



TOWN OF KENNEBUNKPORT, MAINE

**Board of Selectmen Agenda
February 8, 2024 @ 5:00 PM
VILLAGE FIRE STATION
32 North Street**

This is an in-person meeting, but the public may join in the Zoom webinar format.

Join by **computer or mobile device** and click on:

<https://us06web.zoom.us/j/81412192292>

or go to **Zoom** and enter the **webinar ID: 814 1219 2292**

By **phone** 1(929) 205 6099 US

1. Call to Order.
2. **5:00 PM** - Executive Session per MRSA 1, §405-6D - discussion of labor contracts and proposals for upcoming negotiations.
3. **ESTIMATED 6:00 PM** - Approve the January 18, 2024, January 25, 2024, and January 30, 2024, selectmen meeting minutes.
4. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)
5. Presentation of proposed June 2024 ordinance changes:
 - a. LD 2003 Land Use Ordinance Amendments
 - b. Floodplain Ordinance Amendment
6. Approval of bid for construction of bridges for wastewater tanks.
7. Review of January 13, 2024, storm response.
8. Approval of Dock Square Parking Lot fees for the 2024 season.
9. Discussion of waiver of beach stair building permit fees.
10. Other Business.
11. Approve the February 8, 2024, Treasurer's Warrant.
12. Adjournment.

Town of Kennebunkport
Climate Action Planning Task Force and Board of Selectmen Workshop
January 18, 2024
6:00 PM
Village Fire Station (32 North Street)

MINUTES

Selectmen attending in person: Mike Weston, Sheila Matthews-Bull, Jon Dykstra, Marybeth Gilbert.

Selectmen attending via Zoom: Allen Daggett.

1. Call To Order.

Chairman Weston called the meeting to order at 6:00 PM, informing the group that Selectman Daggett was attending remotely via Zoom. He then turned the meeting over to Pam Morgan, Chair of the Kennebunkport Climate Action Planning Task Force.

2. [Update from the Kennebunkport Climate Action Planning Taskforce.](https://www.kennebunkportme.gov/climate-action-plan-task-force)

Pam Morgan informed everyone that the slides being presented in the meeting can be found on the town's website. (<https://www.kennebunkportme.gov/climate-action-plan-task-force>). The members of the committee, assigned by the Selectmen in 2022, are: Pam Morgan (chair), Jen Armstrong (vice-chair), Fred Stafford, Harvey Flashen, Ella Boxall, Steve Kaagan, Jon Dykstra & Mike Weston.

The purpose of the Climate Action Plan is to ensure that Kennebunkport will remain economically and environmentally viable in the decades to come, protecting the health and vitality of the Town, positioning the Town to receive state and federal climate grants, and prioritizing existing funds strategically.

The Southern Maine Planning and Development Commission (SMPDC) works with Kennebunkport and three other towns in Southern Maine as a cohort - Biddeford, Kennebunk, and Kittery. Though each town is working on its own plan, they are also working to help each other. Karina Graeter and Abbie Sherwin of SMPDC were present at this meeting.

The Plan is based on the Comprehensive Plan, the 2020 Select Board climate goals, 75 strategies researched by SMPDC, and feedback from hundreds of community members via survey, community meetings at libraries, with high school students & RSU 21, local business owners, and civic groups. The Plan is also based on the Town's Greenhouse Gas Emissions Study (determining what kinds of greenhouse gases we are emitting) and Vulnerability Assessment (determining the specific impacts of climate change to develop strategies to deal with them).

An impact of major concern is sea level rise. The State's Climate Action Plan is committed to manage 1.5 feet of relative sea level rise by 2050, and 3.9 feet by 2100. Pam presented maps available from the State online, which illustrate the level of flooding in various scenarios, to help communities plan ahead. The other biggest concerns were for the natural and built environment, critical infrastructure (water, sewer, power, Internet), the local economy, and the strain on public services to keep our community safe. Our environment/landscape are the basis for the tourist industry and the reason people want to live here. The town should act to protect it by managing and reducing development that threatens dunes, marshland, water sources, and forest. Education and community development is key.

Sample quotes from community feedback indicated concern about preserving natural resources, how best to reduce damage along coastlines, saltwater intrusion into wells and septic system, and the need to change policy soon for 'doable' changes. Businesses are concerned about how long they can continue in their current location and want to understand specific ways to address flooding in Dock Square.

The strategies that were developed include building resiliency, reducing emissions, and enabling action. Building resiliency includes infrastructure changes (e.g. raising low lying roads), planning for disasters, and preservation and protection of marshes, forests & wetlands as natural buffers against extreme wet weather. Reducing emissions includes supporting electric vehicles and helping homeowners and businesses to weatherize. Enabling action includes the creation of a Climate Action Committee to help enable strategies in the Plan and enabling municipal operations and funding to deal with climate change.

The Plan provides recommendations. To implement them, strategies that require Town funding would be submitted for budget review. Those that require ordinance revision would go to the Select Board and voters for approval. The proposed volunteer Climate Action Committee would support public outreach and the implementation process. Next steps are to get Select Board feedback as well as feedback from the public on the Town's website. The goal is for the task force to return with a Climate Action Plan for the Select Board to vote on in March.

Selectman Gilbert asked what the problem is with "hard armoring" with a seawall. Pam responded that vertical walls encourage erosion because the wave energy erodes the sand under and around the sea walls. Selectman Gilbert also expressed her concern that naturalistic efforts to prevent coastline erosion are futile. Selectman Dykstra agreed but added that hardscape might be able to stave off wave action effects for a few decades. However, with rising oceans he agrees that there's nothing that can be done to save Goose Rocks beach in a 50–100-year time frame. Discussion ensued between Pam and the Board regarding hardscaping vs. natural landscaping to counter storm damage.

The Select Board expressed a sense of futility when it comes to protecting private property but thanked Pam for the work done by the Task Force and for bringing to the Board actionable items to increase the resiliency of public infrastructure.

Laurie Smith, Town Manager, stated that the Town can invest in different plans and models that we think will work for the situation. The strategies that are listed may be a bit narrow in focus and could be made broader.

Selectman Matthews-Bull stressed that there should be recommendations and not requirements. She, the Selectmen, and the Committee also discussed solar, electric buses, and electricity for heating & cooling buildings.

It was agreed that the next step is to take the strategies presented and determine which ones could be implemented that would be most effective and lowest cost. Chairman Weston said it was difficult for the Board to approve the document overall without first naming a few priority items from the list that could be acted on. Karina informed everyone that Biddeford had selected priority strategies based on public input to ensure community support, also considering impact and cost. Selectman Gilbert stated that the nine areas put forward by the committee were too many and we need to winnow it down. She pointed out that some of the areas we're already working on, e.g. a plan to trim tree limbs that could fall on power lines.

Laurie stressed the importance of the plan as a document that can be relied on to provide long-term direction as to what the Town wants to accomplish, independent of Town staff (e.g. Town Manager) and current Select Board members' priorities. She and the Board take their responsibilities and commitment very seriously, and in view of the recent storm damage they've seen, recognize that they have much work to do. What she is hearing from the Board is that they don't want to have a lot of visionary ideas that they can't bring to fruition.

Pam pointed out, and Karina agreed, that having items listed in the plan is a very important justification for getting grants and funding. Karina continued that the plan is a guidance document for staff, the community and partner organization to find things that we can act on. It's proof of community support and engagement to aid in getting Federal grants and provides a record of work that has already been done when there is a turnover in staff. While there is overlap in the stated goals, comprehensive plans relate to the state level. Climate action plans are a free-standing document appealing to the Federal level for funding.

Selectman Daggett, via Zoom, stated that he opposed the document proposing regulations or changing policy. Carol Morris, committee member, responded that the committee had examined a change in policy that would allow citizens to improve their resiliency in ways that are currently prohibited. An example is the current building height restriction. If that regulation were relaxed, a homeowner could raise their house to make it more resilient to rising waters. With the current regulation, however, they would not be permitted to do this. Selectman Dykstra added that any proposed change in regulation would require Select Board and public referendum approval.

