



CITY OF KEENE LAND USE CODE AD HOC COMMITTEE

Friday, May 17, 2019
4:00 pm
2nd Floor Conference Room
Keene City Hall
3 Washington St, 03431

AGENDA

1. Call to Order
2. Downtown Form Based Zoning Update
3. Review of Draft Land Development Code Chapters
 - a. Hillside Protection Overlay District
 - b. Telecommunications Overlay District
 - c. Surface Water Protection Overlay District
 - d. Subdivision Regulations (including Conservation Residential Development)
4. Next Meeting – June 7, 2019
5. Adjourn

City of Keene
New Hampshire

LAND USE CODE AD HOC COMMITTEE

Friday, May 3, 2019

2:00 PM 2nd Floor Conference Room

Members Present:

Kendall Lane, Mayor
Margaret Rice, Councilor
Doug Barrett
Jim Phippard
Dave Richards, Councilor
Gary Spykman
Katie Cassidy Sutherland
George Hansel, Councilor

Staff Present:

Tara Kessler, Senior Planner
Med Kopczynski, Economic
Development, Initiatives, and Special
Projects Director
Mary Brunner, Planner
Rhett Lamb, ACM/Community Dev. Dir.

Members Not Present:

1) Introductions -

Mayor Lane opened the meeting by thanking everyone for their participation. He shared the intent to have the project finished by the end of the year. The Mayor's hope is that this smaller group will help facilitate the development of a successful product that Council can adopt.

2) Role of Ad Hoc Committee –

Mr. Kopczynski said that staff originally thought it would use the Joint Committee as a sounding board for the project. However, there has been a recent recognition of the need for a Steering Committee that can meet more frequently and directly with staff to finalize the drafts of the Land Development Code and the Form Based Zoning effort. He noted that there will be points in time when this information will be distributed to the general public to obtain feedback.

The role of the Steering Committee will be to review chapters and sections of the Land Development Code that are nearly finished drafts. Staff will provide a "Change Form" with each draft that explains, at a high level, what amendments have been made and where appropriate a description of why these changes are proposed. The expectation is for Committee members to review the drafts and change forms prior to the meeting and then be prepared to ask questions and engage in discussion on the drafts at the meeting. Staff will use the Change Form to guide discussion at each meeting.

3) Building Better Together Update -

Ms. Kessler referred to the handout "Schedule of Content to be Shared with Steering Committee" and verified members also had copies of the "Technical Review Summary Report" from Camiros. Ms. Kessler reiterated Mr. Kopczynski's comments regarding use of the Joint

Committee noting they have been working on developing drafts for the past 12 months. The handout lists the different content that is anticipated to be in the final Land Development Code, and in the order we anticipate drafts being shared with the Steering Committee for review. Ms. Kessler went on to explain the schedule.

1st column- Land Development Code (LDC) Chapter corresponds to each of the chapters.

2nd column – Status indicates where we are internally with working on drafts.

- Dark green- completed draft
- Light green- nearing completion of draft
- Light orange- draft has begun with more information needed
- Dark orange – draft not started yet

3rd column – Date Shared with Committee

Ms. Kessler explained this lets the Committee know where staff is at and that staff will be presenting these drafts starting at the next meeting.

Mr. Kopczynski gave a reminder that the majority of this project is a reorganization of what is already there. He continued stating that separate from this process is the work to develop an ordinance specific to Social Service and Continuing Care uses, which is on its own and will come to Council in two weeks. Mr. Lamb added the this ordinance will not come to this Committee; it will go straight to the Joint Committee. Mayor Lane asked about the definition of Social Services. Mr. Lamb explained it entails lodging houses, group homes, homeless shelter, and some of the more care oriented types of living uses. Mayor Lane verified questions remaining from previous Joint Committee meetings will be presented here. Mr. Kopczynski affirmed adding we will be looking for guidance from this Committee to make sure we have captured them all.

4) Downtown Form Based Zoning –

Ms. Kessler explained the process and what has been going on with respect to Form Based Zoning in the Downtown for those present not serving on the Joint Committee. Referring to the Technical Report, Page 31, Ms. Kessler said this is the meat of what is being proposed. She noted a map of the seven districts is also included as Page 33. Ms. Kessler said they have been working with Camiros to talk about the next steps. She also noted an interest from staff to get back into the community to review the proposed subdistricts and collect feedback. However, prior to doing so, staff feel it is important to ensure the Steering Committee is certain of the proposed districts and boundaries. Camiros is currently working on more visualizations of what the dimensional setbacks would look like, a better delineation of the uses allowed, and more concrete definitions of setbacks and form requirements. This next deliverable should come back to this Committee in early June.

Mr. Kopczynski asked Ms. Kessler to speak about the methodologies that might be used to reach out to the public. Ms. Kessler replied staff feels it is important to reach out directly to the property owners and tenants of the buildings that would be impacted by these changes, holding two or three meetings specific to sub-districts. Ms. Kessler also noted opinions might vary depending on how people are impacted. Staff would also like to hold the meetings in the same time period as a larger community forum where everyone can come to learn about the proposal and ask questions.

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Addressing the where and when, Ms. Kessler said staff would like to hold the meetings around the same time frame in a place close to the geographic areas to be impacted. Mr. Kopczynski suggested this Committee would be present at those meetings to hear firsthand the community concerns.

Mr. Barrett asked about the timing of the outreach sessions. Ms. Kessler replied staff is looking at mid to late summer. Addressing the organization of the events Ms. Kessler noted the challenge is contact information of tenants occupying spaces that are not the property owners. A list was started at the fall workshop.

Mr. Lamb reiterated the Mayor's comments noting the map and boundaries were the subject of much discussion. Part of what Camiros is doing in this next round is helping us understand uses and dimensions through the use of renderings of what these future scenarios will look like. Mr. Lamb also noted this subject is scheduled for discussion during the next couple of meetings to answer any questions this Committee may have.

Mr. Kopczynski said he had a subject that goes along with this he would like the Committee to start thinking about; downtown parking. He referred to the report done last year noting there is no parking standard requirement in the Central Business District. Mr. Kopczynski said there have been discussions as to whether this is a good or bad thing. If you look at the Expanded Downtown, there might be shades of that requirement. He noted the current limitation with the suggestion that parking lots only be in the rear of the buildings. In relationship to downtown parking Mr. Kopczynski commented:

1. How much of it is going to be a requirement for the private properties versus the City providing the parking?
2. If the City provides parking, we need to be thinking about how/where we would be providing it.
3. The downtown aesthetic standard will also have to be drawn in somewhere along the line.
4. The City will also have to make sure that its part of this matches whatever downtown is.

Mr. Lamb added some of the practices such as parking and snow removal relate to Zoning Districts, and maintenance practices are different outside of downtown. He continued if this area is getting bigger there are questions to our other operations about how we will or will not maintain it in the future. Councilor Hansel asked if only the Downtown Growth area was being discussed. Both Mr. Kopczynski and Mr. Lamb replied they did not know. Mr. Kopczynski commented we want to make sure the Joint Committee, Council, and this group fully understand the implications; if there are any.

Mr. Phippard said he is already getting questions about this proposed zoning change from his clients and looking at the map he has clients in every one of the sub-districts. He noted the first questions he has received include:

1. Why did they draw the line down my side line?
2. Will I become non-conforming and have to go before the ZBA?

Mr. Phippard continued noting his concern that this causes conflicts between the two adjacent properties. Mr. Phippard said he does not know how to answer the questions even after listening to all the discussions. He referred to Page 33, specifically the dark green Residential Transition zone which is made more at the side lines than the others. Mayor Lane commented that is

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primarily the old Office Zone; this was not an attempt to create something new. Mr. Lamb clarified we are just changing the name of it and putting it into a sub-district that will have slightly different treatment than the Office District today. Mr. Lamb did agree this will likely change some of the parameters and uses. Ms. Kessler pointed out today at Roxbury Court and Spring Street there is no buffer between the current Central Business District and adjacent residential districts.

Mr. Phippard continued noting he also gets questions about parking. One question is if the City can really make someone park on the rear of their property. Mr. Phippard explained how he replies to this question. Mayor Lane added it is probably a question we will have to wrestle with as the project unfolds. The Mayor continued, stating that when the City removed the requirement for off-street parking in the Central Business District, it was under the assumption that the City provided adequate parking; this is not always the case. There are areas where the City has not been able to provide adequate parking for whatever reasons and this will be a challenge going forward the Mayor noted.

Councilor Hansel said it will be difficult in some of these areas that are sparsely developed to determine what the parking demand will be. Mayor Lane suggested we say onsite parking is required and that becomes part of the development requirement. The Mayor continued, stating that we did not do this on Railroad Street and now we have a parking problem there.

Continuing Councilor Hansel said the original work around messaging for this project is going to be important and it might be a good idea to send it out again to the Steering Committee. Mr. Lamb commented staff was just talking about that the other day along with how to structure our public outreach. Mr. Phippard suggested that parking under the first floor of a building should not be precluded and hopes the City will consider this option. He raised the point because it is starting to become more affordable/feasible to do this and provided some background information. He also noted recent discussions with a developer regarding the Kingsbury property. Mr. Kopczynski discussed the two techniques he is familiar with for underground parking. The Mayor noted we are limited by the water table and also noted we may need more education as we move along.

5) Schedule of topics for upcoming meetings – Discussed in agenda item #3.

Ms. Kessler asked how many on the Committee understand the concepts of form based zoning and how much education would be needed to supplement upcoming discussions. Councilor Hansel said he just has to see how it is applied. Mayor Lane suggested everyone understands the basic concept and that more education may be needed as we move along. Mr. Spykman commented the product would be the education; and it will be easily understood by non-professionals.

Ms. Cassidy Sutherland raised the subject of Special Exception/Variance and asked what the process would be. Ms. Kessler commented we would need to determine the path for relief from the code. Mr. Kopczynski noted that the form based district also substitutes in part for the Historic District Commission (HDC). Ms. Brunner reported this has also been discussed with the HDC a couple of times and they are supportive of this. Their standards are geared more towards existing buildings and preserving architectural features of existing buildings. Ms. Brunner continued they do want to stay in touch to ensure new construction follows the historic

pattern. Mr. Kopczynski also noted this could supplant Development Standard 19 of the Planning Board.

Ms. Kessler noted there have been no discussions on architectural guidelines. The discussions have been just about the placement of the building on the lot not what the façade should look like. Councilor Hansel commented on how important Ms. Cassidy Sutherland's comment is to allow for new ideas. He asked if the new districts would provide for more creative design than others or would this be uniformly applied across the whole form based code area. Mr. Lamb indicated some of this is still to be determined and agreed with Ms. Kessler the standards will be relatively general talking about building placement, height, size, orientation on the lot, and a body to authorize approval when needed. Mr. Lamb continued hopefully this Committee will test us on this when the regulations come in because you are the sounding board. Councilor Hansel noted his fears getting into designing district by district. Mr. Lamb reiterated these sub-districts were created with intention of representing what is there today. Ms. Cassidy Sutherland referred to the Downtown Growth district noting there is a lot of opportunity for different forms of development; something may come up that does not meet the established form and we need to determine who will be the authority for its approval. Mr. Kopczynski suggested the relief valve should promote good architecture. Mr. Spykman recommended not making it so easy that people could opt out. Mayor Lane said he is hoping we do not create so many non-conforming uses that every time someone wants to do something they have to go to the ZBA.

Ms. Kessler addressed what is proposed for discussion at the next meeting and asked if the Committee needed one or two weeks to digest it; Hillside, Surface Water Protection, Telecommunication, and Subdivision Regulations. Ms. Brunner noted there are examples of the Change Form on the Building Better Together website (keenebuildingbetter.com).


