Town of Kittery
Planning Board Workshop
September 29, 2016

Economic Development Committee

Discussion: No formal action. The Economic Development Committee will continue a discussion regarding a vision for the Business Park, and present proposed amendments to Title 16, Land Use and Development Code, to address opportunities and restrictions for property tax growth in the Business Park Zone

PROJECT TRACKING

ACTION	COMMENTS	STATUS
Joint Workshop with Planning Board	6/23/2016; Scheduled for 9/29/2016	Held
Joint Workshop with Town Council	8/8/2016	Held

Background

The Planning Board held a joint workshop with the Economic Development Committee (EDC) on 6/23/2016 to discuss a vision for the Business Park along Route 236. During the discussion, several elements of the Business Park Zone (B-PK) were identified as barriers to the vision, specifically the minimum lot size and required wetland setbacks. At that time, the Planning Board recommended the EDC identify which exact standards they proposed to change prior to the next workshop with the Planning Board.

Town Council also held a joint workshop with the EDC regarding this same manner on 8/8/2016.

The EDC submitted a packet of proposed Title 16 amendments to the Planning Board during the public comment section of the July 28, 2016 Planning Board meeting (attached). The following is a preliminary Staff review of these proposed amendments.

Review

General comments

1. The introduction appears to have omitted the property at no.1 Route 236 owned by Gearasin Family Realty, LLC, David Garvey, Map 21 Lot 18, which is within the Business Park zone and the TIF district #3. Additionally there are three more properties within the TIF district but these are not within the Business Park Zone; Map/Lots 29-01; 13-05-9; and 13-05-10. A map of TIF #3 is attached for your reference.
2. It is not clear from the narrative submitted the relationship between the TIF and the proposed amendments.
3. A chart comparing the permitted and special exception uses between the Business Park and the Business Local, Business Local 1 and Commercial Zones is attached. The current organization of permitted and special exception uses makes a comparison difficult due to a lack of uniformity in title and groupings of uses. For example, a day care facility appears to be permitted only in the commercial zones, however this is because day care facility is included with "Schools…" in the B-L and B-L1 zones, and possibly the B-P, depending on the curriculum of a "day nursery". Given those limitations, it appears the primary distinctions between the B-P and other business and commercial zones is the permitted uses of cluster residential development, light industry.

4. It's not clear from the narrative in what manner and degree does the proposed amendments increase the development and market potential for the business park properties. The proposed changes seem arbitrary.

Title 16.3.2.10 Business – Park B-P

5. The notion of residential mixed with large-scale businesses (i.e. a large brewery, other large scale industry typical of a "business park") might need to be vetted and re-examined before making changes to the zoning. The *purpose* of the zone seems not to include large-scale and/or intensive industrial commercial uses that are typical of traditional business parks.

   A. Purpose.
   To encourage investment that promotes development of a high quality park-like setting for both the business and residential communities. Cluster mixed-use development must be used on larger tracts of land where offices, retail sales, services, lodging, open space, housing and light manufacturing space are blended with residential and moderate entertainment to foster general business growth and a sense of community. The intent of cluster mixed-use development is to provide a more efficient use of land than might be obtained through segregated development procedures.

   It is also not evident today that the land use model that was adopted for the town's business park zone in 2008 makes sense and will yield a feasible or productive mixed residential and business sector.
6. We currently have breweries operating in town and permitted as a *Specialty Food and/or Beverage Facility*. The addition of *Brewery* as a permitted use brings up two potential issues. First, the definition proposed and perhaps the existing definition for *Specialty Food and/or Beverage Facility* need to have greater specificity so there is a clear distinction between the uses. In addition, should there be no restrictions on the size and scale of the brewery? Secondly, it seems awkward to be considering zoning changes to allow a use that has been made clear is part of one business park property owner, rather than identify a large number of similarly scaled and type uses to be considered.
7. It is not evident why there would be a need to have the addition of a special net residential acreage calculations (Net Business Park for the business park. Does not appear to be an equitable solution, nor necessary to have an increase residential density.
8. The changes proposed to the cluster open space requirements, should be considered in the same manner as any change to the permitted uses, in the context of the current stated purpose of the zone (see item 5 above) and if the current purpose is still relevant today. The current purpose calls for "park like setting". Reducing the required open space is not consistent with the zone's stated purpose.
9. Changes to the permitted building height from 40 feet to 60 feet would have an adverse effect on the Town's ISO fire service rating without a large investment in a new ladder truck. Would this be something the town would absorb? And is such an investment make sense for only a small sector of town if the building height was not similarly increased in other zones?

