

City of Keene
New Hampshire

**JOINT PLANNING BOARD/
PLANNING, LICENSES, & DEVELOPMENT COMMITTEE**
MEETING MINUTES

Monday, September 14, 2020

6:30 PM

Remote Meeting via Zoom

Planning Board Members Present:

Doug Barrett, Chairman
Chris Cusack, Vice-Chair
Mayor George Hansel
Michael Burke
Gail Sommers
Andrew Weglinski
Councilor Michael Remy
David Orgaz

Planning Board Members Not Present:

Tammy Adams, Alternate
Emily Lavigne Bernier, Alternate
Pamela Russell Slack

Planning, Licenses and Development

Committee Members Present:

Councilor Kate Bosley, Chairman
Councilor Mitch Greenwald
Councilor Gladys Johnsen
Councilor Catherine Workman

Planning, Licenses and Development

Committee Members Not Present:

Councilor Philip Jones

Staff Present:

Rhett Lamb, Community Development Director
Mari Bruner, Planner
Tara Kessler, Senior Planner

1. Statement of Authority to Hold Remote Meeting

Chair Barrett began the meeting by reading the following statement with respect to holding remote meetings: *“In Emergency Order #12, issued by the Governor of the State of New Hampshire pursuant to Executive Order #2020-04, certain provisions of RSA 91-A regulating the operation of public body meetings have been waived during the declared COVID-19 State of Emergency. Specifically:*

- *The requirement that a quorum of a public body be physically present except in an 18 emergency requiring immediate action under RSA 91-A:2, III(b);*
- *The requirement that each part of a meeting of a public body be audible or otherwise 20 discernible to the public at the location specified in the meeting notice as the location of the 21 meeting under RSA 91-A:2, III(c).*
- *Provided, however that the public body must:*
 - *Provide access to the meeting by telephone, with additional access possibilities by 24 video or other electronic means;*
 - *Provide public notice of the necessary information for accessing the meeting;*
 - *Provide a mechanism for the public to alert the public body during the meeting if 27 there are problems with access; and*
 - *Adjourn the meeting if the public is unable to access the meeting.*
- *All votes are to be taken by roll call.*
- *All board participants shall identify the location from where they are participating and who is present in the room with them.”*

Chair Barrett provided information for how to access the meeting either online or by telephone.

2. Call to Order & Roll Call

Chair Barrett called the meeting to order at 6:30 PM and a roll call was taken.

Chair Barrett stated that the Committee will take time for public comment; however, the time provided for comment will be limited to three minutes per person per comment. He added the plan is to end the meeting by 8:30 PM and added that there will be time for further public comment at the next meeting, which will be a public workshop.

3. Approval of Meeting Minutes - August 10, 2020 Meeting Minutes

A motion was made by Councilor Mitch Greenwald that the Joint Committee accept the August 10, 2020 meeting minutes. The motion was seconded by Councilor Kate Bosley and was unanimously approved.

4. Format for Public Workshop / Public Hearings for Land Development Code Ordinance

Mr. Lamb asked the Committee to recall the discussion held by the Committee at their last meeting on the letter submitted from Mr. Espiefs questioning the format of remote meetings. Mr. Lamb referred to the schedule and noted the committee is at the last portion of preliminary review at this time. The second half is the schedule for when the item is submitted to Council for adoption.

Mr. Lamb indicated staff has suggested moving forward in the current manner via zoom but there was discussion as to whether this is the right way to move forward or not and if the public has adequate access. He indicated to that end, staff had a few suggestions. The first is simply a written process; there will be the option of joining by zoom or to submit written comment. The other option was to rent the Northfield Drive In. Mr. Lamb stated these are some options staff has and asked for committee ideas as well. He noted regardless of what option the committee chose to move forward with, the meeting format won't be how it was prior to March 2020, at least not for quite some time.

