

CITY OF KEENE  
NEW HAMPSHIRE

**JOINT PUBLIC WORKSHOP**  
**PLANNING BOARD/**  
**PLANNING, LICENSES, AND DEVELOPMENT COMMITTEE**  
**MEETING MINUTES**

Monday, March 11, 2019

6:30 PM

Council Chambers

**Planning Board Members Present**

Chris Cusack, Vice-Chair  
Martha Landry  
Mayor Kendall Lane  
Michael Burke  
Councilor George Hansel

**Planning Board Members Not Present**

Doug Barrett, Chairman  
Pamela Russell Slack  
Gary Spykman  
Andrew Weglinski

**Planning, Licenses and Development  
Committee Members Present**

Councilor Philip Jones  
Councilor Bart Sapeta  
Councilor George Hansel

**Planning, Licenses and Development  
Committee Members Not Present**

David Richards, Chairman  
Councilor Margaret Rice

**Staff Present**

Rhett Lamb, Community Development Director  
Mari Bruner, Acting Planner  
Med Kopczynski, Economic Development  
Director

**1. Roll Call**

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

**2. February 11, 2019 meeting minutes**

A motion was made by Councilor George Hansel that the Joint Committee accept the February 11, 2019 meeting minutes. The motion was seconded by Mayor Kendall Lane and was unanimously approved.

**3. Building Better Together Project**

Acting Planner Mari Brunner and Asst. City Manager/Community Development Director Rhett Lamb were the first two speakers. Ms. Brunner stated that the goal of tonight's meeting is for staff to receive general feedback on the draft Historic District Regulations and Telecommunications Ordinance. She invited anyone who would like to provide more detailed or specific feedback on either of these items to meet with staff individually. The goal for the downtown form-based zoning agenda item is to confirm what staff heard from the committee last month, review consultant recommendations, and finalize the sub-district map.

Chair Jones referred to the Historic District Regulations and the Telecommunications Ordinance and noted these already exist and asked whether staff was looking to making significant changes here. Mr. Lamb stated the two items before the Committee tonight is work that has been going on behind the scenes by staff and they are the first two installments of the unified development ordinance; there will be additional drafts that staff will be bringing before the Committee for discussion and review.

Ms. Brunner said that each has an associated "Building Better Together" change form which is a summary of the major changes the committee should be paying attention to. Mr. Lamb stated once they get into the downtown form-based section, staff will get into a much more detailed discussion as the

committee has been working on this topic for the past three meetings. Mr. Lamb added there is an outline of the entire project in the committee's packet (land development code). Ms. Brunner noted the outline is in draft form.

a. Historic District Commission Regulations

Ms. Brunner provided some background information on the Historic District Commission (HDC) Regulations. The downtown Keene historic district was formed in 2009 and currently all buildings within this district are subject to the Historic District regulations. Staff are proposing that only buildings 50 years or older be subject to the HDC Regulations and any new buildings go through the form-based code process. This reduces the number of buildings that would be subject to the HDC regulations from 196 to 167. Mr. Lamb noted the logic of this change is to give historic preservation to the Historic District Commission and any new buildings will go through the form-based code process.

Mayor Lane asked whether staff doesn't want new buildings to be consistent with the historic buildings and asked whether this can be done with form-based zoning. Ms. Brunner stated the historic district regulations do not have clear and specific standards for new development and it is difficult for the Board to apply these standards to a new building. The form-based zoning approach is more objective because it has clear standards, and it is meant to reinforce a certain pattern of development in an area where there is already an established pattern. This tends to work well in historic downtown areas where there is an historic pattern of development that the community wishes to preserve into the future.

Councilor Hansel asked why 50 years was used as a timeframe. Ms. Brunner stated 50 years is what was already established in the regulations as the period of significance for the City of Keene and this comes from the National Parks Preservation Program. Ms. Brunner referred to language regarding this from the regulations. Councilor Hansel asked whether it would not be more prudent to set a date range rather than having a rolling deadline. Ms. Brunner stated this is an option that has been discussed and that it is still a possibility to use a date range instead. The downside is that over time, there might be buildings that attain historic significance which aren't subject to the Historic District regulations. The Councilor asked whether there was a date range for a building to qualify for the National Registry. Mr. Lamb stated this was 50 years as well.