Proposed Amendments to Town of Kittery, Maine – Town Code – Title 16 Land Use

August 11, 2016

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Kittery Business Park Zone and Related Town Code Amendments Within The Kittery Business Park Municipal Development District # 3 (MDD)

Introduction / Purpose

- *Kittery Business Park – Municipal Development District #3 (MDD) was adopted by Kittery Town Council on December 10, 2010 and approved by the State of Maine.*
- *The District includes the properties approximately 500 feet west of Interstate 95 between Dennett Road and Maine Route 236. (See Enclosure 1). This includes:*
    - *Cullen - (22 acres)*
      Map 6 – Lot 15 B
      Map 6 – Lot 16 A;
      Map 13 – Lot 4
    - *Dennett - (83 acres)*
      Map 12- Lot 12-3-1

  These properties comprise the majority of the undeveloped land within the Business Park.
- *MDD's purpose is to establish a reserve account of money to pay for public improvements in the District.*
- *Public improvements may be streets, utilities, sewer and water facilities, sidewalks, trees, lighting, etc.*
- *Funds for the reserve account are derived from the incremental increase in property tax revenues over the initial (i.e., base) property value.*
- *Funds may be used to finance / pay for the publicly beneficial capital improvements and administrative costs; this is called "tax increment financing".*
- *The MMD overlays three Kittery Land Use Zones including the:*
    - *Business Park (B-P) Zone*
    - *Residential – Suburban (R-S) Zone*
    - *Commercial – 2 (C-2) Zone*

  The Kittery Land Use Code contains development standards that regulate development within the Zones. Key factors for development in the Business Park (B-P) Zone address:
    Permitted Uses
    Cluster mixed-use development
    Cluster residential development
    Buildable Acreage
    Open Space and Setback Requirements, etc.

The following are proposed amendments to the Kittery Town Code Title 16 Land Use to better meet Town economic development goals in the adopted Town Comprehensive Plan and the Kittery Business Park- Municipal Development District # 3 Plan.
Their purpose is to:

1. *Respond to market / user demand and current economic conditions.*
2. *Promote business and related development more appropriate for a business park.*
3. *Better enable use of the currently permitted cluster residential and cluster mixed-uses and related design standards within the Business Park, Residential-Suburban and Commercial – 2 land use zones that set development standards within the Kittery Business Park Municipal Development District #3.*

Specific amendments are to:

1. *Expand permitted business land uses in the Business Park.*
2. *Define Net Business Park Acreage to enable limited business park land to be used for optimum business development.*
3. *Set appropriate business park development standards for open space and wetland setbacks.*
4. *Set building heights.*
5. *Enable the use of flat roofs where the structure is not obtrusive and where visual impact can be shown to be minimal.*
6. *Allow business related residential development within the Business Park and/or the Residential – Suburban Zones and also within the Business Park Development District to be built at one dwelling unit per 4,000 square feet of Net Business Park Acreage, rather than per 10,000 square feet.*

Table of Amendment Parts

I. Business Park Zone Amendments
II. Cluster Residential and Mixed Use Residential Cluster Development Amendments
III. Residential – Suburban Zone Amendments Related to the Business Park
IV. Definitions – Net Acreage

Key

Black - Existing text
Yellow - Sections particularly applicable to development within the Business Park District.
Red - Underlined text – added text.
Red - Strick out text - deleted text.

Part I Business Park Zone Amendments

Amendment Rational or Comment: Purpose:

Amendments to this section of the Land Use Code are aimed to:

1. *Expand permitted business land uses in the Business Park.*
2. *Allow business related residential development (i.e., dwellings) within the Business Park Zone to be built at one dwelling unit per 4,000 square feet of Net Business Park acreage, rather than per 10,000 square feet. This will enable residents the possibility to walk to work and take advantage of trails and other amenities.*
3. *Define Net Business Park Acreage to enable limited business park land to be used for optimum business development.*
4. *Increase land use coverage appropriate in a Business Park.*
5. *Set appropriate business park standards for open space and wetland setbacks.*
6. *Set building height at 60 feet rather make discretionary.*
7. *Enable the use of flat roofs where the structure is not obtrusive and where visual impact can be shown to be minimal.*

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RECODIFICATION - ORDAINMENT – 07/26/2010 (With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14; 1/28/15; 9/28/15;10/14/15;10/26/15)

16.3 LAND USE ZONE REGULATIONS Page | 71

16.3.2.10 Business – Park B-P.

A. Purpose.

To encourage investment that promotes development of a high quality park-like setting for both the business and residential communities. Cluster mixed-use development must be used on larger tracts of land where offices, retail sales, services, lodging, open space, housing and light manufacturing space are blended with residential and moderate entertainment to foster general business growth and a sense of community. The intent of cluster mixed-use development is to provide a more efficient use of land than might be obtained through segregated development procedures.

B. Permitted Uses.

1. The following land uses are permitted for projects that are cluster mixed-use developments:

a. Art studio/gallery;
b. Bakery
c. Brewery and/or distillery facility;
d~~b~~. Building materials and garden supply;
e~~c~~. Business and professional offices;
f~~d~~. Business services;
g. Commercial greenhouse;
h~~e~~. Commercial parking lot or parking garage;
i. Construction services, excluding construction lots.
j~~f~~. Conference center;
k~~g~~. Cluster residential development;
l. Dwellings, excluding mobile homes, but including a Modular Home in a single-family, duplex, and/or multi-unit stand-alone residential and or Mixed-Use Building configuration for sale or rent.
m. Garden supply;
n~~h~~. Grocery, food store, convenience store, including gas station;
o~~i~~. Light industry;
p~~j~~. Mass transit station;
q~~k~~. Mechanical services, excluding junkyard;
r~~l~~. Motel, hotel, rooming house, inn;
s. Nursery, agricultural;

