

## 2020 Planning Board Action List

ITEM #	DATE	BY	ITEM	PRIORITY	ACTION TAKEN	COMPLETE
		<b>Dutch</b>	Simplify and reduce the number of zones.			
		<b>Karen</b>	Adjustments to the Cluster Development ordinance is to ensure Kittery is getting a meaningful conservation benefit from dimensional modifications.			
		<b>Ron</b>	Designate areas in Kittery that are high-risk for flooding from sea level rise and increased rate of rain fall and specify the conditions for their use and development.			
			Identify and specify standards for building freeboard height and other provisions, which would extend development and building regulations to lessen vulnerability of new buildings and facilities to flooding due to sea level rise and/or increased rainfall rate.			
			Incorporate accurate data from Maine Coastal Mapping Initiative for latest data for current and projected land use patterns and precipitation amounts.			
			Consider prohibiting artificial hardening of estuary and river shorelines, with possible exceptions granted in the case of an imminent threat to a primary residence structure or critical public infrastructure.			
		<b>Steve</b>	Clarify interpretations on various overlay zones (Shoreland, Resource Protections, CFMU, etc.).			
			Address issues around rising sea levels.			
		<b>Earldean</b>	Discuss man-made wetlands and ponds.			
<b>PLANNING STAFF</b>						
		<b>Adam</b>	Review of Comprehensive Plan 5-Year Action Plan			
		<b>Adam</b>	Review of zone dimensional standards (setbacks, lot size, lot coverage, etc.).			
		<b>Adam</b>	Density discussion of various zones.			
		<b>Adam</b>	Discussion of uses & updated use table.			

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		Adam	Overlay zone locations and interpretation.			
		Adam	Review and update of development processes & requirements.			
		Kathy	Mixed-Use zone revisions.			
PREVIOUS ITEMS / LIMBO						
			AirBnB and short term rentals		Draft ADU amendments reviewed by KOSAC in early Nov 2018; Draft ADU regulations presented to the Planning Board on 1/24/19, 2/28/19 & 3/28/19; Town Council paused while awaiting STR presentation/info from MMA	
			Neighborhood Mixed Use Zone (formerly Business Park) boundary changes		Public Hearings held on 8/21/18 & 8/23/18; Town Council did not consider during MU-N rezone. This could wait until property owner petitions for rezoning.	
			Comp Plan 2015 - 2025 Items: Housing Plan; Complete Streets Policy, Parking, Climate Adaptation Study			
STAFF						
			Define Commercial Recreation		Part of Recodification	
			Update Design Standards for LED Lighting and Signs		Part of Recodification	
			Definition: Substantially complete re: development vs. building permits		Staff to draft definition differentiating from bldg permits as appropriate	
			Vision for Route 1 Bypass		Wait on recommendations from the Economic Development Committee	
			Fines and Fees review		Staff will research	

## 2020 Planning Board Action List

COMPLETED ITEMS						
	TBD		Route 236 safety	NA	Study funded and completed.	
Complete	TBD	Staff	2 Board members participate in Inclusionary Housing Working Group (IHWG)	On-going	Russell White and Drew Fitch are members	
Complete	TBD	Staff	<u>Shoreland Zone:</u> Excavation  Invasive plants; shoreland invasive plant removal Shoreland definition Structure replacement; time periods HAT - Highest Annual Tide	Pending	Updated per Ch. 1000 guidance, ordained by Town Council on 10/26/2015	
				Completed		10/26/2015
				4	In context of climate change	
Complete	8/23/2018	Staff	Shoreland zoning amendments to address nonconformance issues	Completed	Amendments to comply with Ch. 1000 guidelines recommended by the Board on August 23, 2018; Forwarded to Town Council for consideration at their 11/14/18	Adopted 12/10/18, Effective 1/9/19
Complete	8/23/2018	Staff	Sign ordinance changes:	Completed	Proposed ordinance amendments recommended by the Board at August 23, 2018 meeting; Town Council Public hearing set for 12/10/18; Approved by Town Council on December 10, 2018, Effective on January 9, 2019	Adopted 12/10/18, Effective 1/9/19
	8/23/2019	Staff	Message boards/internal & external lights & timers	Completed		1/9/2019
	2/28/2019	Staff	Sign character/appearance/administration & enforcement	Completed		1/9/2019
	10/25/2018	Staff	A-frame (Sandwich Board) signs	Completed		1/9/2019
Complete		Staff	Neighborhood Mixed Use Zone (formerly Business Park) text amendment	Completed	Town Council held a Public Hearing on 9/24/18; Town Council scheduled a public forum for citizen input on 10/29/18; Town Council adopted amendments at the 11/26/18 meeting	Adopted 12/10/18, Effective 1/9/19
Complete	8/9/2012		16.10.9.2 REDEFINE FIELD CHANGES; Major/Minor (for May 2015 TC workshop)	2	Staff to draft language for review	

