

**CITY OF KEENE  
NEW HAMPSHIRE**

**JOINT PUBLIC WORKSHOP  
PLANNING BOARD/  
PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE  
MEETING MINUTES**

Monday, September 14, 2015

6:30 PM

Council Chambers

**Planning Board Members Present**

Gary Spykman, Chair  
Christine Weeks  
Councilor James Duffy  
Douglas Barrett  
George Hansel  
Tammy Adams, Alternate

**Planning Board Members Not Present**

Andrew Bohannon  
Mayor Kendall Lane  
Nathaniel Stout  
Pamela Russell Slack

**Planning, Licenses and Development  
Committee Members Present**

Councilor Emily Hague  
Councilor Carl Jacobs  
Councilor David Meader

**Planning, Licenses and Development  
Committee Members Not Present**

David Richards, Chairman  
Councilor Bettina Chadbourne

**Staff Present**

Rhett Lamb, Planning Director  
Tara Germond, Planner  
Gary Schneider

**1. Roll Call**

Planning Chair Spykman called the meeting to order at 6:30 pm and a roll call was taken.

**2. Approval of meeting minutes: June 8, 2015**

Councilor Hague stated she had read through the minutes and was impressed by the way it had captured the spirit of the discussion and did not have any changes.

A motion was made by Christine Weeks that the Joint Committee accept the June 8, 2015 meeting minutes. The motion was seconded by James Duffy and was unanimously approved.

**3. Public Workshop**

**Ordinance – O-2015-06 – Relating to a proposed amendment that clarifies the intent of Medium Density District relevant to the number of structures per lot which will be limited to 3 units per lot.**

Planning Director Rhett Lamb stated the origin of this change begins with an appeal to an administrative decision through the Zoning Board of Adjustment (ZBA) in 2014. The zoning ordinance identifies several zoning districts, medium density being one of them. The medium density district has approximately 800 parcels. The district is fairly dense and has a less intense use of land compared to the high density district but more dense than low density.

The medium density district was modified in 1992-1993 at a point when the City was looking at some serious changes to the zoning ordinance. There were a couple of primary purposes attached

to medium density. One was to remove some of the commercial uses that were dominant at that time and the other was to increase the number of units per land area. He indicated language was adopted to that end and this was the subject of appeal in 2014. Mr. Lamb referred to page 22 of the staff report to the actual ordinance language (middle of page, strike through language) the addition of the words “per lot”. He added the change is simple but the significance of this change is not so simple. The original language had a limit to the number of housing units to a maximum three units per structure but the way it has been interpreted over the course of time since the early 90’s has been as “per lot”.

In accordance with the density requirements the first unit needs to be 8,000 square feet in size and each succeeding unit should be 5,400 square feet which was interpreted in 1993 as three units per lot, which would be 13,400 square feet for two units and 18,800 square feet for three units. He explained the Zoning Board’s ruling upheld the administrative decision and removed the per lot limit. The result of that is if someone had a larger lot in the medium density zone you no longer had to subdivide that lot and provide for frontage for each individual lot and could build with no limits to the number of units on the lot as long as the building did not exceed three units.

Councilor Jacobs clarified the dimensional requirements still need to be in place. Mr. Lamb answered in the affirmative. He added the typical way of establishing density requirements of units per structure as it existed in 1992 does not exist anymore; it is now units per lot.

Based on the ZBA’s decision there was an initial review done of approximately 800 parcels in the medium density district and 45 were identified as being able to accommodate more than three dwelling units and on those 45 parcels there could be 62 dwelling units on them today. Code Enforcement has also determined (not including any site limitations) an additional 330 additional units that could be developed. He went on to say staff does understand that this is not a realistic way of looking at development potential and hence staff looked at two possible land areas: 217 Court Street and 165 South Lincoln Street. Mr. Lamb noted possible development options are listed for these land areas on pages 20 and 21 of the Staff Report. If these two examples of land areas were developed according to the ZBA recent decision, this is what it would look like:

217 Court Street – home of the Surry Village Charter School: Land area is close to two acres and using the dimensional requirement for a medium density district shows a possible development of three additional buildings and dividing the existing structure into three units (12 units in all). The bottom line is, under the ZBA interpretation, twice as many units could be obtained.