Discussion continued regarding the scope of the document and how many items it proposes. Karina suggested adding context for items that are immediately achievable.

As the Select Board members had no more questions, Chairman Weston opened the meeting to members of the public with questions. Melinda Anderson, via Zoom, suggested that we have a Town transfer station with clean cardboard drop off in lieu of the current single stream recycling program, which she feels is less effective.

No motion was necessary. No motion was taken.

3. Storm recovery update and other business.

Laurie thanked the staff who worked round the clock and over the weekend to deal with the aftermath of the second storm of the week. Staff were able to get down the water level at the west end of King's Highway at Goose Rocks Beach. Efforts continue in dealing with the sand cleanup and other issues. Ocean Avenue sustained damage that staff have proposed remediating temporarily with gravel only, though Laurie is concerned that the next storm could wash that out. We are also concerned about the road in sections of Ocean Avenue and Dock Square as well as supports underneath the pilings and businesses in Dock Square. Engineers are scheduled to look at these roads and infrastructure tomorrow and devise a plan to remediate that spends our money wisely. The DEP and Army Corps of Engineers gave approval today for the Town to proceed with the efforts we had proposed last summer to deal with the damage to the parking area at Colony Beach. Considering the additional damage from the recent storms, we're not planning to move forward with that at this time. Colony Beach continues to be closed to vehicular traffic, though pedestrians can continue to go there.

Maine State Emergency Management is taking damage estimate declarations from counties for both the January 10th & 13th storms. The Governor will request a disaster declaration from the Federal Government (FEMA). There are two types of declarations: public and private. It is recommended that individuals report damages to their homeowner's insurance company, whether or not they think they are covered by the policy. Individuals can also go to the Governor's website, Flood Resources and Assistance Hub (<https://www.maine.gov/governor/mills/flood>), and take a survey that will inform the state as to how many uninsured properties were affected, their density, and the estimated amount of damages. This information is used to determine if the Federal Government will aid individuals as well as provide public assistance. This is a survey, not an application. If and when it is determined that help to individuals will be provided, they will need to make a separate application. Documentation is extremely important. Take pictures before, during and after, and keep all receipts.

4. Adjournment.

Motion by Selectman Matthews-Bull, seconded by Selectman Gilbert, to adjourn.
Voted: 5-0. **Motion passed.** Meeting adjourned at 7:49 PM.

Submitted by,
Dave Powell,
Technology Specialist

Town of Kennebunkport
Board of Selectmen Meeting
January 25, 2024
6:00 PM
Village Fire Station (32 North Street)

MINUTES

Selectmen attending: Mike Weston, Sheila Matthews-Bull, Allen Daggett, Jon Dykstra, Marybeth Gilbert.

1. Call To Order.

Chairman Weston called the meeting to order at 6:00 PM.

2. Approve the January 11, 2024, and January 14, 2024, selectmen meeting minutes.

Chairman Weston noted that the January 14th meeting was a special meeting where Select Board members and members of the public observed damage from the recent storms.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to approve the January 11, 2024, and January 14, 2024, selectmen meeting minutes. **Voted:** 5-0. **Motion passed.**

3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)

No members of the public, either in the community room or on Zoom, came forward to address the Board.

No motion was necessary. No motion was taken.

4. Consider renewal liquor license for Chez Rosa LLC d/b/a Chez Rosa Bistro, located on Cross Street and Union St in Building D.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to renew the liquor license for Chez Rosa LLC d/b/a Chez Rosa Bistro, located on Cross Street and Union St in Building D. **Voted:** 5-0. **Motion passed.**

5. Consider renewal liquor license and special amusement permit for Rhumb Line Motor Lodge d/b/a Rhumb Line Resort, located at 41 Turbats Creek Rd.

Selectman Matthews-Bull recused herself as this is her business.

Motion by Selectman Daggett, seconded by Selectman Gilbert, to renew the liquor license and special amusement permit for Rhumb Line Motor Lodge d/b/a Rhumb Line Resort, located at 41 Turbats Creek Rd. **Voted:** 4-0-1. **Motion passed.**

6. Audit presentation by Casey Leonard of RKO for FY 2023.

Nicole Evangelista, Finance Director, informed everyone that the audit went very well with our revenues over budget and expenditures under budget. There were no significant findings. There were a few minor findings: credit card policy (we are updating), purchasing policy (we are working to align that with Federal standards), and segregation of duties (e.g. have two people counting cash, one person completes a deposit and different person scans the checks). It is difficult with a small Finance department, but we have a person from a different department assist when needed.

Casey Leonard, RKO representative, echoed that the audit went very well. The Town received an unmodified, clean opinion. In addition, RKO performed two compliance audits: a “Yellow Book” audit of internal controls, and a test of compliance with laws, regulations, contracts, and grant agreements. No material weaknesses or deficiencies were found; only the recommendations that Nicole mentioned.

The total fund balances increased by about \$1.39 million in FY 23. Actual revenues exceeded the budget by \$52,045 due to greater than expected excise taxes, intergovernmental revenues, parking violation and beach sticker revenues, and interest earned due to higher-than-expected rates of return due to interest rate increases.

Expenditures were about \$2.262 million under budget, due to lower-than-expected administration, planning and development, contingency and tax abatement costs. Public Safety costs were less than expected due to vacancies in the Police Department and Communications. Public Works were under budget due to vacancies and lower than expected repair costs. Debt service payments were under budget due to the first payment for the 2022 radio tower bond being budgeted for FY23, but not actually being made until FY24. Committed funds were under budget as they are carried forward until expended on their intended use.

It is the policy of the Town to maintain the General Fund unassigned fund balance at 18% of fund expenditures. Unassigned funds in excess of 18% are to be transferred to capital reserve accounts. The current fund balance is at 26%.

General Fund expenditure distribution for FY 2023 is similar to that of FY 2022, with the largest amounts being about 49% to RSU21 for Education, 13% to Public Safety, and 10% to General Government expenses.

Motion by Selectman Daggett, seconded by Selectman Matthews-Bull, to accept the audit report. **Voted:** 5-0. **Motion passed.**

7. Authorize annual transfer to the Capital Reserve Fund in accordance with the Fund Balance Policy.

Nicole recommended, in accordance with the General Fund Balance Policy, that \$1.8 million be transferred from the General Fund to the Capital Reserve Fund for general capital improvements. The Capital Reserve Fund balance on June 30, 2023, was \$1.1 million. We had committed funds for a boat launch and pier funding of \$1.5 million. With this transfer of \$1.8 million, \$1.4 million will remain in the Capital Reserve Fund.

Motion by Selectman Daggett, seconded by Selectman Gilbert, to transfer \$1,810,871 to the Capital Reserve Fund in accordance with the Fund Balance Policy. **Voted:** 5-0. **Motion passed.**

Laurie Smith, Town Manager, commended Nicole for completing the Comprehensive Annual Financial Report (CAFR) on her own this year. Last year we spent \$8,000 to have auditors create this report. There are many, larger communities that do not create a document of this nature. We go above and beyond to make sure we have good financial reporting for ourselves and our citizens.

8. Presentation of proposed June 2024 ordinance changes:

a. LD 2003 Land Use Ordinance Amendments

Galen Weibley, Director of Planning and Development, informed the Board that we need to amend our land use ordinance to address affordable housing and increasing housing stock in Town. He described the three “buckets” to this law:

Accessory Dwelling Units (ADUs, aka Accessory Apartments) – we must allow them throughout Town (and we currently do). They can be attached or detached from the existing single-family dwelling, are exempt from our density requirements, and have no parking requirements in addition to those already in effect for the

property. The State has placed a 190 sq ft floor on the size of ADUs, but we are permitted to apply a cap, which the Town has already done at 800 sq ft.