tm. Personal service;
un. Place of public assembly, including theater;
vo. Public open space recreational uses, recreational facilities, and selected commercial recreation;
wp. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
xq. Repair services;
yr. Research and development;
zs. Restaurant;
aat. Retail uses and wholesale businesses excluding used car lots and junkyards;
bbu. School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
cc. Self-storage facility;
ddv. Shops in pursuit of trade;

eew. Veterinary hospital;
ffx. Warehousing and storage; and
ggy. Specialty food and/or beverage facility.
2. The following land uses are permitted for projects that are not cluster mixed-use developments:
a. Business and professional offices;
b. Accessory uses and buildings; and
c. Business services.
C. Special Exception Uses. None
a. Transportation terminal, excluding truck stops;

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D. Standards.
The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development. Multiple-parcel development is subject to Chapter 16.10, Article II, Master Site Development Plan:
1. Design and performance standards in Chapters 16.8 and 16.9. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.
2. Except for cluster mixed-use developments, the following space standards apply.
Minimum land area per dwelling unit 4,000~~40,000~~ square feet of net business park acreage
with sewer service
Minimum lot size 120,000 square feet
Minimum street frontage 150 feet
Minimum front yard 50 feet
Minimum rear and side yards 30 feet*
*Except as may be required by the buffer provisions
of this Code, and except where the side and/or rear yards
of the proposed nonresidential-use abut a residential district
or use, in which case a minimum of forty (40) feet is required.
Patios, sheds, parking lots and golf courses must have a minimum setback of 50 feet from streams, water bodies and wetlands.
Maximum building height 60 ~~40~~ feet. ~~In the Business Park (BP) zone, the maximum building height is forty (40) feet. If the Planning Board finds that provisions for fire safety are adequate to allow buildings of greater height, then the Board may allow a building height of up to sixty (60) feet as a part of the development plan review and approval process.~~
Maximum building and outdoor stored material coverage ~~50~~ 75 percent
3. Cluster Mixed Use and Cluster Residential Development. In a cluster mixed-use and cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that: (Ordained 9-28-15)
i. Minimum Principal building separation as required by the Fire Chief, but not less than 10 feet.
4. Other standards.

a. Parking.
All new or revised parking must be visually screened through the use of landscaping, earthen berms, stone retaining walls and/or fencing from adjacent public streets and abutting properties (see the Design Handbook for appropriate examples).
b. Building Design Standards.
Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. The front elevation must contain one or more of the following elements: (i) windows, or (ii) display cases (see design handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques must be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

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i. Exterior Building Materials and Details.
Building materials and details strongly define a project's architectural style and overall character (see the Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.
ii. Roofs.
In the Business Park, A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable or that the structure is not obtrusive and where visual impact can be shown to be minimal. The Board reserves the right to evaluate such on each and all specific proposals. Acceptable roof styles are gabled, gambrel, and hipped roofs. Shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Flat roofs may be considered in context where it can be demonstrated to the Planning Board's satisfaction that the structure is not obtrusive and where visual impact can be shown to be minimal. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (see the Design Handbook for examples of appropriate treatments).
iii. Loading Docks and Overhead Doors.
Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.
c. Landscaping Standards.
To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8, the following landscaping requirements apply to new and modified existing developments:
i. Landscape Planter Strip.
Landscape planter strips, interior and exterior to the project, are encouraged. A minimum of forty (40) feet in depth of vegetated landscape buffer must be provided adjacent to all public right-of-way lines that are common to parcel exterior boundary lines and include the following landscape elements:
(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.
(B) Street Side Trees. In the event project development is to be approved based on a development master plan, development standards are to be applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided.
Development not based on a master development plan must, as a minimum, provide one street tree for each twenty-five (25) feet of street frontage.
The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (see the Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended

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street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) Planter Strip. Shrubs and flowering perennials must be planted at a minimum of fifteen (15) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (see the Design Handbook for examples of appropriate treatments).

ii. Outdoor Service and Storage Areas.

Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (see the Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards.

Sidewalks and roadways internal to the parcel must provide adequate pedestrian and traffic circulation both internally and externally, and provide safe and sufficient connectivity to the surrounding neighborhoods. (See the Design Handbook for appropriate examples).

e. Open Space Standards.

Open space must be provided as a percentage of the total parcel area, including freshwater wetlands, water bodies, streams, and setbacks. Twenty-five percent (25%) of each parcel, or individual lot if applicable, must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be situated to create an attractive environment on the site, minimize environmental impacts, and protect significant natural features and resources. Where possible:

i. Individual large, healthy trees and areas with mature tree cover will be included in the open space; and

ii. The open space will be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

E. Net Business Park Acreage Calculation

To calculate the net business park acreage the land area listed below must be subtracted from a parcel's gross area. Where land areas to be subtracted overlap, the area therein is subtracted once.