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Complete	10/13/2012	TE	DPW PROJECTS COME BEFORE PB; NEED UPDATED LIST	2	CDM to discuss with DPW, report to PB	
Complete	12/12/2013	-	<u>Comp Plan Items</u> Pedestrian / Bike paths / Bike Racks	CPC*	CDM will provide existing bike path plan; disc. 12/18; req. input from T. Emerson 1/22/15; input to CPC when appropriate	
	3/28/2013	-	CONTINUE WORKSHOP WITH KCPC, KOSC REGARDING 1 - 3 ACRE RR; and future land use regulation; restrict # building permits issued per year	-		
	2/25/2016	-	ROADS / SIDEWALKS TO NOWHERE (ROW plans)/Shared Driveways/ROW Standards/Emergency access roads	-	May 15, 2013 Workshop; December 3, 2013 workshop, w Soil Suitability; PB input to CPC* when appropriate	
Complete	3/27/2014	DD	Kittery Historic Resources; historic designation identification	3		
Complete	10/22/2015		Draft language and amend bylaw to require MMA workshop to newly appointed planning board members	Staff		
Complete	1/8/2015		Foreside Review Committee (16.3.2.15.F)	1	Staff prepare draft version of Bylaw to present to Board	
Complete	1/23/2014		Outdoor Seating/Use of Public Way; extend to other zones	Done	Discussed 1/22; Board to discussed results of Foreside Forums 4/23; idea is to hire out design review until Foreside study is complete	
Complete	2/27/2014		Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Done	PB review: 10/23/14; rev. language 12/18/14; 1/22/15 discussion; <u>Foreside only</u> ; CDM to work w/ NCP/TC to add to Title 5 permanently; ordained by TC 4/27	
Complete	2/27/2014	AG	List of Committees/Boards to monitor	Done	Reviewed 3/27/14; PB approval 6/26/14; to Council 11/10/14; Effective 2/28/15	
Complete	11/14/2013	Staff	16.7.3.5.6 Structure replacement <u>outside</u> of shoreland zone (missing from code)	1	CDM to place in 2/26 packets	
Complete	10/24/2013		16.7.8 Soil Suitability Guide; discontinue; replace with Net Residential Acreage calculations	Done	Board recommended to Council on 5/28, will be before TC this summer	