The Growth Planning Committee (GPC) put forward additional optional amendments: 1) requiring a stormwater plan be submitted with a proposal for a new ADU; 2) prohibiting the outside construction of an ADU on an existing non-conforming lot that would make the property more non-conforming (e.g. lot coverage). Short-term rentals of ADUs are not permitted.

Allan Evelyn, Kennebunkport resident, asked if deed restrictions or covenants relating to ADUs are overridden by the proposed ordinance. Galen responded that the Town does not recognize deed restrictions or covenants, but the private individuals involved can resolve violations via civil action. The Town does not get involved in contract lawsuits. So, while the Town would not deny a permit for ADU construction based on a deed restriction, we could advise the individuals that they might face civil action from the other individuals as a result. ADUs are only permitted with single-family dwellings. They are prohibited for multi-family dwellings. ADUs don't follow growth permits or density requirements.

Diane Franz, Kennebunkport resident, asked if an ADU is taxed as a separate property or affects your property tax rate. Galen responded that it is considered part of the property and does not receive a separate tax card. Laurie added that the ADU would affect the overall value of the property, assessed every year on April 1st, and therefore the overall tax amount. But the tax rate would not change.

Affordable Housing Density Bonus – A 2.5x base zoning density must be permitted for affordable housing projects that meet certain criteria. There must be two parking spaces for every three housing units. Affordable housing developments cannot occur outside the growth area zoned for multiplex unless it is zoned for multiplex and has access to an adequate Town water system.

Selectman Gilbert initiated discussion surrounding the question of drainage and rainwater runoff relating to construction of multiplexes and ADUs. The Board also discussed the problem of properties that have their sump pump tied into the sewer system. Chris Simeoni, Public Works Director, stated that he has witnessed this issue. While he confirmed that it is a problem for the wastewater treatment system, he does not know the scope. Laurie added that while drainage is considered in building applications and before the Planning Board, they are looking at this issue as individual instances. The recent storm flooding shows that drainage is a much bigger issue that affects large swaths of the community and is not addressed by

LD 2003. There is much work to be done in this area, which is beyond our current Town staff and consultant capacity.

Bob Domine, Town resident, asked if the owners of a single-family dwelling that is not on Town water wish to add an ADU, do they need to add separate septic for the ADU? Galen answered that the ADU can be built, tying it into the existing septic system for the main dwelling. However, if the addition of the ADU causes the number of bedrooms for which the septic tank is rated to be exceeded, a building permit for the ADU would not be issued until the septic tank is upgraded. The same well can be used.

Robin Phillips, Town resident, asked via Zoom how the number of building permits issued for the year is determined. Galen responded that there is a formula in the Land Use Ordinance (LUO) that determines the number. He explained that while unused permits in a lower density zone can be transferred to a higher density zone, the reverse is not permitted. Robin then asked how Affordable Housing specified in LD 2003 fits in with the number of issued permits. Galen responded that the LUO specifies that 10% of the permits issued in the growth zone are to be for Affordable Housing. Laurie added that LD 2003 does not affect the number of permits issued. In addition, no more than seven growth permits shall be issued to any one individual, property owner, developer, or company in a calendar year – except after December 1st if all permits for that year have not already been issued.

2 – 4 Units Provision – Galen explained that this allows up to two units in every zone, but must meet density requirements, and four units in the growth area. State Law says that for every parcel we have with an existing single-family dwelling, two additional units can be added. The GPC needs time to review this language, assess its impact on the Town and comment on it, making it unlikely that it will be brought forward for a vote before November. Laurie added that the State has informed municipalities they need to follow all three changes by a date sometime in July. While there is no penalty from the State for not complying by July, there is a risk because we would be liable if sued by developers when our ordinances are not in compliance with State statute. She and Galen feel that this risk is small for Kennebunkport, but wanted to make sure the Board is aware that the risk exists.

Ed Francis, Planning Board member, expressed his desire for the Planning Board to work with the GPC in reviewing the ordinance language coming from the State to make it as clear as possible, to the standard we currently have in the Kennebunkport LUO. Galen will invite Planning Board members to the upcoming GPC meetings.

b. Floodplain Ordinance Amendment

Galen informed the Board that this is a situation that started in 2013 when the Federal Emergency Management Agency (FEMA) proposed amending our flood insurance rate maps. Kennebunkport, along with nearby towns, hired a consultant who proposed changes to FEMA's new map. The appeals process has gone on until recently when FEMA informed us that they will accept our amendments, but with the caveat that their map will be implemented first, closing out the appeals process. Our Town attorney has worked with FEMA and the plan is for the FEMA map to be in effect for one day, on July 27, 2024, with our amended map going into effect on July 28, 2024.

FEMA's map will require residents with mortgages in their flood zone to obtain flood insurance. The Town's amended map has a smaller flood zone, so some of those who would be required to obtain flood insurance by FEMA's map would not be required to do so with our amended map.

The Board wondered if those who would be required to get flood insurance for just one day would be given a waiver. Laurie said she did not know. Allan Evelyn suggested that those in this group could obtain the flood insurance and then cancel it within two or three days in accordance with the State's "buyer's remorse" law.

Selectman Dykstra asked how citizens can determine if their property is in the floodplain. Galen confirmed that they can go to the Town's website and select GIS maps. There is a map layer there for the floodplain. Laurie added that a mailing will go out to all individuals affected by the floodplain map changes.

Cynthia Domine asked why the period between the FEMA flood map application and the amended flood map application had to be 24 hours, and not 1 hour. Laurie responded that we worked with the Federal congressional delegation and the Boston FEMA office along with six towns from Harpswell down to Kittery. This was the best agreement that we could broker with FEMA.

Robin Phillips returned to the previous topic of LD 2003, stating that other towns have rejected the State mandated changes without consequence. She feels that the language is unclear and that we shouldn't rush to put LUO amendments to a public vote in June.

Bob Domine recalled that back when the State mandated the consolidation of Maine School Administrative Districts (MSADs) into Regional School Units (RSUs) several years ago, many municipalities refused, and there was never a negative consequence for any of them.

No motion was necessary. No motion was taken.

9. Consider a quote from Allegiance Trucks for the wiring harness to fix Truck 2.

Chris Simeoni informed the board that during the latest snowstorm, Truck 2 went into a de-rated engine power mode. Rick Bleakney, Town Mechanic traced the problem to a number of issues with the wiring harness. The truck is inoperable at this point because there is no power to the injectors. Replacement of the part is sole source from International directly and is specific to this vehicle, so is very expensive at a cost of \$9,890.42.

Motion by Selectman Matthews-Bull, seconded by Selectman Gilbert, to approve the purchase of a replacement wiring harness for Truck 2 for \$9,890.42. **Voted: 5-0. Motion passed.**

10. Town Hall Building Committee Update.

Chairman Weston informed everyone that the new Town Hall Building Committee met on January 18th, comprised of himself and Selectman Gilbert, Town staff members Laurie Smith and Yanina Nickless, and committee members David Graham, Kevin McDonnell, Dick Smith, Tim Pattison, John Ware, Allen Evelyn, Deborah Bauman, Judy Phillips, and April Dufoe. Invited experts were Mark Adams (President of Sebago Technics), Owens McCullough (engineer) and Mike Hays (architect).

In the January 18th meeting, the discussion points were:

- How to engage the public and make them aware of what was discussed and decided in the committee meetings. They decided that discussion points of the meeting would be presented in the Board of Selectman meeting following each committee meeting. Committee members also said they will entertain people for coffee at their houses.
- What were some reasons that the Town Hall proposal was voted down in November? Price, clear communications on energy efficiency, the need and benefit for the public for better communication were cited. They also decided to send out a survey to the community to see if there are other reasons and address those reasons if possible. The survey ends on February 8th at noon.

- The committee examined which sites were considered for the new Town Hall. Sebago Technics explored the following sites in detail: the Village Parcel, the Village Fire Station, the current Town Hall site, the McCabe lot near School Street, and the Police Station lot. So far, the Village Parcel was the best option financially and based on public response to the survey. The committee asked Sebago Technics to examine the Village Parcel lot and the Village Fire Station lot as potential sites for the new Town Hall and explore other options to reduce costs (e.g. smaller footprint, different square footage).
- Parking, open spaces, and making sure the design feels like Kennebunkport were also discussed.
- Consultants will be invited to a future meeting to discuss solar, geothermal, and other energy sources.

