment and make recommendation to Town Council for adoption.  
Proposed amendment requires adherence to Kittery Design Handbook.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	4/24/2014	
YES	Schedule Public Hearing	Scheduled 5/22; ran in legal section in the Portsmouth Herald for Sat.5/10 and again for Wednesday 5/14	COMPLETE
YES	Public Hearing	Scheduled 5/22	HELD
	Town Council/Planning Board Joint Workshop		PENDING
YES	Review/Recommendation to Town Council		PENDING

**Background**

- Town’s can plan, design and achieve a unique character and appearance to increase overall property value. Kittery does this in part via its sign standards which also increases public safety.
- Kittery’s Town Code Title 16 Land Use and Development Code: is designed for all the purposes of zoning embraced in Maine Revised Statutes, and created as an integral part of a growth management program, comprehensive planning and implementation process for the Town to promote the health, safety and general welfare of its residents.”
- This includes implementation of the adopted Comprehensive Plan vision: “to preserve and enhance Kittery’s New England small, seacoast and historic town character and appearance.”
- Per Town Code Sections 16.3.2.11.3, 4, and 5 all development and the use of land within the commercial zones must meet standards such as b. Building Design Standards, including exterior building materials and details, roofs, and landscaping/site improvements.

**See attached Ordinance Revision Memorandum**

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Signs – Appearance and LED option
<b>Town code section:</b> Title 16, §16.8.10.1 & 2	<b>History:</b> Amendment

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

1 PURPOSE OF PROPOSAL:

2  
3 Clarify the use of LED light fixtures and provide an option for gas price signage  
4  
5 in the context of other town character and appearance amendments related to signs.  
6  
7  
8

9 SUMMARY OF PROPOSAL/AMENDMENT:

10 Amend General Requirements Section  
11  
12  
13

14 JUSTIFICATION:

15  
16 Needed to clarify LED light fixtures use and limitations.  
17

18 FISCAL IMPACT:

19 None.

## CODE AMENDMENT

### 20 Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

#### 21 Article X. Signs

##### 22 16.8.10.1 Purpose.

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

28  
29 A. Establishing and enforcing sign and graphic design standards described in the Kittery Design  
30 Handbook that includes examples of acceptable materials and designs.

31 A.B. Allowing adequate signage for the effective use of signs as a means of identifying, advertising  
32 and communication of land uses;

33  
34 ~~C.B.~~ Establishing the appropriate bounds for location, size, number, type and use of signs to protect  
35 traffic safety, preserve property values and to promote visual order and clarity; and

36  
37 ~~D.C.~~ Establishing procedures and regulations for the fair and consistent administration and  
38 enforcement of these sign restrictions.  
39

##### 40 16.8.10.2 General Requirements.

41  
42 A. Any sign not expressly permitted herein is prohibited. (MOVED FROM I.BELOW to A.)

43  
44 A.B. All signs must be compatible with Kittery's characteristic architectural styles in form, scale,  
45 material and color. The primary architectural styles are New England Colonial (such as Cape Cod and  
46 saltbox) Georgian, Federal and Classical Revival. (See Design Handbook for examples of acceptable  
47 materials and designs-) and requirements.) Form, scale, material and color characteristics must  
48 include:

49 1. For all signs:

50 a. A simple geometric shape.

51 b. A picture-like, raised frame around the sign area that reflects the exterior shape of  
52 the sign.

53 c. A painted or trimmed boarder around the sign area that reflects the exterior shape of  
54 the sign.

55 d. Sign colors not to exceed three, unless a free standing sign serves a multi-tenanted  
56 property where a fourth color may be used in conjunction with the property name.

57 2. For free standing/identification signs:

58 a. Two sign posts a minimum of four by four inches (4" x 4") or four inches in diameter  
59 and not to exceed twelve by twelve inches (12" x 12") or twelve inches in diameter,  
60 unless the sign is supported by a stone or brick base.

61 b. Post top caps with either crown mounding, fennels or masonry if the top of the post is  
62 visable.

63  
64  
65 C .No sign may be erected, posted, enlarged, or substantially changed without a permit issued by the  
66 Code Enforcement Officer (CEO) and also approved by the Town Planner, except where Section  
67 16.8.10.9 provides otherwise.

68 (Ordained 9/26/11; effective 10/27/11) ) if the CEO and Town Planner cannot agree on whether to

69 issue a sign permit, the sign permit application must be reviewed and approved by the Town Planning  
70 Board.

71  
72  
73 DB. No exterior sign may be internally illuminated or artificially illuminated except where hooded or  
74 shielded or otherwise designed to prevent direct light spilling onto traveled ways or neighboring  
75 property.

76  
77 EG. No sign may contain a moving message, board, LED- electronic message center/board or  
78 other photometric display lighting or intermittent illumination, except where necessary in  
79 time/temperature/date signs, or gasoline price sign provided the maximum numeral height does not  
80 exceed twelve (12") inches, the background is black and the lighting is amber in color only and is part  
81 of only a freestanding/identification sign

82  
83 FD. Any sign that interferes with or closely imitates any official traffic sign, signal or device is  
84 prohibited.

85  
86 GE. No sign designed to be transported by means of wheels is allowed, unless said vehicle is used  
87 in the normal day-to-day transportation operations of the business. All trailer signs are prohibited.

88  
89 HF. Any changeable message signs must be integrated into a permanently-mounted sign. Such a  
90 changeable message Bboard is to be mounted a minimum of three and one-half feet above ground  
91 level.

92  
93 IG. All signs must be maintained in a safe and sound structural condition.

94  
95 JH. Advertising. No advertising or signage is permitted on wireless communication services facilities.

96  
97 I. Any sign not expressly permitted herein is prohibited.

98 K. Any business identified on a sign located on a property must be legally permitted to operate on the  
99 property.

100  
101 L. No sign or related electrical permit or other permit or license will be issued unless the property is in  
102 compliance with Town Code and state and federal laws

103  
104 M. A sign documented to be legally existing prior to 1988 may continue in use without any change  
105 other than maintenance as a legally non-conforming sign pursuant to this Town Code.

106  
107 =====

108  
109  
110  
111 DEFINITIONS

112  
113 **ELECTRONIC MESSAGE CENTER (aka "ELECTRONIC MESSAGE BOARD")**

114 An electrically activated sign whose message content, either in whole or in part,  
115 may be changed by means of electronic programming. The message content may  
116 be displayed as pixels on a display surface, which pixels may consist of  
117 incandescent lamps, reflective disks, light-emitting diodes (LEDs), liquid crystal  
118 components (LCDs), neon or plasma light segments, or various combinations of the  
119 above.

120  
121  
122 End

*ENACTMENT ORDINANCE*

Title 16.8 Article X Signs

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154

**AN ORDINANCE** amending Town Code Title 16.8 Article X. Signs Sections 16.8.10.1 Purpose and 16.8.10.2 General Requirements.

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

**WHEREAS**, clarification is necessary to ensure the Town implements adopted Town Comprehensive Plan vision related to Town character and appearance impacted by signs.

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

**NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO TOWN CODE TITLE 16.8, ARTICLE X. SIGNS AND SECTIONS 16.8.10.1 PURPOSE AND 16.8.10.2 GENERAL REQUIREMENTS.

**INTRODUCED** and read in a public session of the Town Council on the \_\_ day of \_\_\_\_\_, 2014, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and passed by a vote of \_\_\_\_\_-.

**THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery, Maine on the \_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ {NAME}, Chairperson

**Attest:** Maryann Place, Town Clerk

**Town of Kittery Maine  
Town Planning Board Meeting  
June 26, 2014**

**Town Code Amendment – Title 16.7 Sewer System and Septic Disposal, 16.9.1.4 Soil Suitability, 16.8.16 Lots and 16.2.1 Definitions.** Action: review amendments and schedule a public hearing. Amendments to the Town Code to address soil suitability as it pertains to septic disposal systems and other development standards.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	1/9/14 deferred to 1/23/14, issued to Subcommittee	
	Workshop	December 3, 2013	HELD
YES	Schedule Public Hearing		PENDING
	Town Council/Planning Board Joint Workshop		PENDING
YES	Review/Recommendation to Town Council		PENDING

**BACKGROUND**

The issues related to the *Soil Suitability Guide for Land Use Planning in the State of Maine* generated an enquiry into other soil related references in the Town's Land Use and Development Code, especially the those sections that pertain to septic disposal. The Planning Board requested the Code Subcommittee to review the related sections of the Town Code and prepare an amendment for their review.

**RECOMMENDATION**

Please refer to the attached Ordinance Revision Memorandums (ORD's) for details.

The amendment is organized with separate ORD's with one code amendment that includes all the sewage related information with associated definition changes and two other code amendments for Soil Suitability and Lots.

If the Board is comfortable with the proposed amendments Staff recommends scheduling a public hearing.

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Sewage Disposal (Sewer only)
<b>Town code section:</b> Title 16, §16.8.7 (Sewer only, proposed as 16.8.7.1)	<b>History:</b> Amendment

**ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE {FORTHCOMING}, AND PLANNING BOARD REVIEW NOTES**

1 **PURPOSE OF PROPOSAL:**

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

7  
8 **SUMMARY OF PROPOSAL/AMENDMENT:**

9 *{See Line 147, Page 5 Code Amendment}*

10  
11 The amendment would do the following:

- 12
- 13 1. Define sewer hook-up requirements for individual structures as well as those for subdivisions in  
14 order to clarify and codify current practice.
  - 15
  - 16 2. Allow a developer to request a waiver from the mandatory sewer hook-up requirement should  
17 such hook-up not be feasible. Guidelines for such a request and for the Board's decision are  
18 described.
  - 19

20  
21 **JUSTIFICATION:**

22  
23 The amendments would make sewer hook-up information clearer and easier to find for both  
24 developers and owners of single structures with sanitary facilities.

25  
26 Rules governing sewer hook-up for individual structures would be added to Chapter 16. These  
27 additions would align with and refer readers to Chapter 13 regulations.

28  
29 Clarifying the process by which a developer may request a waiver of sewer hook-up would ensure that  
30 all requests are held to the same standards.

31  
32 **FISCAL IMPACT:**

33 None

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Sewage Disposal (Subsurface wastewater disposal only)
<b>Town code section:</b> Title 16, §16.8.7 (Subsurface Wastewater Disposal System, proposed as 16.8.7.2)	<b>History:</b> Amendment

**ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE {FORTHCOMING}, AND PLANNING BOARD REVIEW NOTES**

35 **PURPOSE OF PROPOSAL:**

36  
37 The proposal would separate regulations for subsurface wastewater disposal (SWD) systems from  
38 those for sewer hook-ups and holding tanks. This would satisfy the requirement of Town Charter  
39 Section 2.14 that there should be only one topic per ordinance. The proposal would also implement  
40 many important goals of the Comprehensive Plan.  
41

42

43 **SUMMARY OF PROPOSAL/AMENDMENT:**

44 *{See Line 199, Page 5 Code Amendment}*

45  
46

The amendment would do the following:

47  
48

- 49 1. Prohibit subsurface wastewater disposal (SWD) systems in subdivisions with four or more lots  
50 or dwelling units.
- 51 2. Increase the soil depth required for passing test pits by six (6) inches in lieu of mandating  
52 prohibitively expensive advanced pre-treatment SWD systems to ensure non-contaminated  
53 soil.  
54
- 55 3. Allow replacement SWD systems where no expansion of use is proposed to follow current soil-  
56 depth guidelines. SWD systems where expansion of use is proposed would follow enhanced  
57 regulations.  
58
- 59 4. Require advanced pre-treatment for new construction that is over or within 100 ft. of easily-  
60 polluted sand and gravel aquifers. There is one such aquifer in Kittery in the vicinity of Cutts  
61 Rd.  
62
- 63 5. Move rules governing sewer connections and holding tank use to new, separate subsections.  
64 (See separate memorandum for Holding Tanks)  
65

66

67 **JUSTIFICATION:**

68

69 Limiting SWD systems to small developments would be pursuant to and consistent with the  
70 Comprehensive plan in many ways:

71  
72

- 73 1. It would direct development to areas with Town services.
- 74 2. It would prevent overbuilding in any single year, thereby helping to stabilize property values  
75 throughout Kittery.  
76

- 77 3. It would prevent overbuilding in areas designated for low growth.  
78  
79  
80 4. It would protect sensitive environmental resources such as groundwater, wetlands and  
81 watersheds.  
82  
83 5. It would preserve rural character and open space.  
84  
85 6. Density would be managed without decreasing the value of divisible parcels.  
86  
87 In addition:  
88  
89 7. Deeper soil requirements for passing test pits would ensure greater separation between SWD  
90 systems and bedrock or the water table. More soil would improve the filtering of effluents.  
91 Although no SWD system can filter excreted pharmaceuticals or all household chemicals, this  
92 would provide greater protection from nitrogen and phosphorous pollution of groundwater,  
93 watersheds and wetlands  
94  
95 8. There would be no disincentive for routine replacements of old or failing SWD systems  
96 because such replacements would be held to less stringent standards than those for systems  
97 that are being enlarged due to expanded use.  
98  
99 9. Requiring advanced pre-treatment for SWD systems in new construction over Kittery's sand  
100 and gravel aquifer would reduce the chance of contamination.  
101  
102 10. Removing other topics from this subsection would make SWD regulations easier to find and  
103 less confusing.  
104

105 FISCAL IMPACT:

106 None  
107

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair, S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Sewage Disposal (Holding tanks only)
<b>Town code section:</b> Title 16, §16.8.7 (Holding tanks only, proposed as 16.8.7.3)	<b>History:</b> Amendment

**ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE (FORTHCOMING), AND PLANNING BOARD REVIEW NOTES**

108 **PURPOSE OF PROPOSAL:**

109  
110 The proposal would separate holding tank regulations from sewer and subsurface wastewater  
111 disposal (SWD) regulations to comply with Kittery Town Charter Section 2.14. The proposal would also  
112 allow holding tanks to be installed for use at municipal facilities in the Commercial Fisheries/Maritime  
113 Uses Overlay Zone.