Mr. Weglinski asked when the proposed schedule was drafted. Ms. Kessler stated it was presented at the June meeting and the schedule before the committee tonight is the one the group agreed to. Mr. Weglinski asked whether they were on schedule for the December 17 council adoption. Ms. Kessler stated as has been indicated previously that would depend on the Joint Committee's willingness to meet and move through the draft code. There are four public workshops and this draft is planning for only one public hearing before the City Council but the Council might feel differently. If the number of dates and times remain as is as outlined in the schedule, then the December 17 date could be met. Mr. Weglinski asked whether Council has commented on this schedule. Ms. Kessler answered in the negative.

Councilor Greenwald stated he was opposed to this process moving beyond the workshop phase until face to face options can be looked at for public hearings.

Mayor Hansel suggested #1 or #2 public workshop be a face to face workshop, possibly getting attendees to sign up before the meeting. This meeting could be conducted in a larger space, with limit of 100 people and if needed a second session scheduled. He also suggested adding a fifth

workshop with the understanding that the prior four sessions are recorded and anything not raised at those workshops could be raised at the fifth in person workshop. Mr. Lamb asked whether the Mayor is suggesting that the in person meeting would also be broadcast zoom or a similar method allowing for public comment. Mayor Hansel answered in the negative and added he is proposing for two in person workshops.

Chair Barrett asked whether the city has the ability for people to also call in during a large in person meeting. Mr. Lamb stated the city through the Clerk's office is trying to pull together small meetings that could be broadcast over zoom, but to conduct something like that through a large meeting area is not available right now. A large meeting being broadcast by Cheshire TV is something that would need to be discussed with Cheshire TV. He added finding auditorium space is an issue because of the current exposure concern but staff has not done this research yet.

Councilor Bosley stated she was also in support of in-person workshops and suggested a show of hands by committee members who might be apprehensive being in that type of environment, because this does pose some risk. The Councilor went on to say, the issue with broadcasting over Cheshire TV has come up at Council, which seems to be a difficult component. Councilor Bosley suggested the new Colonial space or the Moco Arts location.

Chair Greenwald suggested the Blastos Room, the Keene Middle School, the Library. The Councilor noted Cheshire TV not being able to get the appropriate equipment to broadcast these meetings is not an issue for him, but what was important was to give the public the opportunity to have face to face meetings.

Mr. Weglinski stated he was not concerned about the location, but felt a meeting was necessary so this process can move forward.

Chair Barrett stated his concern was scheduling a face to face meeting but the space is maxed out and the public being turned away and not being able to join via some sort of broadcast method.

Mr. Lamb noted if the Council Chambers were to be used which has the capacity for 80, once social distancing and property health guidelines are followed that number would get smaller. He went on to say regardless of what location the committee went with, accommodating 100 people, if would be a different setting, not similar to how it was prior to March 2020; a setting many won't be comfortable joining. He stated as the committee moves forward these meetings will have to be scheduled offering both ways for people to join in and also covering the same material so people don't feel like they are missing out. Mr. Lamb stated he felt everyone should have equal access and at the moment the best way to do that is zoom.

Mr. Kopczyński pointed out the city is at the point where this information is starting to fall under the legislative process. He noted it was important for the public to offer their input regardless of what method they use and give the public as much time as they need.

Chair Barrett asked staff if it would be prudent for the committee to ask staff to look at a location that could accommodate the most number of people in a feasible manner. Mr. Lamb stated this would depend on what the committee is trying to accomplish; accommodate Cheshire TV and a zoom function or just a public meeting with only zoom option. He indicated staff can look at this further and come back to the committee. Ms. Kessler added staff will not be able to come before the committee with this information prior to the first public workshop. Chair Barrett agreed this

would be with the understanding the first public workshop will move forward as a zoom session. Councilor Bosley stated if the committee was to follow the Mayor's suggestion the timeline is likely going to be extended but felt it would be worth it at the end. Mayor Hansel stated what he is suggesting is to move forward with the one on October 13th and then try to schedule an in person meeting (people sign up) which will be a repeat of workshop #1 (no Cheshire TV or zoom) and then adding one at the end to be a meeting that covers everything (in person).

