

City of Keene
New Hampshire

LAND USE CODE STEERING COMMITTEE
MEETING MINUTES

Friday, May 17, 2019

4:00 PM

2nd Floor Conference Room,
City Hall

Members Present:

Douglas Barrett, Acting Chair
Councilor David Richards
Councilor George Hansel
Councilor Maggie Rice
Gary Spykman
Jim Phippard
Katie Cassidy-Sutherland (Arrived Late)

Staff Present:

Medard Kopczynski, Economic Development
Director
John Rogers, Health & Code Official/Zoning
Administrator
Tara Kessler, Senior Planner
Mari Brunner, Planner Technician

Members Not Present:

Mayor Kendall Lane

1) Call to Order

Mr. Barrett acted as Chair of this meeting, which he called to order at 4:00 PM.

2) Downtown Form Based Zoning Update

Ms. Kessler said there were few updates since the last meeting. Still pending is the next phase of concepts for the Committee to understand more about the proposed Form Based Zoning district and sub-districts. Ms. Kessler should have a draft of how the districts could look on the ground, considering setbacks and uses, in June.

Mr. Kopczynski recalled upcoming public engagements, which Ms. Kessler described. She said it is important for the Committee to be confident of the proposed districts before conducting widespread outreach on them. Once finalized, the public will engage with the drafts at meetings within the sub-district areas affected and there will be one larger community forum when the meetings are complete.

3) Approve Minutes of May 3, 2019

Mr. Spykman recalled meeting minutes to approve that were not agendized. Mr. Barrett adjusted the meeting agenda to hear a motion.

Councilor Richards moved to approve the minutes of May 3, 2019, which Mr. Spykman seconded and the motion carried unanimously.

4) Review of Draft Land Development Code Chapters

a. Hillside Protection Overlay District

Ms. Kessler referred to page six of the meeting packet and recalled there are change forms included before the draft of each section of code the Committee has been working on. She recalled that Council adopted the Hillside Protection Ordinance in 2009 with the intent to protect against flooding in the community. Impacts to steep slopes could lead to increased runoff and drainage impacts. Over the course of a year, the City worked to adopt this Ordinance, which addresses precautionary (15-25%) and prohibitive slopes (> 25% grade) specifically.

Staff does not propose changing the Ordinance significantly from the current ordinance. The majority of work proposed is reorganization of the existing language and streamlining it for reader comprehension. During a previous discussion, the Joint Planning Board-Planning, Licenses & Development (PB-PLD) Committee proposed eliminating the requirement that all prohibitive and 50% of precautionary slopes be subtracted from the calculation of minimum lot size.

Mr. Kopczynski asked if the code form works and provides enough information. Councilor Hansel said yes and for this one especially because it is consistent with the intent of what the minimum lot sizes are supposed to do, which is to determine density.

Mr. Barrett and Mr. Spykman agreed that the addition of graphics, as Ms. Kessler suggested, in the “clearing for views” section would help their comprehension. Ms. Kessler agreed the section is complex and she continues working to simplify it, which includes developing an illustration.

Mr. Phippard noted an issue that arose with two abutters of an existing house on Jordan Road. Under the terms of this Ordinance, they were clearing trees to open their view of the City and he thought they complied with the Hillside Protection Ordinance. However, the property owners left the felled trees, which abutters feel is unattractive and disrupts their views. He asked if there is a standard requiring removal of felled trees. Ms. Kessler said it is not required today so it is something to consider and might require more time to evaluate the pros and cons of this potential requirement. For example, there may be benefits to leaving those trees behind for wildlife habitat. Mr. Phippard thought the trees were left because of the extreme slope steepness and it would have been expensive to get equipment in to remove the trees. There were nearly 100 trees felled on this property and Mr. Phippard said it looks like a terrible mess. He thinks it is appropriate to consider requiring removal and if the cost is too much to remove trees on a slope, then perhaps they should not cut the trees.

