

City of Keene
New Hampshire

LAND USE CODE UPDATE PHASE I THINK TANK

MEETING MINUTES

Tuesday, June 28, 2016

8:00 AM

**2nd Floor Conference Room
City Hall**

Members Present:

Jim Duffy (Departed at 9:35 AM)
Steve Bragdon
Mike Giacomo
George Hansel, Councilor
Gary Spykman
Jim Phippard
Jane Stabler
Katie Cassidy Sutherland
John Rogers
Susy Theilen
John Croteau

Staff Present:

Tara Kessler, Planner
Rhett Lamb, Assistant City Manager /
Planning Director
Tom Mullins, City Attorney

Others Present:

Brian Wright, TPUDC
Sandrine Thibault, TPUDC

Members Not Present:

George Foskett
Linda Rubin

Mr. Lamb, City Planner, called the meeting to order at 8:02 AM.

1) INTRODUCTIONS

Mr. Lamb began the meeting by welcoming the Think Tank members and called for introductions. He indicated that the Land Use Code Update project has been a priority of the City's since the adoption of the 2010 Comprehensive Master Plan.

2) CITY ATTORNEY VISIT

Mr. Lamb introduced Mr. Mullins, City Attorney. The City Attorney thanked the Think Tank members for their participation and provided a handout on the legalities of an Ad Hoc Committee. He explained that as a public body appointed for a specific purpose, the Think Tank must follow the NH Right to Know Law (RSA 91A). Even as an Ad Hoc committee, there are uniform rules of procedure that should be adopted and returned to the City Attorney at the next meeting once all members have had a chance to review them. The City Attorney explained the requirements of the Right to Know Law listed in the handout.

The City Attorney explained that anything created in the context of a public body, such as meeting minutes and work products, becomes public record. He indicated that because this is a public process, the minute taker has a responsibility to keep a careful record of what takes place in a meeting and urged members not to ask the minute taker and staff to make substantive changes and to not ask the minute taker to leave things out of the minutes. He also reminded members of the City's Conflict of Interest policy. If something comes before the Think Tank and a member has a monetary interest, the Think Tank should be alerted and the member should recuse themselves.

The City Attorney indicated that he is available to answer questions from Think Tank members and he will work through the process with City staff as the project moves forward.

3) PROJECT GOALS & SCHEDULE

Mr. Lamb introduced Ms. Kessler, City Planner, who explained that the Land Use Code Update is a top implementation strategy of the 2010 Keene Master Plan. The Update has been divided in two phases. The first phase will take place between the end of June and end of November 2016 and will focus on reviewing existing regulations with consultants, assessing them, and weighing the different frameworks for updating them. She stated that at the end of the first phase, the City will have a sense of direction for how to structure the second phase.

4) THINK TANK ROLE

Ms. Kessler welcomed the consultants selected to oversee this phase of the project, Mr. Wright and Ms. Thibault, of Town Planning and Urban Design Collaborative, LLC (TPUDC) to explain the role of the Think Tank.

Ms. Thibault indicated this meeting is the start of the project schedule and the goal is to finish this first phase by the end of November. They anticipate three to four additional meetings between July and November. In August or early September, TPUDC will present an analysis of the current zoning regulations. In September or October, the Think Tank will discuss newer innovative approaches to zoning. Finally, the Think Tank will make recommendations in a final report, which will be presented to the Planning Board and City Council.

Mr. Wright explained that while the City Attorney's legal procedures are important, the Think Tank should not have a feeling of formality. TPUDC uses the Think Tank model because their projects tend to be open and about the community at large directing the process. He said the "steering committee" label often causes the rest of the community to feel left out. The value of this Think Tank is that they understand the community in a way the consultants cannot. Mr. Wright explained that he and Ms. Thibault will bring five to six questions to the Think Tank at each meeting so they can explore topics in more detail

and in a concise way. He said it is critical to remain in the mindset of a Think Tank throughout the process because it is an important distinction.

5) POP QUIZ

Mr. Wright presented a pop quiz to the Think Tank members on existing zoning in Keene. The quiz revealed that: the City currently has 17 zoning districts; Keene adopted its first zoning ordinance in 1927; Keene has eight overlay districts; the maximum building height in Keene is six floors (seven in the Seed District); and all zoning districts in Keene allow for home occupations.

Mr. Wright indicated the point of the quiz was that nearly everyone failed it, which is typical. They use this quiz to eliminate the pressure Think Tank members feel to become zoning experts. The members should not feel pressure to know every aspect of City zoning.