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

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

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

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

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

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

G. All soils with a drainage class of poorly drained, and/or very poorly drained as defined in Title 16.2 Soils.

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

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

J. All land within a Resource Protection Overlay Zone not included in 16.7.8.2.A -L.

Amendment Rational or Comment: Purpose:

Amendments to this section of the Land Use Code are aimed to define land uses that currently are not defined in the Code.

Chapter 16.2 DEFINITIONS

16.2.2 Definitions.
As used in this title:

Brewery and /or distillery facility means a facility for the preparation of beer and/or distilled liquids for consumption.

Nursery, Agricultural means a location for the growth and retail or wholesale sale of agricultural products.

End of Part I.
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Part II Cluster Residential and Cluster Mixed-Use Development Amendments

Amendment Rational or Comment: Purpose:

Amendments to this section of the Land Use Code are aimed to clarify definitions of the cluster residential and cluster mixed- use development permitted within the Business Park Zone. Currently "residential" is not defined except in terms of a "dwelling."

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Chapter 16.2 DEFINITIONS

16.2.2 Definitions.
As used in this title:

Cluster residential development means a form of land use improvements and/or change with residential dwelling elements in which the dimensional requirements are reduced below that normally required in the zone~~ing district~~ in which the land use improvements and/or change is located, in return for the provision to set aside a portion of the tract as of permanent open space and other environmental enhancements owned and maintained jointly in common by individual lot/unit owners, the Town, or a land conservation organization.

Cluster mixed-use development means a form of land use improvements and/or change, with residential dwelling and commercial use elements in mixed-use or single-use buildings, in which the dimensional requirements are reduced below that normally required in the applicable zone in return for a requirement providing traffic improvements, utility extensions, permanent open space, and other such improvements that the Planning Board may determine contribute to the enhancement of the project and/or the surrounding environment.

Commercial use means the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Residential (not defined)

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 does not include a trailer.

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Article XI. Cluster Residential and Cluster Mixed-Use Development. (Ordained 9/24/12; effective 10/25/12) page 209 plus

16.8.11.1 Purpose.
To implement adopted Comprehensive Plan policies regarding the Town's natural, scenic, marine, cultural and historic resources, land use patterns and recreation and open space, this Article is intended to encourage and allow new concepts and innovative approaches to housing/commercial development and environmental design so development will be a permanent and long-term asset to the Town, while in harmony with the natural features of the land, water and surrounding development. Objectives include:
A. efficient use of the land and water, with small networks of utilities and streets;
B. preservation of open space and creation of recreation areas;
C. maintenance of rural character, preserving farmland, forests and rural viewscapes;
D. preservation of areas with the highest ecological value;
E. location of buildings and structures on those portions of the site most appropriate for development;
F. creation of a network of contiguous open spaces or 'greenways' by linking the common open spaces within the site and to open space on adjoining lands wherever possible;
G. reduction of impacts on water resources by minimizing land disturbance and the creation of impervious surfaces and stormwater runoff;
H. preservation of historic, archaeological, and cultural features; and
I. minimization of residential development impact on the municipality, neighboring properties, and the natural environment.

16.8.11.2 Permitted Zones.
A. Cluster residential development is permitted in various zones as indicated in Chapter 16.3.
B. Cluster mixed-use development is permitted only in the Business Park (B-P) zone.
16.8.11.3 Dimension Standards Modifications.
Notwithstanding other provisions of this Code relating to dimensional standards, the Planning Board, in reviewing and approving proposed residential or mixed-use development under this Article, may modify said dimensional standards to permit flexibility in approaches to site design in accordance with the Code standards. The Board may allow subdivision or site development with modified dimensional standards where the Board determines the benefit of a cluster development is consistent with the Code. Such modifications may not be construed as granting variances to relieve hardship.
16.8.11.4 Property Ownership.
Tracts or parcels of land involved in a development proposed under this Article must be in single ownership; or, must be the subject of an application filed jointly by the owners of all properties included; or, must have an applicant with vested interest in all property included. Pursuant to the requirements of this Article, mobile home parks or mobile homes on individual lots are not eligible for cluster residential development.
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16.8.11.5 Application Procedure.
All development reviewed under this Article is subject to the application procedures in Chapter 16.10, Development Plan Application and Review, and the following:
A. In addition to the requirements of Chapter 16.10, the following are required at submittal of the Sketch Plan:
1. Calculations and maps to illustrate:
a. proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;
b. All land area identified in Title 16.7.8 Net Residential Acreage; and (Ordained 9-28-15)
c. Net Residential Density; and
d. open space as defined in Section 16.8.11.6.D.2 of this Article.
e. In the Business Park zone, Net Business Park Acreage and Density.

2. A map showing constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of thirty-three percent (33%), easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.

3. A written statement describing the ways the proposed development furthers the purpose and objectives of this Article, including natural features which will be preserved or enhanced. Natural features include, but are not limited to, moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites worthy of preservation.
4. The location of each of the proposed building envelopes. Only developments having a total subdivision or site plan with building envelopes will be considered.
B. An applicant with a project that includes proposed public open space must obtain Town Council acceptance for the public land or easement following Preliminary Plan approval. Town Council acceptance is contingent upon receipt of Final Plan approval by the Planning Board.

