

**City of Keene**  
**New Hampshire**

**PLANNING, LICENSES AND DEVELOPMENT COMMITTEE**  
**MEETING MINUTES**

**Wednesday, December 7, 2016**

**7:00 PM**

**Council Chambers A**

**Members Present:**

David C. Richards, Chair  
Philip M. Jones, Vice-Chair  
George S. Hansel  
Bettina A. Chadbourne  
Robert B. Sutherland

**Staff Present:**

Patricia Little, City Clerk  
Rhett Lamb, ACM/Planning Director  
Tara Kessler, Planner  
Rhett Lamb, ACM/Planning Director  
John Rogers, Acting Health & Code Director  
Kurt Blomquist, Director Public Works  
Tom Mullins, City Attorney

**Members Not Present:**

**Other Councilors Present**

Terry Clark

Chair Richards called the meeting to order at 7:00 PM. Chair Richards advised agenda items 2 and 3 may be switched to accommodate individuals attending the Municipal Services, Facilities and Infrastructure (MSFI) Committee meeting.

1) **Oral report** – Periodic Report – Planning Board

Gary Spykman, Chair of the Planning Board stated the Planning Board costs of 9 members, including the Mayor, an administrative official of the City, a City Council and six members appointed by the Mayor. He continued the Board is tasked with three spheres of activity – planning, legislative, and regulatory review.

Per state statute, the Board has the duty to prepare and periodically amend the City's Master Plan to establish a vision for the future of the community and guide development. Keene's current Comprehensive Master Plan was adopted in 2010. In 2016, the Board has been working with the PLD, as a Joint Committee, to prioritize implementation strategies of the Master Plan. The top priorities include:

- Identifying and facilitating more options for workforce housing
- Focusing on Keene as an intermodal transportation hub
- Pursuing funding for a community-wide weatherization program
- Identifying ways to retain younger individuals in the community
- Supporting economic development and redevelopment
- Enhancing and improving broadband infrastructure and access

The legislative role of the Board involves reviewing proposed changes to the zoning ordinance to determine consistency with the Master Plan, and enacting or amending land use regulations, such as the subdivision and site plan regulations and the Planning Board's Development Standards.

The final sphere of responsibility related to a regulatory function. In this vein, the Board relies on these regulations as part of its review and approval of subdivisions and site plans for new or modified development.

In 2016, the Planning Board reviewed approved: 14 Site Plan, 3 Subdivisions, 2 Driveway applications, 28 Administrative Approvals, 4 Boundary Line Adjustment and 2 Conditional use Permits. Mr. Spykman reviewed a number of a new development projects including the Savings Bank of Walpole on Court Street, the Keene Public Library Renovation, the Washington Park Apartments at the site of the former Middle School, the Continuing Care Retirement Community on Wyman Road (Hillside Village), and the new MoCo Arts Building on the site of the former YMCA on Roxbury Street.

The proposed MoCo Arts Building is a great example of a new development within our downtown that supports many Master Plan goals/principles: It will keep a community arts organization in the downtown, promote walkability, serve as an event and education space, and it models a contemporary / more modern design while drawing off of and being compatible with the surrounding historic buildings and site features.

With respect to regulatory changes, the Board dealt with a request to zone the parcel occupied by the KPL Library Annex/Heberton Hall from Office to Central Business District was approved by City Council; the Board voted on the Main Street Historic District – Request to establish a second historic district in Keene, on the area of Main Street between NH Route 101 and the Marlboro/Winchester/Main roundabout and will soon have a public workshop on a rezoning proposal for a parcel at 32 West Surry Road from Low Density to High Density 1.

In terms of special projects, the City hired a consultant to conduct a review of existing land use regulations and educate the City on various approaches/strategies for conducting an update or rewrite of the Land Use codes/regulations. Phase I is nearing completion. There will be a presentation by the Consultant before the Council on Dec. 15<sup>th</sup>. The Marlboro Street Re-zoning initiative has been at the public workshop phase since April of this year. After two years of studying the issue, three new zoning districts - Business Growth and Reuse, Neighborhood Business and Neighborhood Preservation have been proposed. The Joint Committee is still reviewing and addressing the proposed districts. Once their work is done a public hearing will be held before City Council.