6) Next meeting – Ms. Kessler suggested the Committee would need to meet twice per month for next few months. Committee members discussed their availability and it was determined the next meeting would be held on Friday, May 17th at 4:00 PM.

7) Adjournment - There being no further business before the Committee Mayor Lane adjourned the meeting at 3:03 PM.

Respectfully submitted by,
Mary Lou Sheats-Hall, Minute-taker
May 7, 2019

Reviewed and edited by Tara Kessler, Senior Planner

2020 Building Better Together (UDO)

 <p>BUILDING BETTER TOGETHER KEENE NEW HAMPSHIRE</p>	 <p>SIMPLE New regulations will be easy to navigate & will include graphics to outline a clear process, from start to finish.</p>	 <p>EFFICIENT The updated structure will provide a set of clear procedures for development queries, & will create a more streamlined application process – eliminating the need to navigate multiple points of contact.</p>	 <p>THOUGHTFUL Although our regulations have worked in the past, they can be outdated & confusing. This update will help guide us into the future, while protecting the crucial elements that make this a great place to live, work, & play.</p>	<p>Hillside Protection Overlay District</p> <p>Draft as of May 13, 2019</p>
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BACKGROUND:

- The City adopted the Hillside Protection Overlay District originally in October of 2009 and later amended it in March of 2010. This ordinance was designed to protect against flooding and erosion/sedimentation that could occur as a result of the City's steep slopes areas being developed. Impacts to steep slopes, such as the cutting and filling of these areas for building structures, can lead to changes in the watershed, which can contribute to flooding downstream. The current Ordinance limits the types and degree of development that can occur on hillsides / slopes with a grade of over 15%. It also includes standards for site preparation, grading and construction.
- This current Ordinance requires a conditional use permit issued by the Planning Board for any removal of vegetation, grading of slopes, erection of buildings, addition of impermeable surfaces, installation of sewage disposal systems, and/or removal of native soil that impacts greater than 20,000 sf of precautionary slope area on one lot.
- In addition, the current Planning Board Site Plan and Subdivision Regulations specifies that all prohibitive slopes and 50% of precautionary slopes be deducted from the calculation of minimum lot size.

The current ordinance is available for review via the following link:

https://library.municode.com/nh/keene/codes/code_of_ordinances?nodeId=PTIICOOR_CH102ZO_ARTXIIIH_IPR

SUMMARY OF MAJOR CHANGES & REASONS:

- The primary changes to this ordinance are the reorganization and streamlining of the existing text and structure to improve readability and ease of understanding. No changes are proposed that would alter the original intent and meaning of this ordinance or that would impact the standards for review.
- Staff are proposing to eliminate the requirement in the Planning Board Regulations that all prohibitive slopes and 50% of precautionary slopes be deducted from the calculation of minimum lot size.
- Staff are proposing that graphics be included to support the following sections of this regulation:
 - **"Siting of buildings.**
The highest point of a structure that requires any permit shall be located at least 50 vertical feet below and 50 horizontal feet from the top of a ridgeline or hilltop, measured at approximate right angles to the ridgeline or the hilltop. Ridgeline shall be defined as a narrow elevation of land or similar range of hills or mountains representing the highest elevation of such landforms which also include prohibitive and/or precautionary slopes. When building on slopes, structures shall be set into topography using partial earth sheltering. "
 - **"Clearing for views.**
Trees may be removed beyond the building area for a width of clear cutting not to exceed 25 feet and extending outward from the edge of clearing within the building area at an angle of 45 degrees or less on both sides, to a point down-slope where the tops of the trees are at the same elevation as the ground floor of the building. The 25-foot opening may be at any point along the down-slope boundary."

REMAINING ISSUES/QUESTIONS

- There needs to be a cross reference to the Conditional Use Permit Section of the LDC, which would contain more information about the application procedure.

- There should be a map established for these precautionary and prohibitive slopes.

ATTACHMENTS:

- A. Revised Hillside_Standards_05-13-19 dated May 13, 2019

DRAFT HILLSIDES PROTECTION OVERLAY DISTRICT

PURPOSE

The purpose of the Hillside Protection Ordinance is to protect the city's ecological and scenic resources from undue adverse impacts resulting from development of steep slopes, ridgelines, and visually sensitive lands, and to guide development of those hillside areas where development can be safely accomplished through carefully designed, low-impact development.

APPLICABILITY

- a) The standards set forth in this Article shall apply to all land area with prohibitive and/or precautionary slopes as defined below.
 1. *Prohibitive slopes* are slopes of greater than 25 percent where any land area has an elevation gain of greater than ten feet over a horizontal distance of 40 feet or less.
 2. *Precautionary slopes* are slopes of 15 percent up to 25 percent where any land area has an elevation gain of ten feet over a horizontal distance between 66 feet and 40 feet.
- b) Slopes in excess of 15 percent that were constructed during the lawful development of a site in accordance with this Article shall not count toward the future delineation of steep slopes or the future calculation of the area of the lot affected by steep slopes.

REVIEW AND APPROVAL AUTHORITY

- a) An evaluation for compliance with this Article shall be performed by the City Engineer at the time of application for any subdivision, site plan, building permit, driveway permit, and/or any construction or improvements subject to review as stated in this article. The City Engineer may require special studies or information in order to make this determination.
- b) All driveway permit applications with driveway layouts that affect land areas subject to this Article shall be referred to the Planning Board for approval.
- c) A Conditional Use Permit from the Planning Board shall be required if a total area of precautionary slopes greater than 20,000 sf on an individual lot is proposed to be altered by removal of vegetation, grading of slopes, erection of buildings, addition of impermeable surfaces, installation of sewage disposal systems, and/or removal of native soil.

GENERAL STANDARDS

- a) Development, including clearing, grading and construction, on all land areas subject to this Article shall be designed, sited, or carried out in a manner that does not cause undue adverse impact to the physical environment and shall provide for the retention of native soil, stabilization of slopes, and prevention of erosion or sedimentation of streams and watercourses.
- b) Existing natural and topographic features, including the vegetative cover, shall be retained on lands subject to this Article except where removal of vegetation and grading are expressly permitted and subject to applicable standards set forth herein.
- c) Structures, where permitted, shall be designed and sited in a manner that limits the removal of vegetation and grading, and avoids natural features such as prominent knolls, ridgelines, ravines, and natural drainage courses.
- d) Erosion and sediment control measures, soils stabilization measures and stormwater management systems shall be designed and installed in accordance with best management practices, contained in the most recent version of "Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire" and shall be adequate to mitigate potential adverse impacts associated with the disturbance of steep slopes, during and after construction.

SPECIFIC STANDARDS

1. Prohibitive Slope Standards

- a) Removal of vegetation, grading of slopes, erection of buildings, addition of impermeable surfaces, installation of sewage disposal systems, new streets, and/or removal of native soil within prohibitive slope areas shall not be permitted except as expressly indicated in this section, and subject to the corresponding use also being permitted in the applicable zoning district.
- b) The following shall be permitted in prohibitive slope areas subject to the standards set forth in this Article.
 - i. Construction of a new driveway across a prohibitive slope area to access a new single-family dwelling on a lot that existed at the time this Article was adopted, provided that there is no alternative driveway location that would avoid the prohibitive slope.
 - ii. Expansion of a building that existed either wholly or partially within the prohibitive slope area at the time this Article was adopted, provided that:
 - a. The area of the expanded footprint within the prohibitive slope area does not exceed 25 percent of the portion of the original footprint located in the prohibitive slope area; and
 - b. No additional future expansion within the prohibited slope area shall be permitted.
 - iii. Installation of public or private utility lines (e.g. power, phone, cable, gas, water, sewer, and storm drainage) when it can be demonstrated that there is no other alternative for siting the utility line.
 - iv. Earth excavation operations subject to standards set forth in the Zoning Ordinance.
 - v. Forestry, logging and/or woodcutting activities allowable under state law and permitted and/or performed in accordance with any state requirements.
 - vi. Construction of trails, ski lift towers and lift service roads associated with commercial alpine or cross country ski activities.

2. Precautionary Slope Standards

- a) The following shall be permitted in precautionary slope areas subject to the standards set forth in this Article.
 - i. Installation of public or private utility lines (e.g. power, phone, cable, gas, water, sewer, and storm drainage) when it can be demonstrated that there is no other alternative for siting the utility line.
 - ii. Earth excavation operations subject to standards set forth in the Zoning Ordinance associated with this activity.
 - iii. Forestry, logging and/or woodcutting activities allowable under state law and permitted and/or performed in accordance with any state requirements.
 - iv. Construction of trails, ski lift towers and lift service roads associated with commercial alpine or cross country ski activities.
 - v. Agricultural activities with the exception of any structures.
- b) The following shall be permitted if removal of vegetation, grading of slopes, erection of buildings, addition of impermeable surfaces, installation of sewage disposal systems, and/or removal of native soil does not exceed a total of 20,000 sf of precautionary slope area on an individual lot. This 20,000 sf limit may be increased subject to the issuance of a Conditional Use Permit issued by the Planning Board.
 - i. Construction of a single-family dwelling and/or all buildings and accessory structures normally associated with residential uses (e.g. garage, shed, workshop, barn), if permitted in the underlying zoning district.
 - ii. Construction of a driveway or shared driveway.
 - a. For shared driveways, the area of removal of vegetation, grading of slopes, addition of impermeable surfaces, and/or removal of native soil within the shared portion of the combined driveway shall not count toward the limit of 20,000 sf.
 - iii. Construction of a city street or private road.

3. Standards for Commercial Alpine and/or Cross Country Ski Trails, Ski Lift Operations and Service Roads

- a) Trails associated with outdoor recreation as a business shall:
 - i. Meet best management practices for trail design and stormwater management;
 - ii. Be sited to follow natural contours of the slope; and,
 - iii. Retain and reuse old farm roads or old logging roads to limit clearing and disruption of the landscape
- b) Service roads associated with outdoor recreation as a business shall:
 - i. Not exceed a 15 percent slope at any point along the grade of the service road;
 - ii. Not exceed a width of 16 feet for the travel lane and 1 foot for a shoulder on either side;
 - iii. Follow the natural contours of the slope to minimize disturbance of vegetation and soils;
- c) Cutting and filling of slopes to accommodate ski trails or service roads crossing prohibitive and precautionary slope areas shall be limited and shall comply with applicable grading standards set forth in this Article.

4. Site Preparation, Grading, and Construction Standards

a) **Siting of buildings.**

- i. The highest point of a structure that requires any permit shall be located at least 50 vertical feet below and 50 horizontal feet from the top of a ridgeline or hilltop, measured at approximate right angles to the ridgeline or the hilltop. Ridgeline shall be defined as a narrow elevation of land or similar range of hills or mountains representing the highest elevation of such landforms which also include prohibitive and/or precautionary slopes.
- ii. When building on slopes, structures shall be set into topography using partial earth sheltering.

Commented [TK1]: A graphic will be included to demonstrate this measurement

- b) **Grading.** Graded areas shall not be larger than the area necessary to construct all buildings, accessory buildings or structures, plus the area needed to accommodate access, parking, and turnaround areas.

c) **Clearing for views.**

- 1. Trees may be removed beyond the building area for a width of clear cutting not to exceed 25 feet and extending outward from the edge of clearing within the building area at an angle of 45 degrees or less on both sides, to a point down-slope where the tops of the trees are at the same elevation as the ground floor of the building. The 25-foot opening may be at any point along the down-slope boundary.
- 2. A plan detailing any proposed clearing for views shall be submitted with applications for subdivisions, building permits and site plan review.