Ms. Weeks stated she has a large lot she owns on Portland Street and has talked to many individuals about placing a conservation easement on her property and felt the property Mr. Lamb is talking about is a better example because it provides a greenspace. She asked whether the City would want properties turned into conservation land within the City. Mr. Lamb stated this is the question that is inherent under this ordinance and added that he couldn’t talk to the conservation easement but the question before the Committee is how much land would the City want developed if it can be developed. Ms. Weeks asked whether a vote is being considered tonight for this item. Mr. Lamb stated a vote is not something that is absolutely necessary if the Joint Committee doesn’t feel adequate information has been reviewed.

165 South Lincoln Street – two adjacent lots in common ownership. There is one unit today in an existing building. The rear lot is a separate land locked parcel with no frontage (undeveloped green space). Under this scenario, it is being assumed the two lots will be merged and the

existing frontage on South Lincoln Street will be used as an access driveway to the rear of the lot where two new three unit buildings could be constructed. Mr. Lamb added even though staff is only showing two buildings, three could be constructed. Hence, this landowner could construct three units in the existing building to a maximum of nine units.

He noted with both these land areas there is also the option of subdivision.

Mr. Lamb next called the Committee's attention to the table on Page 14 which looks at the basic zoning standards of the three primary zoning districts. He noted there is not much difference between these districts:

<b>HD</b>	<b>MD</b>	<b>LD</b>
6,000	8,000	10,000

In the low density district it is clearly stated that you get one unit per lot. In high density there is no limit for number of lots and there is no limit for building. In the medium density the one phrase, per structure has been interpreted as a limitation on the units per lot. This is the only item that distinguishes between medium density and high density. To interpret this to mean per building, places medium density and high density as indistinguishable except that you can build bigger buildings in high density. Mr. Lamb stated as a result staff presumes in 1992 what was being attempted is to create a greater distinction between high density and medium density and the ordinance before the Board tonight re-establishes that distinction. If someone was to construct in a medium density today, the two scenarios presented by staff is a way someone could develop their lot. Chair Spykman referred to an error in the language in this table. It should correctly read as "maximum percentage of lot coverage, not minimum"

Mr. Lamb then referred to a rendering which showed the medium density districts in the City: Washington Street, Court Street, Lincoln Street, Beaver Street to Water Street, North Street, Intersection of Gilsum and Washington Street, School Street neighborhood, Citizens Way, corner of West Street and Route 9/10/12, Harmony Lane, land adjacent of Woodland Cemetery, Carpenter Street (dominant housing is single, two family and three family).

Mr. Lamb stated staff did look at the comprehensive master plan and reviewed as to how medium density should be treated. He noted to the master plan principles which call for creating a balanced and diverse housing stock, affordable housing, student housing, neighborhood village activity center, allowing mixed uses in neighborhoods.

Mr. Lamb went on to say the dominant housing in the medium density district is single, two family and three family which is consistent with the zoning ordinance which says you get three units per lot not three units per building. The development pattern staff presented in the two scenarios tonight is probably not consistent with the pattern that has been established in the medium density district in the last 20 years.

Councilor Duffy referred to page 14 where it refers to language from the master plan and felt it was more than a recommendation to update landuse and zoning code, in fact it was identified as the number one implementation strategy in 2010. However, the City has still not begun this process even though it was outlined in the CIP, it was "kicked out" of the CIP but has now been funded again and the process has just started.

Plans Examiner Gary Schneider addressed the Committee next. Mr. Schneider stated he has been working for Code Enforcement since 1979. He indicated prior to the ordinance being changed in

1992 and 1993 it was clear that in the medium density zone you were allowed two units and you were allowed a third unit if you went before the ZBA for a Special Exception. When this ruling came up which was different to how Code Enforcement always ruled on medium density properties, Mr. Schneider stated he did a lot of research with the Clerk's Office and looked over the meeting documents that happened in 1992 and 1993. He stated that nowhere in any of those meetings did it talk about allowing three units per structure. Prior to that it was no more than three units and prior to 1993 before the ordinance was changed you needed the same amount of footage for each unit. When the ordinance changed, they lowered it from 8,000 square feet to 5,400 square feet but was clear in all the information there was no information about the number of units in a structure.

Mr. Schneider referred to a large piece of property on Marlboro Road on Route 101 which is located in the medium density zone and if this reasoning was to be upheld and not changed, this property owner will be able to locate 22, three-unit structures on this property (75 units).