6) ZONING 101 PRESENTATION

Mr. Wright explained that this Update is taking place because of the Master Plan and explained the key components of Keene's 2010 Comprehensive Master Plan, including vision focus areas, unique natural environments, quality built environments, culture, and a healthy community.

Mr. Wright continued explaining what zoning is. Zoning is not about building or development, it is a guide to limit or allow certain land uses. Zoning often has to do with enforcement or maintenance. In the past, the goal of zoning was to keep similar uses grouped together, but today it is more focused on promoting mixed uses. The purpose of zoning is to prevent overcrowding, protect public health and safety, balance property rights, protect valued aspects of the community, enhance areas that need improvement, etc. Mr. Wright stated there is no one way to have a community, context must be considered. He said it is important to not only think about the preferences of the Think Tank, but the preferences of the whole community.

Mr. Wright continued that zoning makes a difference in how a city looks and functions depending on how it is written. Often zoning separates uses in a community into "pods": housing pods, school pods, industrial pods, multi-family housing pods, etc. Today, the goal of zoning is more often walkable, mixed use, and diverse communities as opposed to pods. Mr. Wright indicated these interconnected, mixed use communities solve traffic problems through land use while creating real places in the process.

Mr. Wright continued explaining what happens when zoning changes. He indicated there are State statutes with regard to grandfathering that will remain in place. He stated that people often fear that zoning will change everything. People are concerned if zoning changes their investments will not be protected and it is TPUDC's goal to protect those investments during the zoning change process.

Mr. Phippard commented that he hopes the Think Tank will not take the issue of grandfathering and non-conformities lightly as it can be a negative and confusing factor when zoning changes are made. Mr. Wright replied that some communities are concerned about transforming the place while others are more concerned with protecting and preserving what is there. TPUDC approaches zoning with Synoptic Surveying – a process by which they identify the most beloved parts of the city and base any changes to the ordinance on the DNA/context of these places. He indicated that unless there are intentional, wholesale transformations, there will likely be few issues with non-conformity. While they would not propose changes for the sake of changing, if change is required to meet an end goal it may be necessary, and there will ultimately be discomfort in that process. Mr. Bragdon commented there will undoubtedly be conflict between individual wants and community wants. He said the ultimate purpose of zoning is to eliminate non-conformities.

Mr. Duffy commented that the Master Plan had unprecedented public participation. He indicated those most involved in the Master Plan are now of an age to begin settling in Keene so it is a good time to think about making the City relevant and accommodating to a new generation. He pointed out the complexities between the short-term and long-term impacts of a new code/set of regulations, and indicated zoning that creates buffers with a more elegant design could alleviate some of these issues. Mr. Wright replied that transitions between zones are always an issue in zoning. He said that in authentic and historic places, like Keene, there is often no need for buffers because the character of the place is compatible from one use to the next. He said the goal is to find compatibility from zone to zone so buffers are unnecessary. He indicated that these issues will arise in this process, and that some will not be easy to answer. Everyone will view the pros and cons differently.

Mr. Lamb commented that the purpose of the Think Tank is not to write the ordinance but to choose a direction for the Land Use Code re-write process. He said they will look at methodologies for how to write code, not actually write the code. The methodology chosen might change feelings about the code. The objective is to have TPUDC help address their goals.

7) CURRENT ZONING

Ms. Kessler presented an overview of the existing zoning in Keene. She indicated that Keene has 17 zoning districts. She said the Central Business District is the least restrictive with no minimum lot size and no minimum setbacks, but there is a height restriction. Zoning districts transition from the more urban and dense Central Business District in the downtown to the Rural District where the minimum lot size is five acres. There are a variety of different zones and buffers in the City. Ms. Kessler and Mr. Lamb explained the boundaries of the Central Business District.

Ms. Kessler continued explaining that the City has underlying zones that determine the types of development that can take place in each district. There are also eight overlay districts, which are a special type of zoning on top of base zoning that add special

provisions. Mr. Wright commented on the complexity in having many zones and layers. He said the goal of this project is to simplify City zoning.

Ms. Kessler and Mr. Lamb presented a map of a telecommunications overlay developed in 2000-2001. This overlay was established based on community preference of where cell towers should be placed to preserve the character of the City. Ms. Kessler explained additional overlays including those for the surface water and wetlands protection, the Downtown Historic District, Railroad Property Redevelopment District, and the Gilbo Avenue Design District.