Ms. Brunner stated the next proposal is to put everything in one place – in one chapter in the Uniform Development Ordinance.

The next recommendation from staff is to remove "design guidelines" from the document, which are optional and could be confused with the design standards, which are not optional. The goal is to reduce confusion and streamline the regulations by keeping the most critical information while shortening the length of the document. She went on to say the items which are being removed could perhaps go into educational materials such as a brochure which could be handed out to applicants as informational material.

At the present time most of the buildings and structures within the historic district have been categorized as primary, contributing, non-contributing or incompatible. The regulations treat each of these categories differently. For instance, primary and contributing resources have a higher set of standards they have to meet whereas non-contributing and incompatible resources have more flexibility within the regulations. Mr. Lamb said that he believes it makes sense to treat historic buildings differently from contemporary buildings. For example, if an historically significant building such as the UCC church were to be modified it would have to meet the standards of the Historic District, which ensures that the historic character and integrity of the building is preserved. On the other hand, if Cumberland Farms were to change its windows, it should be permitted to do so without having to go before the Historic District Commission.

Ms. Brunner stated the proposal is to categorize more of the activities for non-contributing and incompatible resources as "minor projects" which can be reviewed administratively rather than by the Historic District Commission. The activities would still have to meet the HDC standards, but the application would be reviewed by staff.

Ms. Brunner stated the issue of art installations has recently come up with the Walldogs project. In order to allow painted murals on historic brick and stone masonry, the Historic District Commission created mural standards which are currently detailed in the masonry section of their regulations. Staff is proposing to add a separate section within the regulations that specifically addresses art. The proposed art standards would apply only to art that is attached to an historic building or structure, and would include general standards for artwork that would ensure that art installations would not cover up an important architectural feature or damage historic materials. In addition, the mural standards from the masonry section would be moved to this new art section. Chair Jones asked whether it is going to be difficult to distinguish between art and signage. Ms. Brunner stated the current mural standard indicates the mural has to depict people, place and events that have an historic significance as well as a whole list of standards an applicant has to meet. The sign code would supersede the HDC regulations; if a mural were determined to be a sign by the zoning administrator, the applicant would need to get a sign permit. Chair Jones asked whether a dress store with a mural that depicts a person using an old-time sewing machine would be considered a sign or art. Staff wasn't sure – each application would have to be looked at on a case-by-case basis.

Mayor Lane asked how it is going to be determined if a mural meets the standards. Ms. Brunner stated the HDC mural standards have already been adopted and put to the test; so far there has only been one applicant that has come forward for multiple murals. For each mural, the applicant has had to demonstrate that the mural does not cover more than 40% of the surface area of a wall, the surface treatment is appropriate for use on historic brick or masonry, the theme of the mural is historic (the Commission is not approving or disapproving the design), and that it is not located on the primary façade of an historic building ranked as a primary or contributing resource.

Ms. Brunner went on to say that due to the way in which the standards are currently structured, there is a lot of repetition between the standards for primary and contributing resources and non-contributing and incompatible resources. Staff's proposal is to list the required standards for all resources in one section and include the additional standards for primary and contributing resources in a separate section to reduce repetition and shorten the document.

Mr. Lamb added staff has been in conversation with the Historic District Commission as well to keep them in the loop as the HDC Regulations are under the Commission's jurisdiction to adopt. Ms. Brunner noted the development community has been provided a copy of this draft for their comments as well.

Councilor Sapeta felt this is an important chapter to be able to maintain the history of Keene and stated he liked the changes but suggested a flow chart and graphics. He noted however, the enforcement and penalties have not changed from the existing regulations. The Councilor felt it is important to make sure this section reiterates that people cannot make changes without following the proper standards. Ms. Brunner stated the UDO will have an enforcement section and added staff will make sure it addresses this change and felt a flow chart and graphics would also help.