Ms. Weeks stated she was not following this discussion and asked for further clarification. Mr. Schneider stated Code Enforcement's interpretation would be for example to limit it to no more than three units on the Marlboro Road property. When the appeal went before the ZBA recently on a different piece of property, the appeal was that instead of limiting it to three units per lot it was to be three units per structure and if the lot was large enough it could accommodate more than just three units. Code Enforcement disagreed with that interpretation but the ZBA ruled with the petitioner and indicated the ordinance says three units per structure and that would be the ruling the city would be forced to live with.

Mr. Lamb noted page 12 which states "three units per structure" which conflicts with other sections of the ordinance which talk about the number of units for the size of the lot. ZBA's ruling was that it should be interpreted the way it was written even though the reading and the intent had always been three units per lot which is how Code Enforcement had been operating since 1993 when this ordinance was adopted. Mr. Lamb stated the question for the Committee is whether they want to make the language read as it has been interpreted for the past 20 years.

Ms. Weeks noted that Mr. Schneider had indicated he did not find language that said three units per lot. Mr. Lamb agreed Mr. Schneider could not find justification why the word "structure" was used and not "lot". Ms. Weeks asked whether the ZBA decision is final. Mr. Lamb stated the City is bound to interpret it in that manner. Ms. Weeks asked if the language is changed the two examples of development Mr. Lamb gave could not happen. Mr. Lamb agreed but those property owners do have the option of subdividing and creating more units but it won't be as many as twelve. Ms. Weeks asked what happen with reference to the ruling that went before the Board. Mr. Schneider stated this petitioner prevailed and was able to get the six units on one lot using a merger process.

Councilor Hague asked whether there was any argument presented by the applicant as to why interpretation they chose would be appropriate for Keene and medium density. Mr. Schneider stated the applicant was represented by legal counsel and there is state law that states it doesn't matter the intent of the ordinance or the history of other development, what the ordinance says is the law. The Councilor asked whether the applicant presented any reasoning as to why this level of density would be appropriate. Mr. Schneider stated they were looking at the language and wanted to move forward as it stated. Mr. Lamb state he was not at the meetings but did not feel there was an argument made to the larger question with reference to medium density.

Councilor Jacobs indicated staff has said the current situation is inconsistent with what is outlined in the master plan and stated he would like to hear more on that issue. He added that he can see how having more units could accomplish some of the goals of the master plan such as providing for workforce housing. Mr. Lamb stated that he was not making an exclusive argument with respect to the master plan but rather a general argument with respect to planning principles. The City has a pattern that is pretty well established of mostly single, two and three-family homes developed on separate lots. With this pattern larger land areas could be developed as single developments. He further stated the master plan does not provide specific guidance and the Committee might agree with the additional density. What he has provided is the pattern of development would be different to the surrounding zoning district that already exists in the medium density.

Mr. Barrett asked whether this is the only conflict that exists in which the code enforcement's interpretation is different to what is said in the ordinance since it was adopted in 1993. Mr. Schneider answered in the affirmative. Ms. Weeks asked where this property is located. Mr. Schneider stated it is located at the corner of Carpenter and Kingsbury Streets.

Mr. Lamb went on to say that the master plan does call for a more detailed neighborhood scale planning. In some neighborhoods the issue of addressing workforce housing, student housing will be appropriate. However, absent where this should occur his argument is to keep the pattern that has existed and if added density is required, be done in a more defined area. Mr. Lamb talked about an application that came from Dartmouth Street and the opposition this application saw from the neighborhood with respect to drainage.

Councilor Duffy asked whether the City of Keene needs to have a Zoning Board. Mr. Lamb stated if a City has a zoning ordinance it needs to provide a venue for appeals of decisions.

Councilor Meader referred to page 14 where it talks about the city's need to update its landuse zoning codes which the city is beginning to do. He asked whether the amount of density in a larger context will be discussed at that time. Mr. Lamb stated they would. The Councilor recalled the discussion that happened in 1992/1993 and the concerns expressed regarding density in medium density districts and felt the ZBA's decision is different to the philosophy of the past 20 years and felt it was time to look at the larger picture and decide how the City wants to move forward.

Councilor Hague clarified the ZBA's decision brings the medium density district closer to high density and such decision could undermine the Council's bigger picture thinking and hence the need for this clarification. Mr. Lamb agreed his interpretation is there is now very little difference between high and medium density districts as to the number of units. Mr. Schneider clarified the ZBA didn't agree it should be three units per structure; what they upheld is the wording of the ordinance.

Councilor Jacobs asked whether there were other differences between these two districts such as allowable uses. Mr. Lamb stated the allowed uses are different; in high density there is a high volume of mixed uses as well as smaller scale commercial activity.