Mr. Spykman asked if any parts of the City Code require timber cleanup. Ms. Kessler recalled the Hillside Ordinance states that logging must be conducted using best management practices (BMPs). Mr. Phippard said there are BMPs for timber management and the state requires leaving stumps on steep slopes but he is unsure if they require removing those trees. He cited wildlife studies that assert it is good to leave felled trees in the woods because they enhance habitat for small animals and insects. He said it is a different situation, though, when clear-cutting a piece of land. Ms. Kessler stated she would report to the Committee with more information on this request.

Mr. Phippard said that Conditional Use Permits (CUP) require topographic mapping and he cited a website that provides photography resources called Light Detection & Ranging (LIDAR); he would like that technology listed as acceptable for CUPs because it is less expensive than a survey and relatively accurate. Ms. Kessler thinks it is a reasonable source today based on the aerial photogrammetry listed under one of the CUP requirements. There is also data available from the City to determine 2-foot contours.

b. Telecommunications Overlay District

Ms. Brunner said this information was also presented to the Joint PB-PLD Committee. The City adopted the current Ordinance, Chapter 102, Article 7, “Telecommunications Towers and Antennas,” in 2001. At the time, most telecommunications facilities mounted on towers were visible due to their height, if not camouflaged or concealed. In response to this trend, the 2001 Ordinance focused mainly on mitigating the aesthetic impact of large towers; it aimed to protect “viewsheds” within the City with the establishment of a “view preservation overlay” map in zoning that had different classes of view area. This Ordinance also changed some restrictions in the Historic District and along Main Street. However, the current Ordinance inadequately addresses changes in federal and state law as well as advancements in telecommunications technology since 2001. Staff updated the proposed Ordinance to be more consistent with state and federal law (see meeting packet page 13/43), modernized to take into account newer technologies, and reorganized to make it easier and simpler for users to find the necessary information. The updates to state and federal laws also included definitions for: collocation, modification, substantial modification, and utility pole. Ms. Brunner said the process for collocation and modification applications only require a building permit per state law but historically the City also required an additional CUP for these applications. The proposed Ordinance reflects this change to eliminate the requirement of CUPs for collocation and codification.

Staff also drafted a license process to allow small cell facilities in the public right-of-way under the authority of the Public Works Director. Ms. Brunner clarified that staff proposes prohibiting new small cell facilities in the right-of-way on Main Street because there are already so many structures there. On Main Street, there are more opportunities to add equipment to existing structures and there may be opportunities for new facilities along Gilbo Avenue where there is more space.

Councilor Hansel asked how the new telecommunications small cell facilities are similar to electrical infrastructure in the right-of-way. Mr. Kopczynski said state and federal laws reduce the City’s ability to prohibit facilities. He said typically these facilities are boxes on top of a pole with some electrical transmission, which is a limiting factor required for small cell facilities. He was unsure how much downtown Keene will use but he has no doubt the City will have to use its own stimulus to provide some of the technology. Overall, casual observers will not likely notice the small cell facilities.

Councilor Hansel asked if the process for installing small cell facilities would be similar to an electrical company placing a small transformer on one of their poles. Mr. Kopczynski said the City will require a permit to install facilities but the telephone and electric companies do not need a permit. He said state law prohibits the municipality from adding small cell facilities to existing poles, which is why the newer definition defines utility poles. The City cannot prohibit a cellular company from installing on their existing pole. Most small cell facilities are cylinders on top of the pole that increase height by 5’ with a smaller box that comes down the pole for electrical services. Ms. Brunner said some towns are working with Historic Districts to ensure the facilities blend in and look nice, which is easily accomplishable with historic light poles.

Mr. Barrett commented on Section 5: Design Standards, and specifically the Aesthetics subsection. He noted a bullet that says antennas should be narrow in profile, which is vague and thus could lead to enforcement difficulty. Mr. Rogers said that is a good point. Ms. Brunner said that is the current standard language, which staff preserved for Committee discussion. She cited recent work on a Verizon Wireless application, for which she tried to determine if their antennas are narrow in profile and she was told to say they are consistent with what we have approved in the past. She said the Mr. Barrett’s point is a good one and she is unsure how to measure narrowness.