Councilor Remy asked if any of the rooms suggested could have someone in another room with a computer and people could join in on a camera. He added if this would be a solution or whether eye contact is requirement for in person meetings.

Councilor Workman asked for a 5th workshop, whether the committee will be able to schedule one during the week of November 23rd (right before Thanksgiving) to avoid pushing back the schedule any further. Ms. Kessler answered in the negative and added what is missing from this schedule is a public hearing with the Planning Board which is required by State Statute and one with the Historic District Commission which were going to be built in. These would not happen until the draft ordinance leaves the public workshop and before the public hearing before the City Council, so the schedule will need to be extended into 2021.

Councilor Greenwald suggested committee chairs meet with staff and decide on these options.

Councilor Bosley noted workshop #1 and #2 indicate zoning ordinance review and the Mayor has suggested having one of those as an in-person with no zoom option and one as a zoom attendance. The Councilor noted her observation has been, the committee has not been able to complete a body of work in one meeting. She indicated her concern discussion not being complete during workshop 1 and 2 but then scheduling an in person workshop #3. Ms. Kessler stated workshops 1 and 2 were intended to break up the discussion regarding zoning (zoning is 18 chapters of a 28 chapter code). Mr. Lamb stated prior to the first public workshop nearly 8,000 letters will be sent out and this schedule needs to be set prior to these letters going out. Hence, a very important decision is being placed in the hands of the Chairs.

Councilor Remy did not feel these need to be separate sessions – the committee could still meet remotely under zoom, the attendees can join in from a room and cameras could be turned on so attendees can see the members of the committee. Councilor Bosley stated her concern is that doing a hybrid version might not be as easily attainable. She asked whether a motion is required giving the Chairs authorization to revise the schedule as needed. She noted when the Chairs meet with staff two additional meetings will be added (at the least) to this schedule, if there is no hybrid model which will enable the committee to move forward with this schedule. Mr. Lamb stated the Chairs have the ability to set the schedule with no motion required. The Chair asked for comments from the committee regarding Chairs meeting with staff to revise the schedule if necessary. There were no comments from the committee.

5. Continued Review of Preliminary Draft Land Development Code

i. Presentation on proposed changes in Draft Code

Ms. Kessler stated she would like to review topics the committee has not reviewed yet. The topics for discussion today are parking, surface water protection, conservation residential development, subdivisions, and site review threshold. She stated she would also go over the

written comment received so far on the draft land development code. The next issue to be covered would be also be the congregate living social service component.

Parking

- New minimum thresholds – current parking thresholds date back 40 years – staff has developed new minimum thresholds based on the review of the Institute of Transportation Engineer’s Parking Generation manual.
- Options for reductions in parking minimums – if someone could not provide the minimum parking spaces required, for example due to the building encompassing large area and there is no space for parking. For an issue such as that, a landowner has the option of seeking relief prior to filing for a variance – going before the Zoning Administrator to receive 10% reduction in parking or going before the Zoning Board of Adjustment for 50% reduction in parking. To expand where remote parking can be located – all parking can be located off site (the distance for off-site parking has been expanded from 300 feet to 1,000 feet).
- Expand area where no on-site parking in downtown permitted – today this is Central Business District where no onsite parking is required, the proposal is to expand this to the Downtown Growth District.
- Add requirement for providing parking for residential use in three of the downtown districts have to provide at least one parking space per unit, elsewhere in the city it is two spaces per unit.
- Consolidate and update screening standards under one location.

Councilor Greenwald asked whether there was any differentiation between existing buildings and new buildings and whether there was any delineation of that. Ms. Kessler explained if you have an existing building in an area of the city where onsite parking is exempt and if this land development code is adopted, this building would be legally non-conforming. However, if this building use was to change there is relief that can be sought as was mentioned earlier. Ms. Kessler referred to a map and noted the orange area does not have a parking requirement (existing code) and this will carry on with the new land development code as well. The red area is an expansion of the orange area.