Chair Jones referred to the acronym COA which refers to Certificate of Appropriateness – Mr. Lamb stated this is a statutory term and staff is contemplating whether to keep this term in the document or not.

b. Telecommunications Ordinance

Ms. Brunner stated the Telecommunications Ordinance topic was brought before this committee in July 2018. Following that meeting, staff made the changes that were discussed and have brought a draft forward for the committee to review. She noted the major changes that have been made since that time.

The definitions section was updated to be consistent with state and federal definitions by reviewing NH RSA 12-K and the recently released FCC Small Cell Order. The terms that were updated were collocation, modification, substantial modification and added the term for utility pole. Mr. Lamb stated since this ordinance was written in 2001 a lot of changes have happened with telecommunications, including the advent of hand-held devices, the number of carriers, and the way that carriers provide coverage. He indicated that requests to install 200-foot towers located on hillsides have slowed down; smaller installations and small cell

installations are what is anticipated would happen for the future. He indicated this is something the City wants to encourage and not create hurdles for these carriers who are trying to provide service to the area. Mr. Lamb felt these were good changes in keeping with others in the City who were promoting broadband not just for cell service but also for in-home access for broadband services.

Ms. Brunner continued with her presentation and stated in addition to the definition section there is also an update to the process for collocation and modification applications which per state law are only subject to the issuance of a building permit (small installations on existing structures). However, if it is a substantial modification, that application would have to go through the full application process, which includes a conditional use permit.

Staff also propose to create a process for small cell facilities to locate within the public right of way where there is no structure for them to locate their facility. They would still need to meet certain criteria such as poles being far enough apart, height restrictions, etc.

The next item staff is proposing is to revise is the View Preservation Overlay Map and rename it the Telecommunications Overlay Map (retaining the same configuration of the map). A use table and a dimensional requirement table have been added. The next change was to make the design standards section for conditional use permit review and site plan review to be more concise and less repetitive. Overall the standards have been preserved. Mr. Lamb stated the standards still exist; if someone wanted to build a 200-foot tower on top of Beech Hill, the standards will still apply.

Mayor Lane asked what a small cell facility was. Mr. Lamb stated this is a fairly new terminology and refers to an installation which is smaller when compared to a typical cell tower and would fit into an area less than six feet tall in a cylinder less than two feet in diameter – it can be installed on top of a utility pole and would probably have a less strong signal as its distance would not travel too far. This is being used in more dense neighborhoods where the 5G technology comes in.

Chair Jones referred to the 1997 Telecommunication Act which he noted was written mostly for the providers and which blindsided municipalities who were not made aware this technology was coming – this Act took away the ability for municipalities to be able to charge for use of right of way. Mr. Lamb agreed and added this same trend continues with the FCC Small Cell Order which staff is referring to. He stated this Order affects other areas more than it does New England where those communities own most of the structures and they are trying to make some revenue on those utility poles which are going to be used; the FCC Order places a cap on that. This part of the order doesn't affect the City as much as it doesn't own the utility poles.

Councilor Sapeta stated he does not see any health related considerations in this document and felt a closer review before it is adopted might be necessary. Mr. Lamb stated the 1997 Act Chair Jones referred to had an explicit prohibition against municipal government addressing health impact of telecommunications and the same is true with this Order. Until the state or federal government says so it would be premature for the City to address this issue. There are some cases in California where this issue is being litigated but until the City is told it has that authority Keene would have to follow the state and federal guidelines. The councilor asked whether staff had indicated that the City was given a certain time with the previous ordinance to research the ordinance. Mr. Lamb stated in 2001 when the ordinance was enacted there was a lot of pressure to issue permits for new structures and the City placed a six-month moratorium which gave the City time to develop an ordinance and did not think that was necessary at this point. He added there are individuals who are researching the health issue, but this staff is not qualified enough to do so. The Councilor stated he wasn't expecting staff to do the research but being aware, placing a moratorium might be things the City can do and would be an effort to protect the public.