## 2020 Planning Board Action List

<b>Complete</b>	<b>8/22/2013</b>	<b>Staff</b>	Site dev pre-meeting; CMA construction inspection; Ref: 16.4.4.1.A (for May 2015 TC workshop)	1	16.7.8 Land Not Suitable for Development: 10/23/14 PB Review/Recommend to Council for 11/10/14 approval; 5/4/15 TC workshop; recommendation needed 6/25/15
<b>Complete</b>	<b>2/27/2014</b>		Flag Lots (16.8.-16.9)	Done	Discussed December, 2014; staff drafted language for review, reviewed 3/12/15. Public Hearing and recommendation to Council 3/26/15
<b>Complete</b>	<b>10/22/2018</b>		Parking strategies for Foreside		Proposed changes to on-street parking in the Foreside were submitted to the Town Manager for the October 10 Town Council meeting; Town Council scheduled a public hearing for Monday, October 22
<b>No longer required</b>	<b>3/13/2014</b>		Septic pretreatment requirement as bonus (See also: VIII.3.i.ii 2015 Code Amendments: Briefing Book, #38)	Done	
<b>Complete</b>	LEGAL NOTICES IN PACKET OR EMAILED TO PB MEMBERS (email to PB @ same time sent to publication)				
<b>4/25/2013</b>	UNBUNDLE ZONING AMENDMENTS				Complete
<b>Complete</b>	BUILDING PERMIT LIST IN PACKETS				Complete / Ongoing
<b>3/25/2013</b>	Amendment: 16.8.24.2 F (LED lights); amended 12/14 (allowing LED lighting)				Complete / Ongoing
<b>3/25/2013</b>	DISCUSS PUBLIC NOTICES; ABUTTER'S LIST EARLY, INCLUDE M/L AND PHYSICAL ADDRESS; Sales (assessor) close April 1; system update in Fall				Ordained: 3/25/2013; ordained 12/14
<b>4/25/2013</b>	Amendment: Speciality Food & Beverage				Complete
<b>1/24/2014</b>	Foreside workshop with Council				ordained 6/10/2013
<b>1/24/2014</b>	REVIEW REPORT TO COUNCIL (RTC) FORMAT				
<b>4/25/2013</b>	PB Workshop Update: training; education; conflict of interest; attendance/voting;				1/24/2013
<b>4/25/2013</b>	Title 16.11 Marine Development				Retreat: January 10, 2014; MMA workshop 3/25/14
<b>2/14/2013</b>	Outdoor Seating/use of public ROW extension period/Title 5 (Seasonal only; extend sunset date)				Ordained: 1/27/2014
<b>Complete</b>	Proposed Ordinance Changes on line				To Council 6/9/14
<b>4/24/2013</b>	ABUTTER'S LIST TO PB EARLY ON, BEFORE PUBLIC HEARING (at sketch plan)				Packets posted online
	Waivers;				
	Post Building Permits on Web Site				January 2014
<b>11/14/2013</b>	ByLaw Changes				Provided in Board packets

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2/28/2015	Approved Plan Expiration; Requests for Extension; Expiration of Wetland Alteration Permit	Adopted 1/22/15
Complete	Outdoor Seating/Use of Public Way; extend to other zones	Effective 2/28/15
		Effective 5/28/15

**From:** [Karen Kalmar](#)  
**To:** [Dutch Dunkelberger](#)  
**Cc:** [Adam Causey](#)  
**Subject:** homework  
**Date:** Thursday, January 9, 2020 1:03:07 PM  
**Attachments:** [Biddeford CLUSTER ord..pdf](#)

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Dutch — My top priority is to make adjustments to the Cluster Development ordinance. Most important is revising language in each of the 16.3 zones where Cluster is allowed in order to clarify which “dimensional standards” may be modified. Mr. McEachern determined that they are limited by ME law to lot coverage, lot size, frontage and yard setbacks. So that should be easy. Then I’d hope to look at other towns’ ordinances that include useful procedures. The goal is to ensure that Kittery is actually getting a meaningful conservation benefit from allowing such dimensional modifications, and aren’t just allowing developers to get more density than they could otherwise. (Biddeford’s ordinance is a great example, attached). This one should be pretty easy too.

I also think starting discussion about all of Adam’s list items is important. At minimum, we need to set priorities and get a bead on the Board’s sensitivities. See you later! — KK

## Article VI. Performance Standards

### Section 16. Cluster developments.

[Ord. No. 2000.70, 8-1-2000]

#### A. Purpose.

1.

- (a) The purpose of these provisions is to allow for new concepts of residential, commercial and industrial development where variations of design and dimensional requirements may be allowed, provided that the new net density shall be no greater than that normally permitted in the zoning district in which the development is proposed;
- (b) These provisions may be used when considering affordable housing projects; and shall be used when parcels of land sustain significant wildlife habitats or other significant natural features that would be destroyed if ordinary development approaches were used.
- (c) Clustered development shall be encouraged as a means of preserving open space and land of value due to the natural resources found on it, limiting the costs and impacts of development, lowering maintenance costs, and reducing impervious surfaces.