16.8.11.6 Standards.
A. The purpose and intent of this Code must be upheld for any reviews conducted under this Article.
B. A cluster mixed-use and cluster residential development must meet all requirements for a subdivision (and site plan where applicable), and all other applicable federal, state and local ordinances, except as modified by action of the Planning Board, where authorized.
C. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning Board's satisfaction that alternative methods used result in a development that is compatible with Section 16.8.11.
D. Unless a public or shared sewer collection and treatment system is provided, no lot may be smaller than twenty thousand (20,000) square feet per single family residence and eight thousand (8,000) square feet per bedroom per multifamily residence as outlined in the Maine Minimum Lot Size Law, Title 12 MRS § 4807-A.

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E. Open Space Requirements:
1. Open space must contain at least 50% of the total area of the property, and no less than 30% of the total net residential acreage, as defined. In the Business Park (BP) Zone, open space must contain no less than 25% of the total area of the property, and no less than 10% of the total business park area used for dwellings or cluster residential development.
2. Total calculated open space must be designated as follows (See Open Space Definitions Section 16.2): a. Open Space, Reserved; b. Open Space, Common; and/or c. Open Space, Public.
3. The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.
4. Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the Planning Board.
5. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover as identified in applicant's written statement. In the Business Park (BP) zone, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrian ways and aesthetics that serve to interconnect and unify the built and natural environments.
6. Open space should be in a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.
7. A portion of the open space should be in close proximity to other open spaces used for recreation (e.g. a common green, multi-purpose athletic field, gardens, and playgrounds).
F. In the Business Park (BP) zone, the maximum building height is sixth (60) ~~forty (40)~~ feet. ~~If the Planning Board finds that provisions for fire safety are adequate to allow buildings of greater height, then the Board may allow a building height of up to sixty (60) feet as a part of the development plan review and approval process.~~
G. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.

H. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland must be a part of the commonly held land.
I. The developer must take into consideration the following points, and illustrate the treatment of buildings, structures, spaces, paths, roads, service and parking areas, recreational facilities, and any other features determined by the Planning Board to be a part of the proposed development.
1. Orientation. Buildings, view corridors and other improvements are to be designed so scenic vistas and natural features are integrated into the development. Buildings should be sited to consider natural light and ventilation.

2. Utility Installation. All utilities are to be installed underground, wherever possible. The Planning Board must require the developer to adopt a prudent avoidance approach when permitting above ground electrical service installations. Transformer boxes, pumping stations and meters must be located so as not to be unsightly or hazardous to the public.
3. Recreation. Facilities must be provided consistent with the development proposal. Active recreation requiring permanent equipment and/or modification of the site may not be located within the wetland setback areas or contiguous reserved open space areas.
4. Buffering. Planting, landscaping, form and siting of building and other improvements, or fencing and screening must be used to integrate the proposed development with the landscape and the character of any surrounding development.
5. Development Setbacks.
Setbacks from wetlands and water bodies, must demonstrate compliance to Table 16.9 of Chapter 16.9.4.3. These setbacks must be permanently maintained as no cut, no disturb buffer areas within the first 25 feet of the setback. If the setback areas are not of substantial vegetation to provide a sufficient buffer, the Planning Board may require additional plantings. In the Business Park (B-P) zone, setbacks from wetlands and waterbodies, are 75 feet with the:

i. first 25 feet permanently maintained as no cut, no disturb buffer areas. If this area lacks substantial vegetation to provide sufficient buffer, the Panning Board may require additional plantings.
ii. remaining 50 feet may be used for water retention, roadways, parking or pedestrian or bike trails.

If the wetland is altered said alteration shall be mitigated per Title 16.9.3.6.

J. The location of subsurface wastewater disposal systems and a reserve area, if required, must be shown on the plan. The reserve areas must be restricted so as not to be built upon. The report of a site evaluator, licensed by the state of Maine, must accompany the plan. If the subsurface disposal system is an engineered system, approval from the M Maine Department of Human Services, Division of Health Engineering and the municipal plumbing inspector must be obtained prior to Planning Board approval.

16.8.11.7 Open Space Dedication and Maintenance.
A. Prior to approval of the final plan by the Planning Board, documents for open space must be submitted to the Town for review by legal counsel. Subsequent to approval, there may be no further division of the open space; however, tracts or easements dedicated for public utilities, public access or structures accessory to noncommercial recreation, agriculture or conservation may be permitted within the open space.
B. The open space(s) must be shown on the development plan with appropriate notation on the face thereof to indicate that:
1. The open space must not be used for future building lots; and
2. A part or all of the open space may be dedicated for acceptance by the Town.
C. If any, or all, of the open space is to be reserved for ownership by the residents and/or by commercial entities, the bylaws of the proposed homeowner's or similar governing association for commercial owners

(in the Business Park zone), and/or the recorded covenants must specify maintenance responsibilities and be submitted to the Planning Board prior to approval. See subsection A above.
D. Association Responsibilities.
1. Maintenance: The homeowner's association or similar association for commercial owners is responsible for the maintenance of open space(s), and other common facilities unless and until

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accepted by the Town. The stormwater management system must be maintained in accordance with Section 16.8.8.2, Post-construction Stormwater Management. Associations must maintain adequate funds to defray these expenses. The Planning Board shall require an initial capital fund for associations to be paid by the developer to cover these expenses.