Ms. Brunner stated in 2012 or 2013 State RSA 12-K was amended to make collocation or modification applications exempt from local land use regulations. This is the category that a small cell facility would fall into; in the instance that a small cell application comes before the City, the only thing a municipality is permitted to do is to issue a building permit. Councilor Sapeta stated what he is asking for is the maximum

density of the towers and control over that; not to break the law but to be more creative and noted to the health concerns that have been raised.

Mr. Burke asked whether there was any provision for the City to collocate on a large tower for police and fire purposes (for emergency use). Ms. Brunner stated staff is working on a separate license and this might be the place to indicate that; she noted there is also First Net which is used mostly for emergency services. She further stated that should there be a new structure proposed within the right of way, the City could negotiate an agreement for access through the licensing process. Mr. Burke stated the way it is written right now the City would need to lease such a collocation or wait for approval from the owner of the tower.

a. Downtown Form-Based Zoning

Mr. Kopczynski began by saying that the committee has seen today the first of the work products staff has been working on. He noted the map before the committee is the end result of the discussions that have gone on in the past few months and the next step is to fit uses to this map. The consultant has looked at this map and has comments on it.

Mr. Lamb began by providing a recap of the Joint Committee discussion from February 11<sup>th</sup>. He referred to the downtown zoning map and summarized the decisions that were made:

- (1) Include a portion of the Keene State College (KSC) campus and put this section in the Downtown Growth sub-district.
- (2) Include the area west of Foundry Street to the river in the commercial edge sub-district.
- (3) Change sub-district of area between Vernon and Mechanic Street from Downtown Core to a different sub district and it was agreed commercial edge was the closest fit.
- (4) Include residential pockets near Wilcox Terrace/Blake Street and Willow Street/Grove Street areas.

Chair Jones asked about the zone which the committee had asked about changing the front setback. Mr. Lamb stated this was for commercial edge (dark blue area), as well as the area between the river, Roxbury Street and Beaver Brook, i.e. the area around Foundry Street. The other area was Residential Transition (green area), Willow Street, Blake Street, and the former Office District.

Councilor Sapeta asked whether staff has reached out to the college. Mr. Lamb stated staff attended the next College Commission meeting after the last Joint meeting but that meeting did not happen due to lack of quorum. Staff will be attending the next meeting. Chair Jones stated the concern with the college is trying to work with them, and said it is important to consider what would happen with the KSC property if it is sold in the future.

Mr. Lamb referred to the Downtown Core sub-district on the map, stating that this is the area within the downtown with the highest density and buildings that go right up against the sidewalk. What is being proposed in the Downtown Growth sub-district is to allow buildings of a similar height to the Downtown Core but with slightly larger setbacks to allow buildings to be set back further from the sidewalk. The Commercial Edge sub-district is more oriented towards automobiles with buildings set back further from the sidewalk.

With regards to the Residential Transition sub-district, this area has less density with buildings that are predominantly one to two stories high. The buildings tend to be more traditional in this area with less intense commercial and office activity, and parking primarily in the rear of the building. This would be the area between a district with seven stories and a residential neighborhood with single family homes.

Mr. Lamb stated what he just presented is what staff felt the Committee had discussed last month and asked for their feedback. Chair Jones felt the comments of the committee have been well captured.

Mr. Lamb noted the Downtown Core is already a mixed used district and all types of uses are permitted. Mr. Kopczynski stated the Downtown Growth Sub-District is where the committee has put a lot of thought into the future – the height is 2 stories with a maximum of 7 stories, parking in the rear (original proposal for side and rear), current zoning districts are central business, central business limited,

commerce, high density and industrial. The proposed uses would be commercial, mixed use, and multi-family, which is similar to what exists in central business today. Mayor Lane asked whether this is an attempt to include the SEED District into the Downtown Growth Sub-District; some of this area is the SEED District now. Mr. Lamb stated staff has been discussing how to incorporate at least the principles of the SEED District. He indicated the reason SEED works right now is because there is a cap on uses and height (commerce and high density). However, what SEED does it provides for green buildings in exchange for relief on these caps. He indicated applying this same principal to all the districts would require structuring the underlying zoning to make it work.