There being no questions from the Committee or public Chair Richards asked for a motion.

Councilor Hansel made the following motion which was seconded by Councilor Chadbourne.

On a vote of 5-0, the Planning, Licenses and Development Committee moves to recommend the periodic report from the Planning Board be accepted as informational.

2) Relating to Dormitory, Lodging, or Rooming Houses and Residential Board and Care –  
Ordinance O-2016-09

Patricia Little, City Clerk provided the following background information. During the previous discussions of this Ordinance, the PLD Committee expressed its interest in having an opportunity to place conditions on any lodging house license. Staff was instructed to prepare an amendment to Ordinance O-2016-09 that would return the responsibility for issuing an initial license to the jurisdiction of the City Council and any subsequent licenses issued administratively by the City Clerk's Office.

In advance of drafting that amendment, City staff met to consider whether any provisions in Ordinance O-2016-09 should be incorporated into Chapter 46 such as an expanded definition to include "residence house." In addition, staff believes it would be important that any further amendment should reconcile the definition references and other provisions that relate to a lodging house in Chapter 102 the Zoning Ordinance and in Chapter 18 Building Regulations.

Recognizing that there is an ongoing initiative to rewrite the land use code ordinances, which includes both Chapter 102 and Chapter 18; staff is recommending that further revisions to this license be deferred until the land use code rewrite is completed. Chair Richards asked if the Committee needed to defeat the Ordinance or report it out. The City Clerk clarified the intent is for the Committee to recommend the denial of the Ordinance.

Chair Richards asked for questions from the Committee.

Councilor Chadbourne commented she agrees the timing is not right and they should wait for the land use code update is completed. Councilor Chadbourne added she was in favor of denying this Ordinance. Chair Richards also noted his support for defeating the Ordinance.

There being no public comments or additional Committee questions, Chair Richards asked for a motion.

Councilor Jones made the following motion which was seconded by Councilor Chadbourne.

On a vote of 5-0, the Planning, Licenses and Development Committee recommends the denial of Ordinance O-2016-09 with the understanding that further amendments to the lodging house license ordinance will be introduced after the Land Use Code rewrite project is completed.

3) **Request to Amend the Surface Water Protection Ordinance** – Conservation Commission

Thomas Lacey, of 241 Daniels Hill Road addressed the Committee and distributed the following handouts.

- o Map- Proposed Surface Water Protection Ordinance Coverage by Zone
- o Map- Draft City of Keene Current and Historical Tax Ditch Locations
- o Map- Overlay of Streams Needing Regular Maintenance
- o Map- same as #3 without being overlaid on the City streets
- o Email between Rob Hitchcock, of SVE Associates and James Donison (former City Engineer). This email was part of an application; it states the exemption the applicant

- was requesting and was subsequently granted.
- o Current Sec. 102-1485- Exemptions – to be used as a reference sheet during discussion.

Mr. Lacey stated the goal of the Surface Water Protection Ordinance is to address inconsistencies that have arisen in the maintenance of buffers along brooks and streams now that they are no longer subject to agreement with Federal agencies and to eliminate inconsistencies in the interpretation of streams in regard to man-made water ways.

Mr. Lacey then began his discussion of each handout. He noted the purpose of #3 will be used to try and figure out the maintenance of these streams and still have the Surface Water Ordinance work. Mr. Lacey said this action was prompted by an application in 2014. Southwestern Community Service was on an accelerated timeframe for a Senior Housing project located on a property with considerable footage on Beaver Brook. Mr. Lacey drew attention to the area with the concrete structure. Mr. Lacey explained he thought this was a good project on paper, and had no reason to oppose it. Mr. Lacey also noted the applicant was in compliance with the Surface Water Ordinance.