114  
115 **SUMMARY OF PROPOSAL/AMENDMENT:**

116 *{See Line 267, page 7 Code Amendment}*

117  
118 The amendment would do the following:

- 119  
120 1. Permit the installation and use of holding tanks at municipal facilities only.
- 121  
122 2. Mandate an inspection, maintenance and pumping program and would specify who is  
123 responsible for implementing the program.
- 124  
125 3. Include, by reference, the Model Holding Tank Ordinance of the State of Maine Subsurface  
126 Wastewater Rules which would be modified to include local information and local restrictions.

127  
128  
129 **JUSTIFICATION:**

130  
131 The proposal complies with Kittery Town Charter 2.14.

132  
133 Holding tanks for marina use would encourage boaters not to dump effluents at sea.

134  
135 The MDEP recommends the use of a holding tank for the town's BIG project. Revisions to the Code  
136 would be required to make this possible.

137  
138 If properly enforced, a clear protocol for implementing a monitoring, pumping, maintenance and  
139 inspection program would provide a reasonable safeguard for a holding tank disposal wastewater  
140 system.

141  
142 **FISCAL IMPACT:**

143 None

144  
145

146 *CODE AMENDMENT*

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

148 **Article VII. Sewage Disposal**

149 **16.8.7.1 Sanitary Sewer System and Septic Disposal.**

150  
151 A. An existing or new dwelling unit or structure that requires wastewater disposal must connect to town sewer  
152 where sewer is within 100 feet of the property line per Town Code Title 13, Chapter 13.1 Public Sewer System.  
153 Individual dwellings and structures in approved and recorded developments where town sewer becomes available  
154 as described in this paragraph must connect per the requirements of Title 13, Chapter 13.1. {NEW}  
155

156 B. Where town sewer is located within one thousand (1,000) feet of the property line of a commercial or industrial  
157 development or a residential subdivision, the developer shall connect to town sewer per the town Wastewater  
158 Services Department (WSD) specifications. The developer shall provide written certification to the Planning Board  
159 from the WSD that the proposed addition to town sewer is within the capacity of the collection and wastewater  
160 treatment system. {MOVED FROM 16.8.7.3}  
161

162 C. Sewer mains, service lines and related improvements must be installed at the developer's expense. Service  
163 lines must extend to the each lot's boundary line. Connections to town sewer must be installed in accordance to  
164 this Article and Title 13 Public Services in the Kittery Town Code.  
165 {MOVED FROM 16.8.7.1.E}  
166

167 D. Proposal and construction drawings must be approved in writing by the town Wastewater Services Department.  
168 All required approvals must be secured before the start of final plan review.  
169 {MOVED FROM 16.8.7.1.A & F}  
170

171 E. When town sewer connection to the parcel and/or proposed lots is not feasible, the Planning Board may allow  
172 individual or common subsurface wastewater disposal systems to be used in accordance with Section 16.8.7.2.  
173 To determine feasibility, the developer shall submit information that considers the unique physical circumstances  
174 of the property and sewer connection alternatives to conventional construction/installation techniques such as, but  
175 not limited to, horizontal/directional boring and low pressure sewer. The developer's information must be  
176 accompanied by findings and recommendations of the town Peer-Review Engineer. In determining feasibility, the  
177 Board may not base its decision solely on additional costs associated with a sewer connection. {MODIFIED &  
178 MOVED FROM 16.8.7.1.B}  
179

180 A. Public sanitary sewer disposal system connections must be installed, in accordance to Article VII o Chapter  
181 16.8, with proposal and construction drawings reviewed and approved in writing by the servicing sanitary sewer  
182 agency. {Moved and Modified, SEE 16.8.7.1.D}  
183

184 B. If, in the opinion of the Board, service to each lot by a sanitary sewer system is not feasible, the Board may  
185 allow individual subsurface waste disposal, or a separate central sewage collection system to be used in  
186 accordance with Section 16.8.7.4. {Moved and Modified, SEE 16.8.7.1.E}  
187

188 C. In no instance may an initial installation septic disposal system be allowed in soils rated poor or very poor for  
189 such purpose by the Soil Suitability Guide for Land Use Planning in Maine. {DELETED}  
190

191 D. If the developer proposes individual subsurface waste disposal or central collection system and waste  
192 generated is of a "significant" nature, or if waste is to be discharged, treated or untreated, into any body of water,  
193 approval must be obtained in writing from the Maine Department of Environmental Protection. {DELETED}  
194

195 E. Sanitary sewer disposal systems must be installed, at the expense of the developer, to the individual lot  
196 boundary line. {Moved and Modified, SEE 16.8.7.1.C}  
197

198 F. All required approvals of a sewage disposal system must be secured before official submission of a final plan.  
199 {Moved and Modified, SEE 16.8.7.1.D}  
200

201 **16.8.7.2 Subsurface Wastewater Disposal System**

202 A. Subsurface wastewater disposal is not permitted in a residential subdivision with four or more lots or dwelling  
203 units.  
204

205 B. The developer shall submit plans for subsurface wastewater disposal designed by a Maine Licensed Site

206 Evaluator in full compliance with the requirements of the State of Maine Plumbing Code, Subsurface Wastewater  
207 Disposal Rules, and this Code. Subsurface wastewater disposal systems must be constructed according to the  
208 approved plan. (MODIFIED & MOVED FROM 16.8.7.2)  
209

210 C.G. All first-time subsurface wastewater ~~subsurface sewage~~ disposal systems must be installed in  
211 conformance with the State of Maine Subsurface Wastewater Disposal Rules and this Code. The Maine  
212 Subsurface Wastewater Disposal rules require new systems, excluding fill extensions, to be constructed no less  
213 than one hundred (100) feet, horizontal distance, from the normal high water line of a perennial water body. The  
214 minimum setback distance for a new subsurface disposal system may not be reduced by variance. ~~(Moved to item~~  
215 1 below) The following also apply:

216 1. The minimum setback distance for a first-time subsurface disposal system may not be reduced by variance.  
217 (MODIFIED & MOVED FROM 16.8.7.2 )

218 ~~±2. Clearing or removal of woody vegetation necessary to site a first-time system and any associated fill~~  
219 ~~extensions, must~~ may not extend closer than one hundred (100) feet, horizontal distance, from the normal high  
220 water line of a water body or the upland edge of a wetland. (MODIFIED & MOVED FROM 16.8.7.1.G.1)

221 ~~2. Holding tanks are not allowed for a first-time residential use in the Shoreland Overlay Zone. (MOVED &~~  
222 ~~MODIFIED , SEE 16.8.7.3.B.2)~~

223  
224 D. Replacement subsurface wastewater disposal systems for existing legal uses:

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

227 2. Where no expansion of use is proposed, must comply with 16.8.7.2 and Table 16.9.

228 (NEW)  
229

#### 230 16.8.7.2 — Design and Standards.

231 ~~A developer must submit plans for sewage disposal designed by a Maine licensed site evaluator in full compliance~~  
232 ~~with the requirements of the State of Maine Plumbing Code and/or Subsurface Wastewater Disposal Rules.~~  
233 (MOVED AND MODIFIED, SEE 16.8.7.2.B)  
234

#### 235 16.8.7.3 — Public Sewer Connection Required.

236 ~~Where a public sanitary sewer line is located within one thousand (1,000) feet of a proposed development at its~~  
237 ~~nearest point, the developer must connect with such sanitary sewer line with a main as required by the sewer~~  
238 ~~department, and provide written certification to the Board from the department that the proposed addition to service~~  
239 ~~is within the capacity of the system's collection and treatment system. (MOVED AND MODIFIED, SEE 16.8.7.1.B)~~  
240

#### 241 E. 16.8.7.4 Private Subsurface Wastewater Disposal Systems; on Unimproved Lots Created after April 26, 242 1990. 243

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

247 ~~1. Additionally, on lots with a limiting factor identified as being within twenty-four (24) inches of the surface, a~~  
248 ~~second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail.~~  
249 ~~Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements~~  
250 ~~of the Subsurface Wastewater Disposal Rules and this Code. (MODIFIED FROM 16.8.7.4.A )~~  
251

252 2.B. In no instance may a primary or reserve disposal area be permitted on soils or on a lot which requires  
253 requiring a First-Time System Variance Request from per the State of Maine Subsurface Wastewater Disposal  
254 Rules.  
255

256 3.C. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within  
257 the each disposal area (primary and reserve sites) to assure ensure that the proposed disposal area system can  
258 be located on soils and slopes which that meet the criteria of the State of Maine Subsurface Wastewater Disposal  
259 Rules and the State Plumbing Code. Passing test pits must have a minimum of fifteen (15) inches of existing  
260 natural mineral soil above the limiting factor, except in the Shoreland and Resource Protection Overlay Zones  
261 where passing test pits must have a minimum of twenty-one (21) inches of natural mineral soil above the limiting  
262 factor.  
263

264 F. The developer shall install advanced pre-treatment to subsurface wastewater disposal systems that are located  
265 over or within 100 feet of a sand and gravel aquifer as indicated on the Maine Department of Agriculture,  
266 Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff. (NEW)

267 **16.8.7.3 Holding Tanks**

268 This section includes by reference all information and requirements in Appendix A: Model Holding Tank Ordinance  
269 of the State of Maine Subsurface Wastewater Rules, January 18, 2011 (SMSWR) with the following exceptions  
270 and additions:

271  
272 **A. Section 2 Definitions.**

273 "Authority" means Town Council of Kittery, York County, Maine.

274 "Municipality" means Kittery, York County, Maine.

275  
276 **B. Section 4. Rules and regulations to be in conformity with applicable law. All such rules and regulations adopted**  
277 by the Authority must be in conformity with the provisions herein, including Section 7 First-Time Users, State of  
278 Maine Subsurface Wastewater Rules, all other ordinances of the Town of Kittery, all applicable laws, and  
279 applicable rules and regulations of the administrative agencies of the State of Maine. In addition:

280 {NEW}

281  
282 1. Holding tanks may not be used when a seasonal dwelling unit is converted.

283  
284 2. Holding tanks are not allowed for a first-time residential use. {MODIFIED & MOVED FROM 16.8.7.1.G.2}

285  
286 3. Holding tanks are allowed for functionally water-dependent uses at a municipal facility located within the  
287 Commercial Fisheries/Maritime Uses Overlay Zone. {NEW}

288  
289 4. The Harbormaster is the agent per the SMSWR and is responsible for monitoring tanks and scheduling  
290 inspections, routine pumping and maintenance. {NEW}

291  
292 5. Holding tanks must be inspected for leaks or deterioration by a state-certified professional with a minimum of  
293 three (3) years of experience in pumping and inspecting septic and holding tanks. Holding tanks must be inspected  
294 each April and October and otherwise as needed. Inspections include a written report submitted to the Code  
295 Enforcement Officer and the Kittery Port Authority {NEW}

---

298  
299 **Chapter 16.2 DEFINITIONS**

300 **16.2.2 Definitions**

301  
302 **Subsurface sewage disposal system** means a collection of treatment tank(s), disposal area(s), holding tank(s)  
303 and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices  
304 and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or  
305 beneath the surface of the earth. The term does not include any wastewater discharge system licensed under 38  
306 M.R.S. §414, any surface wastewater disposal system licensed under 38 M.R.S. §413, §1A, or any public sewer.  
307 The term does not include a wastewater disposal system designed to treat wastewater which is in whole or in part  
308 hazardous waste as defined in 38 M.R.S. §13.1.

309  
310 **Subsurface wastewater disposal system** means any system designed to dispose of waste or wastewater on or  
311 beneath the surface of the earth. These include but are not limited to septic tanks, disposal fields, holding tanks,  
312 pretreatment filters, piping, or any other fixture, mechanism or apparatus used for such purposes. This definition  
313 does not include any discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system,  
314 or any municipal or quasi-municipal sewer or wastewater treatment system.

315  
316 **Wastewater** means any domestic wastewater, or other wastewater from commercial, industrial or residential  
317 sources that has attributes similar to those of domestic wastewater. This term specifically excludes hazardous or  
318 toxic wastes and materials.

319  
320 **Domestic wastewater** means any wastewater produced by ordinary living uses, including liquid waste containing  
321 animal or vegetable matter in suspension or solution, or the water-carried waste from the discharge of water  
322 closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes of human  
323 origin.