Mr. Bartlett asked if the ordinance was changed as proposed by staff and a particular parcel came before the Board for additional development – short of changing the ordinance back, what other options are available to that applicant. Mr. Schneider stated if there was substantial argument the applicant could go before the ZBA for a variance.

Chair Spykman summarized what has been discussed so far. In essence this new ordinance is simply fixing a mistake; the way it has been interpreted all these years is what was meant to be written, but somewhere along the line a wrong word was inserted into the ordinance. All the Committee is doing is fixing a mistake – no change is being made. Mr. Lamb added the development pattern will not change.

Chair Spykman asked for public comment. With no public comment, the Chair closed the public hearing.

Ms. Weeks asked whether this wording has been reviewed by the City Attorney. Mr. Lamb stated the language has been reviewed by the City Attorney.

Ms. Weeks asked whether a duplex is considered one unit or two units. Mr. Lamb stated a duplex is two units. Ms. Weeks clarified this change will limit development to three dwelling units per lot. Mr. Lamb answered in the affirmative.

A motion was made by James Duffy that the Planning Board finds O-2015-06 consistent with the Master Plan. The motion was seconded by Tammy Adams and was unanimously approved.

A motion was made by Carl Jacobs that the Planning, Licenses and Development Committee send this item on to the Mayor to schedule a public hearing. The motion was seconded by Emily Hague and was unanimously approved.

#### **4. City Council referral – Comprehensive Master Plan Implementation Update**

Mr. Lamb stated the Joint Committee was assigned the task of oversight, review and then the implementation of the Master Plan. He indicated several presentations on various topics have been made in front of the Joint Committee to keep the Committee updated on what has been going on.

Mr. Lamb talked about how the master plan gets implemented. He explained projects that relate to infrastructure are represented by capital improvement projects. Each year the City prepares a capital improvement program and all aspects related to maintaining how the City functions - (projects elevated to \$25,000) comes through the Master Plan.

Another way implementation is done is through the legislative process – it could be done through the Planning Board regulations; for example SEED District, Surface Water Ordinance. In some cases staff would request the Council to sponsor changes to legislations at the higher level – for example the net metering law.

Mr. Lamb then talked about the Complete Streets Policy which is underway. This is a Master Plan idea from 2010 and felt this policy will be adopted in short order. He referred to the initiative that will take place on Saturday, September 19. With reference to the Green House Gas inventory, this is being planned for 2015. In January-February of this year, the Active and Passive Recreation Plan was adopted. This was a specific recommendation of the master plan.

Phases of trails development is also being pursued. The south bridge is out to bid and should be funded by the State for the construction of the bicycle/pedestrian crossing towards the bypass.

The first phase of the Stone Arch Bridge has also been completed. Marlboro Street zoning should be coming before the Committee shortly.

With reference to the arts – establishment of a Friends Group is being thought of.

Low impact development standards are also something staff has been working.

With the help of Antioch University New England, the City has been able to work on the Climate Adaptation Plan which was adopted in 2007. Establishing a Food Coop is in this Adaptation Plan and increasing local agriculture and creating, community gardens, again with the help from Antioch University New England. Changing and updating the energy code – adoption of the SEED District. The City being powered by 50% renewable energy, there is progress being made towards this idea. Stormwater management is something the City is always working on. Mr. Lamb stated this is a quick list of a very long list of projects.

Landuse Code Update – Funding was available for this project about a year ago but because of the transition that has happened in the Planning Department the project has not been pursued. The plan was to work on the Marlboro Street project first. He indicated there will be a series of ordinances staff will be bringing forth for the committee and council's review very soon. Mr. Lamb went on to say that he would next like to talk about a concept staff has been working on in the Planning Department. He stated that he would like to propose splitting this project into two parts; first assess the status of our regulations and code and look at state of the art ways to do this work and to that end, Mr. Lamb proposed hiring a national scale planning consultant. This will help define what we want to achieve, learn from others about various approaches, and then draft the code.

Councilor Duffy thanked Tara Germond, the City's new planner, JB Mack of SW Regional Planning Commission and Linda Reuben for the work they did on Complete Streets and moving the project forward. The Councilor asked what changes of consensus have taken place with reference to landuse since 2010. Mr. Lamb stated in 2010 the idea was fresh and what he is suggesting is to make sure everyone is on the same page before a substantial amount of work is taken on; building a foundation for how our landuse code will work. He felt the City is not in the same growth mode as it was back in 2008-2010; this is what the consultant can help us understand.