2. Inspection: Annually, by June 30, the developer or association must complete and submit to the Code Enforcement Officer a Maintenance Compliance Report on a form prepared by the Code Enforcement Officer certifying compliance with any open space use and protection requirements. Said report must be completed by a Maine licensed civil engineer or certified soil scientist.
E. Transition of Responsibility. The developer must maintain control of such open space(s) and be responsible for maintenance until development, sufficient to support any and all associations, residential or commercial, has taken place. Responsibility and authority must be clearly defined and described in the recorded covenants, and such information must be distributed to any and all associations in a timely manner so the transition of responsibilities is seamless.
16.8.11.8 Pre-Development Requirements.
Prior to the beginning of site work, the applicant must file with the Town Planning Department all required performance guarantees and inspection escrows in forms acceptable to the Town Manager in accordance with Chapter 16.10.8.2.2.

Article XII. Mobile Home...

Etc.

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Part III Residential – Suburban Zone (R-S) Zone Amendments within the Business Park MDD

Amendment Rational or Comment: Purpose:

Amendments to this section of the Land Use Code are aimed to update the density of cluster residential development in the Residential – Suburban Zone within a Business Park Municipal Development District.

REODIFICATION - ORDAINMENT – 07/26/2010 (With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14; 1/28/15; 9/28/15;10/14/15;10/26/15)

16.3 LAND USE ZONE REGULATIONS Page | 49

16.3.2.2 Residential – Suburban R-S.

A. Purpose.

To provide areas adjacent to the developed urban areas for future residential growth consistent with the availability of public utilities. To this end, the following apply.

B. Permitted Uses.

1. Dwellings in a single-family, duplex, and multi-unit residential configuration with not more than four units per building and mobile homes;
2. School or educational facility (including nursery schools), eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or other institution of educational, religious, philanthropic, fraternal, political, or social nature. Any single listed use may not occupy more than five thousand (5,000) square feet of floor area;
3. Public open space recreational uses;
4. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for commercial purposes;
5. Accessory uses and buildings including minor home occupations;
6. Day care facility;
7. Elderly day care facility;
8. Accessory dwelling units; and
9. Cluster residential development.

C. Special Exception Uses.

1. Rooming house;
2. Public utility facilities including substations, pumping stations and sewage treatment facilities;
3. Cemeteries;
4. Mineral extraction subject to Section 16.9.1.2;
5. Convenience store, neighborhood grocery facilities excluding sale of gasoline;
6. Temporary, intra-family dwelling unit;
7. Major home occupations as an accessory use;
8. Any use listed in subsection (B)(2) (Permitted Uses) of this section that occupies more than five thousand (5,000) square feet of floor area;
9. Dwellings in a multi-unit residential configuration with five to twelve (12) units per building; and
10. Dwellings, exclusive of mobile homes, in a major or minor subdivision.

D. Standards. The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development:

1. Design and Performance Standards. The design and performance standards of Chapters 16.8 and 16.9 must be met. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.
2. Dimensional Standards.

Minimum land area per dwelling unit*

without public sewage disposal 40,000 square feet
with public sewage disposal 30,000 square feet
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unless reduced in accordance with Note A.
Minimum land area per dwelling unit within the Business Park Municipal Development District with public water and sewage disposal is 4,000 square feet of net business park acreage.
*As per Chapter 16.2 definition of *minimum land area per dwelling unit* except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to October 25, 2012. (Ordained 9/24/12; 9/28/15)
Minimum lot size
without public sewage disposal 40,000 square feet
with public sewage disposal 30,000 square feet
unless reduced in accordance with Note A.
Minimum street frontage 150 feet unless reduced
in accordance with Note A.
Minimum front yard 40 feet
Maximum building coverage 20 percent
Minimum rear and side yards 15 feet*
*Buildings higher than 40 actual feet must have side
and rear yards not less than 50 percent of the building height.
Maximum building height 35 feet*
*Minimum distance between principal buildings on the
same lot is the height equivalent to the taller building.
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.
Note A: The required minimum land area per dwelling unit and/or minimum lot size for residential uses that are served by public sewage disposal and that are located outside of areas subject to shoreland zoning may be less than thirty thousand (30,000) square feet per lot/unit if the established average density of development in the immediate area of the use as determined below is less than thirty thousand (30,000) square feet.
If the average of the lot sizes and/or land area per dwelling unit of the developed residential lots that are located on the same street and within five hundred (500) feet of the parcel is less than thirty thousand (30,000) square feet, the required minimum lot size or required minimum land area per dwelling unit is the calculated average lot size or average land area per dwelling unit but not less than twenty thousand (20,000) square feet.
If the required minimum lot size is reduced, the required minimum street frontage for new residential uses served by public sewerage may also be reduced to the average of the lot frontage of existing developed

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residential lots that are located on the same street and within five hundred (500) feet of the parcel but in no case to less than one hundred (100) feet.
3. Subdivision types and standards (Ordained 9/24/12; effective 10/25/12)
Subject to Net residential acreage and Net residential density per 16.2.2. (Ordained 9/28/15)
a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum lot size, and with the conditions that: (Ordained 9/24/12; 9/28/15)
i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.
b. Subdivision development (Per Special Exception Uses 16.3.2.2.C.10). In a subdivision development, standards 16.3.2.2.D.1 and 2 apply and include:
i. Minimum percentage of Common Open Space 15%.
4. Mobile homes. Mobile homes must meet the standards of Article XI and XIII of Chapter 16.8.