2. Notwithstanding other provisions of this and other ordinances relating to dimensional requirements, the Planning Board, in reviewing and approving proposed developments located in the City, may modify said provisions related to dimensional requirements to permit innovative approaches to site design in order to achieve the stated purpose of this section, and in accordance with the following standards.

3. The use of this section shall not be construed as granting variances to relieve hardship because of the nature of the land or other conditions or situations.

B. Application procedure.

1. The Planning Board may allow subdivided development on reduced lot sizes with reduced frontage and setback requirements in return for open space where the Board determines that the cluster approach will prevent the loss of natural features without increasing the net density of the development.
2. The developer shall submit a written application to the Board for a cluster development which shall include all plans and materials required for a conventional subdivision under Chapter **66** of the Revised Code of the City of Biddeford.
3. Two sketch plans shall be submitted: one layout as a standard subdivision meeting the standards of the particular zone; the second as a cluster development indicating open space and significant natural features. Each lot in the standard subdivision shall meet the minimum lot size and lot width requirements. The number of lots in the cluster development shall in no case exceed the number of lots in the standard subdivision.
4. If the cluster option is elected for use by the applicant, the applicant shall provide a written justification or statement. The written statement shall describe the natural features which will be preserved or enhanced by the cluster approach. Natural features include, but are not limited to moderate-to-high value wildlife and waterfowl habitats, moderate-to-high yield aquifers, important natural or historic sites, and soils that are identified as being of statewide significance, prime agricultural, or unique. The statement shall also compare the impacts upon the City from each plan. Examples of impacts are municipal cost for roads, school busing, solid waste removal, utility efficiencies, recreational opportunities, protection of floodwater storage areas, and environmental impacts on sensitive lands.

C. Requirements for cluster developments.

1.
  - a. Cluster developments shall be a minimum of five acres in area.
  - b. The Planning Board shall determine whether to allow the subdivision to be developed in accordance with the cluster

standards of this section based upon findings that:

- (1) The site contains natural features of the type described in Subsection B4 above which are worthy of preservation; and
  - (2) The site includes critical natural resources identified in the City of Biddeford 1999 Comprehensive Plan; and
  - (3) Those natural features could not adequately be preserved in a standard subdivision layout; and
  - (4) A clustered development will permit more efficient creation and utilization of infrastructure and provision of municipal and quasimunicipal services than would a standard subdivision layout; and
  - (5) The clustered development achieves maximum preservation of agricultural and forested land, in particular those soils identified by the soils conservation service as being of statewide significance, as prime agricultural soils, and as unique soils. These soils are identified on a map prepared by the Southern Maine Regional Planning Commission based on Soil Conservation Service data and available in the City Planner's office; and
  - (6) The open space that is preserved as described herein shall be considered for agriculture and natural resource-based uses where appropriate.
2. Each building shall be an element of an overall plan for site development. The site plan shall illustrate the placement of buildings, open space, paths, roads, service areas, and parking areas, and in so doing shall take into consideration all requirements of this section and of other relevant sections of this ordinance.
3. The maximum net density allowable in cluster developments shall be calculated on the basis of the net density calculations standards found in Article VI of this ordinance. In order to determine the maximum number of units permitted on a tract of land, the total net acreage shall be divided by the minimum lot size required in the district.
4. A copy of that portion of the York County Soil Survey covering the proposed development shall be submitted.
  - a. In addition, the Board shall require a high intensity soils survey

or a report by a registered soil scientist or a registered professional engineer experienced in geotechnics, indicating the suitability of soil conditions for those uses.

- b. If the proposed development is in an area featuring soils identified by the natural resources conservation service as being of statewide significance, as prime agricultural soils, and as unique soils, the Planning Board shall require a high-intensity soils survey or a report by a registered soil scientist or a registered professional engineer experienced in geotechnics, indicating the suitability of soil conditions for those uses.