Councilor Duffy referred to language from the Human Services Health and Safety Committee meeting minutes of July 7, 1993 – there was discussion about Keene State College possibly paying for a police officer as well as pursuing a conversation about off-campus housing. There was also discussion about the purchase of alcohol, the deterioration of property values etc. He noted the same items being discussed today was discussed back in 1993. The Councilor felt the neighborhoods closer to downtown should be a priority and felt this was something that is mentioned in the master plan and felt an emphasis should be put on creating neighborhoods that have more in common with pre-excessive automobile use.

Ms. Weeks referred to page 43, Open Space Protection and stated that perhaps the City could work with organizations like the Monadnock Conservancy or the Harris Center to help landowners who wish to put their property into a conservation easement and asked whether a presentation could be arranged by one of these organizations.

Ms. Weeks then talked about a topic previously discussed – adding Wyman Road to institutional use. She asked that the city evaluate how the demographics are changing to an aging population. She noted the school district will be closing one elementary school. She asked whether the master plan address an aging population and felt it should. Mr. Lamb stated he recalls this conversation. He indicated the master plan is not being re-written in this exercise, it is being implemented and in adopting substantial changes to the landuse code, demographic trends should be looked at. But this does not mean the master plan is going to be amended.

Councilor Hague stated leads and partners have been identified in the spreadsheet Mr. Lamb and asked which entities would assign timeline, status and metrics. Mr. Lamb stated staff has not got to that point yet. The Councilor stated it is important to be mindful of staff time as well. She further referred to the letter from Councilor Duffy asking for Board and Commission updates to the Council and asked if there is an opportunity to update the list the Joint Committee has today to check off items that have been accomplished and perhaps assigning some these tasks to appropriate committees.

The Councilor recalled a conversation about 30% of the City's Code being redundant and could be eliminated. Mr. Lamb stated his recollection is the City Manager setting a goal to reduce the number of regulations through the City Clerk's office and there was a percentage attached to it. Councilor Hague asked if there was an opportunity to look at this first before. Mr. Lamb stated this gets back to re-evaluating what we want to achieve and felt it is a deliberate process to choose what we want to achieve as this will be a multi-year process.

Chair Spykman asked Mr. Lamb to explain for the benefit of those watching this meeting what the landuse code includes. Mr. Lamb stated fundamentally there are codes and regulations in place to determine how land is used, for instance the zoning ordinance which determines the overall pattern of a parcel of land. The Planning Board standards for site plan review and subdivision of land will also be included in this as will the Historic District rules, flood plain ordinance which has a substantial effect on landuse, earth excavation standards, building code which is ultimately the final step for construction which is finally looked at by the Fire Department.

Chair Spykman asked whether there was a chance in this process a way to combine some of these codes. Mr. Lamb stated this is one of the key elements staff is working on is to make this process easy for people to understand.

Councilor Jacobs asked whether the consultant would help bring the entire process together. Mr. Lamb answered in the affirmative.

Mr. Hansel thanked Mr. Lamb for putting this document together. He referred to marketing, recruitment and economic development and felt this is more reactive than proactive. He felt economic development is an important aspect to move this City forward and noted he didn't see many steps in this area in the master plan and hoped this is something that could be addressed as well. Mr. Lamb talked about the innovation zone that came up during the Marlboro Street rezoning; where the City would create the right incentives and then it would be up to the private entities to make an investment in whatever they felt was advantageous to them. He agreed creating economic development should be a priority but felt it should be a partnership which is how the city has done many things.

Councilor Duffy felt economic development is important but the City should also pay attention to things like housing stock, it should be a balanced approach. Mr. Hansel stated he has seen much emphasis put on localized planning issues as opposed to looking at the possibility of a game changing employer coming to Keene.

Chair Spykman stated that economic development and creating a livable community go hand in hand and the document before Committee gives us a path to achieve this. He commended staff on the quality of work that went into this document. The Chair asked where the Committee moves from this point. Mr. Lamb stated the two things he has identified is to write the first scope of work for the landuse code update and bring it back to the committee and secondly to refine the master plan list. He added he wasn't sure this can be done in the next two months but it will be brought forward soon. The Chair asked the Committee to look at items they would like to put focus on and bring those items forward.

5. Next Meeting – **Tuesday**, October 13, 2015

6. Adjourn

The meeting adjourned at 8:30 PM.

Respectfully submitted,

Krishni Pahl,  
Minute Taker