324  
325 **ENACTMENT ORDINANCE {FORTHCOMING}**

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair, S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Lots
<b>Town code section:</b> Title 16, §16.8.16.1 through 11	<b>History:</b> Amendment

**ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE {FORTHCOMING}, AND PLANNING BOARD REVIEW NOTES**

1 **PURPOSE OF PROPOSAL:**

2  
3 To comply with Kittery Town Charter 2.14, the proposal would remove lot size restrictions from  
4 16.9.1.4 Soil Suitability and include them in Section 16.8.16 Lots.

5  
6 Other modifications would incentivize the use of advanced pre-treatment SWD systems, improve  
7 ordinance clarity and prioritize items in this subsection.

8  
9  
10 **SUMMARY OF PROPOSAL/AMENDMENT:**

11  
12 The amendment would do the following:

- 13  
14 1. Single land divisions no longer subject to the Lot Size Restrictions
- 15  
16 2. Create an incentive for developers to use advanced pre-treatment SWD systems by allowing a  
17 greater percentage of wetland on lots using such systems.
- 18  
19 3. Re-organize the Article so that the most general and commonly referenced items would appear  
20 first. Other items would be renumbered to accommodate these changes.
- 21  
22 4. Improve clarity of intent for Lot Shape regulations with minor modifications.

23  
24  
25 **JUSTIFICATION:**

26  
27 Moving Lot Size Restrictions to the section pertaining to lots would make this information easier to find  
28 and would comply with Kittery Town Charter 2.14.

29  
30 Amendments to lot size restrictions would benefit small land owners making land divisions that do not  
31 trigger subdivision review.

32  
33 Use of advanced pre-treatment SWD systems would be incentivized.

34  
35 **FISCAL IMPACT:**

36 None

38 **CODE AMENDMENT**

39 **CHAPTER 16.8 DESIGN AND PERFORMANCE STANDARDS**

40 **Article XVI. Lots**

41

42 **16.8.16.1 Dimensions.**

43 The lot size, width, depth and shape and orientation and the minimum building setback lines must be appropriate  
44 for the location of the development and for the type of development and use contemplated. The lot configuration  
45 should be designed to maximize access to solar energy for building sites with suitable orientation.  
46

47 **16.8.16.9~~2~~ Lot Shape.**

48

49 A. The ratio of lot length to width shall **must** not be more than three to one. **Flag-shaped** lots **are prohibited**, and  
50 **o**ther odd-shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size  
51 requirements are **also** prohibited.  
52

53 B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook  
54 or coastal wetland as these features are defined in Code 38, M.R.S. §480-B, none of the lots created within the  
55 subdivision may have a lot depth to shore frontage ratio greater than five to one.  
56

57 **{MOVED AND ONLY AMENDED SECTION NUMBER}**

58 **16.8.16.3 Lot Size Restrictions.**

59 **Lot size determination for all development requiring subsurface wastewater disposal is as follows:**

60 **Areas containing very poorly drained soils may be used to fulfill twenty-five (25) percent of the minimum lot size**  
61 **required by this Code, provided that the remaining area is sufficient in size and configuration to safely and**  
62 **adequately accommodate all buildings and required utilities such as water supply and wastewater disposal,**  
63 **including primary and reserve disposal field locations, within required zoning setbacks. Where advanced pre-**  
64 **treatment is used in conjunction with wastewater disposal, said soils may satisfy seventy-five (75) percent of the**  
65 **minimum lot size.** {MODIFIED AND MOVED FROM 16.91.4 SOIL SUITABILITY}  
66

67 **16.8.16.2 Off-street Parking. {MOVED AND RENUMBERED; 16.8.16.9 BELOW}**

68 Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street  
69 parking and service facilities for vehicles required by type of development and use contemplated.  
70

71 **16.8.16.3 Land Subdivision. {MOVED AND RENUMBERED; 16.8.16.11 BELOW}**

72 The subdividing of land must conform to the requirements of Chapter 16.3.  
73

74 **16.8.16.4 Double/Reverse Frontage Lots.**

75 Double frontage and reverse frontage lots are to be avoided except where essential to provide separation of  
76 residential development from traffic arteries or to overcome specific disadvantages of topography and  
77 orientation. A planting screen easement of at least ten (10) feet, across which there may be no right of access, is  
78 to be provided along the lot lines abutting such a traffic artery or other disadvantageous use.  
79

80 **16.8.16.5 Side-lot Lines.**

81 Side-lot lines must be substantially at right angles or radial to street lines.  
82

83 **16.8.16.6 Substantially Larger Lots.**

84 Where a tract is subdivided into lots substantially larger than the minimum size required in the zone in which a  
85 subdivision is located, and where no covenants exist to preclude lots from resubdivision, the Board may require  
86 that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements  
87 contained in these standards.  
88

89 **16.8.16.7 Multiple Frontages.**

90 When lots have frontage on two or more streets, the plan and deed restrictions must indicate vehicular access to  
91 be located only on the least-traveled way.  
92

93 **16.8.16.8 Divided Lots.**  
94 If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements  
95 for lot size, it may not be combined with a lot on the other side of such barrier to meet the minimum lot size  
96 unless in conformance with Article II of Chapter 16.7.  
97

98 **16.8.16.9 Lot Shape.** (MOVED, MODIFIED AND RENUMBERED; 16.8.16.3 ABOVE)  
99

100 A. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd-shaped lots in  
101 which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.  
102

103 B. Spaghetti-Lots Prohibited. If any lots in a proposed subdivision have shore frontage on a river, stream, brook  
104 or coastal wetland as these features are defined in Code 38, M.R.S. §480-B, none of the lots created within the  
105 subdivision may have a lot depth to shore frontage ratio greater than five to one.  
106

107 **16.8.16.29 Off-street Parking.**

108 Depth and width of properties reserved or laid out for all purposes must be adequate to provide for off-street  
109 parking and service facilities for vehicles required by type of development and use contemplated.  
110 (MOVED AND ONLY AMENDED SECTION NUMBER)  
111

112 **16.8.16.10 Access to Arterial Street.**

113 Where a major subdivision abuts or contains an existing or proposed arterial street, no residential lot may have  
114 vehicular access directly onto the arterial street. This requirement must be noted on the plan and in the deed of  
115 any lot with frontage on the arterial street.  
116

117 **16.8.16.311 Land Subdivision.**

118 The subdividing of land must conform to the requirements of Chapter 16.3.  
119 (MOVED AND ONLY AMENDED SECTION NUMBER)  
120

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Soil Suitability
<b>Town code section:</b> Title 16, §16.9.1.4	<b>History:</b> Amendment

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

1 **PURPOSE OF PROPOSAL:**

2  
3 The proposal would provide regulatory relief for small residential projects by the establishment of  
4 different standards of soil assessment, and codify what is current practice.

5  
6 Applicants seeking to build high intensity, cluster developments would remain subject to existing law.

7  
8 **SUMMARY OF PROPOSAL/AMENDMENT:**

9  
10 The amendment would do the following:

- 11
- 12 1. Codify current best practices as endorsed by the Maine Association of Professional Soil
  - 13 Scientists.
  - 14
  - 15 2. Remove lot size restrictions to align the ordinance with the Kittery Town Charter 2.14.
  - 16
  - 17 3. Require soil reports; including class A high-intensity soil surveys and soil mapping for cluster
  - 18 developments or other high intensity land use.
  - 19
  - 20 4. Permit the Board to grant a waiver from the above requirements for low-intensity, non-cluster
  - 21 developments upon written request by the applicant, and after consideration of the Peer
  - 22 Review Engineer's report.

23  
24 **JUSTIFICATION:**

25  
26 The current code employs a one-size-fits-all regulatory regime to the detriment of small, low-intensity  
27 development projects. Small building projects should not be made to meet the same high standards  
28 that are required of major cluster developments. This flexibility would permit the Board to grant  
29 regulatory relief on a case-by-case basis that will save the applicant both time and money.

30  
31 In addition, the proposal would amend the ordinance to employ current terminology and is consistent  
32 with the recommendations of the Maine Association of Professional Soil Scientists.

33  
34 **FISCAL IMPACT:**

35 None

## CODE AMENDMENT

### Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT

#### 16.9.1.4 Soil Suitability.

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

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

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

~~D.~~ When constructing a new dwelling unit on soils identified with severe restrictions, requiring subsurface wastewater disposal and on lots not subject to subdivision review, a Class A (High Intensity) Soil Survey is not required. However, the site's soil suitability must be assessed and documented in a soil report by a Maine certified soil scientist, a Maine certified geologist or Maine licensed site evaluator. Prior to the issuance of a Building Permit, the soil report must be submitted to the Code Enforcement Officer (CEO) and soil conditions reviewed for conformance with this Code. {MOVED AND MODIFIED FROM 16.9.1.4.E}

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

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

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

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

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

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

92 {MODIFIED AND MOVED TO 16.8.16 LOTS}  
93

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

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

112 **ENACTMENT ORDINANCE**

113 {FORTHCOMING}  
114

ITEM 7

2012-2014  
PLANNING BOARD ACTION ITEMS

ITEM #	START DATE	ITEM	PRIORITY	ACTION TAKEN	DATE
1	8/9/2012	16.10.9.2 REDEFINE FIELD CHANGES; Major/Minor	1	Ongoing; 6/26/14	
2	10/11/2012	REVIEW 16.10 (WORKSHOP ITEM #1 FROM 10/11/12 WORKSHOP) Plan Application Review	3		
3	10/11/2012	Post Building Permits on Web Site		Requested: Shelly Bishop; TBD	
4	10/11/2012	SUGGESTED ORDINANCE CHANGES BE AVAILABLE ONLINE	2		
5	10/11/2012	ABUTTER'S LIST TO PB EARLY ON, BEFORE PUBLIC HEARING	1	at sketch plan- 4/24/13	
6	10/13/2012	DPW PROJECTS COME BEFORE PB; NEED UPDATED LIST	2	No DPW update submitted since October, 2012	
7	10/13/2012	BUSINESS OVERLAY ZONES; WHERE AND WHAT CHANGES; 16.3.2.20 Proposed Quality Improvement Overlay; form based code vs. individual ordinances (Bob M.)	2	Workshop; Sustain So ME; set up January 2014 workshop (1/24 AM)	Ongoing
8	2/14/2013	DEFINE COMMERCIAL RECREATION	2	In process	
9	2/14/2013	OUTDOOR SEATING/use of public ROW/Title 5 (See also: VIII.3.i.iv 2015 Code Amendments: Briefing Book)	1	Ongoing (Winter, 2014)	
10	2/28/2013	UPDATE DESIGN STANDARDS FOR LED LIGHTING:	3		
11	3/28/2013	Set up Workshop to discuss High Pointe Circle Issues: Road Extension & Gate and use of woods road; review prior approvals and minutes	1	Staff (GM) will attempt to resolve and report to KPB (4/25/13)	
12	3/28/2013	CONTINUE WORKSHOP WITH KCPC, KOSC REGARDING 1 - 3 ACRE RR; and future land use regulation; restrict # building permits issued per year (See also: VIII.3.i.i 2015 Code Amendments: Briefing Book)		May 15, 2013 Workshop: December 3, 2013 workshop, w Soil Suitability; what is status of LD 220 and 1810?	Ongoing
13	4/11/2013	Format of Comp Plan		strike out and underline existing 3/25/2002 CP	Ongoing
14	4/25/2013	WORKSHOP: Cluster Ordinance needs work USABLE OPEN SPACE RETAIN ROAD FRONTAGE (Buffers) TRAFFIC STUDIES	2	KOSC wants input	
15	4/25/2013	PB Workshop Update (MMA?): training; education; conflict of interest; attendance/voting;	1	Retreat: January 10, 2014; MMA workshop 3/25/14	Ongoing
16	4/26/2013	ROADS / SIDEWALKS TO NOWHERE (ROW plans)	1	Ongoing	
17	8/22/2013	No site work while application before Planning Board; site dev pre-meeting; CMA construction inspection;	1		
18	10/24/13 Amendment	DPW Road Cuts; Title 5 amendment; approved by PB 10/24/13; to Council 11/25/13		Revise per Council Action (on Hold)	
19	10/24/2013	Shoreland definition			
20	10/24/2013	HAT - Highest Annual Tide: no Elevation 6			
21	10/24/2013	Definition: Substantially complete re: development vs. building permits			