Mr. Barrett referred again to Section 5: Design Standards and specifically the Screening subsection, which refers to underground vaults. His understanding was that Eversource has been removing equipment from underground vaults due to maintenance and flooding, for example. Mr. Kopczynski agreed and said it is a safety issue. The Mr. Barret's questioned if the language that suggests putting things in underground values will be problematic if the trend is moving away from that. Ms. Brunner said camouflaged facilities are not visible, which is why she thinks the requirement existed. Ms. Kessler said Eversource day lighted aboveground transformers in downtown Keene because the water table poses concerned for underground utilities. Ms. Brunner thought this standard was geared more toward camouflaged facilities on a building with equipment inside or constructing a camouflaged structure to house the equipment. Mr. Barrett noted that he wants to ensure that the City is not requiring people to do something that is unfeasible.

Continuing the discussion on camouflaged facilities, Councilor Hansel asked if requiring underground infrastructure would discourage people from doing camouflaged facilities. Ms. Brunner said no, based on the requirements for non-camouflaged facilities.

Mr. Spykman also referred to the Screening subsection, which says, "All equipment for a camouflaged facility shall be in an underground vault." He thinks this is redundant with the following bullet. The bullets in question are:

- 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.

Mr. Spykman said the third bullet can be eliminated and the fourth bulled conveys the same information without the added confusion of an underground value. Ms. Kessler agreed that staff should revisit this subsection because to determined if the third bullet is specific to camouflaged facilities and the fourth is specific to new ground-mounted towers and antennas. Ms. Brunner thinks that equipment for a camouflaged facility could possibly be an equipment shelter as long as it is screened of camouflaged.

Ms. Cassidy-Sutherland asked the difference between camouflaged and ground-mounted facilities. Ms. Brunner replied there are a few types of facilities. A concealed telecommunications facility itself is in another structure and completely invisible from view. An example is the Colony Mill smokestack, which contains a telecommunications facility that most would never know. Camouflaged facilities cannot extend above the tree line more than 20'. Most examples of camouflaged facilities are towers in wooded areas, some of which use fake tree branches to better blend with surroundings. Building-Mounted facilities are painted to match the surrounding structure.

Ms. Cassidy-Sutherland asked if there were technical definitions. Ms. Brunner referred to the definitions and said, "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 man-made trees.”

The Committee agreed to strike bullet three from the Screening subsection and to remove the words *underground vault* from bullet four.

Ms. Brunner referred back to the change form that demonstrates design standards were reduced significantly. Many sections on design criteria were condensed into one concise section.

Mr. Barrett referred to the standard for security fencing, which says that, “New ground-mounted facilities shall be enclosed by security fencing not less than 6 feet high or equipped with an appropriate anticleimbing device, if applicable.” He wondered if that standard applies more to monopole structures. He recalled seeing a pole disguised convincingly as a fake palm tree while on vacation recently and said it would have been ruined if a 6’ fence were around it instead. Ms. Brunner said there is a blanket prohibition on monopoles. New towers must adhere to a fall zone with a certain setback distance from streets and residential structures. She thinks security fencing is common because these towers are usually off the beaten path where people cannot be safely in the fall zone. As written, Mr. Barrett said it only mentions height dimensions and he would not have understood that the restrictions are in the fall zone, which is a significant difference. Ms. Brunner was unsure if the intent is to fence the fall zone. She said the fence is for security to keep people from getting too close to the equipment.

Mr. Barrett provided an example of a project for a municipal wind power turbine (100’-150’ monopole) from where he lived 18 years ago. The city’s typical requirement was a 10’-20’ fence around the equipment. The group installing the turbine said it is a secure, unclimbable metal pole with no exposed equipment and they thought a fence would be an eyesore and actually entice kids more to want to get inside the fence. Mr. Barrett said those installing equipment are most apt to determine security needs for equipment and should be the ones to decide.