Mr. Kopczynski added to make the SEED District work for the downtown form based zoning districts, there has to be a determination made as to what type of incentives should be provided to make it work. He noted if someone is redeveloping a building, it is easy to meet Green Building standards and the same is true for the construction of a new building if the energy standards are followed closely. What the City requires within the SEED district is that the building qualifies for LEED; it does not require LEED Certification. Chairman Jones noted since SEED district was adopted in the City only one application has been filed and felt some sort of tax incentives might work.

Councilor Sapeta asked whether there should be a minimum of three stories for the Downtown Growth Sub-District. The Chairman asked whether this is something the consultant has looked at. Mr. Lamb stated this is not a question that has been posed to the consultant and the reason they chose two stories is because they are evaluating the existing form in addition to the form that the City wants to see into the future. This is what the Downtown Growth Sub-District is all about. By choosing two stories the consultants are also indicating there are many building in the growth district that are currently two stories – especially in the commerce and industrial districts. The Chairman asked if Gilbo Avenue has a height restriction, and Mr. Lamb stated it was two stories.

Dr. Cusack noted that if the SEED District was to be expanded it would include the Historic District and asked whether that would create any type of conflict for property owners. Mr. Lamb stated the Historic District Regulations were recently updated to include renewable energy and stated he has not taken a close look at this.

Councilor Hansel stated in his profession he has seen a lot of LEED projects but the industry has slowed down with LEED Certifications and it is now more about renewable energy incentives and felt this seems more important.

Mr. Lamb noted the current proposal is to apply the Downtown Growth Sub-District to the college. He added that Main Street is the most historic corridor within the City and felt staff is likely to come back before the committee with another sub-district to manage the college that more closely matches the existing form in this area.

Mr. Lamb went on with his presentation and referred to the Commercial Edge sub-district, shown in blue on the map. This sub-district currently includes area near the Fire Department (Vernon Street and Mechanic Street), the area near Norway Avenue and Roxbury Street, and the area on Marlboro Street. He noted that these areas accommodate moderately intense commercial activity transitioning to lower intensity commercial or residential development. Proposed setbacks are 0 -15 feet and the building height is a maximum of three stories. Parking would be located at the rear, and the consultant recommends allowing parking on the side and front as well. The current zoning districts for these areas include Central Business, Central Business Limited, Commerce, and High Density. Proposed uses are single family, multi-family, and general commercial (retail, service, restaurant and office).

The Consultant referred to an area on the map which they suggest as a separate sub-district. The Chairman asked how many sub-districts are now being considered. Mr. Lamb stated the consultant suggested adding four new sub-districts. Mr. Kopczynski noted the existing buildings already have parking in the front, rear and side and for future buildings parking will be located just in the rear of the site. The buildings presently located in this area would be considered legally non-conforming.

Councilor Sapeta asked whether it would make sense to extend Downtown Core to Mechanic Street. Mr. Lamb stated this is what was proposed after the January meeting until it was re-evaluated last month and noted the consultant had initially proposed this area as a separate sub-district; he noted staff initially had the same question as to the number of sub-districts and whether that would add complexity. However, the consultants felt that adding more sub-districts that more closely match the unique character of each area would be easier to handle as this won't create as many legally or pre-existing non-conforming buildings. From a process standpoint, this will not add complexity for applicants as they only have to meet the standards of the district they are in.

Mr. Lamb then went on to refer to the Residential Transition Area. He noted the area to the north on the map was where the idea of a transition area originated, then areas such as the area around Wilcox Terrace and Blake Street and the area around Dunbar Street, Water Street, and Grove Street were added. These areas accommodate a variety of open space residential and low intensity commercial uses in a mixed-use attached and detached structures and transition into adjacent neighborhoods. Setbacks are 10 to 20 feet, building height is three stories, and the current zoning is office, high density, residential preservation, and central business. Proposed uses are single family, multi-family, and low intensity commercial (office, limited retail and limited service). Mr. Lamb noted that with regards to these areas on the southern end of the downtown, the consultant had indicated that if retail was to be included here there could be some changes taking place because of the proximity of the college (this area is predominantly residential at the present time). The same can be said of the area around Grove Street. Mr. Kopczynski felt an office use in the Blake Street area or the Grove Street area might be perfectly appropriate and felt this is the kind of conversation that needs to happen when the committee starts talking about uses.