Surface Water Ordinance

- Existing overlay zoning district with the intent of preserving wetlands and other surface waters.
- Establishes a surface water protection buffer that limits the activities permitted within 30-ft or 75-ft of surface waters from existing wetlands, rivers, lakes, vernal pools, etc
- Certain activities require approval in the form of a Conditional Use Permit from the Planning Board.

Mr. Lamb went on to say the reason this item is bring brought before the committee today is because in 2015 the Conservation Commission formed a subcommittee to look at this ordinance and two primary topics were raised. The first was regarding an exemption created for tax ditches and other altered streams and the other was regarding the reduction in subdividing of new lots by eliminating the amount of wetland areas to count towards the minimum lot size. Mr. Lamb stated staff has gone back to the Conservation Commission to verify that they stand by these recommendations but that body does not meet until next week.

Mr. Lamb went on to explain that the Tax Ditches were constructed in the 1950s as a system to increase the amount of agricultural land on the valley floor. They were funded with federal funds. These agricultural lands don't exist anymore and are now surrounded by development. Mr. Lamb noted these areas are continued to be maintained by the City to protect property from the potential impacts of flooding.

He indicated when the draft ordinance was written it did not make sense to indicate that a land owner could not build something in the buffer area to a tax ditch if the city was mowing every piece of vegetation along that stream. As a result tax ditches were exempted from the ordinance.

- *To permit by right “vegetative maintenance of the buffer,” which would allow activities such as mowing in the surface water protection buffer* – Mr. Lamb noted this is a clarification added by the Conservation Commission.

Mr. Lamb referred to the next slide which referred to the established concept of subtracting all areas of wetlands on a newly subdivided lot. This area would not count toward minimum lot size – the Conservation Commission in 2016 recommended removing this clause.

The argument is because the wetland is already protected through permitting and because the ordinance would impose a buffer on these wetlands. This only applies to newly subdivided lots. Mr. Lamb stated it is staff's position to retain the tax ditch exemption because they feel it is an equity issue and staff is mowing these areas and it is difficult to tell property owners not to use a particular area. Mayor Hansel asked whether there was a change to the surface water protection ordinance. Mr. Lamb stated the draft has language from the 2016 Conservation Commission language. Mayor Hansel stated he was on the Conservation Commission when this was discussed and agrees with staff's position. He stated Keene's Ordinance is way beyond what the State is looking for. He agreed there would be major issues however, if these tax ditches are not maintained.

Councilor Remy asked if someone was to come before the city for example with a ten acre lot with five acres of wetland and propose to put it all on one lot and leave zero buildable land – can this be done? Mr. Lamb stated this is a possible option under the draft ordinance; there are significant parcels with a lot of wetlands on them. He stated there is something to be said about wetland protection based on the presence of buffers. Ms. Kessler agreed and added however, when a subdivision comes before the Planning Board they need to see if a subdivided lot can be developed in the future.

Conservation Residential Development (CRD) – This is an option for redevelopment in a rural (10 acres), low density or low density 1 (5 acres) zoning districts.

- A type of residential subdivision in which 50-60% of the original parcel remains in permanently protected open space in exchange for great flexibility in minimum lot sizes, setbacks, and placement of lots.
- There are a number of dimensional requirements that would need to be followed.
- For the purpose of this land development code the regulations for this item has been consolidated into Subdivision Regulations
- Streamlined application process

- There are also changes being proposed to the dimensional requirements to increase interest in this type of subdivision – the more area that is set aside for permanently protected open space the greater number of building lots you will be able to subdivide.

Minor changes are being proposed for the dimensional requirements –

- All subdivisions are required to have a perimeter building setback.
- Today it is 100 feet from a road and 50 feet from property boundaries not adjacent to a road.
- Reductions are being proposed for these building setbacks as outlined in Table 20-1 of staff's presentation.
- Minimum lot areas for Low Density 1 with city water will change from 16,000 square feet to 8,000 square feet and for Low Density it will go from 8,000 square feet to 6,000 square feet.