Commented [TK2]: A graphic will be included to make this easier to interpret

d) **Drainage and stormwater management.**

- 1. A drainage management system designed to accommodate the stormwater volumes associated with a 50 year, 24-hour storm event shall be required to manage stormwater runoff from all new impervious surfaces located on land areas subject to this Article.
- 2. Runoff shall be dispersed within the subject lot.
- 3. Natural drainage courses shall not be disturbed and shall be incorporated as an integral part of the drainage and stormwater design.

INTERPRETATION





- a) Where an interpretation is needed as to the boundary location of prohibitive and precautionary slopes in relation to a given lot, a determination shall be made by the City Engineer based on a field survey prepared by a New Hampshire Licensed Surveyor, provided by the applicant, of contour intervals of 2 feet or less; or, in the absence of a field survey, based on contour intervals of 2 feet or less determined by aerial photogrammetric methods (available in the City GIS database).

1. Any party aggrieved by any such determination may appeal to the Zoning Board of Adjustment. The party contesting the location of the district boundary shall have the burden of proof of any such appeal.

CONDITIONAL USE PERMIT APPLICATION REQUIREMENTS

- a) A plan or plans sealed and signed by a New Hampshire Licensed Engineer or Surveyor shall be submitted and the following is required:
 1. All existing and proposed lot or lots and a depiction of topographic features based on a field survey or aerial photogrammetry with contour intervals of 2 feet or less.
 2. A delineation of all prohibitive and precautionary slope areas on the lot or lots, the size of each area identified, and a calculation of the total area of prohibitive and precautionary slopes on the parcel to be subdivided.
 3. A building area showing the location of each proposed structure, existing structure, and/or expansion to existing structures on an existing or proposed lot or lots that includes prohibitive and precautionary slopes.
 4. The location of proposed driveways and parking areas and a profile showing the slope of any proposed driveway that will cross a precautionary or prohibitive slope area.
 5. The location of test pits and proposed on-site wells and septic systems.
 6. The limits and area calculations of proposed land areas within the precautionary slope areas that will be subject to clearing of vegetation and grading.
 7. The location of existing and proposed roads and trails.
 8. The location of existing or proposed public or private utility lines.
 9. Existing or proposed earth excavation operations.
 10. Ski trails, ski lift towers, and lift service roads.
 11. Any other information necessary to demonstrate compliance with this article.
 12. Application fee.
- b) It shall be the sole responsibility of the applicant to demonstrate that its application complies with all standards in this article.
- c) An application may be reviewed by a qualified third party entity. The applicant will be required to pay for the third party review. Selection of the third party entity shall be at the discretion of the City Engineer.
- d) Upon completion of their review, the City Engineer shall advise the permit granting authority regarding compliance of the application with the standards of this Article.

2020 Building Better Together (UDO)

	 <p>SIMPLE New regulations will be easy to navigate & will include graphics to outline a clear process, from start to finish.</p>	 <p>EFFICIENT The updated structure will provide a set of clear procedures for development queries, & will create a more streamlined application process – eliminating the need to navigate multiple points of contact.</p>	 <p>THOUGHTFUL Although our regulations have worked in the past, they can be outdated & confusing. This update will help guide us into the future, while protecting the crucial elements that make this a great place to live, work, & play.</p>	<p>Telecommunications Ordinance</p> <p>Draft as of March 6, 2019</p>
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BACKGROUND:

The current ordinance, Chapter 102, article 7, “Telecommunications Towers and Antennas,” was adopted in 2001. At the time, most telecommunications facilities were mounted on towers which due to their height were visible if not camouflaged or concealed. In response to this trend, the 2001 ordinance focused mainly on mitigating the aesthetic impact of large towers and aimed to protect “viewsheds” within the City with the establishment of a “view preservation overlay” map in zoning. However, since the ordinance was adopted, there have been changes in federal and state law as well as advancements in telecommunications technology which are not adequately addressed in the current ordinance. The proposed revised ordinance has been updated to be more consistent with state and federal law, modernized to take into account newer technologies, and reorganized to make it easier and simpler for users to find the necessary information.

SUMMARY OF MAJOR CHANGES & REASONS:

- Updated the definitions section to be consistent with definitions used by state in NH RSA 12-K “Deployment of Personal Wireless Service Facilities” and the FCC Small Cell Order “Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, et al”:
 - “Collocation,” “modification,” “substantial modification,” & “utility pole” definitions added or updated.
- Updated process for collocation and modification applications, which per state law are only subject to a building permit.
- Created a process for small cell facilities, including a proposed license for new facilities for the public right-of-way under the authority of the Public Works Director.
- Revised the “View Preservation Overlay” map and re-named as “Telecommunications Overlay Map.”
- Added a use table to make it easier to understand what types of facilities are allowed within each zone, and a dimensional requirements table to make requirements for height, setbacks, etc. clear and easy to find and understand.
- Revised the design standards section to be more concise and less repetitive.

ATTACHMENTS:

- A. Proposed/revised Telecommunications Ordinance dated March 6, 2019

TELECOMMUNICATIONS OVERLAY DISTRICT (DRAFT)

I. Applicability and Exemptions

This Section shall apply to all telecommunications facilities, as defined in Section X of this article, within the City of Keene, with the following exceptions:

- Concealed or camouflaged facilities located on property owned, leased, or otherwise controlled by the City, not including the public right-of-way. This infrastructure shall only be permitted in locations of the City delineated in the Telecommunications Overlay Map in Section II of this article. For this exemption to apply, a license or lease approved by City Council authorizing such antenna or tower shall be required.
- Private use residential satellite dishes, antennas for wireless Internet access, private wireless ham communication antennas, or the installation of any tower or antenna less than 70' in height that is owned and operated by a federally licensed amateur radio station operator.
- Telecommunications facilities placed on existing mounts, building or structures, or modifications to existing telecommunications facilities provided that the proposed facility or facilities do not meet the definition of substantial modification.
- Concealed Facilities which are located inside a building or structure and are completely concealed from view.

All telecommunications facilities, including the list of exemptions in Section I above, shall be constructed, installed, and maintained in compliance with local building codes, city ordinances, as well as all applicable state and federal regulations, including Federal Aviation Administration (FAA) and Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate towers and antennas.

- Conformity. If such standards and regulations are changed, the owners of the towers and antennas governed by this Section shall bring such towers and antennas into compliance with the revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for their removal at the owner's expense through execution of the posted security.

Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities as defined or used elsewhere in this Land Development Code or the City's ordinances and regulations.

II. District Boundaries

The Telecommunications Overlay District as described in the Telecommunications Overlay Map dated March 2019, is adopted as an overlay to the official City of Keene Zoning Map. This Overlay District includes three zones: Zone 1, Zone 2, and Zone 3. Each zone is displayed on the Telecommunications Overlay Map.



Telecommunications Overlay

Updated: 3/6/19

1 Miles



III. Use Regulations:

The telecommunication facilities listed in this subsection are deemed to be permitted uses subject to the requirements of this article. The telecommunication facilities listed in this subsection all require a building permit, a conditional use permit, and/or site plan review. Facilities in the public right-of-way may require a license from the Public Works Director or their designee.

FACILITY TYPE	PUBLIC RIGHT-OF-WAY*	ZONE 1	ZONE 2	ZONE 3	HISTORIC DISTRICT
Structure Mounted <i>(Mounted on an existing building or structure other than a tower)</i>					
Collocation/Modification	O	O	O	O	O
Fully Concealed	O	O	O	O	O
Substantial Modification	O*	CUP + SPR	CUP + SPR	CUP + SPR	CUP + SPR
New Ground Mounted <i>(Mounted to the ground or a tower constructed primarily for the purpose of supporting telecommunications facilities)</i>					
Collocation/Modification	O	O	O	O	O
Camouflaged	O*	X	CUP + SPR	CUP + SPR	X
Non-Camouflaged	O*	X	X	CUP + SPR	X

O = allowed, subject to building permit. X = Not allowed. CUP = Conditional Use Permit. SPR = Site Plan Review.

* Per **Section ?** of City Code, new structures within the public right-of-way require a license issued by the Public Works Director or their designee.

- *Telecommunications Facilities within the Public Right-of-Way.* The placement or installation of new ground-mounted telecommunications facilities may occur within the public right-of-way, excluding Central Square and Main Street between Marlboro Street and Central Square. These facilities are subject to the issuance of a building permit and a license from the Public Works Director or their designee, and must meet the dimensional requirements as delineated in Section IV of this article.
- *Collocation of facilities.* The placement or installation of new telecommunications facilities on existing towers or mounts may occur in any district within the City provided it does not meet the definition of substantial modification as defined in Section X of this article, and is subject to the issuance of a building permit only.
- *Modification of facilities.* The replacement or alteration of an existing telecommunications facility within a previously approved equipment compound or upon a previously approved mount is allowed in all districts provided it does not meet the definition of substantial modification as delineated in Section X of this article, and is subject to the issuance of a building permit only.
- *Concealed facilities.* The installation of a facility that is located inside a building or structure and is completely concealed from view is allowed in all districts and is subject to the issuance of a building permit only.
- *Camouflaged telecommunication facilities.* The installation of new ground-mounted towers and antennas if camouflaged, or a substantial modification to an existing tower or mount that would maintain its camouflage, may occur within Zone 2 or Zone 3. All camouflaged facilities shall require the issuance of a building permit, conditional use permit, and site plan review under the Planning Board's site plan and subdivision regulations.

- *Ground-mounted towers and antennas.* The installation of new ground-mounted towers and antennas which are not camouflaged, or a substantial modification to an existing tower or mount that is not camouflaged, is not allowed in Zone 1, Zone 2, or in a designated historic district and shall require the issuance of a building permit, conditional use permit, and site plan review under the Planning Board’s site plan and subdivision regulations.

IV. Dimensional Requirements:

STRUCTURE-MOUNTED FACILITIES (excl. public right-of-way)		
Height	Shall not increase the height of an existing building or structure, including utility poles, guyed towers, lattice towers, and masts, by more than 10% or more than twenty (20) feet, whichever is greater.*	
	Shall not be placed on any structure less than thirty (30) feet in height.	
Setbacks	Shall comply with setbacks in the underlying zoning district where the facility is installed.	
	Shall not increase any nonconformity with respect to setbacks.	
NEW GROUND-MOUNTED FACILITIES (excl. public right-of-way)		
Height	Shall not project higher than twenty (20) feet above the average tree crown height within a 150' radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greater (as measured according to the criteria set forth in Section ?). A licensed landscape architect, certified arborist or forester shall determine the average tree crown height.	
Setbacks	Shall comply with setbacks in the underlying zoning district where the facility is installed. These setbacks apply to the facility as well as all accessory equipment, structures, and/or fences greater than six (6) feet high associated with the facility.	
	Shall be set back a distance equal to 125% of the tower height from any offsite residential structure or public right of way.	
Fall Zone**	Shall maintain a minimum distance, which is equal to or greater than the fall zone, from the base of the facility to any property line, public road, residential dwelling, business use, institutional use, or public recreation area.	
	Fall zones may cross property lines if an easement is obtained from affected property owners.	
FACILITIES IN THE PUBLIC RIGHT-OF-WAY		
	STRUCTURE-MOUNTED	NEW GROUND-MOUNTED
Height	Shall not increase the height of an existing building or structure within the public right-of-way by more than 10% or more than ten (10) feet, whichever is greater.**	Shall not be greater than 35 feet in height.
Spacing	N/A	Shall not be located within 400 feet of an existing or proposed telecommunications facility, utility pole, and/or light pole within the public right-of-way.

* See definition of “Substantial Modification” in Section X of this article.

**Fall zone is defined as the area within which there is a potential hazard from falling debris, such as ice, which encompasses a circle with a diameter equal to twice the height of the telecommunication facility as measured on the ground from the base of the facility.

V. Design Standards

General:

The following standards shall apply generally to all telecommunication facilities subject to this Section.