Mr. Kopczynski said the City Code was based originally on a model that was prevalent in the state at the time. He agreed that the fence requirement is illogical if there is no safety or security need for a fence

In line with the Mr. Barrett’s thinking, Mr. Rogers agreed with striking the first bullet in the Security Fencing subsection. He thinks the second bullet alone makes it clear that security fencing is at the Planning Board’s discretion. Councilor Hansel said, however, that not all facilities may be reviewed by the Planning Board. Mr. Kopczynski said the Ordinance was written historically to create a series of steps for new tower installations. No new towers have been built in 15 years because the technology has changed. When discussing camouflage, location, or hidden towers the process is reduced significantly to only require a building permit. The proposed revisions to this Ordinance will make any new tower go through the Planning Board process.

Ms. Brunner said staff thought a table would be useful to demonstrate the path a developer must take depending on the facility type and zone proposed. Staff renamed the map “Telecom Overlay Map” and renamed *areas* as *zones* for consistency. Ms. Brunner provided examples for the Committee of how that table would work. She said this Ordinance was really designed to push people as much as possible to conceal, camouflage, or reduce visual impacts of facilities. She said according to the Community Development Director, this Ordinance has done well since adopted and there have not been new towers on hillsides.

Mr. Phippard referred to the third bullet of the Lighting Subsection of Section 5: Design Standards. He said he could demonstrate that on a clear night when the moon is out that there is not a zero footcandle measurement anywhere; he said it is not possible to meet that standard always. Mr. Phippard went on to say that a compliance hearing after the project is built may be a better approach. If changes are apparent at the compliance hearing, then the developer must add shields to light sources to cut off light to certain areas of adjacent properties. He participated in this process recently in Chesterfield, NH and he found it easier to comply with than a certain number. He said that lighting photometric plans now generate a photo plan as if the light source is the only one; it shows the added ambient light on each project, which is never a completely accurate representation of what the resulting light levels will be when the project is complete.

Ms. Kessler wondered if it may be possible to change the language to clarify that the installed lighting cannot trespass across the property lines. Mr. Barrett thought this idea was reasonable. Mr. Kopczynski agreed but said any changes have to be consistent with the City's general lighting standards.

Mr. Phippard said that zoning regulations are challenging to comply with and he cited examples from Marlboro Street and the Kingsbury property, where regulations such as footcandles, property lines, and other requirements often conflict. Ms. Kessler replied to Mr. Phippard's examples saying the current regulations allow two footcandles in the public right of way. When the Committee discusses lighting development standards, they can decide if this issue of footcandles is too onerous a standard to meet. Mr. Kopczynski thought footcandles are more about the safety of pathways and walkways at night. He agreed with Ms. Kessler that when the Committee discusses lighting in depth they will see how staff tried to balance these issues; but the Committee will need to make more decisions.

c. Surface Water Protection Overlay District

Ms. Kessler said the Surface Water Protection Overlay District was adopted initially in August 2013. The City intended the district to preserve water quality and protect the functions and values of wetlands and surface waters as recommended in the 2010 Comprehensive Master Plan. In 2015, the Conservation Commission formed a subcommittee to review the Ordinance for inconsistencies and make recommendations to City Council for addressing these inconsistencies. The subcommittee proposed amendments to the Ordinance in 2016. These amendments were presented to the PLD Committee in December 2016, at which time the PLD Committee recommended that the City should review and consider these changes as part of the Land Use Code Update. Most significant changes outlined in this draft are from the subcommittee's proposed edits, which were incorporated for consideration.

Ms. Kessler said staff significantly streamlined the purpose statement, which is very lengthy, while trying to maintain the overall intent. She directed the Committee to a possible substantial change. The subcommittee proposed removing this phrase from the buffer definition, "in an undisturbed and natural condition."

Councilor Hansel said the Surface Water Protection Ordinance has been around a long time. He asked if there is any way to prove it has accomplished what intended. He noted that Keene goes beyond the state mandated protection of surface waters and he is interested in what that has done for the City. Ms. Kessler said staff has talked internally about the challenges of measuring the Ordinance's impact. The intent of the Ordinance is to prevent activity in the buffer and if people are not submitting applications to affect the buffer, the City cannot quantify benefits. She thinks it will be hard to demonstrate a success rate but staff can brainstorm ways to measure outcomes

moving forward. Councilor Hansel said he understands the complications but it is challenging to put an Ordinance in place if its efficacy is unknown. He cited nuances of the Ordinance with tax ditches and natural waterways; valuing different waterways and treating them differently is difficult. Mr. Kopczynski said quantifying the Ordinance's efficacy might be hard. However, he does think it is possible to judge if the Ordinance is fair.