Selectman Gilbert asked everyone to complete the survey, stating that the voice of the people is necessary for the committee to do its work. Lorrie O., via Zoom, asked if the survey would be sent via USPS or email. Laurie responded that the committee decided it would be an electronic survey, announced by email and social media post as well as the Town website.

11. Discussion of Goose Rocks Beach parking permit fees for 2024.

Yanina Nickless, Director of Support Services, reminded the Board that the Budget Board and Board of Selectmen discussed raising the cost of Goose Rocks Beach parking stickers in March 2023 to increase revenue for the Town. It was proposed to raise the cost of resident seasonal stickers from \$5 to \$10, but stickers had already been sold at that point, so their price did not go up for the 2023 Summer Season. The Board at that time approved this price increase effective in 2024. The Board also approved at that time to increase the daily sticker cost from \$25 to \$30 effective in 2023. The cost of weekly and seasonal non-resident stickers was not changed.

Town staff made the following cost increase recommendations for 2024, which could increase Town revenues by an estimated \$38,000:

- Increase the price of weekly stickers from \$100 to \$125
- Increase the price of seasonal non-resident stickers from \$200 to \$250

Board members discussed various pricing options for a few minutes. Diane Franz asked about the issue of beach residents buying seasonal resident stickers and parking their cars in those parking spaces, while allowing their visitors to park in their driveways. The

board responded that this has been a known issue for years. Bill Hydel asked how much the parking fine is if you park at the beach without buying a sticker. Selectman Dykstra answered that it's currently \$65, but he would like to raise it to \$75. Bill then asked which category of sticker brings in the most revenue, and Selectman Dykstra responded that it's the daily stickers.

Motion by Selectman Dykstra, to raise the daily parking sticker rate from \$30 to \$40.
Motion not seconded. Motion withdrawn.

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to increase the cost of non-resident weekly stickers from \$100 to \$125, and non-resident seasonal stickers from \$200 to \$250. **Voted: 5-0. Motion passed.**

In Summary, the 2024 Goose Rocks Beach stickers prices are:

Resident seasonal stickers: \$10

Non-resident daily stickers: \$30

Non-resident weekly stickers: \$125

Non-resident seasonal stickers: \$250

- 12. Accept a \$50.00 donation from an anonymous donor towards the nurses' general account.**

Motion by Selectman Matthews-Bull, seconded by Selectman Dykstra, to accept a \$50.00 donation from an anonymous donor towards the nurses' general account.
Voted: 5-0. Motion passed.

- 13. Accept a \$800.00 donation from the Kennebunkport Residents Association, where \$400.00 goes towards the general needs account, and \$400.00 towards the fuel account.**

Motion by Selectman Matthews-Bull, seconded by Selectman Daggett, to accept a \$800.00 donation from the Kennebunkport Residents Association, where \$400.00 goes towards the general needs account, and \$400.00 towards the fuel account **Voted: 5-0. Motion passed.**

- 14. Other Business.**

Selectman Gilbert suggested that the Board tour the beach together to get a common understanding of the storm damage there. She also put forward the idea that the Board have a discussion at some point about having a Town land trust or come up with other actions the Board could take to address the issue of climate change.

Selectman Daggett suggested that the Town look into a floodgate or barrier to mitigate flooding and other storm damage. Chairman Weston suggested that everyone should look at presentation of the study conducted by Engineering students at the University of Maine, examining various proposals and making recommendations for the Kennebunk River. Discussion ensued with Laurie stating that she asked Woodard and Curran if a floodgate would be practical, though admittedly extremely expensive. Local representatives do not have this expertise, but as a nationwide company they are consulting with those on the west coast who might have knowledge in this area. Laurie has reached out to the Kennebunk town manager, and they have indicated an interest, but no one knows how much a study would cost. Robin Phillips asked if the Army Corps of Engineers had been consulted on this issue. The Board members responded that the Army Corps has been involved in various consultations, for example at Colony Beach.

Laurie wanted to make the Board aware that the State had implemented a tax stabilization law that took effect in FY 2023 for FY 2024. The law states that if you are over 65 years of age and you applied, your property taxes would be frozen, and the State would make up the difference. The law was subsequently repealed. The delta amount was automatically marked as a tax commitment to the town. The State allocated \$15 million for this measure but received \$26,500,000 from municipalities for reimbursement. Despite the State's previous assurance that municipalities would be reimbursed at 100%, they have reimbursed at 56% so far. The State is seeking other funding to reimburse at 100%. We submitted a reimbursement request for \$90,963.99 and received \$53,069.00, leaving just under \$38,000 uncollected.

Laurie also informed the board that we have been examining the roads that need design work to deal with flooding. The next two projects are Head of the Harbor on Pier Road and Dyke Road. The Head of Harbor project is important to proceed on for engineering because it is single access, and we are already underway with the project for the causeway elevation further down Pier Road. There is a DOT grant called the Maine Infrastructure Adaptation Fund which could provide \$50,000 to pay for half of the engineering cost for Head of Harbor. She is seeking the Board's approval to authorize her to pursue that funding.

Motion by Selectman Dykstra, seconded by Selectman Matthews-Bull, to authorize Laurie to pursue a \$50,000 grant from the Maine Infrastructure Adaptation Fund for Head of the Harbor project engineering. **Voted: 5-0. Motion passed.**

15. Approve the January 25, 2024, Treasurer's Warrant.

Motion by Selectman Matthews-Bull, seconded by Selectman Dykstra, to approve the January 25, 2024, Treasurer's Warrant. **Voted: 5-0. Motion passed.**

16. Adjournment.

Motion by Selectman Matthews-Bull, seconded by Selectman Gilbert, to adjourn.

Voted: 5-0. **Motion passed.** Meeting adjourned at 8:03 PM.

Submitted by,
Dave Powell,
Technology Specialist

Town of Kennebunkport
Board of Selectmen Emergency Meeting
January 30, 2024 @ 9:00 AM
Goose Rocks Beach General Store (3 Dyke Rd)

MINUTES

Selectmen attending: Allen Daggett, Sheila Matthews-Bull, Jon Dykstra, Marybeth Gilbert.

Other attending: Laurie Smith, Craig Sanford, John Everett, Chris Simeoni, Galen Weibley, Yanina Nickless, Fred Stafford, Kate Bauer-Burke, Leslie Josselyn-Rose, Steven Rose.

1. Call To Order.

Vise-Chairman Daggett called the meeting to order at 9:00 AM.

2. Tour Goose Rocks Beach to observe and discuss the aftermath of the recent storm events.

The Board, Town employees, and community members met at the General Store, from where they proceeded to the Dyke Rd entrance of the Goose Rocks Beach. Laurie Smith, Town Manager, pointed out that the dunes were missing and sand was washed away. Jon Dykstra showed the line where to which sand was elevated before the storm.

After, the group proceeded to the East End of Goose Rocks and Jefferson Way. Laurie Smith pointed out that the pathway is covered in rocks and sand.

The tour ended at the West End of Goose Rocks, where Fire Chief Everett and Public Works Director Chris Simeoni talked about the recent flooding of the area.

3. Adjournment.

Motion by Selectman Mathews-Bull, seconded by Selectman Gilbert, to adjourn.
Voted: 4-0. Motion passed.

The meeting adjourned at 10:00 AM.

Submitted by,
Yanina Nickless,
Director of Support Services

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE
~ INCORPORATED 1653 ~

MEMORANDUM

Date: January 26, 2024
To: Growth Planning Committee, Planning Board
From: Galen Weibley
Re: LD 2003 Follow Up Research

The Town's planning staff met with Maine DECD on January 25, 2024 at the Town of Gray Public Library for a roundtable discussion of planners to understand the nuances with implementation of LD 2003 for local land use ordinances (LUO). Below is a summary of findings as it relates to the 2-4 unit LUO amendment.