Aesthetic:

- With the exception of those that are fully concealed from public view, telecommunication facilities shall not stand out in terms of color and materials, scale, height, mass or proportion against a contrasting background. Specifically:
 - The relative height, mass or proportion of telecommunication facilities shall be compatible with the building or structure it is located on and/or the immediate surroundings.
 - Telecommunications facilities installed on an historic structure shall not alter character defining features, distinctive construction methods, or original historic materials of the structure and shall be fully reversible.
 - Telecommunications facilities shall either maintain a non-reflective finish (subject to any applicable FAA standards), be painted a neutral color, or be painted a color that is closely compatible with or identical to the color and finish of the surrounding environment, buildings, structures, etc.
 - If mounted on an existing structure, telecommunication facilities shall be painted a color that is identical to or closely resembles that of the supporting structure.
 - Structure-mounted facilities shall blend or match the design features and materials of the existing structure as closely as possible.
 - Antennas shall be narrow in profile.
 - New ground-mounted towers and antennas or reconstructed towers and antennas shall be of a lattice, guyed, or mast type mount, unless an alternative design is approved by the Planning Board.
 - Monopoles are prohibited

Screening:

- Telecommunication facilities mounted on the roof of a building shall be concealed behind existing architectural features of the building or shall be located so that it is not visible from public roads.
- All mechanical and electrical equipment associated with any facility located inside a structure or building, must be concealed inside the structure or building or must be shielded from view from public roads.
- All equipment for a camouflaged facility shall be in an underground vault.
- All equipment for new ground mounted towers and antennas shall be in an underground vault or equipment shelter that is designed to be of an appearance and design consistent with the buildings in the area of the facility or camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building.

Security Fencing:

- New ground-mounted facilities shall be enclosed by security fencing not less than 6 feet high or equipped with an appropriate anticlimbing device, if applicable.
- The Planning Board may determine whether security fencing or a barrier is required for other facility types.

Driveways:

- Existing entrances and driveways shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact.
- New driveways shall not exceed 12' in width and must comply with the City's driveway regulations ([see Section ?](#)).

Lighting:

- Telecommunication Facilities shall not be illuminated by artificial means with the exception of aviation caution lights shielded from sight from the ground or lights required by the FAA or other federal or state authority.
- Lighting of equipment structures and any other facilities on site shall be fully shielded.
- Footcandle measurements at the property line shall be zero (0).

Signage:

- No signs are allowed except for warning or equipment signs in compliance with **Section ? - Sign Code**.

VI. Conditional Use Permits

General. All applicants for telecommunication facilities as required under this article shall apply to the planning board for site plan review in accordance with the requirements as provided for in the city's site plan review regulations. As required under this article, applicants shall also be required to submit the information provided for in this section.

Burden of Proof Policy. Only after demonstrating to the planning board that it is not feasible to conceal telecommunication facilities inside an existing structure or building, collocate facilities at existing ground-mounted telecommunication towers or antennas, install or mount telecommunication facilities onto existing structures or buildings, or construct camouflaged telecommunication facilities, can an applicant consider or propose a new ground-mounted telecommunication facility which is not camouflaged. When considering a new ground-mounted facility, the applicant shall have the burden of proving to the Planning Board that none of the options listed above are possible. To meet this burden, the applicant shall take all of the following actions to the extent possible:

- The applicant shall submit to the planning board a list of all contacts made with owners of potential sites regarding the availability of potential space for a telecommunication facility. If the planning board informs the applicant that additional existing structures or buildings may be satisfactory, the applicant shall contact the property owners of those structures or buildings.
- The applicant shall provide to the planning board copies of all letters of inquiry made to owners of existing structures or buildings and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered return receipt requested forms from the U.S. post office shall be forwarded for each owner of the existing structure or building that was contacted.
- If the applicant claims that a structure or building is not capable of physically supporting a telecommunication facility, a licensed professional civil or structural engineer must certify this claim to the planning board. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the telecommunication facility without unreasonable costs.

Issuance. In granting the conditional use permit, the planning board may impose conditions to the extent the board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this article.

- *Procedure on application.* The planning board shall act upon the application in accordance with the procedural requirements of the site plan review regulations and RSA 676:4.
- *Decisions.* Possible decisions rendered by the planning board include approval, approval with conditions, or denial. All decisions shall be rendered in writing, and a denial shall be in writing and based upon substantial evidence contained in the written record.

- *Factors considered in granting decisions.* In the review of conditional use permit applications, the applicant and the planning board shall address all applicable design standards as provided for in Section V – Design Standards. In addition, the planning board shall consider the following additional factors:
 - Visual impacts of the proposed facility on view sheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
 - Availability of alternative facility types and sites.
 - Height of proposed tower or other structures. The Planning Board shall have the final authority to increase the allowable height of all new, altered, or reconstructed telecommunications facilities and towers based on site conditions in non-residential areas, provided:
 - If the structure is readily visible to residential properties, it does not exceed a height of 75 feet; and
 - If the structure is not readily visible to residential properties, it does not exceed a height of 125 feet.

Information required. Each applicant requesting a conditional use permit under this article shall submit a scaled site plan in accordance with the planning board's subdivision/site plan regulations and further information including a scaled elevation view, topography, existing vegetation and tree crown coverage, radio frequency coverage, height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses up to 200 feet away, and any other information deemed necessary by the planning board to establish compliance with this article. Applications for new ground-mounted towers or antennas shall submit the following additional information as part of the conditional use permit request:

- An inventory and map of all existing ground-mounted towers and antennas that are located within the city's jurisdiction and those within two miles of the border thereof, including specific information about the location, height, as well as economic and technological feasibility for collocation on the inventoried towers and/or antennas. The applicant shall submit written evidence demonstrating that no existing ground-mounted tower or antenna can accommodate the applicant's proposed telecommunication facilities. This evidence can consist of substantial evidence that:
 - No existing ground-mounted towers or antennas are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
 - Existing ground-mounted towers or antennas are not of sufficient height to meet the applicant's engineering requirements, and why.
 - The existing ground-mounted towers or antennas do not have sufficient structural strength to support the applicant's proposed telecommunication facility's related equipment.
 - The applicant's proposed telecommunication facilities would not cause electromagnetic interference with the telecommunication facilities located on the existing ground-mounted towers or antennas, or the telecommunication facilities located on the existing towers or antennas would cause interference with the applicant's proposed telecommunication facilities.
 - The fees, costs, or contractual provisions required by the owner in order to share the existing ground-mounted tower or antenna are unreasonable. Costs exceeding new ground-mounted tower development are presumed to be unreasonable.

- The applicant can demonstrate other limiting factors that render existing ground-mounted towers and antennas unsuitable.
- An agreement with the city that allows for the maximum allowance of collocation upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available collocation for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the city, and grounds for a denial.
- The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The planning board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with RSA 676:41(g).

Appeals. An appeal of a planning board decision relative to a conditional use permit under this section shall be to superior court in accordance with RSA 677:15.

VII. Waivers:

- (a) **Generally.** Where the planning board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the design standards and/or conditional use criteria set forth in this article may be served to a greater extent by an alternative proposal, it may approve waivers to this article. The purpose of granting waivers under this article shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by this article. The board shall not approve any waiver unless a majority of those present and voting find that all of the following apply:
- (1) The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
 - (2) The waiver will not, in any manner, vary the provisions of this chapter, the city master plan, or official maps.
 - (3) Such waiver will substantially secure the objectives, standards and requirements of this article.
 - (4) A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include but not be limited to the following:
 - a. Topography and other site features.
 - b. Availability of alternative site locations.
 - c. Geographic location of the property.
 - d. Size/magnitude of the project being evaluated and availability of collocation.
 - (5) In no case shall ground-mounted towers, ground-mounted camouflaged or alternative towers, or preexisting reconstructed ground-mounted towers or antennas be greater than 125 feet in height.
- (b) **Conditions.** In approving waivers, the board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of this article.
- (c) **Procedures.** A petition for any such waiver shall be submitted in writing by the applicant with the application for board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit the petition in writing shall require an automatic denial.
- (d) **Appeals.** An appeal of a planning board decision relative to a waiver shall be to the zoning board of adjustment in accordance with RSA 674:33.

VIII. Maintenance, Monitoring, and Security:

Maintenance. The owner of an approved telecommunication facility shall maintain the facility in good condition. Such maintenance shall include but shall not be limited to painting, structural integrity of the mount and security fencing, and maintenance of the buffer areas and landscaping.

Monitoring. As part of the issuance of a building permit or conditional use permit, the property owner agrees that the city may enter the subject property to inspect the telecommunication facility or obtain RFR or noise measurements at the expense of the owner of the facility. The city shall provide reasonable written notice to the property owner and the owner of the facility and provide an opportunity to accompany city representatives when the inspection and/or measurements are conducted.

Security for removal. Recognizing the extremely hazardous situation presented by abandoned and unmonitored telecommunication facilities, the planning board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunication facilities if a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section IX of this article. The amount of the security shall be based upon the removal cost, plus 15 percent, provided by the applicant and certified by a professional engineer licensed in the state every five years from the date of the issuance of a building permit or the date of planning board approval, whichever is applicable. If the cost has increased more than 15 percent, the owner of the facility shall provide additional security in the amount of the increase. Furthermore, the owner shall submit as part of the issuance of a building permit proof of adequate insurance covering accident or damage.

IX. Abandonment:

Notification. At such time that an owner or carrier plans to abandon or discontinue operation of a telecommunication facility, such owner or carrier shall notify the city manager by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. If an owner or carrier fails to give such notice, the telecommunication facility shall be considered abandoned upon such discontinuation of operations.

Removal. Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the facility within 90 days from the date of abandonment or discontinuation of use. The term "physically remove" shall include but not be limited to the following:

- Removal of antennas, mount, equipment shelters and security fencing as applicable from the subject property.
- Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
- Restoring the location of the facility to its natural condition, except that any landscaping and grading shall remain as finished.

Failure to remove. If the owner of the facility does not remove the facility upon order of the Building Official shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within 90 days of receipt of the declaration of abandonment. If the abandoned facility is not removed within 90 days, the city may execute the security to pay for removal. If there are two or more users of a single tower or antenna, this subsection shall not become effective until all users cease using the tower or antenna.

X. Definitions:

Antenna means any apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth, which is used as a telecommunication facility.

Antenna array means a collection of antennas attached to a mount to send and receive radio signals.

Average tree crown height means an average height found by inventorying the crown height at above-ground level of all trees over 20 feet in height for a defined area.

Carrier means a company that provides telecommunication services, also sometimes referred to as a "provider."

Camouflaged means a telecommunication facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure. Camouflaged facilities include manmade trees.

Collocation means the placement or installation of new telecommunications facilities on existing towers or mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment of telecommunications facilities in compliance with applicable codes. "Collocation" does not include a "substantial modification."

Equipment shelter means an enclosed structure, cabinet, shed, vault, or box near the base of the mount within which is housed equipment for telecommunication facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as "base transceiver structures."

Existing structure means a structure that was lawfully erected, installed, or constructed for purposes other than the siting of telecommunication facilities at least two years prior to the date of application for a building permit and conditional use permit to site telecommunication facilities thereon.

FAA means the Federal Aviation Administration.

Fall zone means the area on the ground from the base of a ground-mounted telecommunication facility that forms a circle with a diameter equal to twice the height of the facility. The fall zone is the area within which there is a potential hazard from falling debris, such as ice, or collapsing material.

FCC means the Federal Communications Commission. Any references in this article to Federal Communications Commission standards or governing law are to standards or law then prevailing or in effect.

Guyed tower means a monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height means, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if such highest point is an antenna. The term "ground level" means the average existing grade or elevation of the ground surface within the footprint of the structure prior to any alterations such as grading, grubbing, filling, or excavating.