Ms. Kessler brought forth a question of process. The goal is to make it easier for applicants to meet the intent of the Ordinance without having to go through the Planning Board. She said there are challenges, however, regarding the difference between waterways. For example, when the Ordinance was adopted, the City intended to inventory, classify, and prioritize wetlands. Ms. Kessler cited the current exemption of tax ditches as the subcommittee's greatest concern. The City's tax ditch system are essentially areas today that were established historically with farming and became an important part of the City's drainage network. The National Resource Conservation Service (NRCS) required that the City maintain the banks of those tax ditches to preserve their function. That requirement from NRCS has expired the City is no longer obligated to maintain and manage those areas. However, the City has continued maintaining those tax ditches because of flooding concerns on surrounding developments if they are unmaintained. The City worked out a plan with the state to inventory streams and developed a course of action to retire management for some tax ditches and continue management for others.

Ms. Kessler referred to the recommendation highlighted in this draft to eliminate tax ditches from the list of surface water exemptions. There was also an addition to the list of permitted uses to allow vegetative maintenance and control of the buffer area. Councilor Hansel said this has major implications for downtown around Beaver Brook and many areas will deal with surface water protection on almost every project, which seems impractical to him. He said some portions of tax ditches in densely developed areas are man-made and some are channelized with concrete; it would be almost impossible to maintain these banks. Councilor Hansel recalled that this is problematic because it strays from the original intent of the Ordinance, which is to protect natural resources. He questioned how much activity on the other side of the channel's concrete wall is really effecting those natural resources. With this change, he said the City would have to regulate activity outside that concrete channel, which is impractical.

Councilor Rice quoted the exemption, "The follow surface waters shall not be subject to this article. A) Man-made ditches, swales," etc. Therefore, she said that would exempt sections of Beaver Brook, or because some parts of Beaver Brook are not man-made then all of it has to be subject to the article; she noted confusion.

Mr. Phippard recalled that the Army Corps of Engineers did not construct new ditches in the 1960s. Existing streams meandered through properties and the Army Corps of Engineers straightened and deepened channels to lower ground water on adjacent properties, which benefitted primarily agriculture. Mr. Phippard noted legal implications of the proposed Ordinance changes. He recalled a C&S project that caused the EPA to consider visiting Keene because of tax ditches maintenance. For most properties where the Army Corps of Engineers did this work, they purchased easements from the landowners and paid small amounts of money. The easement deed's language specified that the City would maintain the ditches after construction. Over time, the landowners abandoned agricultural uses and the land has developed for industry and residences since. C&S released the City from their obligation to maintain ditches throughout corporate property, which was part of their mitigation for some wetland impacts. Now, the channels are filling in well with vegetation and meandering in locations, which will continue. He said sediment is starting to build in ditches and the effects will become apparent on adjacent land areas that will be wetter with higher ground water for longer periods. Mr. Phippard was unsure how to avoid this in the future and if the City

discontinues maintenance, someone will sue for damages. A previous landowner granted the easement and the City guaranteed maintenance, which the current landowner will want as well.

Ms. Kessler recalled the Public Works perspective at a previous Conservation Commission meeting that they intend to continue maintaining tax ditches banks in a number of areas. She thanked Mr. Phippard for clarifying the difference between man-made ditches and the original Ordinance that specifically described tax ditches as: ditches for purposes of managing drainage and flooding better under a maintenance agreement with a federal agency or the state.

Ms. Kessler said the Conservation Commission subcommittee recommended eliminating tax ditches from the list of exemptions, although it poses some problems. Mr. Kopczynski said that staff's recommendation is consistent with the subcommittee's recommendation, but noted apparent Committee hesitation. Ms. Kessler was unsure staff recommended eliminating tax ditches from exemption; staff wants to be true to the process and Mr. Kopczynski agreed that staff is only presenting the recommendation of the Conservation Commission.