Chair Barrett asked how many times a CRD has been used. Ms. Kessler stated it has been pursued three times since it has been adopted and has been used twice.

Ms. Kessler went on to say that in this draft staff proposed the creation of a Site Review Committee, as allowed by NH RSA 674:43,III, to review minor site plan review applications. Staff is currently working on revision to the thresholds for the types of development that would require either Planning Board (Major Projects), Site Review Committee (Minor Projects) and others that would require no review. The Site Review Committee process would also require public notice and could provide a more expedited review. These revised thresholds are being reviewed with the development community in short order and will come back to the Joint Committee through the public workshop process.

ii. Review of public comments received on Draft Code

Ms. Kessler reviewed with the committee public comment received from July 13 through September 10.

- *Concern for adding Group Home & Lodginghouse as permitted uses into the proposed, & Medium Density District* – Today group homes are permitted in medium density with special exception and Lodging House is being proposed to be added into medium density. These two items are currently not allowed in *Downtown-Transition and Office* but are being proposed in the draft.
- *Concern for the number of residents that are permitted to reside in a group home or lodginghouse, and the impact that increased density would have on these zoning districts.* – in the draft there is a cap of 16 for group homes and no cap on lodging houses. One letter suggests that Group Home and Lodginghouse uses should be capped at no more than 5 unrelated persons in these districts. Interest in the removal of these uses from these districts. Concern for array of negative impacts that these might have on a neighborhood, including increased density/overcrowding, traffic, noise, overflow parking, public safety, reduced property standards, and the decrease of property values.
- *There is concern for the introduction of Domestic Violence Shelter into the Medium Density District and the impact this use would have on property values and public safety.*
- *Concern for potential public health impacts of congregate living uses, such as the spread of COVID 19.*
- *Concern for allowing for Sexually Oriented Businesses anywhere in the City.*

- *Concern about the removal of Institutional Use from the Office District / Proposed Downtown-Transition District, and how this might impact existing places of worship in these districts.*
- *Concern for the proposed scale of solar energy system uses that would be allowed in the Medium Density District. There is interest in requiring a conditional use permit (not by right as is being proposed) for small scale solar energy systems in this District.*
- *Concern for the ratio of parking spaces to residents of multi-dwelling structures and the interest in more standards for screening multi-family dwelling parking lots.*
- *Interest in a preamble to the Code that reminds the purpose of Zoning and the importance of honoring the regulatory process.*
- *Objection to the use of remote meetings.*
- *Interest in combining all information related to zoning district dimensional requirements in one place in the Land Development Code. Specifically, including the pavement setbacks in the zoning district dimensional tables.*
- *A letter was received at 5 pm today from Mr. Espieffs addressed to the Joint Committee – suggesting the establishment of a Community Services Care Planning Board to create a community services and care master plan to outline how the city could address service needs.*

Ms. Kessler stated based on the feedback received.

For Group Home – Staff suggests breaking it into two categories – small and large.

Small Group Home (8 or fewer nonrelated persons) be allowed in Medium District, Downtown Transition, and Office District it be permitted by Conditional Use Permit

Large Group Home (8-16 nonrelated persons) be allowed in High Density, Downtown Core, Downtown Growth, Downtown Limited be permitted by Conditional Use Permit.

Only 1 Group Home be allowed per lot.

Councilor Johnson asked for a printout of material that is emailed to the Committee.

Vice-Chair Cusack asked whether small groups will also be allowed in an area where a large group home is permitted. Ms. Kessler answered in the affirmative and noted for large group home it should correctly read as “up to 16”.

Lodging House –

- Remove from Medium Density, Office, Downtown Transition, And Health Care
- Place cap of up to 16 occupants which would not include manager apartment onsite – staff felt this would be a way to control density.
- Only 1 residential use allowed per lot
- Propose to be allowed in High Density, Downtown Edge, Downtown Core, Downtown Limited, Downtown Growth, and Commerce by Conditional Use Permit

Councilor Workman thanked staff for taking the feedback and coming back with the edits being proposed.