5. Minimum lot area.

- a. No lot serviced by a subsurface septic disposal system shall be smaller in area than 20,000 square feet.
- b. If a cluster development will be serviced by public sewer, no lot shall be smaller in area than 75% of the minimum lot size requirements established in Article V of this ordinance, except in the Rural Farm Zone where no lot shall be smaller than 20,000 square feet.
- c. If a cluster development will be serviced by public water, no lot shall be smaller in area than 75% of the minimum lot size requirements established in Article V of this ordinance, except in the Rural Farm Zone where no lot shall be smaller than 20,000 square feet.
- d. If a cluster development will be serviced by both public sewer service and public water, no lot shall be smaller in area than 75% of the minimum lot size requirements established in Article V of this ordinance, except in the Rural Farm Zone where no lot shall be smaller than 20,000 square feet.

- 6. The total area of open space within the development shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the district.
- 7. The Planning Board shall consider the purpose of said open space, and shall require the developer to provide access or to restrict access based on the stated purpose of the open space land.
- 8. Distance between buildings shall not be less than 30 feet.

9. No individual lots shall have frontage on an existing road at the time of development. There shall be a setback of 40 feet from the main public access road and 25 feet from interior roads that are constructed as part of the clustered development.
10. In no case shall shore frontage and setback be reduced below the minimum shore frontage normally required in the district.
11. Where a clustered development abuts a body of water, a usable portion of the shoreline frontage shall be a part of the open space. Said shoreline frontage shall be no less than 100 feet. Deeded access to said frontage shall be conveyed to each lot owner in the clustered development.
12. When individual wells are to be utilized, a drilled well, with casing, shall be provided on each lot by the developer/builder. The applicant shall demonstrate the availability of water adequate for domestic purposes as well as for fire safety. The Planning Board may require the construction of storage ponds and dry hydrants.
13. Utilities shall be installed underground wherever possible. Transformer boxes, pumping stations, and meters shall be located so as not to be unsightly or hazardous to the public.

D. Siting and buffering standards.

1. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, south-facing slopes (where possible) and natural drainage areas, in accordance with an overall plan for site development and landscaping. A site inspection shall be conducted by the Planning Board prior to approval. Once approved, the plan shall not be altered without prior approval of the Planning Board.
2. Residential buildings shall be designed and laid out to protect bedroom windows from light invasions by vehicle headlights or glare from existing outdoor lighting or illuminated signs where allowed, insofar as practicable.
3. Where parking spaces or storage areas are located in areas abutting existing residential properties, a permanent wood or masonry screen at least four feet high shall be erected along the property line in addition to the green perimeter strip described below.
4. Other than in the resource protection district, a green perimeter strip

not less than 20 feet wide shall be maintained with grass, bushes, flowers, or trees all alongside lot or rear lot lines of the property as a whole, and (except for entrance and exit driveways) along the entire front of such lot. Such green strip shall not be built on or paved or used for parking or storage. There shall be no removal of trees over four inches in diameter within this buffer. The Planning Board may require a green strip of up to 50 feet in width if, in the judgment of the Board, the preservation of natural features or of the character of the area in which the clustered development is proposed would be enhanced by a green strip greater than 20 feet in width. In the resource protection district, vegetation shall be retained in its natural state.

5. Except for removal of dying or diseased trees, existing vegetation shall be left intact to prevent soil erosion.

E. Dedication and maintenance of open space and facilities.

1. In Planning Board review and approval of a clustered development, the following requirements shall apply and shall supersede any inconsistent or more restrictive provisions of this Zoning Ordinance or Chapter **66** of the Revised Code of the City of Biddeford.

Open space set aside in a cluster development shall be permanently preserved as required by this performance standard. Land set aside as permanent open space may, but need not be, a separate tax parcel. Such land may be included as a portion of one or more large parcels on which dwellings are permitted, provided that a conservation easement or a declaration of covenants and restrictions is placed on such land pursuant to this section, and provided that the Planning Board approves such configuration of the open space.