What raised a red flag for Mr. Lacey was when Karen Purinton, of the Planning Department stated it was public knowledge that Beaver Brook is exempt. Mr. Lacey continued Beaver Brook was the poster child for why the Ordinance should pass. Mr. Lacey contacted the Planning Department stating his opinion and received a response of not only is Beaver Brook manmade, it is also a tax ditch. Mr. Lacey indicated this was new to him. Mr. Lacey noted the actions he then took which resulted in the maps provided as handouts.

As a member Mr. Lacey then approached the Conservation Commission. Mr. Lacey read from Conservation Commission minutes (no date provided) where he pointed out there was no mention of Beaver Brook being a tax ditch in any of the public forums held. Mr. Lacey continued reading and noting the Conservation Commission voted to pursue amendments to the Surface Water Protection Ordinance specifically around the definition of Beaver Brook and other places classified as tax ditches. Mr. Lacey also pointed out the Conservation Commission also agreed to convene a subcommittee (Jan Manwaring, Thomas Lacey, and Matthew Walton) to develop the language for these amendments. Mr. Lacey outlined the process noting it took two years; primarily due to a lack of quorum at several of their scheduled meetings. Mr. Lacey explained it was apparent the primary concern of City staff was maintenance of the existing ditches. Mr. Lacey also noted the tax ditch maintenance agreement expired in 2011; he suggests this in itself is another reason to revise this Ordinance so it matches what is happening. In his research reading the easements (Ashbrook) Mr. Lacey discovered the City had the right to maintain the buffers and the land owners had the right to do whatever they wanted; they also had to leave 10 feet of grass. It did not obviate any other use. By accepting the miles of tax ditches, the City is also accepting the fact that all of those property owners are potentially not subject to the Surface Water Protection Ordinance.

At this point Mr. Lacey provided a history of the Ordinance for Councilor Sutherland as he is a new Councilor. Mr. Lacey then picked up his discussion with Sec. 102-1485- Exemptions noting #1 and #7 as problematic. Mr. Lacey reiterated the surprise of some when the West Mill Senior Housing project was granted an exemption from the Surface Water Protection Ordinance,

in August 2014, by virtue of the ruling from the Zoning Administrator that Beaver Brook is manmade and also a tax ditch. Mr. Lacey also shared the subcommittee's efforts in developing the language for the amendments.

Chair Richards commented he had a couple of concerns and questions for the Planning Department. As to how to proceed, Chair Richards suggested this would be part of the land use code update. Chair Richards shared his concern the Planning Department has so much on its plate right now; and he asked if this is not similar to the prior issue of the lodging house license and the fact that staff was recommending that the land use code update occur before changes to the lodging house ordinance were adopted. Chair Richards suggested this be rolled into the land use code update. Rhett Lamb, Planning Director agreed it makes sense to put this into the land use code update and that definitions are one of the big challenges. Both Chair Richards and Mr. Lamb agreed Mr. Lacey's issues are valid. Mr. Lamb also noted one of the biggest changes is that we are no longer under official obligation to maintain these tax ditches.

Councilor Sutherland commented he doesn't know why it is we have this overlay with such restrictions. He shared that he knows someone who lives in the rural Keene who dug a pond on their property. If this individual wanted to put a porch on his house he would have to get a variance because he is too close to the water he created. Mr. Lamb provided the rationale for tax ditches noting the City was under obligation to Federal agencies for 50 years to maintain those ditches. He continued if we are running the lawnmower down the edge of that brook every summer it made no sense to us that we would tell a landowner they could not build a gazebo in that buffer. Mr. Lamb also explained it made no sense for us to be putting a limit on the property owner to use their property. Without having the agreement anymore we have not given up the maintenance obligation because we have land owners who now depend on these tax ditches as part of an important drainage system. Mr. Lamb also noted he agrees this issue should be evaluated as part of the land use code update. Councilor Sutherland also suggested flood mitigations should be looked at; citing improvements to Washington Street and the Middle School project he commented he does not know if the ordinance looks at the amount of additional water we are putting into these major waterways. Mr. Lamb clarified the Ordinance itself is just about the buffer, the development review and introduction of storm water through the development is handled through the Planning Board process.