What does the legislation require municipalities to adopt in their LUO?

: The law requires towns to allow two units (attached or detached) on vacant parcels town wide that meet the density requirements of the zone. Currently the town is in compliance of this provision.

The law also requires towns with a comprehensive plan to allow up to four units on a vacant parcel within the Growth Area (structures can be attached or detached) that meet the density requirements of the zone. The town needs to update language for the LUO to comply.

If an existing single-family dwelling is located on a parcel, the parcel can have an additional two units added to the parcel townwide (not four if in the growth area) if the parcels meet the density requirements of the zone. Staff note: Planning Board review will be required as this would trigger a subdivision. The town will need to update language of the LUO to comply.

If I have a single-family dwelling, can I “double dip” in adding an accessory apartment and then add three additional units to my property if I meet density? State law addressed this issue and double dipping is not allowed. Either you can add one accessory apartment or add up to three additional units to a parcel if you meet density. This can be clarified in the ordinance amendment.

If I have a duplex or multiplex aka apartment, can I add an accessory apartment to my lot?: State law only requires accessory apartments for single-family dwellings. This is already addressed in the town's LUO.

Other questions asked and helpful in education/outreach

If I want to add an accessory apartment to my single-family dwelling, what will my requirements be for water/sewer: The state wastewater requirements are reviewed by the Code Enforcement Officer when reviewing a building permit application for an accessory apartment. If an existing septic tank is at max capacity for existing bedrooms, a property owner will be required to upgrade the capacity of their existing septic tank or add a new septic tank to meet the wastewater requirements of the additional bedroom(s) that are part of the accessory apartment.

Wastewater Flow Rates for septic tanks

- 2 Bedrooms or less need 180 gallons/day
 - Add 90 gallons/day for each additional bedroom.
- 2 Bedrooms or less need 750 gallon septic tank
- 3-4 bedrooms require 1,000 gallon septic tank
- 5+ bedrooms require 1,000+250 gallon/bedroom septic tank

With Affordable Housing Development planned for private homeownership, what safeguards are in place to protect a property to be affordable and not be flipped for a private rental or vacation home given the density bonus of LD 2003?

Maine Housing and United State Housing Urban Development (HUD) have [specific income guidelines](https://mainehousing.org/docs/default-source/development/program-guides/affordable-homeownership-program-guide.pdf?sfvrsn=66da8715_12) for the area medium income for a household to qualify for their programs. In addition, Maine Housing has guidelines for homeownership that limit the purchase price not to exceed the 85% of the purchase price limit for the applicable county under MaineHousing's First Home Loan Program or its successor ("First Home Loan Program") and that the purchaser meets the applicable percentage of area median income in effect under the First Home Loan Program at the time of the sale of the Affordable Homeownership Unit. More details on this program can be found here: https://mainehousing.org/docs/default-source/development/program-guides/affordable-homeownership-program-guide.pdf?sfvrsn=66da8715_12

If an outside developer wants to provide affordable housing outside the HUD guidelines, they would need to record a deed restriction that is agreeable to the municipality that will protect the property for at least 30 years to qualify for the density.

I am concerned about the increased density affordable housing development can have on stormwater runoff given recent storms and flooding. What can be done?

Affordable housing developments while allowed a residential density are still required to meet the maximum lot coverage for a lot (20% in most zones outside Dock Square Zone). This is a combination of all structures (defined as “Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind together with anything constructed or erected with a fixed location above, below or upon the surface of the ground or water”). Within the Shoreland Zone, lot coverage shall include driveways, parking lots, and other non-vegetated surfaces in addition to structures defined above.

In addition, with affordable housing the key to making these projects viable is density. This will lead to a trigger of subdivision review by the planning board which requires plans submitted by developers to address concerns to the surrounding environment including abutters.

Projects located in Shoreland Zones do not gain a bonus since multiples are not allowed in this area as permitted or conditional use.

Actions to Consider

The Selectboard heard the first presentation of the proposed changes drafted by staff and GPC members for LD 2003. Members should be prepared to discuss any additional changes or questions to help the selectboard in weighing their options before the town attorney makes final edits before the town vote.

Time permitting, 2-4 unit LUO amendment can be discussed.

Enclosures

Updated LD 2003 Amendments with comments from PB & Staff
DECD Handout of Summary LD 2003 changes
Understanding Affordable Housing Density Bonus Illustration
Town Table of Dimensional Requirements
Draft LUO Amendment 2-4 Units (Optional Review if Time Permits)

ARTICLE2
Terminology

§ 240-2.2, Definitions.

In this chapter, the following terms shall have the following meanings:

AFFORDABLE HOUSING: Decent, safe and sanitary dwelling Dwelling units that can be afforded by households in the following two categories:

- A. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and

For rental housing, a development in which a household whose income does not exceed 80% of the AMI can afford a majority (51%) of the units that the developer designates as affordable, without spending more than 30% of the household's monthly income on housing costs; and

- B. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.

B. For owned housing, a development in which a household whose income does not exceed 120% of the AMI can afford a majority (51%) of the units that the developer designates as affordable, without spending more than 30% of the household's monthly income on housing.

AVERAGE MEDIAN INCOME - The Area Median Income (AMI) describes the midpoint of an area's income distribution, where 50 percent of households earn above the median figure while 50 percent earn less than the median. As required by the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, the Department of Housing and Urban Development (HUD) calculates AMI for U.S. metropolitan areas on an annual basis.

HOUSEHOLD - defines as any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

Commented [GW1]: Vague meaning of adjectives. PB suggestion to remove section.

Commented [GW2]: E. Francis Proposed Amendment: Suggest clarifying the intent of definition instead of above.

Commented [GW3]: E. Francis Proposed Amendment: Suggested language to Clarify intent of subsection above. Make it easier to understand.

Commented [GW4]: E. Francis Proposed Amendment: Suggested definition to clarify what is a household for affordable housing purposes. This definition is from US Code 42 (Public Health and Welfare)

- B. Each multiplex shall meet the following standards:
- (I) The design, layout, size, area, construction, and screening standards of §§ 240-7.11 and 240-10.7 shall be met.
 - (2) Parking spaces shall be provided to conform with the number required in the following schedule:
 - (a) One-bedroom units: one space per unit.
 - (b) Two-bedroom units: two spaces per unit.
 - (c) Three- and four-bedroom units: two spaces per unit.
 - (e)(d) Affordable Housing Developments: .66 spaces per unit.
- C. Off-street parking shall be provided for elder-care facilities in accordance with the following schedule:
- (I) One space for each employee on the shift with the greatest number of employees; plus
 - (2) One space for each independent living unit in which the occupant receives no supportive services; plus
 - (3) One space for every two congregate living or similar units in which the occupant receives only a basic level of supportive services; plus
 - (4) One space for every three assisted-living or similar units or beds in a nursing home in which the occupant receives a high level of supportive services.
- D. Parking spaces must be composed of sufficient impervious or semipervious material (e.g., asphalt, concrete, composites, gravel) to support a vehicle in all conditions. Semipervious materials such as "grass pavers" or similar materials can be used.
- E. Parking for residential components of residential mixed use shall be as follows:
- (I) One-bedroom unit: one parking space.
 - (2) Two-or-more-bedroom unit: two parking spaces.
- F. Parking for a residential rental accommodation shall include one additional off-street parking space per room rented, in addition to the minimum parking spaces required for the dwelling unit.

§ 240-6.11. Sanitary provisions.