2012-2014  
PLANNING BOARD ACTION ITEMS

22	10/24/2013	Soil Suitability Guide; discontinue; how do other communities handle?	1	Workshop December 3, 2013	Ongoing
23	11/14/2013	Sidewalks 'to nowhere'; case by case basis; further discussion			
24	11/14/2013	Waivers; legal issue?		January 2014	
25	11/14/2013	Fines			
26	11/14/2013	16.7.3.5.6 Reconstruction periods			
27	11/14/2013	Structure replacement outside of shoreland zone (missing from code)	1		
28	11/14/2013	Federal standards, re: road design			
29	11/14/2013	COUNCILOR DENNETT'S PROPOSED CHANGES TO KPB BY-LAWS	1	Markup provided; discussed 11/14, 12/12; 1/14; 3/14	Ongoing
30	11/14/2013	Review flood hazard ordinance; 16.5.3.4		Coordinate w CMA; need estimates	
31	12/12/2013	Structure replacement inside shoreland/excavation	1		
32	12/12/2013	Pedestrian / Bike paths			
33	12/12/2013	Minor subdivisions; density; septic			
34	1/23/2014	Outdoor Seating (extend to other zones)	1	TBD: September 2014	
35	1/24/2014	Findings of Fact workshop			
36	2/27/2014	Extension of subdivisions/building permit periods			
37	2/27/2014	List of Committees/Boards to monitor ?	1	Reviewed 3/27/14;	Ongoing
38	2/27/2014	Flag Lots (16.8 - 16.9)			
39	3/13/2014	Septic pretreatment requirement as bonus (See also: VIII.3.ii 2015 Code Amendments: Briefing Book)			
40	3/13/2014	Proof of building materials (ie. sand from Alfred for septic systems)			
41	3/27/2014	FY 2015 Amendments: Briefing Book iii. Quality Improvement Development Standards update v. Adjacent off-site improvement update vi. Consolidate RR and RC zones vii. Consolidate BL and L-1 zones viii. Sign standards/education/enforcement			
42	3/27/2014	Kittery Historic Resources; historic designation identification			
43	5/8/2014	Outdoor (Foreside) seating amendment/extension, Title 5	1	(see Item #9) To Council 6/9/14	
44	5/8/2014	Sign ordinance changes			
45	5/22/2014	Open Space: Review of Cluster (see 4/25/13)			
46	5/22/2014	Invasive plants			
47	5/22/2014	Encourage rain gardens in parking areas (parking credits/bicycle racks)			
48	5/22/2014	Shared driveways (Conserv. Comm)			
49	5/22/2014	Committee Updates			



# BUILDING MAY PERMIT 2014 REPORT

Number of  
Building Permits  
Issued

27

Value of Building  
Permits

\$733,682.00

Permit Fees  
Collected

\$4,701.00

Impact Fees Paid

-

Date Issued	Permit #	Property Owner	Address	Map	Lot	C	R	Work	Description	Value	Fee	Impact Fee
5/1/2014	14-104	KING, DONALD	199 WHIPPLE	17	41	R		MAINT & REPAIR	UPGRADE ELEC ROOF,	\$650.00		\$25.00 -
5/1/2014	14-105	ROWAN, THOMAS	15 PRINCE AVE	3	40	R		MAINT & REPAIR	COUNTERTOP	\$3,200.00		\$25.00 -
5/1/2014	14-106	LIEN, SHIRLEY	8 MAPLE AVE	14	21	R		SHED	REPLACE SHED	\$1,000.00		\$37.00 -
5/1/2014	14-107	LIEN, SHIRLEY	8 MAPLE AVE	14	21	R		MAINT & REPAIR	RESHINGLE	\$3,000.00		\$25.00 -
5/1/2014	14-108	GYURKO, NELSON	1 LORI LN	42	23-5	R		MAINT & REPAIR	REP FIRE DMG	\$80,000.00		\$865.00 -
5/1/2014	14-109	MUSEUM OF YORK	22 SHAPLEIGH RD	15	64	C		MAINT & REPAIR	RESHINGLE	\$9,800.00		\$246.25 -
5/1/2014	14-110	MEYER, ART	11 LOVE LN 20 WALKER	9	53	R		MAINT & REPAIR	RESHINGLE	\$4,185.00		\$25.00 -
5/1/2014	14-111	CUTTEN, GORDON	AVENUE	2	34	R		MAINT & REPAIR	RESHINGLE	\$5,755.00		\$25.00 -
5/1/2014	14-112	YMHP	6 CUTTS RD #4	60	21-4	R		MOBILE HOME	MOBILE HOME	\$39,800.00		\$502.00 -
5/1/2014	14-113	YMHP	6 CUTTS RD #4	60	21-4	R		SHED	SHED	\$1,040.00		\$37.00 -
5/7/2014	14-114	TOWN OF KITTERY	BELLAMY LN	27	49A	C		PIER	PIER	\$380,000.00		-
5/7/2014	14-115	TRENT, ALEX	2 JANAH LANE	41	5/1/2014	R		SHED	SHED	\$1,400.00		\$43.00 -
5/7/2014	14-116	KING, VINCENT	132 MARTIN RD	29	4	R		MAINT & REPAIR	RESHINGLE ROOF ROOM IN	\$4,895.00		\$25.00 -
5/7/2014	14-117	OSHAUGHNESSEY LABBEE,	8 TUDOR DR	17	43-4	R		RENOVATION	BASEMENT	\$10,000.00		\$145.00 -
5/7/2014	14-118	MARYJEAN	87 GOODWIN RD	58	65	R		DECK	DECK	\$3,000.00		\$61.00 -
5/7/2014	14-119	KENNEBUNK SAV	4A SHAPLEIGH RD	10	40A	C		RENOVATION	REMOVE INT WALL	\$3,500.00		\$152.50 -
5/7/2014	14-120	LAWRENCE, RON	19 PLEASANT ST	4	35A	R		MAINT & REPAIR	REPLACE DECKING	\$3,000.00		\$25.00 -
5/8/2014	14-121	KISUER, DAVID GREENHEAD	29 WALKER AVE	2	28-1	R		MAINT & REPAIR	ROOF & WINDOWS	\$7,000.00		\$25.00 -
5/8/2014	14-122	LOBST	21 RANGER DR	13	5/10/201	C		ADDITION	ADDITION	\$70,000.00		\$1,150.00 -
5/8/2014	14-123	YANKEE MHP HOFFMAN,	1 IDLEWOOD LN #64	66	16-64	R		DECK	DECKS	\$3,600.00		\$67.00 -
5/8/2014	14-124	SANDRA	214 LEWIS AVE	9	100A	R		MAINT & REPAIR	RESHINGLE ROOF	\$5,300.00		\$25.00 -
5/15/2014	14-125	CARDINALLI, ED	25 CHAUNCEYCK RD	44	35	R		MAINT & REPAIR	RESHINGLE ROOF	\$15,624.00		\$91.00 -



# APR BUILDING PERMIT REPORT 2014

Number of Building Permits Issued 28  
 Value of Building Permits \$1,343,245.65  
 Permit Fees Collected \$19,455.50  
 Impact Fees Paid \$750.00

Date Issued	Permit #	Property Owner	Address	Map	Lot	R	C	Work	Description	Value	Fee	Impact Fee
4/1/2014	14-076	CAMPBELL, JOHN	2 GOODWIN RD	53	22	R		RENOVATION TEMP MOBILE	BATHROOM	\$8,000.00	\$121.00	-
4/1/2014	14-077	GYURKOX	1 LORI LANE	42	23-5	R		HOME	FIRE DMG	\$5,000.00	\$85.00	-
4/3/2014	14-078	AL SHAIR, TALAL	242 HALEY RD	40	10/1/21	R		SINGLE FAMILY	RENOV VAC BLDG	\$190,000.00	\$2,305.00	\$450.00
4/7/2014	14-079	BARTELS, ANDREW	23 BADGERS IS W #A	1	28A	R		MAINT & REPAIR	WATER DMG	\$20,000.00	\$145.00	-
4/8/2014	14-080	TILTON, JOHN	6 CUTTS RD #45	60	21-45	R		DECK	DECK	\$2,000.00	\$49.00	-
4/9/2014	14-081	TONELLI, MATT	16-18MACDOUGAL ST	24	13	R		MAINT & REPAIR	SIDING, WINDOWS	\$4,000.00	\$25.00	-
4/9/2014	14-082	HALL, DEBORAH	36 CUTTS ISLAND LANE	45	35	R		MAINT & REPAIR	SIDING	\$16,000.00	\$97.00	-
4/9/2014	14-083	FABULOUS FIND	139 STATE RD	14	30	C		RENOVATION	WALL	\$2,500.00	\$137.50	-
4/9/2014	14-084	BOLEY, JOHN NICKERSON,	68 CHAUNCEY CK RD	45	72	R		SINGLE FAMILY	2BR 1 BATH SF	\$110,000.00	\$1,345.00	\$50.00
4/9/2014	14-085	NICOLE PARSONS,	349 HALEY ROAD	41	1	R		MAINT & REPAIR	ELECTRICAL	\$1,700.00	\$25.00	-
4/9/2014	14-086	MICHAEL DOW HIGHWAY	165A WHIPPLE RD	16	204	R		PIER, RAMP, FLOAT	PIER, RAMP, FLOAT	\$8,000.00	\$121.00	-
4/10/2014	14-087	PRO	4 DANA AVE #38	21	3-38	R		MOBILE HOME	MOBILE HOME	\$20,000.00	\$265.00	-
4/10/2014	14-088	EAMES, JEFFREY	37 WALKER AVE	2	32	R		MAINT & REPAIR	STAIRS	\$5,000.00	\$25.00	-
4/10/2014	14-089	WENNBERG, GARY	16 TENNEY HILL RD	44	24	R		MAINT & REPAIR	ROOF	\$2,000.00	\$25.00	-
4/17/2014	14-090	MAY, KURT	110 STATE ROAD	8	40	R		DEMO	INTERIOR	-	\$20.00	-
4/10/2014	14-091	TETREAULT TREAUCY, PAUL	30 ADAMS LN	60	32A	R		MOBILE HOME	MOBILE HOME	\$111,015.00	\$1,357.00	-
4/17/2014	14-092	JEAN	135 PEPPERRELL ROAD	36	1	R		GARAGE	GARAGE	\$8,000.00	\$121.00	-
4/17/2014	14-093	SHEA, KATHLEEN	116 WILSON RD	59	22	R		MAINT & REPAIR	SHINGLE BARN	\$5,000.00	\$25.00	-
4/17/2014	14-094	WEST, DONALD	480 US RT 1	67	9A	R		GARAGE	GARAGE	15000	205	-
4/17/2014	14-095	PHILBRICK, JOSH	24 MARTIN RD	11	33	R		SINGLE FAMILY	SINGLE FAMILY	\$150,000.00	\$1,825.00	\$250.00
4/17/2014	14-096	YANKEE MHP	1 IDLEWOOD LN 26	66	16-26	R		DECK	DECK	\$2,355.65	\$52.00	-
4/17/2014	14-097	MEETINGHOUSE	143 ROGERS RD	14	51	C		RENOV	WINDOWS	\$60,675.00	\$1,015.00	-
4/17/2014	14-098	MEETINGHOUSE	143 ROGERS RD	14	51	C		DECK	REPLACE GAZEBO	\$7,000.00	\$205.00	-

4/17/2014	14-099	LOCOCOCOS	36 WALKER ST	4	160	C	ADDITION	ADDITION	\$16,000.00	\$340.00	-
4/17/2014	14-100	WATER DISTRICT	147 ROGERS RD	14	52	C	WIRELESS	ANTENNA REPLAC	\$12,500.00	\$295.00	-
4/17/2014	14-101	BALDWIN	8 DEXTER LN	47	3	C	REFIT	DEXTINATION XL	\$192,000.00	\$2,980.00	-
4/17/2014	14-102	KP OUTLETS	345 US ROUTE 1	47	1	C	REFIT	ANN TAYLOR	\$364,000.00	\$5,560.00	-
4/29/2014	14-103	YASSA, SAMI	16 BOND RD	25	12	R	GARAGE	GARAGE	\$5,500.00	\$685.00	-

## Town of Kittery Ordinance Revision Memorandum

<b>Originator(s):</b> T. Emerson, Planning Board Chair; S. Tuveson, VC	<b>Council Sponsor(s):</b> J. Thomson, Chair
<b>Council meeting date:</b> TBD	<b>Title:</b> Signs – All clarifications / updates
<b>Town code section:</b> Title 16, §16.8.10	<b>History:</b> Amendment

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

- 1 PURPOSE OF PROPOSAL:
- 2
- 3 Clarify and update sign standards and related requirement sections.
- 4
- 5
- 6
- 7 SUMMARY OF PROPOSAL/AMENDMENT:
- 8
- 9 Amend sections related to sign standards and related requirements.
- 10
- 11
- 12 JUSTIFICATION:
- 13
- 14 Needed to insure code meets intent and promotes compliance.
- 15
- 16 FISCAL IMPACT:
- 17 None.

# CODE AMENDMENT

Enclosure 1 DRAFT FOR TOWN PLANNING BOARD REVIEW

## Kittery Town Code Title 16 Land Use and Development Code

### Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

#### Article X. Signs

##### 16.8.10.1 Purpose.

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

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

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

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

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

##### 16.8.10.2 General Requirements.

A. Any sign not expressly permitted herein is prohibited.

B. All signs must be compatible with Kittery's characteristic architectural styles in form, scale, material and color. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox) Georgian, Federal and Classical Revival. (See Design Handbook for examples of acceptable materials and designs and requirements.) Form, scale, material and color characteristics must include:

###### 1. For all signs:

a. A simple geometric shape.

b. A picture-like, raised frame around the sign area that reflects the exterior shape of the sign.

c. A painted or trimmed boarder around the sign area that reflects the exterior shape of the sign.

d. Sign colors not to exceed three, unless a free standing sign serves a multi-tenanted property where a fourth color may be used in conjunction with the property name.