Councilor Hansel said now is the time to measure effectiveness of this Ordinance. He knows that staff is in a difficult position, but if the goal is to streamline the process and make regulations more effective, the Committee and staff will have to dive deeper into the Ordinance and rearrange it. Mr. Spykman was unsure the Ordinance is old enough to have a record of effectiveness, which Councilor Hansel said is fair. Mr. Spykman added that Keene is not booming with development so it will take longer to see effects.

Mr. Kopczynski asked what the Committee needed to see to evaluate proposed changes. Councilor Hansel was looking for any information to show efficacy; he also wants to keep moving the Ordinance change along because there is merit to Mr. Spykman's last point. Councilor Hansel said continued maintenance of tax ditches is a no brainer to him; Mr. Kopczynski agreed that the ditches exist and the City must control flooding.

Mr. Rogers said staff could try to determine the number of properties this Ordinance change would effect. He said it sounded like Councilor Hansel's biggest concern is if changes to exemptions on man-made ditches will affect the number of properties that abut the tax ditches. Councilor Hansel agreed he is concerned with the number of properties effected if tax ditches are no longer exempt. Mr. Kopczynski said as proposed currently, man-made waterways are still exempt and therefore parts of Beaver Brook that are clearly man-made are exempt. Mr. Kopczynski suggested exploring a definition of man-made.

Mr. Barrett said this question of tax ditch exemption is tricky because Beaver Brook has been there since the last ice age and though it was moved slightly, he said it is not man-made, it is channelized. Mr. Kopczynski said history shows that Beaver Brook was dug-up and relocated, and in that sense, it is channelized. Mr. Barrett was not okay with the intent to say Beaver Brook is a channelized concrete waterway relocated over time; he said the definition language needs more work. Ms. Kessler will spend more staff time on this and evaluate properties impacted to bring back for further discussion.

Ms. Kessler said the current Ordinance talks about preexisting uses of lots but the language is confusing. Essentially, the Ordinance states that construction of single-family and two-family residential structures and associated accessory structures, on preexisting unimproved lots are all allowed in the buffer. Also allowed is the expansion of a legally preexisting use on a lot that existed before adoption of the Ordinance. Ms. Kessler stated that staff has proposed rewriting this section to be clear that these uses are allowed in the buffer if certain criteria are met.

In addition, Ms. Kessler suggested that instead of requiring a Conditional Use Permit (CUP) from the Planning Board for certain uses in the buffer, these could possibly be reviewed administratively, provided they do not encroach within 30' of the edge of a surface water in the districts that require a 75' buffer and 10' in the districts that require a 30' buffer. A CUP would still be required for activities that are allowed via CUP today if they take place between 0-30' or 0-10' from the edge of a surface water. Mr. Spykman said this would be consistent with the process of Code rewrite, which from the start was about simplifying the process and reducing the number of cases that need to go before the Planning Board; by just meeting requirements applications will be approved more readily.

Ms. Kessler noted that the Conservation Commission weighs in on the applications currently and provides feedback to the Planning Board in a meeting that would be a noticed public hearing. While an element of transparency is lost, she thinks it would streamline the process for a number of people and perhaps make property owners willing to adhere to regulations. This Ordinance applies to single and two-family homes, which do not go to the Planning Board for site plan review.

Councilor Hansel asked if the Conservation Commission would still be alerted to NH Department of Environmental Service (DES) permits. Ms. Kessler replied in the affirmative and said the Conservation Commission is always notified of Wetland and Shoreland Permits issued by the state. Councilor Hansel said it is valuable to notify the Conservation Commission because they often notice and consider aspects of a project that can be overlooked. Ms. Kessler said the CONS does not currently vote on CUPs, they only provide comments and feedback to the Planning Board.

Ms. Kessler said that if the Committee is interested in trying to increase administrative review, staff could return to the Committee with a revised section; Mr. Kopczyński agreed.