- A. Connection to public facilities. All plumbing shall be connected to public collection and treatment facilities when required by other ordinances.
- B. Subsurface sewage disposal. No plumbing permit shall be issued for a subsurface disposal system unless:
- (I) The system meets the requirements of the State of Maine Subsurface Wastewater Disposal Rules, 10-144 CMR Chapter 241; a second disposal site that meets the state rules is not required unless mandated by other law. Any such site shall be shown on the permit application as a reserve area and be set aside on the plot plan for possible future use as a disposal site; and

ARTICLE 7

Performance Standards for Specific Activities, Land Uses and Zones

§ 240-7.1. Accessory apartments. [Amended 11-3-2020; 6-13-2023]

Accessory apartments may only be located in, attached to, or detached from a single-family dwelling, shall not be defined as a two-family or a multiplex, are allowed as a permitted use in all zones, except where otherwise noted in Subsection D, and are subject to the limitations below:

- A. A request for an accessory apartment requires submittal of a site plan that shall include the property owner with deed reference, lot boundaries and dimensions to scale and the location and setbacks of all buildings and parking areas.
- B. A request for an accessory apartment shall include a plan of the entire building showing a separate floor layout of all finished levels identifying the use of all rooms and the location of all entrances ~~and exits.~~ [All Accessory Apartments either attached to the principal building or stand alone shall meet the design criteria in Article 240-Article 6 section 6.2 (Height Restrictions) where appropriate as well as 240-Article 7 section 7.1.C of this ordinance.]
- C. The dwelling shall have only one front entrance and all other entrances shall be either on the side or in the rear of the dwelling. An entrance leading to a foyer with interior entrances leading from the foyer to the two dwelling units is permitted. The living area of an accessory apartment shall be a minimum of 190 square feet, and a maximum of 800 square feet. An accessory apartment may not have any living space on a third story unless it meets the minimum life safety requirements as defined in the Building Code.
- D. Accessory apartments are not permitted in the Shoreland Zone unless the lot on which it will be located has at least double the lot size for that zone, double the minimum lot size, and double the shore frontage for that zone.
- E. Only one accessory apartment shall be permitted per single-family dwelling. Only one accessory apartment shall be permitted per lot regardless of the number of single-family dwellings on a lot.
- F. An accessory apartment shall be occupied as a primary residence. ("Primary residence" shall be defined as more than six months per year.) An accessory apartment is not eligible to operate as a short-term rental.
- G. Accessory apartment located on properties connected to the Town's wastewater collection system must be approved by the Sewer Department. Properties utilizing subsurface waste system and private wells must meet the standards required in the Maine Subsurface Wastewater Disposal Rules. In addition:
 - (1) Existing septic systems must be evaluated for condition and capacity by a licensed site evaluator. A reserve is required for existing and new systems in the event that replacement is necessary. Biannual pump-outs of septic systems servicing the property are required and documentation must be provided to the Town upon request.
 - (2) Properties serviced by private wells must provide to the Code Enforcement Office a water quality test to ensure adequate water quality prior to issuance of a certificate of occupancy.

H. Any plan for a stand alone Accessory Apartment or an addition to the primary structure for an Accessory Apartment must provide a Drainage Plan which meets the following stormwater design standards:

- (1) The plan must demonstrate that the proposed improvements are designed to minimize

Commented [GW1]: Clarifies the cross reference and removes section below.

Commented [GW2]: GPC amendment to address design concerns

Commented [GW3]: Suggested Staff Amendment: In speaking with Code & Planning Staff, town staff recommend adding this language to help address potential double dipping with density changes in LD 2003...GLW

the amount of stormwater leaving the site. This must include consideration of the design and location of improvements to minimize the total area of impervious surface on the site and stormwater management techniques to minimize both the volume and rate of runoff from the lot.

- (2) Any stormwater draining onto or across the lot in its pre-improvement state will not be impeded or redirected so as to create ponding on, or flooding of, adjacent lots; and
- (3) Any increase in volume or rate of stormwater draining from the lot onto an adjacent following the improvement can be handled on the adjacent lot, whether privately or publicly owned, without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the adjacent lot.

The Drainage Plan must include a written statement demonstrating how the proposed addition for an Accessory Apartment or stand alone Accessory Apartment has been designed to meet the requirements of this subsection and must contain at least the following information:

- (1) The location and characteristics of any streams or drainage courses existing on the parcel and/or abutting parcels;
- (2) The existing and proposed grading of the site using one-foot contours;
- (3) The location and area of existing and proposed buildings and impervious surfaces on the site;
- (4) The existing pattern of stormwater drainage on the site, including points of discharge to public ways or adjacent properties; and
- (5) The proposed pattern of stormwater drainage after the improvements, including the location and design of any stormwater facilities.

l. An accessory apartment is allowed on a lot that does not conform to the municipal zoning ordinance if the accessory apartment does not further increase the nonconformity.

Commented [GW4]: P. Hogan Amendment: Addresses post-development concerns of stormwater impacting abutting properties or waterbodies.

Commented [GW5]: GPC concerned with nonconforming lots, state legislature addressed this with passage of LD 1706. This language will address concerns of detached ADU on non-conforming lot given setbacks and lot coverage

shall have code compliant smoke and carbon monoxide detectors in addition to complying with current building code requirements for primary and secondary means of escape;

- (5) The rooms occupied by the roomers do not have a separate entrance from the outside;
- (6) The rooms occupied by the roomers are within the principal structure;
- (7) The roomers use utilities which are not separately metered from those used by the remaining occupants of the dwelling unit;
- (8) One off-street parking space per room rented shall be required as per § 240-6.1OF; and
- (9) The owner of the residential rental accommodation shall remain in residence while rooms are being rented.

C. Approval; permit; appeal.

- (1) Approval to operate a residential rental accommodation shall be granted by the Code Enforcement Officer upon a successful property inspection and complete permit application. Such permit shall be issued to the property owner only, and is subject to sufficient evidence that the property is owner occupied. **[Amended 11-8-2022]**
- (2) A permit to operate a residential rental accommodation shall expire upon a change in ownership or a change in owner residency status.
- (3) A single-family dwelling approved to accommodate roomers prior to November 8, 2016, may continue to operate under the conditions of approval as specified by the Zoning Board of Appeals, including the Land Use Ordinance requirements and restrictions in effect at the time of such approval.
- (4) Penni! shall be revoked upon confirmation of a second confirmed noise or barking dog citation related to use of a dwelling unit by a roomer. Permit shall also be revoked upon any confirmed violation of the requirements contained within the definition of residential rental accommodation located in Article 2. Any such permit having been revoked shall not be reissued to the same property owner within one year (365 days) from the date of revocation, which shall require Code Enforcement Officer reapproval. **[Amended 11-8-2022]**
- (5) An appeal from any decision of the Code Enforcement Officer related to the issuance, non issuance, suspension or revocation of a residential rental accommodation permit shall be taken by-an aggrieved party to the Zoning Board of Appeals within 30 days of the decision.

240-7.15

Affordable housing density

For an affordable housing development approved on or after July 1, 2023, the town shall apply density requirements in accordance with this section.

- A. Affordable housing development shall be allowed where multifamily dwellings are allowed and have a dwelling unit density of at least 2 1/2 times the base density that is otherwise allowed in that location and may not require more than 2 off-street parking spaces for every 3 units. The development must be in a designated growth area and have 51% of the units designated as affordable under the Affordable Housing Development Definition meeting the following criteria:

1. The locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under MRS 30-A section 4347-A;

The development must comply with minimum lot size requirements in accordance with MRS Title 12, chapter 423- A, as applicable.

B. Long-term affordability. Before approving an affordable housing development, the developer shall provide proof that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

1. For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

2. For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

C. Shoreland zoning. An affordable housing development must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

D. Water and wastewater. The owner/developer of an affordable housing development shall provide written verification to the municipality that each unit of the housing development is connected to adequate water and wastewater services before the municipality may certify the development for occupancy. Written verification under this subsection must include:

1. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

2. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

3. If a housing unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

E. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with the state & municipal subdivision regulations.

F. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

G. Short-Term Rental License Prohibition. No units created by an affordable housing development shall qualify for the Town's Short Term Rental License Program during the duration of the long-term affordability restriction in subsection B above.