Historic structure means any structure that is:

1. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places by the state office of historic preservation; or
4. Located in the Downtown Keene Historic District or other local historic district.

Lattice tower means a type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and freestanding.

Mast means a thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Modification means the replacement or alteration of an existing telecommunications facility within a previously approved equipment compound or upon a previously approved mount. This definition does not include a "substantial modification" or routine maintenance of an approved telecommunications facility.

Monopole means a thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

Mount means the structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Building-mounted. Mounted on the roof or side of a building.
2. Ground-mounted. Mounted on the ground.
3. Structure-mounted. Mounted on a structure other than a building.

Planning board and board mean the city planning board and the regulator of this article.

Preexisting towers and antennas means any tower or antenna lawfully constructed or permitted prior to the adoption of the ordinance from which this article derives; also means any tower or antenna lawfully constructed in accordance with this article that predates an application currently before the board.

Radio frequency radiation (RFR) means the emissions from telecommunication facilities.

Security barrier means a wall, fence, or berm that restricts an area from unauthorized entry or trespass.

Separation means the distance between one carrier's array of antennas and another carrier's array.

Substantial modification means the mounting of a proposed telecommunications facility on a tower or mount which, as a result of single or successive modification applications meets any of the following criteria:

1. For towers or mounts other than those in the public rights of way:
 - a. It increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by more than 10 percent or 20 feet, whichever is greater; or
 - b. It involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or
 - c. It involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
2. For towers or mounts within the public rights of way:
 - a. It increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by more than 10% or more than ten feet, whichever is greater; or
 - b. It involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than six feet; or
 - c. It involves the installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;



3. It increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or
4. It entails any excavation or deployment outside the current site; or
5. It adds to or modifies a camouflaged telecommunications facility in a way that would defeat the effect of the camouflage, or
6. It alters or detracts from the historic character or architectural significance of an historic structure.

Telecommunications facilities means any structure, antenna, tower, or other device, which provides commercial mobile wireless services, unlicensed wireless services, cellular telephone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services or other similar services.

Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and alternative tower structures.

Utility pole means a structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity, or to provide lighting.

2020 Building Better Together (UDO)

 <p>BUILDING BETTER TOGETHER KEENE NEW HAMPSHIRE</p>	 <p>SIMPLE New regulations will be easy to navigate & will include graphics to outline a clear process, from start to finish.</p>	 <p>EFFICIENT The updated structure will provide a set of clear procedures for development queries, & will create a more streamlined application process – eliminating the need to navigate multiple points of contact.</p>	 <p>THOUGHTFUL Although our regulations have worked in the past, they can be outdated & confusing. This update will help guide us into the future, while protecting the crucial elements that make this a great place to live, work, & play.</p>	<p>Surface Water Protection Overlay District</p> <p>Draft as of 5/13/19</p>
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BACKGROUND:

The Surface Water Protection Overlay District was initially adopted in of August of 2013 with the intent of preserving and protecting the functions and values of wetlands and surface waters as recommended in the 2010 Comprehensive Master Plan. The Surface Water Protection Overlay District includes all land within a certain distance from the edge of surface waters. This land is intended to be in an undisturbed and natural condition and is called a buffer area. This buffer serves to capture, store and absorb rainfall, and act as a natural filter by capturing sediment, nutrients and pollutants from runoff, which can lead to improved water quality. It also provides shoreland stability and shade, which can lower water temperatures allowing water to hold more dissolved oxygen and support aquatic resource habitat.

Initially, a 100 foot buffer surrounding all surface waters in the City was proposed, which was later reduced to 75 feet in the Rural, Conservation and Agriculture Districts and 30 feet in all other districts. This Ordinance requires a conditional use permit from the Planning Board for proposed uses/activities within this buffer area.

In 2015, the Conservation Commission formed a subcommittee to review the Ordinance for inconsistencies and make recommendations for addressing these inconsistencies to City Council. This Subcommittee focused on the list of surface water exemptions, which include the City's tax ditches. For many years, the Natural Resource Conservation Service (NRCS) required that the City maintain these tax ditches, which have become part of the City's open drainage and storm water removal system. Although this requirement is no longer in effect, the City continues to manage and control vegetation along the banks of these tax ditches to ensure they do not become overgrown and to protect against flooding. The subcommittee of the Conservation Commission proposed amendments to the Ordinance in 2016 that would remove Tax Ditches from the list of exempted surface waters, would change the definition of the buffer, and would allow for vegetative maintenance and control of the buffer without the issuance of a conditional use permit. These amendments were presented before the PLD in December of 2016, at which time PLD recommended that the City would review and consider these changes as part of the Land Use Code Update.

The current ordinance is available for review via the following link:

https://library.municode.com/nh/keene/codes/code_of_ordinances?nodeId=PTIICOOR_CH102ZO_ARTXVIS_UWAPR

SUMMARY OF MAJOR CHANGES & REASONS:

- a) Reduced the purpose statement in length in an effort to promote readability without undermining the original intent of the Ordinance.
- b) Amended the definitions section as follows:
 - i. Relocated the Definitions section to the end of the Ordinance, however, the terms may ultimately go into a definitions chapter in the LDC.
 - ii. Removed terms from the Definitions section that are not referenced in the Ordinance (e.g. Basal Area, Stream Bed, Dredge, Hydrologically Connected).
 - iii. Removed the definition for Certified Wetland Scientist.

- iv. Edited the definition for Surface Water by consolidating it into one paragraph.
- v. At the recommendation of the Surface Water Subcommittee of the Conservation Commission, which proposed draft amendments to this Ordinance in 2016, staff modified the definition of buffer to remove the phrase “in and undisturbed and natural condition.”
- c) Significantly reorganized sections and content, as well as reworded certain sections of the Ordinance to promote readability and understanding without changing its meaning or intent.
- d) Added language to the Applicability Section to be clear that the provisions of this Ordinance do not apply to renovations or repairs of existing structures that do not result in an expansion of the structure’s footprint into or within the Surface Water Protection Overlay District.
- e) At the recommendation of the Surface Water Subcommittee of the Conservation Commission, staff amended the list of Exempt Surface Waters as follows:
 - i. Removed from the list - “Septage and manure lagoons”, “Silage Pits”, and “Ditches, streams or waterways that have been constructed or altered to manage drainage and/or flooding and that are under a management, use and maintenance agreement with state and/or federal agencies (commonly referred to as “tax ditches”).”
 - ii. Revised “Man-made sedimentation/detention/retention basins or ponds constructed to manage stormwater from a development project and/or streets, roads and highways.” to say “Man-made ditches and swales, sedimentation/detention/retention basins or ponds legally constructed to collect, convey, treat and/or control stormwater and spring runoff.”
- f) At the recommendation of the Surface Water Subcommittee of the Conservation Commission, staff amended the list of Permitted Uses in the district – “Maintenance and vegetative control of the buffer area.”
- g) Removed Open Space from the list of Permitted Uses as the wording is confusing. Staff felt it is apparent that Open Space would be allowed in the buffer, and therefore does not need to be included in the list.
- h) Revised the language for the section “Sec. 102-1492. - Pre-existing uses and lots.” and relocated it to the list of Permitted Uses. Included a note that the Zoning Administrator shall determine if all of the criteria have been met.
- i) Removed the requirement in Sec. 102-1494 of the current ordinance that the area of all surface waters be deducted from the calculation for minimum lot size.

REMAINING ISSUES/QUESTIONS

- Should we reconsider what would require a Conditional Use Permit and the process for review? Would it be preferred/possible for administrative review of applications and those that do not meet the standards would need to go to the Planning Board for approval? Staff intends to discuss this question further at the Steering Committee meeting on 5/17/19.
- Should the edits proposed by the Conservation Commission’s subcommittee in 2016 (as noted in the section above) be incorporated in the final draft?

ATTACHMENTS:

- A. Revised Surface Water Protection Overlay District Draft dated 05/13/19

DRAFT SURFACE WATER PROTECTION OVERLAY ZONING DISTRICT

PURPOSE

The purpose of this Ordinance is to:

- a) protect the functions and values of surface waters and, in particular, the buffers associated with these resources, which reduce the rate and volume of runoff;
- b) prevent the loss or degradation of natural stormwater storage, infiltration and conveyance capacity within the city;
- c) prevent water quality deterioration associated with stormwater runoff;
- d) maintain the health and holding capacity of natural surface and ground waters; and,
- e) protect the quality and connectivity of wildlife habitat and corridors.

APPLICABILITY

- a) **General.** All land within the Surface Water Protection Overlay District, as defined in Section X, is subject to the standards set forth in this Article, unless otherwise noted.
- b) **District Definition.** The Surface Water Protection Overlay District is an area of land buffering all surface waters, which include perennial and seasonal streams, lakes, ponds, wetlands and wetland complexes, vernal pools, fens and sloughs. This buffer area is measured on a horizontal plane from either the top of the bank of a stream, or the ordinary high water mark of a river, or the reference line of a lake or pond, or the delineated edge of a wetland or change in soil type.
 1. **Buffer Width.** In the Rural, Agriculture, and Conservation Zoning Districts, the Surface Water Protection Overlay District is a 75-ft wide buffer. In all other zoning districts, this buffer is 30-ft wide.
 - a. **Buffer Reduction.** In specific cases, an applicant may be unable to comply with the terms of this Article and require a reduction in buffer width. This buffer area may be reduced to 30 feet in zoning districts requiring a 75-foot buffer and to 10 feet in zoning districts requiring a 30-foot buffer at the discretion of the Planning Board if the applicant for a Conditional Use Permit provides extraordinary mitigation, replication, and/or restoration of surface waters and wetlands, and/or open space preservation measures.
- c) **Conditional Use Permit.** A Conditional Use Permit issued by the Planning Board may be required as specified in this Article for certain uses and structures within the Surface Water Protection Overlay District.
- d) **Renovations and Repairs.** The provisions of this Article shall not apply to renovations or repairs of existing structures that do not result in an expansion of the structure's footprint into or within the Surface Water Protection Overlay District.

DETERMINATION OF SURFACE WATER BOUNDARIES

- a) In determining the size of a surface water, any portion of the surface water that may be located on an adjacent parcel or in an adjacent municipality shall be included based on best available information.
- b) Roads, drainage culverts, or other man-made features shall not constitute an interruption in the delineation of the size of the surface water.
- c) For all new subdivisions and new or modified site plans, where maps or field investigations indicate that surface water may be present on a proposed development site, the location, area, and limits of all surface waters shall be field determined and delineated by a New Hampshire Certified Wetland Scientist.

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1. Any delineation completed without clear evidence of vegetation, from the current or prior growing season, shall be verified during the subsequent growing season at the owner's expense.
 2. Revisions to surface water delineations and to any required buffer areas shall be submitted to the city as a revision to the original plan. Any proposed development shown on the revised plan shall be modified to bring the plan into compliance with this Article.
- d) The boundaries of any required buffer areas, as specified in this article, shall be marked as such on the site with stakes and flagging, or permanent markers along the buffer perimeter. Such demarcation shall remain in place until all construction is complete and has been inspected and approved by the Community Development Department.
 - e) Where an area is not designated on the plan as a surface water and the Planning Board, after consultation with the Community Development Department and/or the Conservation Commission, believes it to be a surface water, the Planning Board may require the applicant to supply the findings of a New Hampshire Certified Wetland Scientist as to the character of the area, at the expense of the applicant.
 - f) When an area has been designated as surface water and an applicant believes that the area is, in fact, not a surface water area, then the applicant, at their own expense, may supply the findings of a New Hampshire Certified Wetland Scientist attesting to the character of the area. The Planning Board will issue a finding on wetlands identification and may request alternative reports from the applicant, at the expense of the applicant.