###### 2. For free standing/identification signs:

a. Two sign posts a minimum of four by four inches (4" x 4") or four inches in diameter and not to exceed twelve by twelve inches (12" x 12") or twelve inches in diameter, unless the sign is supported by a stone or brick base.

b. Post top caps with either crown mounding, fennels or masonry if the top of the post is visible.

C. No sign may be erected, posted, enlarged, or substantially changed without a permit issued by the Code Enforcement Officer (CEO) and also approved by the Town Planner, except where Section 16.8.10.9 provides otherwise.

(Ordated 9/26/11; effective 10/27/11) If the CEO and Town Planner cannot agree on whether to issue a sign permit, the sign permit application must be reviewed and approved by the Town Planning Board.

DB. No exterior sign may be internally illuminated or artificially illuminated except where hooded or shielded or otherwise designed to prevent direct light spilling onto traveled ways or neighboring property.

EG. No sign may contain a moving message board, LED lighting electronic message center /board or other photometric display lighting or intermittent illumination, except where necessary in time/temperature/date or gasoline price sign provided the maximum numeral height does not exceed twelve (12") inches, the background is black and the lighting is amber in color only and is part of only freestanding/identification sign. -

FD. Any sign that interferes with or closely imitates any official traffic sign, signal or device is prohibited.

GE. No sign designed to be transported by means of wheels is allowed, unless said vehicle is used in the normal day-to-day transportation operations of the business. All trailer signs are prohibited.

HF. Any changeable message signs must be integrated into a permanently-mounted sign. Such a changeable message board is to be mounted a minimum of three and one-half feet above ground level.

IG. All signs must be maintained in a safe and sound structural condition.

JH. Advertising. No advertising or signage is permitted on wireless communication services facilities.

KI. Any business identified on a sign located on a property must be legally permitted to operate on the property.

L. Any sign not expressly permitted herein is prohibited.

75 LJ. No sign or related electrical permit or other permit or license will be issued unless the property is in  
76 compliance with Town Code and state and federal laws.-

77 MK. A sign documented to be legally existing prior to 1988 may continue in use without any change other than  
78 maintenance as a legally non-conforming sign pursuant to this Town Code.

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83 **16.8.10.3 Sign Location.**

84 A. All signs must be permanently installed on the premises of the activity to which the advertising message  
85 refers, except where Section 16.8.10.7 provides otherwise or upon approval by the Town Council.

86 B. All signs must be located outside the full width of the right-of-way of any public way, unless authorized by the  
87 Town Council.

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91 C. Except for signs authorized in Sections 16.8.10.7 and 16.8.10.9, freestanding signs erected after October 1,  
92 1997 must be located; at least thirty-three (33) feet from the centerline of  
93 1. On any U.S. or state numbered highway less than sixty-six feet (66) feet in width (Routes 236, 103 and 101) -  
94 at least 33 feet from the centerline;  
95 or and at least twenty (20) feet from the outside edge of the paved portion of any travel lane 2.  
96 On of any U.S. or state numbered highway which has both more than two travel lanes and a total paved portion  
97 in excess of twenty-four (24) feet in width (Routes 1 and 1 By-Pass) - at least twenty (20) feet from the outside  
98 edge of the paved portion of any travel lane.

99 D. Signs must not be placed on or above the roof of any building. All signs must be located below the level of the  
100 eaves of the portion of building where the sign is to be erected, except as follows:

- 101 1. Signage may be located above the eaves on a gable or dormer of a building providing it does not extend  
102 above or beyond the roof line of the gable or dormer; and
- 103 2. Signage may be located on a parapet wall provided the sign neither extends any more than eight feet above  
104 the roof-wall junction of the parapet wall nor extends beyond the height of the parapet wall.

105 **Note:** Please see Figure 3 of Chapter 16.8 at the end of this section to assist the reader in understanding  
106 acceptable and unacceptable locations of building-mounted signs according to the terms of Section 16.8.10.3.

107 E. Building-mounted signs which extend more than six inches from the surface of the structure must provide a  
108 minimum of eight (8) feet of vertical clearance to a walkway, parking area, private drive and ground surface.

109 Such signs must not extend beyond the street right-of-way boundary unless authorized by the Town Council.

110 F. Freestanding signs must not extend higher than twenty (20) feet above the original ground level or the  
111 elevation of the centerline of the nearest street measured at the closest point to the sign, whichever is greater.

112 G. Signs must not be posted on trees, utility poles, traffic control devices, or unregistered motor vehicles or  
113 trailers. Signs posted on fences are treated as a type of freestanding sign. Any unpermitted and unallowed sign  
114 located in a public road right-of-way may be caused to be removed by the Town without notice to the owner of  
115 such sign.

116 H. No sign may be located so that it interferes with the safe sight distances necessary for motorists to proceed  
117 safely through intersections or to enter onto or exit from public streets, private roads or driveways.

118 I. All building-mounted signs must be located only on the building that contains the activities or businesses  
119 advertised, except that up to ten (10) percent of the allowed signage for building-mounted signs in Section  
120 16.8.10.6 may be allocated to signs mounted on fuel pumps and/or fuel pump canopies.

121 J. In cases where multiple freestanding signs are permitted, any additional allowed smaller freestanding sign  
122 must face and be located along a separate publicly maintained street.

123 K. Site / Subdivision Development sign may be located on the subject property provided it meets all free  
124 standing sign provisions and does not exceed sixteen (16) square feet single sided or thirty-two (32) square feet  
125 double sided.

#### 126 **16.8.10.4 Number of Freestanding Signs.**

127 A. Except as otherwise authorized in this Section, as well as 16.8.10.8 and 16.8.10.9, each development is  
128 prohibited from having more than one freestanding sign.

129 B. Multi-sided signs are considered as one sign however the square footage of each sign face is calculated to  
130 determine total sign area.

131 C. Where a development fronts on two publicly maintained streets and has designed and approved access onto  
132 both those publicly maintained streets, the development is allowed one additional freestanding sign that faces  
133 and is located along a second publicly maintained street in accordance with Section 16.8.10.6. Said second  
134 freestanding sign must be placed within twenty-five (25) feet of the second publicly maintained street's approved  
135 access.

136 D. Where a development fronts on three publicly maintained streets and has designed and approved access  
137 onto each publicly maintained street, a third freestanding sign facing and located along the third publicly  
138 maintained street may be authorized at the Planning Board's discretion if it finds that other freestanding signage  
139 is not visible from the third street and that there is a need for a third freestanding sign to adequately  
140 communicate the business location to travelers on a third road fronted by the business. Said third freestanding  
141 sign must be placed within twenty-five (25) feet of the third publicly maintained street's approved access.

#### 142 **16.8.10.5 Number of Building-mounted Signs.**

143 To prevent sign clutter, except for those signs authorized by Section 16.8.10.8 or 16.8.10.9, each business  
144 facility, which is on a site where two or more businesses occupy the same building, lot or development, is  
145 prohibited from having more than two building-mounted, non-temporary signs.

#### 146 **16.8.10.6 Sign Area.**

149 A. Residential and Related Zones. Zones designated Residential - Rural Conservation, Residential -Rural ,  
150 Residential - Suburban, Residential - Urban, and Residential - Village, and Mixed Use – Kittery Foreside on the  
151 Town of Kittery Land Use zZoning mMap are residential zones for the purpose of this section.  
152 (Ordained 9/26/11; effective 10/27/11)

- 153 1. Accessory uses, including home occupations, are allowed sign area no greater than eight square feet.
- 154 2. Other permitted uses are allowed sign area no greater than sixteen (16) square feet, except as otherwise
- 155 provided. Residential developments are also allowed twenty-four (24) square feet, provided signs are located
- 156 within the development on premises owned by the developer or owners' association.

157 B. All Other Zones.

- 158 1. A single business situated on a lot of record is allowed a total sign area no greater than three hundred (300)
- 159 square feet, or one and one-half square feet for every linear foot of building frontage, whichever is smaller. In
- 160 any case, a single business on a lot of record is allowed a minimum sign area of seventy-two (72) square feet.
- 161 2. Where two or more business facilities occupy the same building, lot or development, allowable sign area is
- 162 calculated as follows:
  - 163 a. Total building-mounted sign area equals one and one-half square feet per linear foot of building frontage for
  - 164 each business facility. The total allowed building-mounted sign area may be allocated among individual business
  - 165 facilities at the property owner's discretion.
  - 166 b. The development is allowed one freestanding sign not greater than one hundred fifty (150) square feet in sign
  - 167 area. An additional freestanding sign no greater than seventy-two (72) square feet in sign area facing and
  - 168 located along that secondary street is allowed if the development fronts on multiple streets and has designed
  - 169 and approved access onto each publicly maintained street. A third freestanding sign may be permitted at the
  - 170 Planning Board's discretion in accordance with Section 16.8.10.4.

#### 171 **16.8.10.7 Off-premises Signs.**

172 A. An individual business or service, upon application, may be assigned no more than three official off-premises  
173 business directional signs (OBDS). An OBDS must be designed and located so as to avoid conflict with other  
174 signs and minimize impact on the scenic environment through the following standards:

- 175 1. Dimensions: twelve (12) inches by forty-eight (48) inches;
- 176 2. Coloring: state standard blue background, white lettering, logo may be any color;
- 177 3. Lettering style: state standard white block case.
- 178 43. Reflectorization: optional;
- 179 54. Location: on existing assemblies (posts) where possible. No more than two assemblies per intersection
- 180 approach;
- 181 56. Restricted areas:
  - 182 a. An OBDS is not permitted if the individual business or service property fronts on Routes 1, 1-By-Pass,
  - 183 and 236.
  - 184 b. An OBDS must not be placed on an inbound leg of the Kittery traffic circle within four hundred (400)
  - 185 feet of its outer perimeter, or adjacent to points of scenic or historical interest, including but not limited to
  - 186 federal, state, and local parks and reserves, recognized historic sites and buildings, water bridges and
  - 187 cemeteries.
  - 188
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190 B. An off-premises sign which advertises commercial or other activity without advertising any specific enterprise  
191 (generic signs) may be approved by the Planning Board at size and location to be specified.

192 C. Any legal OBDS existing as of the date of this ordination, that does not conform to the provisions of this  
193 section will be removed by the Town within thirty (30) days after the date of ordination.

#### 194 **16.8.10.8 Temporary Signs.**

195 All temporary signs must be installed on the premises of the activity to which the advertising message refers.  
196 Moveable and trailer signs are prohibited as temporary signs. One of The following types of temporary sign  
197 types is s are allowed with an approved sign permit:

- 200 A. The use of one temporary sign, other than a trailer sign, per property -at any one time per business- that  
201 must be is mounted to the building or attached to a freestanding sign -structure for the purpose of advertising  
202 special events, provided that such signs is are displayed for no longer than a consecutive combined total of  
203 twenty-one (21) days in any calendar quarter (January 1 - March 30, etc...)-may be permitted. Total sign area  
204 for a temporary sign must not exceed seventy-two (72) square feet. The allowed twenty-one (21) day display  
205 period may be divided into no more than three separate, non-overlapping temporary periods of not less than  
206 seven days.  
207

208 B. One additional temporary sign, ~~other than a trailer sign,~~ that must be mounted to the building or to a  
209 freestanding sign structure is permitted per each sidewalk sales event not to exceed five, legally participating  
210 site for the duration of each approved by Town Council, approved sidewalk sales event.

211 **16.8.10.9 Signs Allowed Without a Sign Permit.**

212 The following types of signs, in sizes and under conditions stated, are allowed without a Town sign permit, but  
213 must conform with all other provisions of Article X of Chapter 16.8 except for the provisions restricting the  
214 number of signs (Sections 16.8.10.4 and 16.8.10.5) and limiting the total sign area (Section 16.8.10.6).