H. Growth Permit Requirements. All affordable housing developments shall comply with Section 240-11.12 (Growth management permit required)

Commented [GW1]: This provision is added if a parcel is located in the growth area but public water is unavailable. SMPDC is in agreement this would be costly from a developer perspective for monthly testing requirements.

Commented [GW2]: GPC suggested change relating to short term rental prohibition concerns for new market rate units that are part of development.

Commented [GW3]: Suggested amendment by staff to clarify separation from LD 2003 ADU & Affordable house development provisions.

Commented [GW4]: PB suggestion for easy cross reference by the public.

What is LD 2003?

Affordable Housing Density Bonus

30-A M.R.S. 4364

Density bonus for affordable housing developments of 2.5x base density; requirement of 2 parking spaces for every 3 units.

To qualify for bonus:

- ✓ 51% or more of the units must be affordable;
- ✓ Development must be located in an area with zoning and multi-family housing; and
- ✓ Development must be located in a designated growth area or served by water/sewer or a comparable system.

Up to Four Dwelling Units

30-A M.R.S. 4364-A

Allows between 2-4 dwelling units on residential lots.

- ✓ Lots without an existing unit:
 - Up to 2 units allowed
 - Exception: up to 4 units if lot is in designated growth area or has water/sewer in a municipality without a comprehensive plan.
- ✓ Lots with 1 existing dwelling unit:
 - Up to 2 units allowed (within, detached, or attached)

Accessory Dwelling Unit

30-A M.R.S. 4364-B

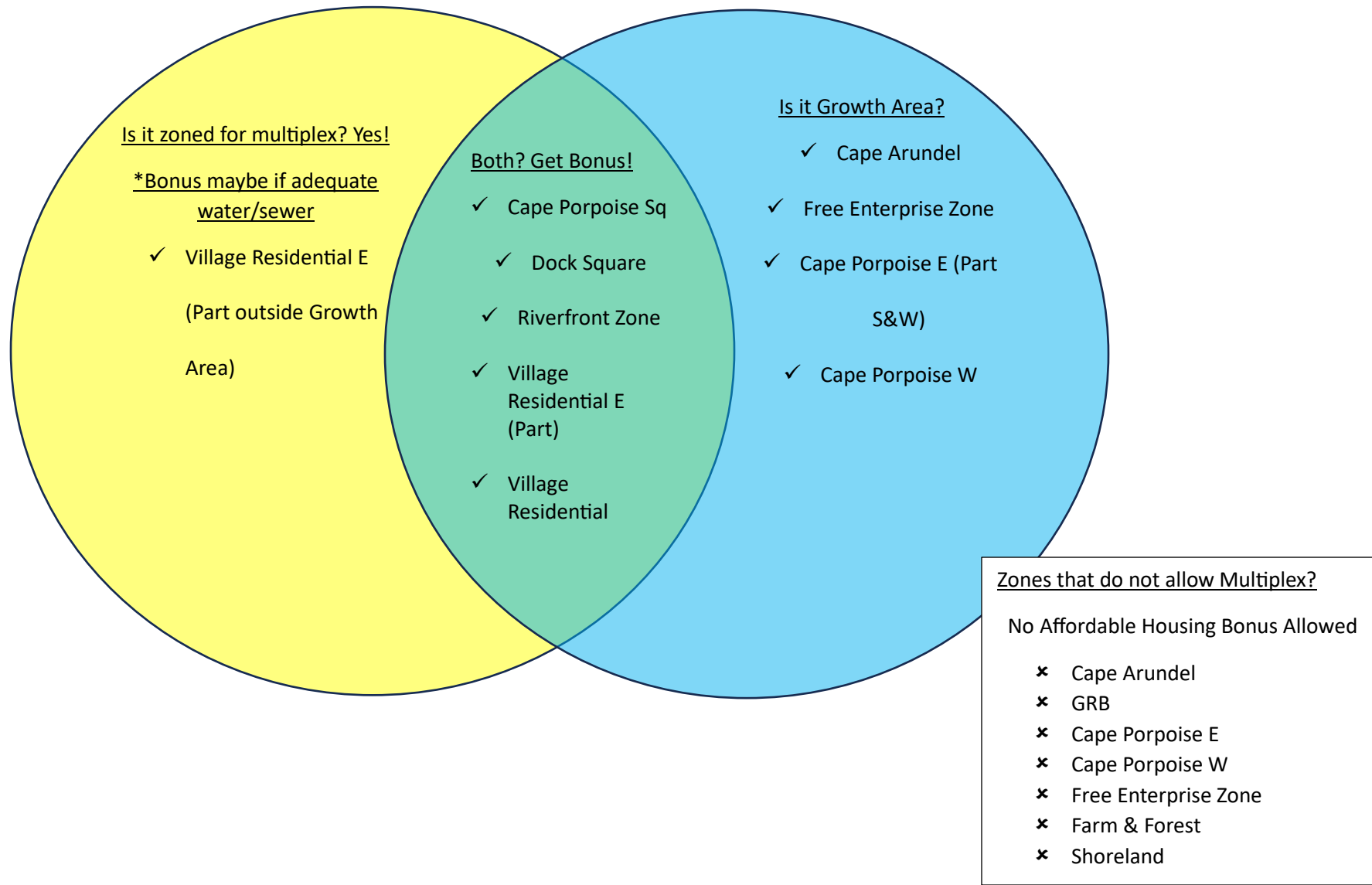
Allows 1 ADU on a lot with an existing single-family home within home, attached to it, or detached.

- ✓ Exempt from zoning density requirements and rate of growth ordinances.
- ✓ No additional parking
- ✓ 190 square feet min; max can be set by municipality

For more information, contact housing.decd@maine.gov or visit <https://www.maine.gov/decd/housingopportunityprogram>

Affordable Housing Density Bonus Allowed

* For illustrative and general educational purposes only. Full determination is site specific and determined based on overlays and zoning standards specific to site of proposed development. See staff for a more accurate assessment of a proposed project.



LAND USE

240 Attachment 1

Town of Kennebunkport

Table of Dimensional Requirements

	Minimum Lot Area ¹ (square feet)	Minimum Lot Width (feet)	Maximum Lot Coverage	Minimum Net Residential Area per Dwelling Unit (square feet)	Minimum Setbacks			Coastal Wetland Setback (feet)	Minimum Open Space	Maximum Building Height (feet)
					Front (feet)	Side (feet)	Rear (feet)			
§ 240-4.3 Village Residential Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	35
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	35
Multiplex	60,000	150	20%	20,000	25	50	50		20%	35
Public libraries	40,000	100	75%		20	15	15		5%	35
§ 240-4.4 Village Residential East Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	35
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	35
Multiplex	90,000	150	20%	30,000	40	50	50		20%	35
§ 240-4.5 Dock Square Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	20,000	100	70%	20,000	20	15	15	25	20%	30
Two-family dwelling	20,000	100	70%	10,000	40	20	20	25	20%	30
Multiplex	30,000	150	70%	10,000	40	20	20	25	20%	30
§ 240-4.6 Riverfront Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	20,000	100	20%	20,000	20	15	15	75	20%	30
Two-family dwelling	20,000	100	20%	10,000	40	20	20	75	20%	30
Multiplex	60,000	150	20%	20,000	25	50	50	75	20%	30

KENNEBUNKPORT CODE

	Minimum Lot Area ¹ (square feet)	Minimum Lot Width (feet)	Maximum Lot Coverage	Minimum Net Residential Area per Dwelling Unit (square feet)	Minimum Setbacks			Coastal Wetland Setback (feet)	Minimum Open Space	Maximum Building Height (feet)
					Front (feet)	Side (feet)	Rear (feet)			
§ 240-4.7 Cape Arundel Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	35
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	35
§ 240-4.8 Goose Rocks Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	30
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	30
§ 240-4.9 Cape Porpoise East and Cape Porpoise West Zones										
Single-family dwelling (1 per lot) or other use § 240-4.16	20,000	100	20%	20,000	20	15	15		20%	30
Two-family dwelling	30,000	100	20%	15,000	40	20	20		20%	30
§ 240-4.10 Cape Porpoise Square Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	20,000	100	20%	20,000	20	15	15		20%	30
Two-family dwelling	20,000	100	20%	10,000	40	20	20		20%	30
Multiplex	60,000	150	20%	20,000	25	50	50		20%	30
§ 240-4.11 Free Enterprise Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	40,000	100	20%	40,000	20	15	15		20%	35
Two-family dwelling	40,000	100	20%	20,000	40	20	20		20%	35
§ 240-4.12 Farm and Forest Zone										
Single-family dwelling (1 per lot) or other use § 240-4.16	3 acres/ 130,680 square feet	200	10%	130,680	20	15	15		20%	35
Two-family dwelling	3 acres/ 130,680 square feet	100	20%	65,340	40	20	20		20%	35

NOTE:

¹ Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in § 240-4.16.