Councilor Hansel asked the opinion of overlay districts in modern planning. Mr. Wright replied they are generally asked to eliminate them and they will have to understand the intricacies and needs for similar zones. He said overlays are often based on incentives and in the absence of zoning re-writes, overlays work well. Mr. Wright indicated that the majority of cities they work in have a lot of overlays. Mr. Lamb added that the origin of zoning was simple but as the community has evolved, it has tried to separate uses in a more refined way, for which the ordinance is not equipped. The goal is to manage the built form of the community and protect its character. Mr. Wright said that zoning evolution has been simultaneous with development devolution. Mr. Duffy added that zoning is a social equity issue as well.

Ms. Kessler explained that Keene adopted its original zoning ordinance in 1926 with subsequent updates in the 1950s, 1970s, and 1990s. The structure is outdated and needs an overhaul. There are complexities due to the amount of overlays and while there are land use regulations, there is no true Land Use Code. There are City Code chapters and many local regulation chapters and standards. To develop in the City, one must go through many different public bodies that have the final say in governing land in the City. Mr. Lamb added that having to go through a variety of boards for a development review adds undo complexity; the goal is to find a way to streamline that process. Ms. Kessler continued that at the City Staff level, the Planning, Code Enforcement, and Public Works departments work most with Land Use issues. Additionally the Fire and Police departments, City Attorney, City Clerk, Assessing Department, Parks and Recreation, and many more. Ms. Kessler and Mr. Lamb are meeting with all these departments and will stay closely connected with them during the Update process.

Mr. Spykman commented that as chair of the Planning Board he is often asked about the development process and he is still unsure of whom to go to first. He said it often depends on the project but it feels like going in circles. It would be helpful to have a step-by-step procedure.

Mr. Duffy asked if form-based and hybrid codes have less red tape. Mr. Wright responded that can be the case but it depends on the community choosing a form-based approach to capture community character. Many communities want a form-based approach but do not have the political will to let go and trust that the code says what they want it to say. He hears the Think Tank desire to simplify the process. The City Attorney asked the difference between the current Keene code and a form-based code. Mr. Wright replied the

existing code is primarily use-based but does not portray the character of Keene or the vision of the Master Plan. A form-based or character-based code places character of the community above specific use details and impediments to development. Mr. Duffy asked if, with a form-based code, planning departments can focus on planning more and minutia less. Mr. Wright replied that if planners are given more ability to review and determine if uses meet zoning codes, it can simplify the review process, but there is a learning curve. Mr. Wright indicated one way to streamline the process is to have a consolidated review committee with all departments represented to review applications together. Mr. Giacomo asked if form-based really simplifies or if it creates more complexity by being more subjective than use-based. Ms. Thibault added that form-based will be more objective than what exists in Keene currently. Councilor Hansel asked if variances will change. Ms. Thibault and Mr. Wright replied that variances would still be allowed. Ms. Thibault added they have learned in their interviews that variances are given in Keene often, which shows that the regulations do not follow what the community wants. A good goal is to reduce the number of variances.

Mr. Lamb stated that simplification and clarification are something to be mindful of in this process regardless of the methodology chosen. The City Attorney added that the character of the City is changing from the outdated code. Mr. Phippard added that wherever the Update ends up, it will also have to comply with state and federal regulations. Mr. Wright replied they will address those regulations at the beginning to avoid having to continuously go back to them.

8) OUTREACH & ENGAGEMENT STRATEGY

Ms. Thibault indicated there is not a large public engagement component during this first analysis phase. In the second phase, once an approach is chosen, the public will be more involved in what the code should say. She and Mr. Wright have been conducting stakeholder interviews with groups who deal with zoning on a regular basis in the City to get their perspectives. She indicated there would be a community event in September to begin sharing information with the public. At the end of this first phase, the analysis will be presented to the Planning Board and City Council. A webpage has been developed and will remain updated throughout the project.

9) Q&A AND NEXT STEPS

Ms. Kessler will send a follow-up email to Think Tank members with more information and will coordinate the next meeting date. Mr. Lamb encouraged members to talk about the Think Tank with peers and if anyone is interested, direct them to himself, Ms. Kessler, Mr. Wright, or Ms. Thibault. There is an e-mail list managed by Mr. Lamb and Ms. Kessler. Ms. Stabler asked if Think Tank sessions are open to the public. The City Attorney replied yes, anyone can come to these meetings. The City Attorney added that a Chair needs to be appointed at the next meeting. Mr. Wright stated that meetings will be kept to one hour or less in the future.

Hearing no further business, Mr. Lamb and Ms. Kessler adjourned the meeting at 9:49 AM.

AHLUCPO Meeting Minutes
June 28, 2016

Respectfully submitted by,
Katie Kibler, Minute Taker

Reviewed and edited by,
Tara Kessler, Planner
August 31, 2016