215 A. Public Information Signs. Signs for the control of traffic and other regulatory purposes, route markers, street  
216 signs, warning signs, utility, danger or warning signs, signs which indicate direction to hospitals, churches or  
217 other places of worship, or other public facilities;

218 B. General Information Signs. Signs which provide direction or instruction such as, location of telephone, rest  
219 rooms, parking, automatic teller machines (ATMs), transit stops, entrances and exits, open and closed signs,  
220 where installed entirely upon the property to which they pertain. "Enter" and "Exit" signs must not exceed four  
221 square feet in size. All other general information signs must not exceed two square feet in size. Except for  
222 identifying approved off-premises parking stalls, no logos, trademarks or names of businesses are permitted on  
223 general information signs. The Planning Board may approve increased sizes and/or the use of logos or names of  
224 businesses on general information signs when considered necessary to promote safety or eliminate confusion;

225 C. Memorial Tablets. Grave markers, signs commemorating a historical figure or event, names or dates of  
226 buildings to which a sign is attached;

227 D. Public Notices and Community Signs. Official notices posted by public employees in performance of their  
228 duties, and any sign for Town sponsored or supported events or facilities as approved by the Town Council;

229 E. Flags of any Government or Recognized Political Subdivision. The flag of any government or recognized  
230 political subdivision is allowed, provided it is displayed no higher than fifty (50) feet above the original ground  
231 level or the elevation of the centerline of the nearest street measured at the closest point to the flag, whichever is  
232 greater. A single memorial flagpole installation sponsored by private funding not to exceed 129 feet in height  
233 installed on Town-owned or regulated property at Memorial Circle is allowed;

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

235 F. Religious Symbols;

236 G. Building Street Numbers. In accordance with the street-numbering map on file with the Town of assessing  
237 department;

238 H. Political Campaign Signs. Signs bearing political messages relating to an election, primary or referendum,  
239 provided these signs may be displayed on:

240 1. Public property not earlier than thirty (30) days prior to the election, primary or referendum to which they relate  
241 and are removed not later than two days thereafter,

242 2. Private property without time constraints;

243 I. Interior Signs. Signs placed inside a building which are located at least ten (10) feet inside the building or  
244 otherwise not oriented to be viewed from outside the building;

245 J. Vehicular Signs. Signs painted on or affixed to registered motor vehicles or trailers where such signs are  
246 clearly incidental to the regular transportation function of the vehicle;

247 K. Service Club Signs. Service club signs may be placed within the right-of-way of a street with approval of the  
248 Commissioner of Public Works. Such signs are encouraged to be consolidated on a single designated assembly  
249 structure at major entrance ways to the Town. In addition, such signs not exceeding four feet in size may be  
250 erected at locations where meetings of such service clubs are convened;

251 L. Real Estate Signs. Any sign advertising real estate for sale, lease or rent provided:

252 1. Each sign does not exceed twelve (12) square feet;

253 2. Each sign is located on the property being advertised except one sign may be located as an off-premises  
254 directional sign provided the sign does not restrict safe sight distances, ~~or~~ impair safety, or be placed in a public  
255 way per section 16.8.10.3.B.;

256 3. No more than two signs are erected per property being advertised, and

257 4. Each sign is removed within five (5) sixty (60) days of transfer of title or signing a lease Code;

258 M. Window Signs. Any sign that is placed inside a window and is visible from the exterior of the window provided  
259 such signage covers no more than fifty (50) percent of the area of any window;

260 N. Legally-Required Signs. Any sign required by local, state or federal law with sign area no greater than two  
261 square feet or the minimum size required by law, whichever is larger;

262 O. Food Menu Signs. Up to two signs advertising food items for sale on the premises at a legally existing  
263 restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed provided that:

264 1. The total sign area of each such food menu sign on the site must not exceed thirty-two (32) square feet, and

265 2. Such food menu signs must either be building-mounted or comply with the front yard requirements for  
266 structures and be located within seventy-five (75) feet of the restaurant;

267 P. Under Canopy, Pedestrian-Oriented Signs. One building-mounted business identification sign per business  
268 facility not to exceed  
269

270 One ~~(1) ten (10)~~ square ~~foot~~feet in size per sign where two or more businesses occupy the same building with a  
271 pedestrian walkway and canopy that parallels and connects the front entrances of the business facilities. The  
272 sign must be oriented toward pedestrians using the walkway, be located under the canopy near the main  
273 entrance to the business advertised and solely identify the business name or logo; and

274 Q. Construction Phase ~~and Contractor Signs. Signs, other than trailer signs, identifying the name of a~~  
275 ~~contractor working on the premises or~~ describing a construction project erected only during the construction  
276 phase of a development provided each sign does not exceed seventy-five (75) square feet.  
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278 **16.8.10.10 Signs in the Shoreland Overlay and Resource Protection Overlay Zones.**

279 The following provisions govern signs in the Conservation, Shoreland Overlay and Resource Protection Overlay  
280 Zones except where either is overlaid by the Commercial Fisheries/Maritime Uses Overlay Zone:

- 281 1. Signs relating to goods and services sold on the premises are allowed, provided such signs do not exceed six  
282 (6) square feet in area and do not exceed two (2) signs per premises.
- 283 2. Signs relating to goods or services not sold or rendered on the premises are prohibited.
- 284 3. Name signs are allowed, provided such signs do not exceed two (2) signs per premises, and do not exceed  
285 ~~six (6) twelve (12)~~ square feet in the aggregate.
- 286 4. Residential users may display a temporary single sign not over three (3) square feet in area relating to the  
287 sale, rental, or lease of the premises.
- 288 5. Signs relating to trespassing and hunting are allowed without restriction as to number, provided no such sign  
289 exceeds two (2) square feet in area.
- 290 6. Signs relating to public safety, health and/or well-being are allowed without restriction.

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- 297 7. Signs higher than twenty (20) feet above the ground are prohibited.  
298 8. Signs may be externally illuminated only by shielded, non-flashing lights.

299 **16.8.10.11 Sign Permit Application Procedures.**

300 A. No person may erect, post, enlarge, relocate, replace or modify a sign except in conformance with a permit  
301 issued by the Code Enforcement Officer and also approved by the Town Planner. If the CEO and Town Planner  
302 cannot agree on whether to issue a sign permit, the sign permit application must be reviewed and approved by  
303 the Town Planning Board. Notwithstanding the above statement, the following signs may be erected or modified  
304 without a sign permit:

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

- 306 1. Signs authorized in Section 16.8.10.9;  
307 2. Changes to nameplates or "shingles" to reflect occupancy changes on an existing approved freestanding sign  
308 identifying individual occupants on the site provided no change is made to the shape or size of the sign or sign  
309 area;  
310 3. Characters, letters and numbers may be changed on approved changeable message signs without a sign  
311 permit, provided no other change is made to the sign; and  
312 4. Signs may be maintained, cleaned, or repainted provided no change is made to the shape or size of the sign  
313 or to the sign area and provided no new business name is advertised.

314 B. A complete sign application submission consists of the following items submitted to the Code Enforcement  
315 Officer:

- 316 1. A completed sign permit application form provided by the Town;  
317 2. An application fee in accordance with a fee schedule established by the Town Council; and  
318 3. A self-addressed, stamped envelope.

319 C. Complete applications must be reviewed by the CEO for compliance with this Code. Complete sign permit  
320 application submissions must be returned by the CEO after rendering a decision to the applicant if accompanied  
321 by a self addressed stamped envelope (SASE). Incomplete sign permit application submissions will only be  
322 returned to the applicant if accompanied by a SASE.

323 D. Unless the proposed sign is located within the shoreland overlay zone, the CEO must issue, deny, or seek a  
324 formal Planning Board opinion within fourteen (14) working days of receiving a complete sign permit application  
325 submission. If either a Planning Board opinion is sought or the proposed sign is located within the shoreland\_  
326 overlay zone, the CEO must issue or deny the application within thirty-five (35) calendar days of receiving a  
327 complete sign permit application submission.

328 E. The sign permit must be approved if the proposed sign conforms in every respect with the requirements of  
329 this Article. In the CEO's absence, or if no action is taken by the CEO within the above time limits, the Town  
330 manager, or the Town manager's designee, may approve or deny the sign permit application submission.

331 F. All new signs approved as of October 1, 1997 must display a numbered sign permit sticker provided by the  
332 Town in a visible location at the lower right-hand corner of the sign face. Failure to display such sign permit  
333 sticker on signs erected as of October 1, 1997 will be considered a violation of this Article. Replacement stickers  
334 are available from the CEO based on a fee schedule established by the Town Council.

335 **16.8.10.12 Nonconforming Existing Signs.**

336 A. All signs lawfully existing on October 1, 1997 that do not conform to the terms of this Article may be continued  
337 and maintained subject to Section 16.8.10.12B.2 but may neither be enlarged nor substantially altered except in  
338 conformity with this Article.

339 B. Lawfully nonconforming signs must be made to conform or be removed if any of the following circumstances  
340 occur, individually or in combination, for a consecutive three year time period:

- 341 1. The sign has ceased to be accurate by reason of vacancy or closure of the business which the sign  
342 advertises;  
343 2. The sign face is blank, illegible, obscured, painted over, concealed or otherwise not decipherable.

344 C. In no event may the degree of nonconformity of any sign or type of signage on any lot be increased.

345

346 **16.8.10.13 Sign Violation and Appeal.-**

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348 A. The CEO must notify and order the owner to immediately correct any sign that endangers public safety. Signs  
349 that endanger public safety include, but are not limited to, those which are dangerous by reason of structural  
350 defect or those that interfere or obstruct a driver's safe operation of a motor vehicle.

351 B. A nonconforming sign which is required to conform to the sign regulations per Section 16.8.10.12 must be  
352 brought into conformity.

353 C. Enforcement of the provisions of this Article is in accordance with Chapter 16.4 including 16.4.3.2.

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355 **16.4.3.2 Permits.**

356 The CEO is to issue required permits for building, occupancy, plumbing, electrical, signs, or such other as may  
357 be required. No permit will be issued unless the applicant / property owner is in complete compliance with the  
358 Town Code.  
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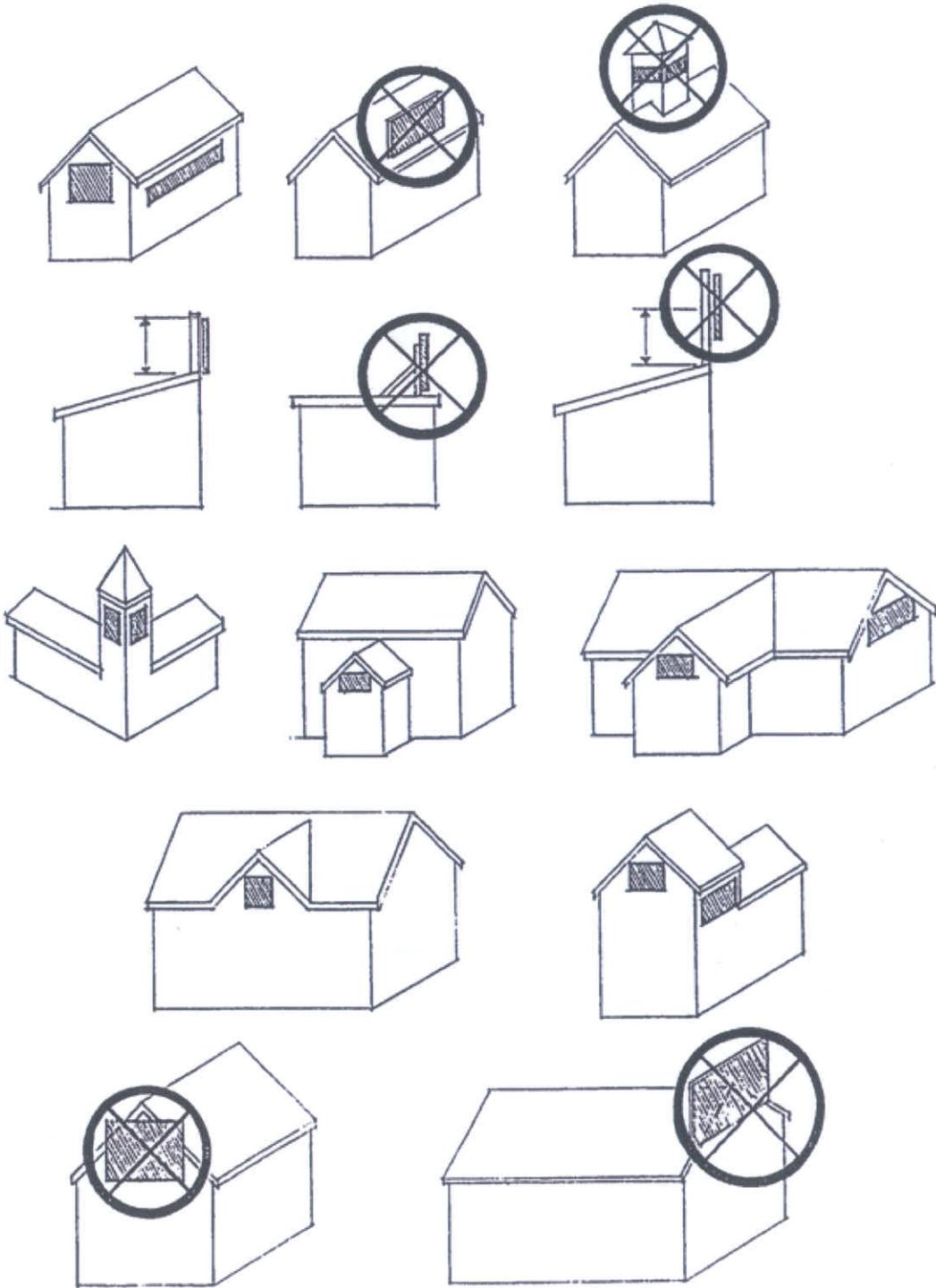
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362 (continued next page)

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These drawing are illustrative and meant to be an aid to the reader Please refer to Chapter 8, Article X, for full details Figure 3 - Chapter 16.8, Article X EXAMPLES of ALLOWED and PROHIBITED SIGN PLACEMENT



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**Chapter 16.4 ADMINISTRATION and ENFORCEMENT**

**16.4.1 Purpose.**

This chapter describes general administration and enforcement of the requirements of Title 16 of the Town Code.