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Part IV. Definitions – Net Acreage

Amendment Rational or Comment: Purpose:

Amendments to this section of the Land Use Code are aimed to expand the land area calculated for development within the Business Park Zone.

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RECODIFICATION - ORDAINMENT – 07/26/2010 (With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14; 1/28/15; 9/28/15;10/14/15;10/26/15)

16.2 DEFINITIONS Page | 7

Chapter 16.2 DEFINITIONS

16.2.2 Definitions.

As used in this title:

Net residential acreage means the land area subject to subdivision that is identified for regulatory purposes as developable and is the gross available acreage minus land area identified in Article VIII of Chapter 16.7 *Net Residential Acreage*, unless otherwise exempt in 16.7.8.4 *Exemptions to Net Residential Acreage Calculation*.
(Ordained 9/28/15)

Net residential density means the number of dwelling units in a subdivision per net residential acre. This is calculated by dividing the net residential acreage by the square feet specified as *minimum land area per dwelling unit* in the dimensional standards in Title 16.3.2 for the relevant base zone or overlay zone(s) where applicable. (Ordained 9/28/15)

Net business park acreage means the land area within the Business Park Municipal Development District subject to subdivision identified for regulatory purposes as developable and is the gross available acreage including all land zoned Business Park (B-P) and Residential - Suburban (R-S)

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End

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Permitted and Special Exception Uses P - Permitted Use SE - Special Exception Use	Business Park (projects that are cluster mixed use developments)	Business Park (projects that are not cluster mixed use developments)	Business Local	Business Local 1	Commercial 1	Commercial 2	Commercial 3
Accessory dwelling units			P	P	P	P	P
Accessory uses and buildings		P					
Accessory uses and buildings including minor or major home occupations			P		P	P	P
Adult entertainment establishment nto located within one thousand (1,000) feet of an existing private residence, school or place of worship						SE	SE
Apartment building			SE	P			
Aquaculture			P		SE	P	P
Art studio or gallery	P		P	P	P	P	P
Boat yard						P	P
Buildings and structures over forty (40) feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than forty (40) actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties, and which may not be less than current standards, of fifty percent (50%) of actual heigh, whichever is greater					SE	SE	SE
Building Materials	P				P	P	P
Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage			P	P			
Business and professional offices	P	P	P	P	P	P	P
Business service	P	P	P	P	P	P	P
Cluster residential development	P						
Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site			P			P	P
Commercial parking lot or parking garage	P		P	P	P	P	P
Commercial greenhouses					SE	SE	SE
Conference center	P		P	P	P	P	P
Construction services						SE	SE
Convenience store, food store, grocery store	P		P	P	P	P	P
Day care facility					P	P	P
Dwellings or modular homes, exclusive of mobile homes			P	P			
Farmers Market				SE			
Funeral home			SE	SE	SE	SE	SE
Garden supply	P		P	P	P	P	P
Gas station	P						

Gasoline sales: (a) not located within one thousand (1,000) feet of an existing station, (b) not located within one thousand (1,000) feet of any private residence, and (c) not located within one hundred fifty (150) feet of any existing structure			SE	SE	SE	SE	SE
Hospital							
Inn	P		SE	P	P	P	P
Light industry	P						
Manufacturaing operations that conform to the provisiosn of Section 16.1.3.2.2 and Chapters 16.8 and 16.9					SE	SE	SE
Mass transit station	P		P	P	P	P	P
Mechanical service			SE	SE			
Mechanical service, excluding junkyard	P				SE	P	P
Mini-storage					SE	SE	SE
Motel, hotel, or rooming house	P		SE	SE	P	P	P
Neighborhood grocery							P
New motor vehicle sales					SE	P	P
Personal service	P		P	P	P	P	P
Place of public assembly, including theater	P		SE	SE	SE	SE	SE
Public open space recreational uses	P		P	P	P	P	P
Public utility facilities including substation, pumping stations, and sewage treatment fa	P		SE	SE	P	P	P
Recreational facilities and selected commercial recreation	P				P	P	P
Repair services	P				P	P	P
Repair garages not located within one hundred fifty (150) feet of a private dwelling or existing structure					SE	SE	SE
Research and development	P				SE	SE	SE
Residential dwelling units as part of a mixed-use building			SE				
Restaurant	P		P	P	P	P	P
Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage			P	P			
Retail uses and wholesale businesses excluding used car lots and junkyards	P				P	P	P
School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature	P						
School or educational facility (including nursery schools), day care facility, eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political or social nature			P	P			

School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature					P	P	P
Service establishment					P	P	P
Shops in pursuit of trade	P					SE	SE
Specialty food and/or beverage facility	P		P	P	P	P	P
Temporary, intra-family dwelling unit			SE	SE	SE	SE	SE
Transportation terminal excluding truck stops					SE	SE	SE
Used car lot not connected with new car sales					SE	SE	SE
Veterinary hospital	P				P	P	P
Warehousing and storage	P				SE	SE	SE

RHR SMITH & COMPANY
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Proven Expertise and Integrity

August 11, 2016

Ms. Carol Granfield
Interim Town Manager
Town of Kittery, Maine
P.O. Box 808
Kittery, Maine 03904

Dear Carol:

It was great seeing you Tuesday and discussing the various sewer matters with you all. I wanted to take some time and summarize the talking points as I understood them as a result of that meeting.