Homeless Shelter –

Staff did not have a clear recommendation for homeless shelter but listed below are options:

Additional CUP Criteria related to screening – there may need to be more specific screening requirements needed if a shelter is located adjacent to a residential area.

Listed below are options for addressing density concerns:

Cap on the number of occupants - today it is driven by square footage

Separation distances between homeless shelters (300' – 1,000')

Increased minimum lot area

Increased setback from residential areas

Councilor Bosley noted there was discussion related to conditional use permits for these uses coming before the Planning Board or City Council. She indicated her question is around managed of a site and asked what criteria is instituted into the CUP Process for the annual review process to make sure these uses are being managed properly and any guidelines that that could affect further permits. Ms. Kessler stated a conditional use permit will first be obtained from the Planning Board and one of the criteria for this permit would be to obtain and maintain an operating license from the City Council each year. For the use to remain on this lot the operator of the lot needs to demonstrate they have this operating license annually and it needs to be renewed annually. The City Council review of the application will be a public hearing and if the operator does not meet the appropriate guidelines such as a safety plan, a management plan the Council will be in a position to deny license, which will make the conditional use permit invalid and the use will need to cease operation.

Councilor Bosley asked whether there were any guidelines as to what goals need to be met in a management plan so that it is not subjective. Ms. Kessler stated staff is working on criteria of what needs to be included in a safety plan and a management plan. She added the license language is not part of this proposed draft it will be included in the ordinance submitted end of September.

Ms. Kessler stated staff did receive comments from residents in the medium density district regarding the introduction of domestic violence shelter. The reason for inclusion of this use into the medium density district is because domestic violence shelters already exist in this district today.

Some of the suggestions for this use to exist in this district would be to maintain the appearance of a residential structure if located in a residential district
All parking areas be screened from adjacent properties and public rights-of-way.

Councilor Remy asked whether the CUP process is done confidentially or whether the address of a site is publicly announced. Ms. Kessler stated a domestic violence shelter will not require a CUP because of this reason but the shelter will need to meet specific guidelines for a shelter to operate.

iii. Questions and comments on Draft

Councilor Clark asked the Chairs to consider slowing down the process because of the pandemic and to allow the public time to participate. He thanked staff for the edits on congregate living and for listening to neighborhood comments.

David Curran of 16 Prescott Street addressed the committee next. Mr. Curran reiterated what was stated by Councilor Clark that this process can't be rushed as this is a big change and felt it needs to be thought out and stressed the importance of listening to the public. Mr. Curran went on to say his other concern is homeless shelters and its density – he referred to Water Street which already has two shelters within a block.

Jim Knight of 26 Prospect Street asked whether the city was planning for a cap on domestic violence shelters. Ms. Kessler stated this has not been discussed but stated it could be part of the discussion. Mr. Knight felt if the density is too much then the anonymity of the project ceases to exist.

Mr. Tom Savastano of 75 Winter Street expressed his appreciation to reach a compromise and also expressed his appreciation for removing lodging house from Downtown Transition District. He asked how the number of 8 and 16 was derived for the small and large lodging houses. Ms. Kessler that number was obtained from documents related to group home sizes. Most group homes seem to average this number. The number 16 is where the city's building code transitions from residence to institutional. Mr. Savastano asked whether personal service establishments have been removed from Downtown Transition District. Ms. Kessler answered in the affirmative and noted the only difference between what is allowed in today's Office District and what would be allowed in the Downtown Transition District would be the removal of the institutional use and the introduction of group home.

6. Next Meeting – TUESDAY, October 13, 2020

7. Adjourn

The meeting adjourned at 8:45 PM.

Respectfully submitted by,
Krishni Pahl, Minute Taker

Reviewed and edited by Tara Kessler, Senior Planner