Mr. Lamb referred to the final slide and reviewed the consultant recommendations, which include:

- Create a unique sub-district for area between Mechanic and Vernon Street
- Create a unique sub-district for Keene State College campus
- Create a unique sub-district for the residential areas near Wilcox Terrace/Blake Street and Willow/Grove Street neighborhoods
- Create more flexibility for parking in the Residential Transition and Commercial Edge sub-districts.

Mr. Lamb felt the above listed recommendations are all worthy of discussion. He felt the consultant is trying to find out if the goal is to preserve what is already there or encourage something new to be introduced. With the Downtown Core, the consultant is not proposing any change; this is a district the City might want to extend and the same is true with the area between Vernon Street and Mechanic Street. This area is distinct from the other places in the downtown so it may make sense to preserve it by creating its own sub-district.

Chair Jones referred to the MacMillan Building and the Social Security Office, and noted that ten years from now someone might want to take this building down and build something else. At that point the City might want parking in the back. In that case, this area would then fit in Commercial Edge. Mr. Lamb stated with Commercial Edge, the consultant is recommended that parking be allowed in the side and front as well.

Councilor Hansel referred to the area south of Water Street behind the Post Office, and noted that part of this area was in Residential Preservation district. If office is to be allowed in this area there is not much room for parking and asked if there is the concern that people might buy up lots and start consolidating them and get rid of the homes. He noted the intent of Residential Preservation was to encourage owner occupancy of the homes.

Chair Jones asked what staff was looking for from the Committee.

Mr. Lamb indicated to the committee as part of today's exercise staff would like to know if the committee was open to more than just the four sub-districts or if they were open to a different configuration.

Mr. Burke stated if staff was doing it for a certain purpose then more than four sub-districts should be added.

Councilor Hansel stated the three southerly Residential Transition areas seem very different to the ones located northerly. He felt the northerly portion would be more conducive to office and commercial uses. Mr. Kopczynski asked whether the form is the same but the uses are different. Mr. Hansel agreed and added the scale and massing might be the same but the uses could be different. Mr. Kopczynski felt perhaps this could be a different sub-district. Mr. Lamb stated the consultant referred to this as the Neighborhood Redevelopment District.

Councilor Hansel further stated people are going to start living closer to downtown and this might become a new trend and these neighborhoods have the potential for workforce housing and stated he did not want to lose this to office or something like that.

Ms. Landry stated she agrees with Mr. Burke in that she is not wedded to four districts or any set number and added she would like to see a map that shows where the different kinds of uses are permitted. Ms. Landry asked once these sub-districts are fully redeveloped, what kind of public infrastructure improvements would be needed to support these new districts. Mr. Lamb stated this was a great question but staff is not totally equipped to answer this question at this time.

Dr. Cusack stated he agrees with Councilor Hansel in that the northerly area requires its own district or use.

Councilor Sapeta referred to the area around Blake and Willow Street and suggested making it a requirement that office uses should be owner occupied and prevent people from being able purchase more than one building and combine them for such a use. He felt changing the wording could address this. As far as the campus was concerned, he questioned why only a portion of the campus would be included and felt this item warranted more of a discussion with the college. He also felt the Downtown Core should be extended to Mechanic and Vernon Streets. With reference to Winchester Court, he asked if this could be included in the Transition District and incentivize it to be owner occupied; this area is currently just rental housing.

Mr. Lamb stated it sounds like there is consensus around the idea of trying out a sub-district that better defines the southern transition districts. In addition, there is the option for the area between Mechanic and Vernon Streets to be its own sub-district or included in the Downtown Core. The College area will be deferred until staff hears back form the City College Commission.

#### 4. **Staff Update**

None

#### **Next Meeting – Monday, April 8, 2019**

The meeting adjourned at 8:30 pm.

Respectfully submitted,

Krishni Pahl, Minute Taker

Reviewed and edited by Mari Brunner, Acting Planner