Sewer understanding:

- On or around February, 2011, the Town received approval from the Maine Department of Economic and Community Development for three TIF Districts. The Town was assisted and guided through this application and approval process by Jensen Baird Gardner & Henry.
- Within the application of TIF District # 3 (one of the three districts) the Town outlined in its proposal a plan to develop some parcels of property (Parcels were identified in the proposal) for a business park.
- Within the application of TIF District # 3, many projects were identified which will result in the creation by the Town of separate "funds" to identify the various projects. These include a development fund, which is identified into two parts, they are:
  1) project cost accounts (maintained separately for each developer),
  2) development sinking fund.
- Within the application of TIF District # 3, and as part of the development of the District, a list of projects were described of which a sewer expansion was identified.
- On or around June, 2013. The Town passed a referendum question for the issuance of a $4.4 million dollar general obligation bond for various Town infrastructure needs.
- On or around June, 2013. The Town passed a referendum question for the issuance of a $7.5 million dollar general obligation bond for the sewer expansion to accommodate TIF District # 3.
- On or around the fall of 2015, the Town received its general obligation bond of approximately $11.9 million to finance these projects.
- On or around August, 2016, the above mentioned financed projects are substantially completed.
- On or around the fall of 2016, the first payment on the $11.9 million dollar bond will commence.

3 Old Orchard Road, Buxton, Maine 04093
Tel: (800) 300-7708 (207) 929-4606 Fax: (207) 929-4609
www.rhrsmith.com

As a result of our understanding, the Town desires (and has drafted some various financial scenarios provided to us) a financial plan to accommodate the accounting of all the said projects and methods of repaying the debt service. As a result of preparing these financial scenarios, the Town has concerns over the revenue streams needed to continue to fund its everyday sewer operations and newly issued debt service to finance the above projects.

As we stated in that meeting, and with the creation of TIF District # 3, the Town really needs to exercise great caution for the accounting of all the TIF related projects. Having said that, we believe the budget scenarios presented to us will need to be reformatted in a way to accommodate that. We look forward to providing you that assistance on this matter and also in reviewing the accuracy of the numbers within the scenarios provided to us.

The question was posed to us on the reasonableness of the numbers outlined in the three scenarios and whether or not the financial needs will be met by the Town. As I stated in that meeting as it relates to my understanding on this matter, and with the issuance of that bond last fall, my answer is yes, and that some scenario needs to be provided to the Town which best suits continued payment of financial obligations on the sewer department and TIF District # 3. The scenario we all agree at the end of this exercise, may look different than the ones provided to us.

We understand this matter is of high importance because the Town is currently, and within each of its scenarios, considering a necessary revenue stream by non TIF district parcels affected by this matter. It appears the Town has some discretion in the calculation of this revenue stream and wants to make sure that the revenue stream provided by the non TIF District parcels is fair. The Town also needs to insure that all of its financial obligations are met in the most prudent way.

May I suggest the Town involve Jensen Baird Gardner & Henry on this matter because of the creation of TIF District # 3 and its relationship to this matter and the simple fact they were very involved in the birth of these TIF's. I have had some initial conversation with them on this matter as I said at that meeting based on direction by you, but believe they can be of greater help making sure the Town has covered all related areas of this matter so the Town can make the best business decisions available and be fair and responsible to all parties affected by this.

Please let me know if you have any questions on this letter. You can reach me at (800) 300-7708.

Very Best,

Ron

Ron H.R. Smith, C.P.A., C.F.E.

Kittery Municipal Development
Distrct #3 Parcel Information

Map-Lot	Address	Property Owner
6-17A	64 Dennett Rd	Allen, Glenwood F & Hazel M Field, C/O John & Karen
6-16A	70 Dennett Rd	Piscataqua Realty LLC Cullen, William J
6-15B	76 Dennett Rd	Sail Away LLC
13-04	0 Dennett Rd	Cullen, William J
21-18	1 Route 236	Gerasin Family Realty LLC C/O David Gerasin
12-03-1	98 Dennett Rd	Dennett TR, Mary D Mary D Dennett Rev Trust
13-05-9	19 Ranger Dr	DEKM LLC
13-05-10	21 Ranger Dr	DEKM LLC
29-01	41 Route 236	LaPierre Properties LLC
ROW 3	Route 236	

Town of K

Kittery Municipal L

Date: 11/9/2010

Planning & Development Department
Kittery, Maine

0 500 1