EXEMPTIONS

The following surface waters shall not be subject to this Article.

- a) Man-made ditches, swales, sedimentation/detention/retention basins or ponds legally constructed to collect, convey, treat and/or control stormwater and spring runoff
- b) Man-made agricultural/irrigation ponds
- c) Fire ponds and cisterns

PROHIBITED USES

The following are expressly prohibited from the Surface Water Protection Overlay District:

- a) Subsurface wastewater disposal systems
- b) Salt storage including the storage of road salt or sand treated with road salt
- c) Automobile junk yards/salvage yards, service and/or repair shops
- d) Hazardous waste facilities
- e) Bulk storage in amounts greater than those for household or agricultural use of chemicals, petroleum products or hazardous materials
- f) Earth excavation operations as defined in **Article X** of this LDC
- g) Off-site dumping or disposal of snow and ice collected from roadways or parking areas, not including snowplowing of existing roadways
- h) Storage or disposal of solid waste, liquid or leachate waste, animal wastes or byproducts
- i) Landfills, solid waste transfer stations, recycling facilities, incinerators, or composting facilities
- j) Animal feedlot operations

PERMITTED USES

The following are permitted in the Surface Water Protection Overlay District without a Conditional Use Permit, subject to any provisions specified in this Article.

- a) Maintenance and vegetative control of the buffer area.

- b) Agricultural activities and operations as defined in RSA 21-34-a and governed by RSA 430 subject to i) Best Management Practices for agriculture as defined in this Article; ii) compliance with all related state and local laws; and exceptions listed below
- c) Forestry, tree farming, and logging operations, subject to Best Management Practices as defined in this article, and compliance with all related state and local laws
- d) Water impoundments, when required state and/or federal permits have been issued
- e) Ground water withdrawal well for a single residential dwelling or duplex facilities, and wells for the City of Keene drinking water supply
- f) Geothermal heating and cooling systems including but not limited to groundwater wells and subsurface heat exchange installations
- g) Trails constructed and maintained in accordance with best management practices as defined in this article
- h) Wildlife or fisheries management activities
- i) Educational activities and scientific research consistent with the purpose and intent of this article
- j) New residential driveways subject to the following provisions:
 - 1. The driveway serves to access uplands on a lot(s) of record that existed at the time this Article was adopted.
 - 2. The driveway provides access for no more than 2 existing lots on a shared driveway.
 - 3. There is no reasonable alternative location to site the development on the lot that would avoid the disturbance of lands within the Surface Water Protection Overlay District.
 - 4. The driveway is designed to minimize any disruption to lands within the Surface Water Protection Overlay District.
 - 5. All applicable NH Wetlands Bureau permits have been acquired for any proposed disturbance of surface waters regulated by the State.
 - 6. All surface water resources and applicable buffer areas have been delineated by a New Hampshire Certified Wetland Scientist and are shown as part of a driveway permit application.
- k) All normal maintenance of existing roadways and utilities including winter maintenance.
- l) Repair, repaving, replacement, and reconstruction of existing roads, bridges, culverts and drainage systems and utilities.
- m) Construction of compensatory flood storage excavation under **Article X** as long as no part of the compensatory flood storage excavation is within a wetland as defined in this Article and subject to issuance of a floodplain development permit according to **Article X**.
- n) Construction of new or expansion of existing single-family and two-family residential structures and associated accessory structures on lots that legally existed before the adoption of this Article, provided that the following criteria are met. The Zoning Administrator shall be responsible for determining whether these criteria are met.
 - 1. It is not feasible to place the structure on a portion of the lot that is located outside of the Surface Water Protection Overlay District.
 - 2. The structure is set back as far as reasonably possible from the edge of the surface water.
 - 3. Applicable erosion control measures are in place prior to and during construction.
 - 4. Any disturbance to the surrounding buffer area is repaired and restored upon completion of construction.
 - 5. A minimum 30-foot buffer is maintained from surface waters in lots in the Rural, Conservation, and Agriculture Zoning Districts, and a 10-foot buffer is maintained from surface waters in all other zoning districts.

6. Any alteration to a surface water is made in accordance with all applicable state and federal laws, administrative rules, and regulations.

Commented [TK1]: More discussion is needed on whether this section remain in the regulations or not.

CONDITIONAL USE PERMIT

- a) A Conditional Use Permit issued by the Planning Board shall be required for the following when located within the Surface Water Overlay Protection District.
 - 1. Construction of a new structure or expansion of an existing structure, with the exception of those structures specified in Section X of this Article, that expands the footprint of that structure within the Surface Water Protection Overlay District
 - 2. Construction of new driveways for residential use that would disturb or cross lands within the Surface Water Protection Overlay District.
 - 3. Construction of new roads, driveways for non-residential uses, and parking lots
 - 4. Construction of new stormwater management facilities and structures or improvements, including but not limited to, sedimentation/detention/retention ponds, drainage swales, and erosion control devices
 - 5. Construction of compensatory flood storage excavation under Article X which requires the issuance of a wetland permit
- b) A conditional use permit shall not be required for impacts to areas within the District that are under the jurisdiction of the New Hampshire Department of Environmental Services when a state wetlands permit or when a state Shoreland Water Quality Protection Act permit has been issued.
- c) **Criteria for granting a conditional use permit.** The Planning Board shall issue a Conditional Use Permit for the activities described in Section X of this Article if it finds that all of the following criteria have been met.
 - i. The proposed use and/or activity cannot be located in a manner to avoid encroachment into the Surface Water Protection Overlay District.
 - ii. Encroachment into the buffer area has been minimized to the maximum extent possible, including reasonable modification of the scale or design of the proposed use.
 - iii. The nature, design, siting, and scale of the proposed use and the characteristics of the site including but not limited to topography, soils, vegetation, and habitat are such that when taken as a whole, will avoid the potential for adverse impacts to the surface water resource.
 - iv. The buffer area shall be left in a natural state to the maximum extent possible. In issuing a Conditional Use Permit, the Planning Board may establish conditions of approval regarding the preservation of the buffer including the extent to which trees, saplings and ground cover shall be preserved.
 - a. Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground cover may be removed.
 - b. Stumps and their root systems shall be left intact in the ground, unless removal is specifically approved in conjunction with a Conditional Use Permit granted by the planning board.
 - c. Exotic, invasive trees, saplings, shrubs, or ground covers, as defined by NHDES, may be removed. The stumps and root balls of exotic, invasive species may also be removed by hand digging and/or hand cutting.
 - d. Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged. Planting of native species of trees, shrubs, or ground cover that are beneficial to wildlife is encouraged.
 - e. Where there has been disturbance or alteration of this buffer during construction, excavation, or grading, re-vegetation with native species may be required by the planning board.
- (f) The Planning Board may consider the following to determine whether allowing the proposed encroachment will result in an adverse impact on the surface water resource:

Commented [TK2]: This refers to item (n) under permitted uses above

- (1) The size, character, and quality of the surface water and the buffer being encroached upon.
- (2) The location and connectivity of the surface water in relation to other surface waters in the surrounding watershed.
- (3) The nature of the ecological and hydrological functions served by the surface water.
- (4) The nature of the topography, slopes, soils, and vegetation in the buffer that encompasses the surface water.
- (5) The role of the buffer in mitigating soil erosion, sediment and nutrient transport, groundwater recharge, flood storage, and flow dispersion.
- (6) The extent to which the buffer serves as wildlife habitat or travel corridor.
- (7) The rate, timing and volume of stormwater runoff and its potential to influence water quality associated with the affected surface water or any associated downstream surface waters.
- (8) The sensitivity of the surface water and the buffer to disruption from changes in the grade or plant and animal habitat in the buffer zone.

CONDITIONAL USE PERMIT APPLICATION PROCEDURE

- a) All applications for a conditional use permit under this section of the article shall be made to the Planning Board following the procedures set forth in Article X of this LDC as they may be amended.
- b) **Referral to the conservation commission.** Upon receipt by the Community Development Department, all applications for a Conditional Use Permit shall be forwarded to the Conservation Commission a minimum of 5 business days prior to the Commission's next regularly scheduled meeting.
 - i. Upon receipt of a Conditional Use Permit application, the Conservation Commission may conduct an evaluation of the application and provide advisory comments to the Planning Board. Such evaluation shall be based on the Conditional Use Permit criteria set forth in this Article.
- c) Submission requirements for a Conditional Use Permit shall include the location of the buffer area, details showing the proposed encroachment into the Surface Water Protection Overlay District, and any information necessary to demonstrate that the proposed encroachment will not cause adverse impacts to the surface water resource, or design details that demonstrate that proposed mitigation will prevent adverse impacts to the surface water resource.
- d) All information pertaining to delineating the location, area, and limits of surface waters, along with the associated buffers as specified in this Article, shall be clearly shown on the proposed conditions plan and on an existing conditions plan.

DEFINITIONS

For the purposes of the surface water protection overlay district, the following definitions apply:

Alteration means any change or modification of habitat, land, water, or existing structure along surface water resources.

Bank means the transitional slope beginning at the edge of a surface water body, the upper limit of which is defined by a break in slope as defined in Wt. 101.06, N.H. Code of Administrative Rules, as may be amended or updated.

Best management practices means the structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent increases in and/or reduce stormwater volumes and rates of flow, reduce point source and non-point source pollution, and improve stormwater quality, and protection of the environment.

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- (1) With Respect to Forestry: *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, NH Department of Resources and Development, 2004 (or later edition, as may be amended or updated), *Best Management Practices for Forestry: Protecting New Hampshire's Water Quality*, UNH Cooperative Extension, 2006 (or later edition, as may be amended or updated).
- (2) With Respect to Agriculture: *Best Management Wetlands Practices for Agriculture in New Hampshire*, NH Department of Agriculture, July 1993 (or later edition, as may be updated or amended), the *Manual of Best Management Practices for Agriculture in New Hampshire*, NH Department of Agriculture, July 2008 (or later edition, as may be amended or updated).
- (3) With Respect to General Regulations: *Best Management Practices for Urban Stormwater Runoff*, NH Department of Environmental Services, 1996, (or later edition as may be amended or updated.) *Innovative Stormwater Treatment Technologies Best Management Practices Manual*, NH Department of Environmental Services, May 2002, (or later edition as may be amended or updated). Environmental Protection Agency Websites "Construction Site Stormwater Control" and "Post-Construction Stormwater Management in New Development and Redevelopment", <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>.
- (4) With Respect to Golf Courses: *Manual of Best Management Practices for Agriculture in New Hampshire*, NH Department of Agriculture, July 2008 (or later edition, as may be amended or updated), the *Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials*, NH Department of Environmental Services, January 2004 (or later edition, as may be amended or updated).
- (5) With Respect to Trails: *Best Management Practices for Erosion Control During Trail Maintenance and Construction*, NH Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails 1994, updated in 2004 (or later edition, as may be amended or updated).

Bog means a wetland area distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage and/or highly acidic soil and/or water conditions per Wt. 101.10, N.H. Code of Administrative Rules, as may be amended or updated.

Buffer for purposes of this article means an area that is designed to remain vegetated to protect adjacent surface water functions and values from adverse impacts and provide habitat for wildlife. The buffer shall be measured on a horizontal plane from the top of the bank of a stream, or from the ordinary high-water mark of a river, or from the reference line of a lake or pond, or from the delineated edge of a wetland or change in soil type.

Fen means a wetland area distinguished by sedge, reed, shrub or forest, peat deposits, poor drainage, which has neutral pH and moderate to high nutrients.

Intermittent stream means a stream that flows for sufficient time to develop and maintain a defined channel, but which might not flow during dry portions of the year or during long-term periods of drought as defined in Wt. 101.47, N.H. Code of Administrative Rules, as may be amended or updated.