Mr. Phippard asked if under the existing Ordinance's permitted uses he is allowed to construct a drainage feature like a rain garden in the buffer or if he would need a CUP; this is unclear to him in the current Ordinance and the proposed amendments. He is working with DES and three property owners in Chesterfield to address problems occurring with runoff crossing their properties into Spofford Lake. Everything around the lake is governed by shoreland protection regulations but especially the first 50' of the buffer where DES is trying to correct for erosion problems with rain gardens and other techniques. Ms. Kessler said she would consult the Community Development Director on Mr. Phippard's question. Currently, she said it appears he would need a CUP to do that in Keene but Ms. Brunner will look into a possible distinction for green infrastructure. Mr. Phippard said he has been talking with DES to consider a new rule that if one generates increased runoff, they must do something to correct it and preferably close to the source. Ms. Kessler thinks that seems reasonable and it is possible green infrastructure could be allowed in the buffer zone. Staff will consider it.

Ms. Kessler said it seems like this Ordinance needs more work and staff will return to Committee with updates; she thought she had sufficient information to continue staff work. Regarding tax ditches, she will produce a map to show how properties will be impacted by that change. She will also consider rewording to be clear about what portions of tax ditches would be included if they are no longer exempt. She will also evaluate or create language for an administrative review option versus a CUP. Finally, she will evaluate possibilities for green infrastructure in the buffer zone.

d. Subdivision Regulations (including Conservation Residential Development)

Ms. Kessler said the Planning Board reviewed the initial draft of these regulations, not including the Conservation Residential Development (CRD) standards. Mr. Kopczynski said this is important because it is the first Planning Board regulation going into the UDO. Ms. Kessler said that currently there are no specific subdivision standards separate from the Planning Board's 19 development standards. Within the UDO, staff proposes a subdivision regulations chapter separate from development standards and site plan review. Currently the regulations related to CRD, which is a type of subdivision, are in the Zoning Ordinance as well as the Planning Board Regulations. There is also a CUP process in the Planning Board regulations that spell out a number of standards and requirements for CRDs.

Ms. Kessler explained that developing a subdivision with three or more lots and a road requires a CRD, which today means the applicant would have to navigate between the lengthy Zoning Ordinance and Planning Board regulations.

Ms. Kessler said staff moved CRDs out of the Zoning Ordinance and into the subdivision regulations so they are all in one place. Regarding general subdivision standards, the Planning Board discussed the concept of major (4 lots or a road) and minor (3 lots or less) subdivisions. In NH, all subdivisions must have Planning Board approval. There might be an opportunity to streamline through the application process. Staff also discussed reducing timeframes for minor applications as an advantage. Ms. Brunner said the idea is for two different application forms and the one for minor subdivisions could be simpler. Mr. Kopczynski said the intention is to get minor projects streamlined and into the Planning Board as quickly as possible, with as little staff effort and applicant time as possible. Ms. Brunner agreed and said there would be a longer review time for major projects.

Regarding general subdivisions, Ms. Kessler recalled a question about excluding condominiums from the subdivision regulations. Mr. Phippard asked about industrial condominiums and when an owner wants to divide an existing building into two units as a condominium. Ms. Kessler said staff discussed this because in most instances it would not affect the site but rather division of space within a structure, it may not warrant the full review of the Planning Board. Specific documents and declarations have to be recorded for condominiums and that would be the mechanism to distinguishing the ownership of units. Mr. Phippard said a condominium site plan would still be necessary, with designated parking spaces and common areas, whether the City of Keene looks at it. The Registry has to record all documents, which the Attorney General's office must also approve.

Ms. Kessler noted the current definition of subdivision includes condominiums and thus need subdivision approval; still, she cannot recall a condominium going through the subdivision application in her tenure. Mr. Rogers said a condominium coming forward as a subdivision would be splitting the building and therefore need a building permit. Any change of use will trigger site plan review. Mr. Kopczynski said condominiums are related to ownership and many kinds of condominiums are possible. Ms. Kessler agreed with Mr. Rogers that any delineation of condominiums would trigger site plan review. Ms. Brunner spoke of a contract partner working with the City who has experience working in many New England towns and who said making condominiums go through the subdivision process only accomplishes ensuring they are recorded. Because condominiums are already required to be reported, going through the subdivision process seems redundant. Mr. Spykman said he was in favor of not including condominiums in the definition of subdivision.