2. Open space uses. On all parcels, open space uses shall be appropriate to the site. Open space shall include natural features located on the parcel(s) such as, but not limited to, stream beds, significant stands of trees, individual trees of significant size, agricultural land, soils as identified in Subsection C1b(5) above, forested acreage, wildlife habitat, rock outcroppings and historic features and sites. Open space shall be preserved and maintained subject to the following, as applicable:
  - a. On parcels that contain significant portions of land suited to agricultural production, open space shall be conserved for agriculture or other consistent open space uses such as forestry,

recreation (active or passive), and resource conservation.

- b. When the principal purposes of conserving portions of the open space is the protection of natural resources such as wetlands, aquifers, steep slopes, wildlife and plant habitats, and stream corridors, open space uses in those portions may be limited to those which are no more intensive than passive recreation.
  - c. Open space areas shall be contiguous, where possible, to allow linking of open space areas throughout the town.
  - d. If the open space is to be devoted at least in part to a productive land use such as agriculture or forestry, the developer shall submit to the Planning Board a plan of how such use is to be fostered in the future. Such plan may include, for example, a long term timber management plan.
  - e. The use of any open space may be limited by the Planning Board at the time of final plan approval where the board deems it necessary to protect adjacent properties or uses, or to protect sensitive natural features or resources. A proposed change in use of open space land, other than that specified at the time of plan approval, shall be reviewed by the Planning Board as an amendment to the approved plan.
  - f. Further subdivision of open space or its use for other than agriculture, forestry, recreation or conservation, except for easements for underground utilities, shall be prohibited and shall be so stated by deed restrictions. Structures and buildings accessory to agriculture, recreation or conservation uses may be erected on open space, subject to Planning Board approval under the site plan review provisions of this Zoning Ordinance and this performance standard.
3. Notations on plan. Open space must be clearly labeled on the final plan as to its use or uses with respect to the portions of the open space to which such use or uses apply, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land or portions thereof. The plan shall clearly show that the open space land is permanently reserved for open space purposes, and shall contain a notation indicating the book and page of any conservation easements or deed restrictions required to be recorded to implement such reservations or restrictions.
4. Preservation in perpetuity. The owner of a parcel of land proposed

for cluster development shall designate all or a portion of the parcel for open space use in perpetuity. All requirements of this performance standard are subject to the following conditions:

- a. A perpetual conservation easement, or declaration of covenants and restrictions, restricting development of the open space land shall be incorporated in the open space plan.
- b. The conservation easement may be granted to or the declarations may be for the benefit of a private party, third party or other entity; the City, with the approval of the City Council; or to a qualified not-for-profit conservation organization, such as a land trust, acceptable to the Planning Board.
- c. Such conservation easement or declaration of covenants and restrictions shall be reviewed and approved by the Planning Board and be required as a condition of plan approval hereunder.
- d. The Planning Board may require that such conservation easement, or declaration of covenants and restrictions, be enforceable by the City of Biddeford if the City is not the holder of the conservation easement or beneficiary of the declarations, or by a third party as specified and/or approved by the Board.
- e. The conservation easement or declarations shall prohibit residential, industrial, or commercial use of such open space land (except in connection with agriculture, forestry, and recreation), and shall not be amendable to permit such use.
- f. The conservation easement or declarations shall be recorded in the York County Registry of Deeds prior to or simultaneously with the filing of the final, approved plan in the York County Registry of Deeds. If the final plan is not required to be recorded, the conservation easement or declarations shall be recorded in the York County Registry of Deeds prior to development of the parcel approved for cluster development, and/or prior to issuance of a building permit for any portion of the cluster development. A copy of the conservation easement or declarations shall be submitted to the planning office with a copy of the receipt from the Registry of Deeds.

5. Ownership of open space land.

Open space land may be held in private ownership (which is to be

preferred) including an appropriate third party not the applicant; or owned in common by a homeowner's association (HOA); dedicated to the town, county or state governments or agencies; transferred to a nonprofit organization such as a land trust acceptable to the Planning Board; or held in such other form of ownership as the Planning Board finds adequate to achieve the purposes set forth in this section and the requirements of this Zoning Ordinance.