Ordinary high-water mark means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas as defined in RSA 483-B:4 Xla, as may be amended or updated.

Perennial stream means a stream that flows year-round in a defined channel.

Pond means any year round standing body of water one acre or more in area, as measured from the mean annual high water mark.

Reference Line means (a) for natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Department of Environmental Services; (b) for artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights; (c) for water bodies without established flowage

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rights, the waterline at full pond as determined by the elevation of the spillway crest; (d) for rivers, the ordinary high water mark as defined in RSA 483-B:4 XVII, as may be amended or updated.

Slough means wetland channels or series of shallow lakes. Water is stagnant or may flow slowly on a seasonal basis.





Surface water for the purposes of this article, includes perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial. Surface water includes wetlands as defined in RSA 482-A:2.X and NH Code of Administrative Rules Env-wt 100-900 including: Bogs, ephemeral stream, intermittent streams, marshes, surface water bodies, swamp, wetlands, wet meadows. Surface water also includes vernal pools, fens, sloughs, and wetland complexes.

Vernal pool means a seasonal or intermittent pool of water providing essential breeding habitat for certain amphibians and invertebrates and does not support fish. Vernal pool status can be confirmed by but not limited to evidence of breeding by at least one vernal pool indicator species such as wood frogs, spotted salamanders, blue spotted/Jefferson salamanders, and/or the presence of fairy shrimp. Evidence of breeding includes calling wood frogs, salamander spermatophores, egg masses, and/or larvae of wood frogs or salamanders.

Wetlands means those areas that are inundated or saturated by surface or ground waters at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation adapted for life in saturated soil conditions.

Wetlands complex means a series of small wetland areas that are hydrologically connected by a common water table.

2020 Building Better Together (UDO)

 <p>BUILDING BETTER TOGETHER KEENE NEW HAMPSHIRE</p>	 <p>SIMPLE New regulations will be easy to navigate & will include graphics to outline a clear process, from start to finish.</p>	 <p>EFFICIENT The updated structure will provide a set of clear procedures for development queries, & will create a more streamlined application process – eliminating the need to navigate multiple points of contact.</p>	 <p>THOUGHTFUL Although our regulations have worked in the past, they can be outdated & confusing. This update will help guide us into the future, while protecting the crucial elements that make this a great place to live, work, & play.</p>	<p>Subdivision Regulations</p> <p>Draft as of May 10, 2019</p>
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BACKGROUND:

Currently within the City of Keene, all subdivisions must comply with the following:

- NH RSA 674:36 paragraph II
- Planning Board Site Plan and Subdivision Regulations
- Planning Board Development Standards
- City Code (Ch. 70) - street standards (for subdivisions with a new road only)

The Planning Board Site Plan and Subdivision Regulations include information about the Planning Board's jurisdiction with respect to site plan and subdivision review, general requirements for site plan and subdivision review, submission and procedural requirements, standards for conservation residential subdivisions (CRDs), and information about fees, security, and waivers. The Regulations make reference to the Planning Board Development Standards, which is a list of 19 standards that are used to review both site plan and subdivision applications. These standards are geared towards development proposals and are often not relevant to subdivision applications, especially when no new roads or development are proposed.

The standards for Conservation Residential Development, which is a type of subdivision, are included in two separate locations. Regulations related to dimensional requirements and uses for CRDs are included as a Zoning District in the Zoning Ordinance. Regulations related to a CRD Conditional Use Permit are included in the Planning Board Site Plan and Subdivision Regulations.

The Planning Board's Site Plan and Subdivision Regulations are available here:

https://ci.keene.nh.us/sites/default/files/planning/2018_05_29_Planning_Board_Regs_Adopted_FINAL.pdf

The Conservation Residential Development (CRD) section of the Zoning Ordinance is available here:

https://library.municode.com/nh/keene/codes/code_of_ordinances?nodeId=PTIICOOR_CH102ZO_ARTIVDI_DIV3COREDECR

SUMMARY OF MAJOR CHANGES & REASONS:

- a) Staff are proposing to locate all standards with respect to subdivisions in one central location, in a chapter of the Land Development Code called "Subdivision Regulations." These regulations would include subdivision of land, voluntary mergers, and lot line adjustments.
- b) Standards for Review have been established that are specific to Subdivisions, whereas the 19 Development Standards are currently used by the Planning Board in reviewing proposed subdivision applications. These standards address lot size requirements, monumentation, floodplains, fire protection and water supply, utilities, and regional impacts.
- c) Removed the requirement for surface waters and steep slopes to be deducted from the calculation of minimum lot size.
- d) Removed the reference to condominiums from definition of subdivision.
- e) Moved the Conservation Residential Development (CRD) District standards from the Zoning Ordinance and the CRD Conditional Use Permit Standards from the Planning Board Subdivision and Site Plan Regulations into one section of the Subdivision Regulations. Revise the current regulations to:

- i. Reduced the minimum tract size for Low Density Zoning District from 8,000 sf to 5,000 sf
 - ii. Reduced the minimum lot frontage for Low Density Zoning District from 100 ft to 50 ft
 - iii. Required a 100 foot perimeter buffer around the tract that can be included in the calculation of open space and developable land. This would replace the current requirement for a minimum 50 foot setback around all tract boundaries and a 100 foot setback from tract boundaries abutting an external road right of way.
 - iv. Reduced the density factor per dwelling unit in the Rural District from 5 acres per dwelling unit to 3 acres (allowing for an increase in density) if 50% of the tract is designated as open space. Reduced the density bonus from 4 acres to 2 acres if 60% of a tract is designated as open space (allowing for a further increase in density).
 - v. Streamlined the process for applicants to conduct a yield analysis and design the Conservation Residential Development by reorganizing and consolidating the standards. Mention of Common Land Areas has been removed as well as requirements for streets and utilities, which will be addressed by referencing other sections of the regulations / LDC.
 - vi. Removed reference to the option for the granting development rights of Open Space to the City.
 - vii. Removed the requirement for a separate planning board public hearing to approve Homeowner Association Bylaws for the management of Open Space.
- f) Added definitions of terms present in the regulations that were not previously defined.
- g) Application procedures will be located in a separate section of the LDC, which will be referenced in these regulations.

REMAINING ISSUES/QUESTIONS

- Is the committee in favor of allowing for increased density in the Rural District as part of a conservation residential development with designated open space?
- Is there support for the consolidation of the Conservation Residential Development standards?
- Should multifamily uses (up to 6 units per lot) continue to be allowed in Conservation Residential Developments in the Low Density District?
- The idea of having a different application process for major and minor subdivisions has been discussed but not finalized.
- Should Conservation Residential Development be mandatory in any circumstance?
- There are a number of references to other section of the LDC, that use the letter X in place of a specific reference number. When the LDC is drafted these references will be updated with the appropriate section number.

ATTACHMENTS:

- A. Revised Subdivision_Standards_05-10-19 dated May 10, 2019

DRAFT SUBDIVISION STANDARDS

GENERAL PROVISIONS.

In accordance with RSA 674:36, the Planning Board shall consider the following when reviewing applications for subdivision:

1. **Character of Land for Subdivision.** Land of such character that it cannot, in the judgment of the Planning Board, be safely used for building development purposes because of danger to health or peril from fire, flood, poor drainage, excessive slope, or other hazardous conditions shall not be approved for subdivision.
2. **Scattered or Premature Development.** The Planning Board may disapprove any application that, in its opinion, would create such scattered or premature development of land as would involve danger or injury to health, safety, or necessitate the excessive expenditure of public funds for the supply of associated services. In making such a determination, the Planning Board will take into account the following:
 - a) capacity of the school system;
 - b) adequacy of the access street(s);
 - c) adequacy of water supply for fire-fighting purposes; and
 - d) distance from emergency services; and
 - e) other public services.
3. **Preservation of Existing Features.** Wherever feasible, suitable steps shall be taken to preserve and protect significant existing features such as rare and/or unique scenic points, stone walls, rock outcroppings, water bodies, and historic landmarks.

STANDARDS FOR REVIEW

1. **Lots**
 - a) Lot size and configurations shall meet all requirements of the Zoning Ordinance.
 - b) All lots shall have their minimum frontage on a state highway (excluding limited access highways), a class V road or a street within an approved subdivision plan. Subdivisions will not be approved on roads shown on City records and plans as Discontinued, Discontinued Subject to Gates and Bars or Class VI Roads.
2. **Monumentation.** The owner or developer shall provide permanent reference monuments in accordance with **Section X** of **Article X** of this LDC.
3. **Special Flood Hazard Areas.** All subdivision proposals governed by these regulations having lands identified as Special Flood Hazard Areas in the "Flood Insurance Study for the County of Cheshire, N.H.", together with the associated Flood Insurance Rate Maps shall meet the following requirements:
 - a) All subdivision proposals shall include base flood elevation data.
 - b) All necessary permits have been received from those governmental agencies from which approval is required by Federal or State law.
 - c) Individual lots of a subdivision shall be located and configured to be consistent with the need to minimize potential impacts from flooding.
 - d) All public utilities and facilities, such as sewer, electrical and water systems shall be located and constructed to minimize or eliminate flood damage.
4. **Fire Protection and Water Supply.** All subdivisions shall be provided with an adequate supply of water for fire protection purposes at the owner's expense. This requirement can be met by any of the following subject to the approval of the Fire Chief:
 - a) Fire hydrants connected to a public water main with adequate fire flows and pressures appropriate to the type and scale of the proposed use that meets the requirements of the Keene Fire Department.

- b) Private fire protection water supply systems when it is infeasible or economically unreasonable to connect a fire hydrant to a public water main as determined by the Planning Board. Private fire protection water supply systems may include the following:
- i) For non-residential, institutional, and multi-unit residential developments: storage and distribution systems appropriate to the type and scale of the proposed use that comply with the standards of the National Fire Protection Association (NFPA) and the Keene Fire Department.
 - ii) For single-family residential development: underground cisterns and associated dry hydrants that meet the standards of NFPA 1142. The location, design, and provisions for ownership, maintenance, and all season access to the cistern and supporting facilities shall conform to the Keene Fire Department hydrant specifications.
 - a. Individual residential sprinkler systems meeting the standards of NFPA 1142 may be installed; however, in no case may the installation of such a system be made a requirement of approval.
 - iii) Any other public or private fire protection water supply system approved by the Fire Chief and determined by the Planning Board to provide a similar or greater level of fire protection than the options provided in i) and ii) above.

5. **Utilities.** When required by City Code, all subdivisions will be serviced by City water and sewer. All necessary water and sewer lines shall be installed to the required specifications of the Public Works Department and shall include service lines running from the water and sewer mains to the property line to service each lot. In addition, utility rights-of-way shall be provided in accordance with **Section X of Article X** of this LDC.

DEVELOPMENTS HAVING REGIONAL IMPACT

All applications shall be reviewed for potential regional impact, in accordance with RSA 36: 54 – 58.

PREVIOUSLY APPROVED SUBDIVISIONS

If any land shown on a subdivision plat has been part of any previous subdivision approved, constructed, or created by conveyance no more than 3 years prior to the new proposal, the proposal shall be processed as a **major subdivision**, and any previous subdivision(s) will be treated as part of the new proposal for purposes of analyzing its effect and applying all review criteria.

FIVE-YEAR EXEMPTION

Approved subdivisions shall be protected from future amendments to regulations and ordinance for a 5 year period, provided that active and substantial development has occurred on the site, in accordance with RSA 674:39.