Mr. Phippard referred to page two of the draft Ordinance and said Keene is now at a point where many people are looking to build houses on lands on the perimeter of the City's utility network. At

these farther properties, water supplies are inadequate perhaps based on elevations, pressure, flow, or size of infrastructure; Mr. Phippard was unsure but said the water pressure at these locations is less than 20 psi. Because the water does not reach these properties, he has to apply to the Zoning Board for a variance to build a single-family homes on a lot not connected to City water. He said the City would not improve infrastructure to serve these areas even though the water lines run adjacent to the properties. He does not think it is fair to landowners in these situations. He cited Whitcombs Mill Road and Base Hill Road as examples, among others. Mr. Kopczynski said the question is more closely related to the body of the Code itself in the Zoning District, which says single-family homes must be served by City water and sewer; he suggested tabling this conversation until the Committee discusses these issues with the Public Works Director.

Ms. Kessler said the remaining comments on this Ordinance are noted on the change form and are related to CRDs (starting on page three of the draft). Staff proposes eliminating the Low Density I District, which is only three parcels. Staff still has questions on this section and more work is needed regarding setbacks and dimensional requirements. Mr. Phippard said Low Density I was intended originally to be a transition between Low Density and Rural, which made sense at the time. Staff reiterated that this is just a proposal.

Ms. Kessler said the regulations related to CRDs are confusing. Three or more lots and a road require a CRD. When discussing tracts of land, she said the parent parcel is considered; 10 acre minimum in the Rural zone and five acre minimum in Low Density and Low Density I zones. For example, she said someone in the Rural District trying to subdivide a 10-acre lot needs to designate at least 50% of that tract as open space and allocate the remaining land into lots with one-acre minimum lot sizes. Ms. Kessler explained that the number of units allowed within the 10 acres is based on dividing the 10 acres by a density factor. Currently, the density factor is 1 unit for every 5 acres. Staff are proposing to change this to 1 unit for every 3 acres. This would allow more units to be located in a CRD. Staff went to explain this concept in more detail and to discuss the proposed changes to the regulations that would allow for more density through CRDs while still preserving the intent. This may be a way to incentivize doing CRDs. The group worked through an example to understand the calculations behind the yield analysis for CRDs.

A question was raised about whether it would be better to reduce the minimum lot size required for CRD. Staff noted that the intent for preserving the minimum lot sizes is to ensure that the character of the zoning districts is not impacted. Ms. Kessler added that the reason is also to ensure there is adequate space for wells and leach fields in areas without City water and sewer.

Mr. Phippard noted there is also a 100' buffer requirement along the external road, so an additional acre of land would be necessary beyond that buffer before building is possible. He thought the Rural Zone would allow duplexes, which Ms. Kessler confirmed that it would if done as a CRD. In reality, Mr. Phippard said CRDs are alright and he cited a project he is working on that can benefit from the changes to the 100' buffer requirement because the most usable strip is 130' along that road. Mr. Kopczynski agreed that it would have to be a narrow house with the current regulations; he noted internal discussions about the 100' buffer, especially in the Low Density District. Ms. Kessler said there was discussion to reduce the perimeter buffer in the Rural zone to 50'. The Committee discussed challenges of a 100' buffer restriction, which could leave someone with an undevelopable lot. Staff will continue working to clarify these numbers.

The Committee agreed the density factor needs significant reconsideration. Staff is trying to increase incentive for CRDs but it is hard to communicate the requirements in simple language.. Mr. Barrett requested an example that excludes the density factor regulation and still constrains

minimum lot size. Councilor Richards suggested diagrams with pictures that compare different components with equations on each to help the Committee visualize.

- 5) **Next Meeting – June 7, 2019**
- 6) **Adjourn**

Hearing no further business, Mr. Barrett adjourned the meeting at 6:06 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker
May 27, 2019