**16.4.3 Code Enforcement Officer (CEO).**

**16.4.3.1 Responsibility.**

It is the duty of the Code Enforcement Officer or other person duly authorized by the Town to enforce the provisions of Title 16 of the Town Code.

**16.4.3.2 Permits.**

The CEO is to issue required permits for building, occupancy, plumbing, electrical, signs, or such other as may be required. No permit will be issued unless the applicant / property owner is in complete compliance with the Town Code.

**16.4.5.2 Applications for Permits or Approvals Involving Sites with a Violation.**

An application for a “building/regulated activity permit” (see Chapter 16.5), certificate of occupancy permit, sign permit, subdivision approval or development review approval will be denied for any property where a violation exists until such violation has been corrected or resolved. Violations related to a sign must be resolved within fourteen (14) days from notice of violation.

**16.4.5.8 Time Limit for Corrective Action.**

A. The time period within which a violation must be corrected as set forth in the notice of violation and order under Section 16.4.5.4 of this Section is thirty (30) days following receipt of the notice of the violation and order unless:

1. The CEO determines a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.
2. The CEO determines a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.
3. The CEO finds that in the case of a sign violation seven (7) days is appropriate due to the limited type of construction, three (3) days for free-standing and building façade mounted signs, and one (1) day for other types of signs.

3. The CEO finds the violator has been previously served a notice of violation and order for a similar violation within the last eighteen (18) months, in which case the time limit for corrective action must be no more than five days.

B. If a violator in a timely fashion files a completed administrative appeal application with the Town clerk as provided in Section 16.4.5.6, any period of time from date of receipt of such an appeal to date of decision of the BOA inclusive, is not counted as part of the cumulative time period described in this Section. If the BOA upholds the CEO's determination, the time line set forth in the notice of violation and order resumes beginning the day after the decision is rendered unless it is extended by the BOA.

**16.4.5.9 Penalties.**

A. The Code Enforcement Officer must impose the following penalties for the failure to correct a cited violation within the prescribed time set forth in the Notice:

1. Fine imposed: \$200.00 for the first seven day period the violation continues beyond the time specified for corrective action. Thereafter, each day the violation continues, a separate and specific violation with an additional minimum of \$100.00 per day penalty for each day of the continuing violation up to a maximum penalty imposed of \$2,500.00 for each specific violation or the maximum as provided by 30-A M.R.S. §4452, if greater.

431 2. When the violation set forth in the notice involves a sign violation of this Town Code, the penalty is: \$200.00  
432 per day for the first seven (7) day period of the violation.

433 \$500 per day for days thereafter not to exceed the maximum penalty imposed of \$2,500 for each  
434 specific violation or the maximum provided by 30-A M.R.S. § 4452, if greater.

435 2. When the Violation set forth in the ~~A~~notice involves any cutting of tree(s) or other vegetation in violation of  
436 Section 16.9.2.2 or 30-A M.R.S. §4452(3), the penalty provided by this Section will be imposed from the date of  
437 notification of the violation in writing in addition to the required corrective action set forth in the Section 16.4.5.4.  
438 B. After the time specified to correct the violation in the notice of violation and order passes, it is the  
439 responsibility of the violator to inform the Code Enforcement Officer in writing when the violation has been  
440 corrected and seek an inspection to verify the violation has been corrected. For the purposes of this Section, the  
441 violation will be assumed to have continued to exist uncorrected until the violator has informed the Code  
442 Enforcement Officer in writing that the violation has been corrected or the Code Enforcement Officer discovers  
443 through inspection of the premises that the violation has been corrected, whichever comes earlier.  
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446

#### 16.4.5.10 Consent Agreements.

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448 A. In special cases, particularly minor, unintentional violations that are unduly difficult to correct, the Town  
449 manager, with advice of the Code Enforcement Officer and Town Planner, is authorized to enter into a consent  
450 agreement with the violator to resolve the violation without further enforcement action or appeal. Consent  
451 agreements are not intended to allow a violator to substitute fines for corrective actions.  
452 B. Any such violation that is allowed to continue pursuant to a consent agreement is not granted the status of a  
453 nonconforming use. Any further actions by the violator with regard to the property must comply in all respects to  
454 the existing terms and provisions of this Code.  
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460 Page | 127  
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## Chapter 16.5 BUILDING/REGULATED ACTIVITY PERMITS

### 16.5.1 Purpose.

465 Building/regulated activity permits and certificates of occupancy are required to control development to insure  
466 that such development conforms with Title 16 of theis Town Code. This chapter outlines the requirements of this  
467 process.  
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### 16.5.2 Requirements.

#### 16.5.2.1. Permit.

471 No building, including municipal buildings, or structure including signs may be erected, moved, added to or  
472 otherwise structurally altered and no regulated activity is to commence without a permit, issued by the Code  
473 Enforcement Officer and in compliance with all applicable Town Code, state and federal requirements. No permit  
474 may be issued unless the property is in complete compliance with this Town Code.  
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482 DEFINITIONS  
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### ELECTRONIC MESSAGE CENTER (aka "ELECTRONIC MESSAGE BOARD")

484 An electrically activated sign whose message content, either in whole or in part,  
485 may be changed by means of electronic programming. The message content may  
486 be displayed as pixels on a display surface, which pixels may consist of  
487 incandescent lamps, reflective disks, light-emitting diodes (LEDs), liquid crystal  
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489 components (LCDs), neon or plasma light segments, or various combinations of the  
490 above.

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498 **Other Sign Related Section Amendments**

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503 **Section 5.3.5.B Hearing for License for food (Victualer) License**

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507 **Chapter 5.3 FOOD SERVICE ESTABLISHMENTS**

508 **5.3.1 Title.**

509 This chapter is known as the Town victualers, innkeepers and lodging house ordinances, and referred  
510 to hereafter as “this chapter.”

511 **5.3.2 Purpose.**

512 The purpose of this chapter is to control the issuance of licenses to the various food service  
513 establishments in the Town.

514 **5.3.3 Definitions.**

515 For the purposes of this chapter, the following definitions apply:

516 **Innkeeper** means a person who keeps an inn, bed and breakfast establishment, hotel, or motel to  
517 provide lodging to travelers and others for compensation.

518 **Licensing board** means the municipal officers of the Town of Kittery.

519 **Lodging house** means a building in which three or more rooms are rented, but does not include  
520 (1) a house where lodgings are rented to persons within the second degree of kindred to the person  
521 operating the lodging house;

522 (2) the dormitories of charitable, educational or philanthropic institutions; or (3) the emergency use of  
523 private dwelling houses at the time of conventions or similar public gatherings.

524 **Premises** means all lands, buildings, structures, places and also the equipment and appurtenances  
525 connected or used therewith in any business, and also any personal property which is either affixed to,  
526 or is otherwise used in connection with, any such business conducted on such premises.

527 **Victualer** means a person who serves food or drink prepared for consumption on the premises by the  
528 public.

529 **5.3.4 License Required.**

530 No person may operate as a victualer within the Town unless licensed to do so by the Town, unless  
531 specifically waived by the Town. Applications for victualers’ licenses are to be made in writing upon  
532 forms supplied by the Town Clerk and state the name of the applicant; his/her residence and mailing  
533 addresses; the name of the business to be conducted; his/her business address; the location(s) to be  
534 used; residence and business telephone numbers; and the date of the application. Upon receipt of the  
535 application, the Town Clerk shall refer the same to the Code Enforcement Officer for a determination  
536 to assure compliance with the ordinances, statutes and regulations of the Town of Kittery and state of  
537 Maine.

538  
539 (NOTE: This includes compliance with the sign ordinance.)

541 **5.3.5 Hearing.**

542 A. The Town Council shall hold a public hearing on any original application for a license for food  
543 service within thirty (30) days of the date the request was received, at which time the testimony of the

544 applicant and that of any interested members of the public is to be taken. The applicant must be  
545 notified of the hearing date.

546 **B. The municipal officers are to grant a license unless they find that issuance of such license will be**  
547 **detrimental to the public health, safety or welfare, or would be in violation of any Town or state**  
548 **ordinance, rules or regulations.**

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## 560 **Chapter 5.4 GARAGE SALES**

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### 562 **5.4.9 Advertising.**

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A. Signs Permitted. Only the following specified signs may be displayed in relation to a pending  
garage sale:

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1. Two Signs Permitted. Two signs of not more than four square feet are permitted to be displayed on  
the property of the residence where the garage sale is being conducted.

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2. Directional Signs. Two signs of not more than two square feet each are permitted, provided written  
permission to erect said signs is received from the property owners upon whose property such signs  
are to be placed. Each sign under this paragraph is to contain the name of the person conducting the  
sale, or the number of the permit granted for the sale.

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B. Time Limitations. No sign or other form of advertisement may be exhibited for more than two days  
prior to the day such sale is to commence.

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C. Removal of Signs. Signs must be removed within ~~forty-eight (48)~~ twenty four (24) hours of the end  
of the period which the sale is allowed pursuant to the permit.

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## 580 **Chapter 5.7 SIDEWALK SALES**

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### 581 **5.7.1 Title.**

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This chapter is known as the sidewalk sales ordinance.

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### 584 **5.7.6 Submission Requirements for a Town-wide Sidewalk Sales Event.**

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Submission of a completed Town-wide sidewalk sales event application indicating:

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A. Dates of the year requested for up to a total of five sidewalk sales events per calendar year, of  
which no single sidewalk sale event may exceed four consecutive days;

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B. Proof of broad business community sponsorship for the event as evidenced by signatures of five  
landlords of tenants engaged in retail trade or merchants primarily engaged in retail trade;

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### 591 **5.7.12 Permits Required—Signs, Tents and Other Structures.**

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No special permit is required for conducting sidewalk sales in accordance with the Town-approved  
sidewalk sales site plan on a Town Council-approved sidewalk sales event date.

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All temporary signs and banners must be permitted by the Code Enforcement Officer in accordance  
with Article X of Chapter 16.8. **One temporary sign or banner per participating site in addition to that**  
**normally allowed** may be permitted for each sidewalk sales event. Sign applications, accompanied by

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598 application fees, for such additional signage are to be made to the Code Enforcement Officer well in  
599 advance of the actual sidewalk sales event.

600 All temporary structures, such as tents, that will be removed at the conclusion of the sidewalk sales  
601 event and are shown on the Town-approved sidewalk sales site plan do not require building/regulating  
602 activity permits. Other temporary structures require building/regulating activity permits.

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End Town Code Amendments

*ENACTMENT ORDINANCE*

Title 16.8 Article X Signs

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**AN ORDINANCE** amending Town Code Title 16.8 Article X. Signs Sections 16.8.10.1 Purpose and 16.8.10.2 General Requirements.

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

**WHEREAS**, clarification is necessary to ensure the Town implements adopted Town Comprehensive Plan vision related to Town character and appearance impacted by signs.

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

**NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A, M.R.S. §3001, AND TOWN CHARTER SECTION 2.14, THE TOWN OF KITTERY HEREBY ORDAINS REVISION TO TOWN CODE TITLE 16.8, ARTICLE X. SIGNS AND SECTIONS 16.8.10.1 PURPOSE AND 16.8.10.2 GENERAL REQUIREMENTS.

**INTRODUCED** and read in a public session of the Town Council on the \_\_ day of \_\_\_\_\_, 2014, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and passed by a vote of \_\_\_\_\_-.

**THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery, Maine on the \_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ {NAME}, Chairperson

**Attest:** Maryann Place, Town Clerk



## TOWN OF KITTERY

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

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### REPORT TO PLANNING BOARD

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Meeting Date: June 26, 2014  
From: Emily DiFranco, Project Manager FB Environmental Associates  
Jessa Kellogg, Shoreland/Environmental Resource Officer  
Subject: **Annual municipal update of the Spruce Creek Watershed Improvement Project**

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#### EXECUTIVE SUMMARY

The Town of Kittery is currently in Phase III of the Spruce Creek Watershed Improvement Project (SCWIP), funded by section 319 of the Clean Water Act. As part of the grant requirements the Town of Kittery must update municipal staff annually on the progress of the project. Emily DiFranco, the project manager from FB Environmental Associates spearheading this project, will briefly highlight the recent past achievements and future plans.

#### BACKGROUND

The SCWIP represents a broad collaborative effort between local, state and federal government, the Spruce Creek watershed communities, the private sector and a local citizen-based watershed group, the Spruce Creek Association. This two-year initiative to reduce bacteria, nutrients, toxic chemicals, sediments and habitat alterations will improve the health of the Spruce Creek watershed. These pollutants are the primary sources of impairments identified by federal, state and local assessments and pose the greatest threat to human and ecological health. Section 319 funding will enable this projects' partners to continue to implement an innovative stormwater retrofit and low impact development (LID) implementation program addressing at least four sites, conduct an agency-assisted sanitary survey and Illicit Discharge Detection and Elimination Program for septic systems, continue a highly-successful cost-sharing residential conservation practices program targeting several hundred individuals, and conduct innovative public outreach campaigns to reach residents and many of the more than three million annual visitors to the watershed. Reductions of bacteria (load reduction), sediment (tons/year), nitrogen (lbs/yr) and phosphorus (lbs/year) will be estimated for NPS sites treated with BMPs.