The appropriate form of ownership shall be determined based upon the purpose of the open space. Unless so determined, or unless deeded to the City of Biddeford and accepted by the City Council, open space shall be owned in common by the owners of the lots or units in the development. Covenants for mandatory membership in the association setting forth the owners' rights and interest and privileges in the association and the common land, shall be approved by the Planning Board and included in the deed for each lot.

The developer or subdivider shall maintain control of and responsibility for such open space(s) and be responsible for its/their maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Planning Board upon request of the neighborhood/tenants association or the developer.

**From:** [Ronald Ledgett](#)  
**To:** [Adam Causey](#)  
**Cc:** [Drew Fitch](#); [Dutch Dunkelberger](#); [John Perry](#); [Karen Kalmar](#); [Russel White](#); [Steve Bellantone](#); [Kathy Connor](#)  
**Subject:** Re: January 9, 2020 Planning Board meeting + REMINDER  
**Date:** Thursday, January 9, 2020 12:06:49 PM

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Based on the work so far by the Climate Adaptation Committee, I suggest expanding Item 7 to include the following:

Use Title 16 zoning, subdivision and site plan regulations, and/or a special overlay districts to designate areas in Kittery that are high-risk for flooding from sea level rise and increased rate of rain fall and specify the conditions for the use and development including:

- Specifically, identify and specify higher standards for building freeboard height (height above the recorded high-water mark for waters that could flood a structure) and other provisions, which would extend development and building regulations to lessen vulnerability of new buildings and facilities to flooding due to sea level rise and/or increased rainfall rate.
- Incorporate data (more accurate than FEMA data) from Maine Coastal Mapping Initiative for coastal communities and latest data for current and projected land use patterns and precipitation amounts. See:  
<https://www.maine.gov/dmr/mcp/planning/mcmi/index.htm>
- Consider prohibiting artificial hardening of estuary and river shorelines, with possible exceptions granted in the case of an imminent threat to a primary residence structure or critical public infrastructure. Increasing sea levels and increasingly extreme flood events will increase the demand for shoreland armoring, which has been well documented to negatively impact aquatic ecosystems.

Ron

On Jan 8, 2020, at 5:33 PM, Adam Causey <[ACausey@kitteryme.org](mailto:ACausey@kitteryme.org)> wrote:

A reminder that at the last meeting, I asked that Board members review the Action Items list (attached) with an eye towards land use policies that could align with the Title 16 Recodification effort. These would be amendments to the code that go beyond the reorganizing and editing currently underway, to include (but not limited to):

- dimensional standards for particular zones (or all of them...)
- density issues (units per acre)
- allowable uses (beyond consolidation/clarification)
- lot coverages
- development processes
- development requirements
- overlay zone location/interpretation

Please send your priority list to Dutch for discussion at a future workshop and/or second monthly meeting.

Also, an update on the Short Term Rental issue: Town Council requested that the Maine Municipal Association be brought in to conduct a workshop, however MMA is apparently booked solid already for 2020. They did promise to send their presentation materials that Kendra could present, but she will be awaiting input from Town Council at their next meeting before proceeding.

Thank you,

Adam Causey, AICP  
Director of Planning & Development

Town of Kittery  
200 Rogers Road  
Kittery, ME 03904  
Phone (207) 475-1307  
[acausey@kitteryme.org](mailto:acausey@kitteryme.org)

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**From:** Adam Causey  
**Sent:** Thursday, January 2, 2020 5:32 PM  
**To:** Drew Fitch <[drew@atlanticdev.net](mailto:drew@atlanticdev.net)>; Dutch Dunkelberger <[dutchdunkelberger@gmail.com](mailto:dutchdunkelberger@gmail.com)>; John Perry <[jcpkittery@yahoo.com](mailto:jcpkittery@yahoo.com)>; Karen Kalmar <[karen@kalhill.com](mailto:karen@kalhill.com)>; Ron Ledgett <[rledgett@comcast.net](mailto:rledgett@comcast.net)>; Russel White <[rbwhite@gmail.com](mailto:rbwhite@gmail.com)>; Steve Bellantone <[stevebellantone@gmail.com](mailto:stevebellantone@gmail.com)>  
**Cc:** Kathy Connor <[KConnor@kitteryme.org](mailto:KConnor@kitteryme.org)>  
**Subject:** January 9, 2020 Planning Board meeting

The packets are available on the website (<http://www.kitteryme.gov/planning-board/events/54174>) or available at the police station for pick up.