Chair Richards noted he voted against the Ordinance and commented as part of the land use update they will look at the whole thing again. If this Committee goes that way can the notes of this meeting be provided to say here are our concerns? Mr. Lamb replied in the affirmative and added thanks to the Conservation Commission the staff has been made aware of this issue.

Councilor Hansel agreed there are several issues with this and he thanked Mr. Lacey for bringing this forward. He continued there are a couple of issues here; there is the issue of fairness because you have property owners that happen to be next to tax ditch or a main waterway that is not really subject to the same regulations as people in rural areas with a little brook. Then there is just a fundamental flaw in the application of this Ordinance where the regulation is not matching the intent. Councilor Hansel also pointed out there is a lot of administrative costs associated with this Ordinance such as Conditional Use Permits. Councilor Hansel emphasized we need to take a serious look at this and address there is an ongoing cost not only to the

environment but also to the City. Mr. Lamb noted anytime you have regulations there will be administration. The question is what is the incremental change? Mr. Lamb suggested they are relatively minor at this point. Ms. Kessler provided the statistics noting there have been four (4) Conditional Use Permits issued since 2012.

Chair Richards asked Mr. Lacey if he was good with this. Mr. Lacey commented he does understand the land use code review and that this may be put off. He also noted the proposed changes were relatively simple and cost saving for the City. Chair Richards noted his concern that Mr. Lacey felt this was being put off. Mr. Lacey agreed put off was the wrong wording and clarified he understood why the issue would not be acted upon tonight. Mr. Lacey commented another fundamental flaw he has always had with this Ordinance is that there never was an overall assessment of the need. It was basically (and referred to in the minutes) no, we do not need to do that, we will deal with them one at a time as they come in the door. Mr. Lacey said he thinks this causes confusion for property owners. He continued it is hard enough to approach the City with something you might like to do and that philosophy makes it harder. Mr. Lacey suggested this is one of the Codes that are hard to navigate. Mr. Lamb explained there was no intent to make the Ordinance difficult to navigate.

Councilor Jones asked staff if the motion is to initiate the Ordinance process or deny it. Chair Richards and Mr. Lamb agreed this could be accepted as informational as there is no Ordinance before the Committee. Chair Richards added he would make the motion to accept as informational with the minutes of the meeting forwarded to the Planning Staff for inclusion in the land use code.

Chair Richards asked for further questions from the Committee or the public.

Toby Tousley, of 499 Washington Street commented he expects that most people who are gung-ho for this Ordinance are not even affected by it. Mr. Tousley noted he is affected by it and feels it is overburdening. Addressing the differences in rural and in town buffers Mr. Tousley commented if there were a 75 foot buffer in town that would encompass entire properties. Mr. Tousley pointed out the only yard he has is within the 30 foot buffer at his Washington Street property. Mr. Tousley commented it sounds like the Conservation Commission is saying he can never mow that area. He added what is happening with this Ordinance is paramount to the City taking this property. Mr. Tousley is against Ordinances being more restrictive. Mr. Lacey assured Mr. Tousley the proposed revisions were addressing that very issue; allowing more uses in the buffer not less, and to make it more aligned with how people actually use the property.

There being no questions from the Committee Chair Richards asked for a motion.

Councilor Chadbourne made the following motion which was seconded by Chair Richards.

On a vote of 5-0, the Planning, Licenses and Development Committee recommends the memorandum from the Conservation Commission on the surface water protection ordinance be accepted as informational and that the minutes are forwarded to the Planning staff for further discussions on the land use code update.

**4) Adjournment** - There being no further business before - the Committee Chair Richards adjourned the meeting at 8:01 PM.

PLD Meeting Minutes  
December 7, 2016

Respectfully submitted by,  
Mary Lou Sheats Hall  
December 9, 2016