The SCWIP Phase III is guided by the project steering committee including the Town of Kittery (including municipal staff, Shellfish Commission, and Conservation Commission), Town of Eliot, Spruce Creek Association (SCA), local business owners, Maine DEP, and Maine DMR.





**Spruce Creek Action Plan: Impervious Cover and Stormwater (2008 and 2014)**

Action Item	Responsible Party										Schedule (2008)	Status of Task	(as of February 2014)	Next Steps	New Schedule (2014)	Approximate Annual Cost							
	Priority 2008	Priority 2014	SCA	YCSWCD	Land Trust	Land School	Land Church	ME DEP Ltd	Other Federal	Town of Spruce							Town of Edinburg	Volunteer					
<b>IMPERVIOUS COVER AND STORMWATER</b>																							
Encourage residential stormwater prevention practices (ex: rain gardens/barris) and educate homeowners about lawn alternatives	H	21	X	X				X	X	X	X	X	X	X	X	X	X	Immediately and ongoing	Over 50 residential BMPs have been installed since 2008; multiple educational workshops have been held	--	Continue residential BMP program. Target specific neighborhoods identified as "hotspots" in bacteria sampling projects. Encourage "neighborhood" projects.	Immediately and ongoing	\$15,000
Develop a comprehensive stormwater mitigation plan	H	17	X	X				X	X	X	X	X	X	X	X	X	X	Beginning in 2008	--	Develop a comprehensive stormwater mitigation plan	Beginning in 2015	\$75,000	
Create additional developer incentives	H	11	X					X	X	X	X	X	X	X	X	X	X	Beginning in 2008 and ongoing	--	Create additional developer incentives for installing BMPs or hosting educational workshops on their properties.	Beginning in 2015	\$3,000	
Create cost estimates for existing stormwater retrofit plan.	M	10	X	X				X	X	X	X	X	X	X	X	X	X	Beginning in 2008	Costs were estimated for each recommended BMP	--	Re-visit 2008 stormwater survey.	2015	\$15,000
Recognize / award businesses using impervious cover reduction practices.	M	9	X					X	X	X	X	X	X	X	X	X	X	Beginning in 2008	Local businesses participating in BMP program through the ME DEP 319 grant have been recognized in press releases, on website, and through signage.	--	Continue to recognize businesses using IC reduction practices; work with Town of Kittery and SCA to develop a "Blue Business Award" for businesses implementing BMPs	Beginning in 2015 and ongoing	\$1,500
Identify available resources for stormwater retrofit funding.	M	8	X	X				X	X	X	X	X	X	X	X	X	X	Beginning in 2008	--	Identify available resources for stormwater retrofit funding.	2014	\$2,000	
Develop a stormwater ordinance.		7	X	X					X	X	X	X	X	X	X	X	X	--	--	Develop a stormwater ordinance.	2016-2017	\$20,000	
Inventory % lawn area in the watershed to determine overall IC impacts	M	6	X	X				X	X	X	X	X	X	X	X	X	X	2009	--	Inventory % lawn area in the watershed to determine overall IC impacts	2016	\$5,000	
Conduct ordinance review to determine if requirements provide adequate protections.	M	6	X					X	X	X	X	X	X	X	X	X	X	Beginning in 2008	--	Conduct ordinance review to determine if requirements provide adequate protections.	2015	\$1,000	
Contractor and Landscaper Certification Program	--	6	X	X				X	X	X	X	X	X	X	X	X	X	--	--	Contractor and Landscaper Certification Program	2016	\$3,500	
Research stormwater ordinance options	--	5	X	X				X	X	X	X	X	X	X	X	X	X	--	--	Research stormwater utility ordinance options.	2015-2016	\$5,000	
Conduct public outreach and encourage more business involvement	H	3	X					X	X	X	X	X	X	X	X	X	X	Beginning in 2008	Multiple educational workshops and outreach activities have been conducted since 2008.	--	Expand public outreach program with a focus on local businesses.	Beginning in 2015	\$5,000
Coordinate with Kittery Planning Departments to hold pre-development/permitting seminars for developers.	M	0	X					X	X	X	X	X	X	X	X	X	X	Beginning in 2009	--	Set up meeting with planning department to discuss this task.	2015	\$1,000	
Visit UNH Stormwater Center to learn more about BMPs.	H	0	X					X	X	X	X	X	X	X	X	X	X	Immediately	Consultations and town representatives have attended workshops at the UNHSWC.	--	Organize a field trip to UNHSWC for municipal staff.	2015	\$1,500
Continue working with ME DOT's SWQPP program.	M	0						X	X	X	X	X	X	X	X	X	X	Ongoing	Work is ongoing.	--	Continue working with ME DOT's SWQPP program.	Ongoing	N/A
Conduct a watershed NPS survey and update priority sites from original list from 2005.		0	X					X	X	X	X	X	X	X	X	X	X	--	--	Conduct a watershed NPS survey and update priority sites from original list from 2005.	2014-2015	\$15,000	
<p align="center">Progress has been made on Action Item Proposed in 2014</p> <p align="center">SCA = Spruce Creek Association YCSWCD = York County Soil &amp; Water Conservation District</p>																							

Spruce Creek Action Plan: Conserved Lands (2008 and 2014)

Action Items	Priority (2014)	Responsible Party										Funding Source	Schedule (2008)	Status of Task (as of February 2014)	Next Steps	New Schedule (2014)	Approx Annual Cost				
		SCA	YCSWCD	Land Trusts	Towns	Schools	Land Owners	ME DEP 319	Other Federal	Other State	Private							Town of Kittery	Volunteer		
<b>CONSERVED LANDS</b>																					
Coordinate with local land trusts to acquire land to protect riparian areas.	H	34		X	X	X		X				X	X	X			Beginning in 2008	--	Continue to work with local land trust to acquire land to protect riparian areas.	Ongoing	N/A
Develop a Watershed Committee (including representatives from the town, land trust, conservation commission, SCA, and other.	--	25	X	X	X	X	X	X	X	X		X	X	X			--	--	Develop a Watershed Committee (including representatives from the town, land trust, conservation commission, SCA, and other.	Beginning 2014	\$4,000
Work with open space committee and land trusts to strategize protection of watershed open space and develop a watershed-based open space plan.	H	20		X		X		X				X		X			Beginning in 2008	--	Organize meeting of the open space committee, Kittery Land Trust, SCA, and the Town; this meeting will lead to the development of a prioritized list of parcels to protect and the development of a watershed-based open space plan.	2016-2018	\$25,000
Use conservation or open space subdivisions to reduce numbers of lots in the shoreland zone.	M	18	X		X	X		X				X		X			Beginning in 2008	--	Use conservation or open space subdivisions to reduce numbers of lots in the shoreland zone.	Beginning 2014	N/A
Encourage "green infrastructure" to reduce municipal costs.	H	17	X	X	X	X								X			Summer 2007 and Ongoing	Two BMPs have been installed on Town Hall property since 2008.	Develop prioritized list of other town-owned property to install BMPs.	2015	\$3,000
Look into allowing greater public access to watershed open spaces (and consider the potential negative effects of doing so).	M	6	X		X	X		X				X	X	X			Beginning in 2008	--	Look into allowing greater public access to watershed open spaces (consider the potential negative effects of doing so).	Beginning 2014	\$500
<p><b>Progress has been made on Action Item Proposed in 2014</b></p> <p>SCA = Spruce Creek Association YCSWCD = York County Soil &amp; Water</p>																					

Spruce Creek Action Plan: Water Quality Assessment (2008 and 2014)

Action Item	Priority										Schedule (2008)	Status of Task (as of February 2014)	Next Steps	New Schedule (2014)	
	Priority (2008)	Priority (2014)	SCA	YCSWCD	Land Trust	Town	Schools	Land Owners	ME DEP 319	Other Federal					Other State
WATER QUALITY ASSESSMENT	Responsible Party	Funding Source	Schedule (2008)	Status of Task (as of February 2014)	Next Steps	New Schedule (2014)									
Use bacteria source tracking techniques such as smoke tests, dye tests, and catchbasin sampling to find storm/sewer cross connections or illicit discharges to the storm drain system.			--	Annual projects since 2009	Use bacteria source tracking techniques such as smoke tests, dye tests, and catchbasin sampling to find storm/sewer cross connections or illicit discharges to the storm drain system.	Annual									
Conduct stormwater monitoring (ex: wet/dry weather, low tide bacteria sampling)			H 17	Annual town-funded projects since 2009	Continue annual stormwater monitoring programs.	Continue annual projects									
Research impact of Navy yard and Piscataqua River on Spruce Creek and look into need for related sampling.			M 16	--	Research impact of Navy yard and Piscataqua River on Spruce Creek and look into need for related sampling.	Beginning 2014									
Conduct baseline water quality analysis of the main stem of Spruce Creek			--	2012 and 2013	Continue to collect data for a baseline water quality analysis of the main stem of Spruce Creek.	2014-2016									
Develop a multi-parameter water quality sampling program in Spruce Creek			--	Some data collected in 2012 and 2013	Develop a multi-parameter water quality sampling program in Spruce Creek	Annual									
Utilize canine detection to determine "hotspots" of human sources of bacteria throughout the watershed			--	2012, 2013, and ongoing	Utilize canine detection to determine "hotspots" of human sources of bacteria throughout the watershed	Annual									
Conduct baseline sediment study (including benthic communities)			H 8	--	Conduct baseline sediment study (including benthic communities)	2016-2017									
Explore funding options to increase volunteer efficiency and purchase new monitoring equipment (ex: data sondes, webcam).			H 6	--	Explore funding options to increase volunteer efficiency and purchase new monitoring equipment (ex: data sondes, webcam).	Immediately and Ongoing									
Create a watershed database for use with town GIS data layers			H 5	Beginning spring 2008	Continue to update interactive map with additional BMPs. Work with Town GIS staff to incorporate all water quality information into town GIS layer.	Beginning fall 2014									
Establish a chemical spill assessment program.			M 2	2009	Establish a chemical spill assessment program.	2015									
Link management strategies to measurable results and provide periodic updates on SCA website			H 0	SCA website updated in 2014	Continue to update SCA website.	Immediately and Ongoing									
Create photo documentation of baseline shoreline conditions.			H 0	Stormwater outfalls were documented in 2012	Create photo slideshow of baseline shoreline conditions including location of stormwater outfalls and tidal restrictions.	2015									
<p>Progress has been made on Action Item Proposed in 2014</p> <p>SCA = Spruce Creek Association YCSWCD = York County Soil &amp; Water Conservation</p>															

Spruce Creek Action Plan: Other Issues (2008 and 2014)

Action Items	Priority										Schedule (2008)	Status of Task (as of February 2014)	Next Steps	New Schedule (2014)	Approx Annual Cost					
	Priority (2008)	Priority (2014)	SCA	YCSWCD	Land Tracts	Town	Schools	Land Owners	ME/DEP 310	Other Federal						Other State	Town of Kittyey	Private	Volunteer	
<b>OTHER ISSUES</b>																				
Workshops for planning boards and all town boards/commissions/staff and Port Authority	--	26	x	x	x			x	x	x						--	--	Workshops for planning boards and all town boards/commissions/staff and Port Authority.	2015-2017	\$2,500
Create a Watershed Committee charged with carrying out the plan (town/SCA/ect)	--	21	x	x	x	x	x	x	x	x						--	--	Create a Watershed Committee charged with carrying out the plan (town/SCA/ect).	Beginning 2015	\$1,500
Assess potential impacts of agriculture in the watershed by surveying the locations and numbers of livestock and horses. Work with farmers on improved animal management practices.		H 19	x	x						x						Beginning 2008	--	Develop an education program targeting agricultural operations in the SC watershed	2016-2017	\$5,000
Prioritize sites for tidal restriction removal		M 18	x					x	x	x						Beginning 2008	--	Conduct a survey of all major tidal restrictions in the SC watershed and prioritize them for removal.	2015-2016	\$25,000
Promote pet waste management (ex create dog park, post pet waste bags in shoreland zone)		H 15	x					x	x	x						Immediately and Ongoing	--	Promote pet waste management (ex create dog park, post pet waste bags in shoreland zone).	Beginning 2015	\$2,000
Increase Impact Fees		-- 12								x						--	--	Increase impact fees	Beginning 2015	TBD
<b>Progress has been made on Action Item</b> <b>Proposed in 2014</b>																				
SCA = Spruce Creek Association																				
YCSWCD = York County Soil & Water Conservation District																				

**Town of Kittery Maine  
Town Planning Board Meeting  
June 26, 2014**

**Town Code Amendment - Title 16.8.10.2.C Signs – General Requirements.**

Action: review amendment and schedule a public hearing. Proposed amendment allows for the limited use of Light-emitting diode (LED) lights in signage.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Discussion	6/26/2014	
YES	Schedule Public Hearing		PENDING
YES	Public Hearing		PENDING
	Town Council/Planning Board Joint Workshop		PENDING
YES	Review/Recommendation to Town Council		PENDING

**Background**

See Ordinance Revision Memorandum, Item 5

**Recommendation**

Schedule a public hearing