Thank you,

Adam Causey, AICP  
Director of Planning & Development

Town of Kittery  
200 Rogers Road  
Kittery, ME 03904

To: Dutch

From: Earldean

Date: January 13, 2020

Thank you for including the Conservation Commission in the discussion at the upcoming Planning Board Workshop on 1/23/2020.

1. Presently there is no protection for CREATED WETLANDS AND WATER BODIES. As it stands now, an applicant can come to the Planning Board, Planning Dept. or Maine DEP (MDEP allows towns to be MORE restrictive and respects' our ordinances) to request a Permit to fill/impact or to reduce the required setbacks for a wetland or water body that has been 'man-made' and the applicant will receive a Permit to impact/fill without getting a wetland scientist's evaluation, as if they are something other than functioning wetlands. Overtime man-made wetlands and water bodies often take on the characteristics of wetlands with hydric soils, wetland vegetation and wetland functions. We are requesting that ordinance language be added to provide the same protections for Functioning Created Wetlands and Water Bodies that now exist for all wetlands and water bodies and that all wetland setbacks will be observed in the zoning district and shoreland overlay district apply provided:
  - a. The created wetland or water body must be evaluated by an accredited wetland scientist and if found to have hydric soils, wetland vegetation and to be functioning as a wetland is given the same protection as all wetlands and waterbodies.
  - b. Once the created wetland or water body attains the characteristics of a functioning wetland or water bodies they are considered wetlands as defined in Section 16.2 (?) for regulatory purposes.
2. Recently an applicant came before the Planning Board with proposed plans clearly displaying a wetland impact. Staff reviewed former proposed development plans that had been approved by the Planning Board with a condition that a Wetland Permit be obtained for the proposed wetland impact. Town staff could not locate a Wetland Permit, MDEP could not locate a Wetland Permit and the property owner could not produce a Wetland Permit. According to present Kittery Ordinance, this property was in violation and, therefore, had no standing before the Planning Board, but apparently the former Planner felt powerless to stop the applicant. At the very least there needs to be clear ordinance language that ALL CONDITIONS ON A PLANNING BOARD APPROVED PLAN MUST BE OBSERVED AND MET- no exceptions, every plan, every time. The fact that they did not follow through with the proposed development should not matter if they did do the proposed wetland impact without a legal permit. At the very minimum an After the Fact Permit should have been applied for and obtained before another proposed development plan could come before the board.
3. 30% expansion of Nonconforming structures in the Shoreland Zone. Presently, the town of Kittery has concluded that the threat of ocean rise is a real danger to the residents and their property, so much so, that a committee has been put together to take a serious look at all possible problems and suggest solutions. In 2019 an applicant came before the Planning Board with a house located 10 feet from the water's edge of Barters Creek. While the applicant was proposing expansions to the sides and front of the structure (so that the structure was no closer to the resource), it is very important to remember that the entire structure was just 10 feet

from the water's edge with a short stone wall holding back the water. This applicant not only got Planning Board approval for the structure expansion but also got approval for a basement 10 feet from the water's edge! This is only one example of a proposed expansion to a Nonconforming Structure in the Shoreland Zone that lacked consideration for possible impacts from the resource. It seems to the Conservation Commission that some thought should be put into informing, instructing, guiding property owners, with structures within the Shoreland Zone setback and/or in Flood Plains, away from possible impacts or loss of property due to raising water levels and storm surges. Basements will fill with water, structures built at ground level will be impacted. Code Enforcement Officers inspect the plumbing, construction practices, electrical work, etc. etc. why doesn't Kittery Ordinance cover proper location and construction in flood prone areas and Shoreland zone? Is our code depending on applicants and their professional help to devise sensible construction plans that take into consideration all possible dangers? If this is so, we wish to point out that this is simply not happening.