

MEMORANDUM

TO: Adam Causey, AICP, Director of Planning and Development

CC: Jamie Steffen, Town Planner
Carl Eppich, AICP, North Star Planning
Open Space Advisory Committee (OSAC)

From: Ben Smith, AICP, North Star Planning 

RE: Code Audit – Kittery Title 16 Land Use and Development

Date: January 18, 2019

North Star Planning is working with the Town of Kittery on a project to recodify and provide ordinance updates for Title 16. Task 1.3 in the Scope of Work approved for that project is a Code Diagnosis, which is an audit or technical review of Title 16's structure and organization, to locate important content areas and then to identify topics not addressed or immediately found in the code. Additionally, we examine how the development review and approval process is structured and how projects are reviewed.

This review and the comments that follow from the perspective of experienced, outside eyes. Observations and suggestions will be discussed further in future meetings, and will be combined with feedback from town staff and the OSAC regarding the weak spots and troublesome aspects of the ordinance prior suggesting changes for committee review. It is also possible that some of the questions and comments below might have easy responses that were just not immediately accessible or clear to someone new to working with this ordinance. With those caveats in mind, we offer the following observations.

Structural and Organizational Review

At first blush, the online version of the Code accessed through the Kittery town website via the eCode platform from General Code is well organized into 12 subsections, complete with a Table of Contents that is always available on the left side of the screen. When looking for specific sections or specific standards, though, we often had to resort to keyword searches, which was great to have, but often brought up suggestions that were not relevant.

The ability to navigate and find relevant portions of the ordinance can be improved. A clear table of contents that includes all 1st and 2nd level headings should be found at the beginning of the ordinance document. Additionally, a table of contents for each section of Title 16 could be useful. Navigating the ordinance could also be improved through page numbering specific to each section. An attempt at this has been made in the PDF version downloaded from eCode, but it is not set up properly. Another alternative to consider would be to separate sections through the use of colored headers, footers or tabs on the edge of pages.

Administrative and Enforcement provisions seem to be scattered throughout Title 16, rather than appearing together in one section at the front or the end of Title 16.

General Provisions (16.1) contain some of the basic administrative elements like the establishment of various boards, how to deal with conflicts and amendments and a severability clause. Enforcement and dealing with violations are in a separate Administration and Enforcement section (16.4). Permit thresholds and procedures for building permits and certificates of occupancy are in Building/Regulated Activity Permits (16.5), while appeals and variances are in another (16.6). These sections should be reviewed for consolidation opportunities.

Some definitions do not appear later in the ordinance while others probably don't need to be defined at all.

Uses that are not allowed in the ordinance do not need to be defined in the ordinance. It is possible that uses were defined and then specifically left out of the list of Permitted Uses for each zoning district to indicate that such uses are not allowed anywhere in town, but this is not a best practice. Examples include Gambling Casino and Game of Chance. Also, commonly used words with dictionary definitions, references to other legislations or units of measure do not need to be defined in Title 16. Examples include Acre, Character, Clean Water Act, Compact or Built-up Section, Day, FCC, Fill, and Glare.

Performance Standards should not be included in Definitions.

Some definitions include conditions or standards that a use must meet in order to be permitted or continue operating. These should be moved to a section of the ordinance dealing with performance standards. See the definitions for Nursery School, Open Space, and Parking Space for examples.

Permitted Uses in zoning districts and in the Shoreland Overlay Zones.

Lists of uses should be in alphabetical order, just as they are in the Definitions (16.2). It is also confusing to have lists of uses in the zoning district and then to have a second list of permitted and conditional uses for each zoning district in the Shoreland Overlay zones. A single table of uses would be useful at the

beginning of Section 16.3 or as an Appendix to Title 16. This use table would be a single source of information that would allow users to find information on a specific zone, a specific use or to compare permitted uses across multiple districts.

Design and Performance Standards for the Natural and Built Environment should be reworked.

These standards should be listed in alphabetical order for ease of navigation. Ultimately, the town should consider consolidating these two separate sections into a single Performance Standards section that would apply to all development in Kittery. Some of these standards appear to only apply to projects that require Planning Board review, such as Buffer areas, Conservation of Wetlands, Monuments, Street Signage, Street Design Standards, Parking, Loading and Traffic and several others. The town should consider moving these standards to the Site Plan and Subdivision review standards in Section 16.10.

Planning Board procedures are scattered throughout Title 16.

Plan submissions and agendas/scheduling and performance guarantee provisions are located in Administration and Enforcement (16.4). Applicability and procedures are in Development Plan Application and Review (16.10) and Post Approval activities like plan amendments and performance guarantees and site inspections are in Sections 16.1, 16.4, and 16.8.

Mandatory Shoreland Zoning provisions required by the state seem to be disbursed through Title 16, rather than appearing as an ordinance section on its own or in a separate Shoreland Zoning Ordinance.

It is also common to see Post-Construction Stormwater Ordinances as a standalone ordinance. There is nothing inherently wrong with including definitions and standards for either of these integrated into a Land Use Ordinance like Title 16, but calling these standards out might add clarity to municipal regulations.

Development Review Process

Procedures for Planning Board review of applications for site plan, subdivision, and Shoreland development are primarily located in Section 16.10, Development Plan Application and Review. As noted above, there are several categories of information dealing with the review and approval of these applications found in other sections of the ordinance.

Aside from bringing all of these disparate pieces into a single ordinance sections, there are several ordinance provisions within Section 16.10 that could be reorganized

and new wording that could be added to add clarity to the review and approval process. Initial thoughts on this work are offered below.

Move an explanation of which development activities or changes of use require review and which require a building permit only and which are exempt from municipal review to the front of this Section.

Section 16.10.1.1 states “the purpose of this chapter is to outline the application and review process for development of any type within the Town.” However, it is not until Section 16.10.3.2 where exemptions to Planning Board review are listed. It would be more user friendly to list the types of projects that require Planning Board review at the front of this section.

Project classification should be described at the front of this section as well.

It would be very helpful for applicants to understand when the requirements of subdivision, site plan, shoreland development review or a combination of these standards will apply. Ordinance sections that follow should be based on these classifications.

Consider breaking out subdivision review process and submission requirements from site plan review process and submission requirements.

Related to the suggestion immediately above, it would be more clear to have a pathway through the ordinance based on the type of project proposed, rather than sectioning the ordinance primarily based on the review stage. It appears the ordinance is attempting to make the stage of review the primary applicant and Board concern so that the type of application or the size of the project are irrelevant. Does every type of application require sketch, preliminary and final plan review by the Planning Board?

Add an explanation of what a Master Site Development Plan is and when it is required.

After reading Section 16.10.2.1-6, and reading the definition of Master Site Development Plan in Section 16.2, we are still confused as to the requirements of this plan, when it is required by the Board, and how it relates to the Board review stages for ultimate project approval

Consider a tiered system of project review that would differentiate between smaller, low impact projects and larger projects that would have more impact on municipal resources and abutting properties.

Some communities have ordinance provisions that differentiate between smaller and larger projects. The differentiation may involve a higher bar for submission requirements in order to show how larger projects meet the standards of the ordinance. For example, a larger project may need to submit

a high intensity soil survey, while a smaller project may be able to simply show a medium intensity soil survey. Additionally, larger projects may have to go through all three stages of sketch, preliminary and final plan review, while smaller projects may go from sketch to final plan review. Some communities have staff review committees that review small site plans rather than the Planning Board.