VOLUNTARY MERGER

1. Any owner of 2 or more contiguous pre-existing approved or subdivided lots or parcels who wishes to merge them shall do so by applying to the Planning Board or its designee.
2. Except where such merger would create a violation of then-current ordinances or regulations, all such requests shall be approved administratively, and no public hearing or notice shall be required.
3. No new survey plat need be recorded, but a notice of the merger, sufficient to identify the relevant parcels and endorsed in writing by the Planning Board or its designee, shall be filed for recording in the County Registry of Deeds, and a copy mailed to the City's Assessing Department.
4. No such merged parcel shall thereafter be separately transferred without subdivision approval.

LOT LINE ADJUSTMENT

1. Landowners of 2 or more contiguous pre-existing approved or subdivided lots or parcels, who wish to adjust the boundary lines between 1 or more of said lots or parcels, may do so by applying to the Planning Board.
2. All such requests shall be reviewed by the Planning Board without a public hearing; however, notice to abutters is required.
3. An updated survey showing the Lot Line Adjustment(s), and all metes and bounds of the revised parcels shall be prepared, and the resulting survey plats shall be filed for recording in the County Registry of Deeds.

CONSERVATION RESIDENTIAL DEVELOPMENT

1. **Purpose.** The purpose of Conservation Residential Development is to promote the conservation of natural resources while providing greater flexibility and creativity in the design of residential developments than would be possible using conventional zoning and subdivision practice. This purpose is accomplished by allowing for clustering of residential units at a higher density within a tract than would be allowed by the underlying zoning district, provided a portion of the tract is permanently designated as open space.
2. **Applicability.**
 - a) Conservation Residential Developments are permitted only in the Rural, Low Density-1 and Low Density Zoning Districts, and where the land area to be subdivided meets the minimum tract size requirements specified in **Section X** of this Article.
 - b) Compliance with this Section is mandatory for a proposed subdivision of land consisting of 3 or more lots and which propose the layout and construction of a new road or street.
3. **Dimensional Standards.**
 - a) All Conservation Subdivisions shall meet the minimum dimensional requirements specified in Table X below. If not specified in Table X or elsewhere in this Article, the dimensional requirements of the underlying zoning district shall apply.

Table X. Conservation Residential Development Minimum Dimensional Requirements

Dimension	Rural	Low Density-1 (without City water)	Low Density-1 (with City water)	Low Density
Tract Requirements:				
Min tract size	10 acres	5 acres	5 acres	5 acres
Min tract frontage	100 ft	100 ft	100 ft	50 ft
Perimeter buffer	100 ft	100 ft	100 ft	100 ft
Min Lot Requirements:				
Min lot size	1 acre	16,000 sf	10,000 sf	5,000 sf
Min lot frontage	40 ft	40 ft	40 ft	40 ft
Min lot width at building line	75 ft	75 ft	70 ft	60 ft
Min front setback	15 ft	15 ft	15 ft	15 ft
Min rear setback	20 ft	20 ft	15 ft	15 ft
Min side setback	10 ft	10 ft	10 ft	10 ft

Max percentage of lot occupied by structures	30%	35%	40%	45%
Max percentage of lot covered by impermeable surfaces	35%	40%	45%	60%

- b) **Perimeter Buffer.** A 100-foot wide buffer shall be required around the perimeter of the entire tract, except for the access point(s). The land area included in the perimeter buffer may be counted toward the developable land calculation as well as toward the calculation of open space.
- c) **Density.** The maximum number of dwelling units allowed on each lot shall be determined by dividing the total area of developable land by the density factor per dwelling unit specified in Table X below.
 - i. All Conservation Residential Developments must set aside at least 50% of the tract as Open Space. Developments in the Rural Zoning District that set aside 60% of the tract area or greater shall be eligible for a density bonus.
 - ii. Any land designated for roadways within the open space may not be used in the calculation of the open space area.

Table X. Conservation Residential Development Density and Open Space Requirements

Zoning District	Density Factor Per Dwelling Unit	Min Required Open Space
Rural	3 acres	50%
	2 acres	60%
LD-1 (lots without City water service)	1 acre	50%
LD-1 (lots with City Water Service)	20,000 sf	50%
LD	10,000 sf	50%

4. **Permitted Uses.** All uses that are allowed in the underlying zoning district are permitted in a Conservation Residential Development, along with customary and associated accessory uses.

- a) **Residential uses.** Table X identifies the residential uses allowed by zoning district in a Conservation Residential Development.
 - i. Where two-family or multi-family dwellings are allowed, the Planning Board may, but is not required to, approve those as individual, detached units. In making such a determination, the Board will take into consideration the surrounding land uses; the degree to which detached units fit the character of the neighborhood; and, the potential for fragmentation of the existing natural habitat.

Residential Use	Rural	Low Density-1	Low Density
Single family dwelling	Permitted	Permitted	Permitted
Two family dwelling / Duplex	Permitted	Permitted	Permitted
Multifamily dwelling	Not permitted	Not permitted	Permitted (max of 6 dwelling units per structure)

- b) **Open space uses.** Uses allowed on open space (land that is set aside by this division to meet the density and open space standards as set forth in Section X of these Regulations) shall be limited to: Conservation; Agriculture; Forestry; and/or Passive Recreation.
 - i. Uses of open space areas may be further restricted by rules as set forth by the ownership of the open space.

5. Design Criteria.

- a) **Primary and Secondary Conservation Areas.** Plans for a Conservation Residential Development shall identify and delineate Primary and Secondary Conservation Areas on the tract, as defined in (i) and (ii) below. Delineation of lands to be used to meet the Open Space requirements shall be based on an analysis and prioritization of primary and secondary conservation values identified on the tract.
 - i. Primary Conservation Areas consist of all slopes over 25% gradient; surface waters, including streams, wetlands, vernal pools, ponds, and any buffers associated with them; springs and floodways.
 - ii. Secondary Conservation Areas consist of the following list of attributes.
 - a. Significant natural areas of species defined by the New Hampshire Natural Heritage Inventory as endangered, threatened, or of special concern.
 - b. Slopes in excess of 15% where disturbance and resulting erosion and sedimentation could be detrimental to water quality
 - c. Woodlands, particularly those performing important ecological functions such as soil stabilization and protection of streams, wetlands and wildlife habitats.
 - d. Areas with topographic and soil conditions affording high rates of infiltration and percolation.
 - e. Groups of trees and large individual trees of botanic significance.
 - f. Prime agricultural soils as defined by the USDA Natural Resource Conservation Service.
 - g. Historic features that are designated on the NH State Register of Historic Places, or the National Register of Historical Places or Historic Landmarks.
 - h. Cultural features, such as stone walls, barn foundations, and cellar holes.
 - i. Existing or planned recreational trails on or throughout the tract that connect to other locations in the City.
 - j. Visually prominent topographic features such as knolls, hilltops, ridges, outlooks, and scenic view-sheds as seen from public
 - k. Highest condition habitat areas as defined by the NH Wildlife Action Plan
 - l. Drinking water supply areas.
- b) **Proposed Development Standards.**
 - i. All proposed development shall be located outside of Primary Conservation Areas, and shall be designed to minimize impact to any identified Secondary Conservation Areas.
 - ii. No structures shall be allowed within the designated Open Space area.
 - iii. Streets shall be constructed in accordance with the street standards in **Article X** of the this LDC, and shall connect to an existing street network.
 - iv. All structures shall be accessed from interior streets, rather than from roads bordering the tract.
 - a. In the event that a waiver of this standard is granted, shared driveways shall be incorporated where feasible.
 - v. The Standards for Review in **Section X** of these Regulations shall also apply to applications for Conservation Residential Development.
- c) **Open Space Standards.** The location and layout of all open space within a Conservation Residential Development shall require Planning Board approval and shall meet the following standards.
 - i. The areas of land designated to meet the open space requirement of any Conservation Residential Development shall not be used for siting of individual lots, construction of buildings, facilities for accessory

- uses, roads and other areas for vehicular traffic.
- ii. In delineating the Open Space, the applicant shall maintain an interconnectedness of the conservation values and shall avoid fragmentation of the Open Space into small, disconnected parcels. The minimum size of any parcel designated as Open Space shall not be less than one (1) acre in area;
 - a. All areas of open space do not necessarily need to be contiguous, but consideration shall be given to connections between non-contiguous areas
- iii. Where possible, any designated open space will be located so that it is adjacent to other open space or protected lands that abut the subject property. In order to understand the potential for such connectivity, the plans will include the identification of all known abutting and adjacent open space or other protected lands.
- iv. Each dwelling unit shall have reasonable access to the Open Space, but need not front directly on such land.
- v. Land designated for open space may not be further subdivided and must remain as open space in perpetuity.
- vi. All open space and any associated facilities shall be permanently protected by covenants or easements as approved by the Planning Board after review and approval of the City Attorney.

6. Open Space Ownership and Maintenance.

- a) All designated open space and any other common lands, roads and/or facilities shall be deeded to and maintained by an entity such as a Homeowner's Association, a non-profit organization, or some other entity as approved by the Planning Board.
- b) The open space and any other common features shall be held, managed and maintained by the developer until such time as they are transferred to the designated entity under an agreement approved by the City Attorney and the Planning Board.

7. Application Procedure.

- a) All proposals for a Conservation Residential Development shall obtain a Conditional Use Permit from the Planning Board in accordance with **Section X of Article X** of this LDC.
- b) Conceptual, nonbinding discussions with the Planning Board and a duly-noticed site visit are required before a formal application for a Conditional Use Permit is filed. The purposes of the site visit are to identify the special features that are particular to the site before plans are finalized.

8. Waiver of Requirements.

- a) The Planning Board may grant a waiver from the requirement that a subdivision be a Conservation Residential Development, if the applicant demonstrates any of the following:
 - i. that conservation values on a property would be better protected by a conventional subdivision design;
 - ii. that a conservation residential development would significantly detract from the character of the surrounding neighborhood; or
 - iii. that a conventional subdivision design provides the only reasonable alternative to developing the parcel to be subdivided given the parcel configuration and site constraints.
- b) The Planning Board may waive strict compliance with the Conservation Residential Development standards on a case-by-case basis. In granting a waiver of any requirements of a Conservation Residential Development, the Planning Board shall find that all of the following conditions apply:
 - i. That granting the waiver will not be contrary to the spirit and intent of the Conservation Residential Development standards.
 - ii. That granting the waiver will better protect the conservation values identified in the Conservation Residential Development Design Standards.
 - iii. That granting the waiver will not diminish the property values of the abutting properties.
 - iv. That granting the waiver will be to the benefit of the public interest.

- c) Any request for a waiver must be submitted in writing within the same time frame as an application for a Conservation Residential Development.
- d) Abutters are to be notified at the applicant's expense when a request for a waiver is submitted

Proposed terms to include in definitions section:

Conservation Areas: Areas of the tract that contain sensitive natural resources or other significant features.

Developable Land: For the purposes of calculating density, Developable Land is the land area of the total tract after deducting any land encumbered by any roads, utility, right-of-way or other easement servicing the land beyond the tract boundaries.

Homeowners Association: A private nonprofit association that is established by the developer to manage the open space and any other common amenities. Membership in said association shall be mandatory for property owners. Articles of Association or Incorporation or any amendments thereto must be acceptable to the Planning Board and approved by Town Counsel.

Lot Line Adjustment: Means adjustments to the boundary line(s) between adjoining properties, where no new lots are created.

Subdivision: Means the division of a lot, tract or parcel of land into two (2) or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, or building development.

Subdivision, Major: Means a subdivision of four (4) or more lots, or one which involves the creation of new streets and/or utilities, regardless of the number of lots.

Subdivision, Minor: Means a subdivision of land into three (3) lots or fewer lots for building development purposes, with no potential for re-subdivision on an existing street, and which does not involve the creation of new streets, utilities, or municipal improvements.

Tract: An area, parcel, site, piece of land, or property which is the subject of development proposal and application.