A. Single-family dwellings. A single-family dwelling and any accessory apartment located therein shall be constructed on one continuous foundation and under one continuous roof; no part of the dwelling unit shall be located in a detached building or structure. Detached accessory apartment units shall be exempt from this requirement. [Amended 6-13-2023]

B. Two-family dwellings. Each unit in a two-family dwelling shall have not less than 650 square feet. The two-family dwelling shall have only one front entrance, and all other entrances shall be on the side or in the rear of the dwelling. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted. One dwelling shall be subordinate in size. A home occupation shall not be permitted in the subordinate unit. A two-family dwelling shall be constructed on one continuous foundation and under one continuous roof; no part of the dwelling units shall be located in a detached building or structure.

C. For any area in which housing is allowed there shall be up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit and meets the minimum net residential area per dwelling unit within the table of dimensional requirements (240 Attachment 1) for the lot's zone, except that it shall allow up to 4 dwelling units per lot if that lot does not contain an existing dwelling unit and the lot is located in a the designated growth area as noted below: for the Town of Kennebunkport (See town's comprehensive plan for the growth area).

If a single-family dwelling is demolished after July 1, 2024, that lot shall not be defined as a vacant lot for section C above.

~~1. The locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under section 4347-A;~~

D. A lot with an existing dwelling unit may have up to two additional dwelling units, either one additional attached dwelling unit, one additional detached dwelling unit, or one of each townwide if the lot meets the minimum net residential area per dwelling unit within the table of dimensional requirements (240 Attachment 1) for the lot's zone. ~~On a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each.~~

~~If more than one dwelling unit has been constructed on a lot as the result of the allowance of subsections D above, the lot is not eligible for any additional increases in density.~~

~~Additional units may be be allowed by this subsection provided the appropriate lot areas can be provided.~~

The owner of a housing structure must provide written verification to the municipality that the structure is connected to adequate water and wastewater services before the municipality may certify the structure for occupancy. Written verification under this subsection must include:

1. If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the structure and proof of payment for the connection to the sewer system;

2. If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

Commented [GW1]: Made edits to this section to clarify only in the Growth Area located in the Comp Plan shall be afforded the 4 units on a vacant lot if they meet density.

Commented [GW2]: Optional Amendment: Allows municipality the option of prohibiting lots with a SFD to demolish to qualify for 4 units in the growth area.

Commented [GW3]: Reworded SMPDC draft to understand

Commented [GW4]: Optional Amendment: State law allows municipalities to add a one and done rule... If you can construct up to 2 more units and only construct one, you can't return to add another in the future.

Commented [GW5]: Optional Change: State allows communities to allow more density above the 2-4 unit requirement on the lot. Staff suggest removal to avoid complex issues with multiplex uses in not permitted zones.

3. If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the structure, proof of payment for the connection and the volume and supply of water required for the structure; and

4. If a housing structure is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

E. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section.

Commented [GW6]: This section pertains to wastewater and water supply requirements which are reviewed by the CEO for compliance during the building permit application process.

Commented [GW7]: State law section that allows for restrictive covenants which can be enforced in civil court between private parties.

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE
~ INCORPORATED 1653 ~

MEMORANDUM

To: Laurie Smith, Town Manager & Kennebunkport Selectboard
Fr: Galen Weibley, Director of Planning & Development
Re: Floodplain Ordinance Amendment
Date: January 18, 2024

Enclosed are proposed changes for consideration by the Selectboard to update Kennebunkport's Floodplain Ordinance (Chapter 219) to comply with updated Federal Emergency Management Agency's (FEMA) updated Flood Insurance Rate maps (FIRM) and state model ordinance (enclosed). FEMA FIRM update has been an ongoing and contentious issue of the inaccuracy of the proposed FEMA map and its impact on resident's properties and insurance premiums.

The Town has received word that the final letter of determination (FLD) has been issued by FEMA, requiring municipalities to begin the adoption process of updating their floodplain ordinances with the revised map. The town is required to adopt these changes while FEMA processes the town's Letter of Map Amendment (LOMA) application, which has been pending until the final adoption of FEMA's proposed map. Failure of the town to make necessary updates will disqualify residents and mortgagors from obtaining insurance policies under the National Flood Insurance Program for properties within the town.

The strategy moving forward is to adopt an amended model ordinance to repeal the town's existing Floodplain Ordinance to include a disclaimer pending the consideration of the Town's LOMA application. This will do two things:

1. Not jeopardize current property owners flood insurance eligibility in the National Flood Insurance Program.
2. Allow for an automatic update of the floodplain maps without a future amendment requiring a future town vote which will lapse coverage or require coverage for currently exempt properties.

With town adoption, the FEMA FIRM will go into effect July 1, 2024, with the town's LOMA map taking effect the day after.

Actions Requested:

Suggested motion: Mr. Chairman, I move that we schedule a public hearing regarding the proposed changes to Chapter 219 of the town's Floodplain Ordinance.

Enclosures

Maine DEP Floodplain Model Ordinance

Map differences between current, proposed and LOMA maps

FLOODPLAIN MANAGEMENT ORDINANCE

FOR THE

TOWN OF KENNEBUNKPORT, MAINE

ENACTED: _____
Date

EFFECTIVE: _____
Date

CERTIFIED BY: _____
Signature

CERTIFIED BY: _____
Print Name

Title

Affix Seal

FLOODPLAIN MANAGEMENT ORDINANCE

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ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Kennebunkport, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Kennebunkport, Maine has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Kennebunkport, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Kennebunkport has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Kennebunkport having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Kennebunkport, Maine.

The areas of special flood hazard, Zones A, AE, and VE for the Town of Kennebunkport, York County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – York County, Maine" dated _____, 2023 with accompanying "Flood Insurance Rate Map" dated _____, 2023 are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

The Code Enforcement Officer shall be designated as the local Floodplain Administrator. The Floodplain Administrator shall have the authority to implement the commitment made to administer and enforce the requirements for participation in the National Flood Insurance Program.

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer, except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Kennebunkport, Maine.

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

A. The name, address, and phone number of the applicant, owner, and contractor;

- B. An address and a map indicating the location of the construction site;
- C. A site plan showing locations of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.3. apply only to new construction and substantial improvements.]

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zones AE, and VE from data contained in the "Flood Insurance Study - York County, Maine," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.M. and IX.D.; or,
 - (2) in the absence of all data described in Article III.H.1.b.(1), information to demonstrate that the structure shall meet the elevation requirement in Article VI.H.2.b., Article VI.I.2.b., or Article VI.J.2.b.
 - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - 3. lowest floor, including basement; and whether or not such structures contain a basement;
 - 4. lowest machinery and equipment servicing the building; and,
 - 5. level, in the case of non-residential structures only, to which the structure will be floodproofed.
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;

J. A written certification by:

1. a Professional Land Surveyor that the grade elevations shown on the application are accurate; and,
2. a Professional Land Surveyor, registered professional engineer or architect that the base flood elevation shown on the application is accurate.

K. The following certifications as required in Article VI by a registered professional engineer or architect:

1. a Floodproofing Certificate (FEMA Form FF-206-FY-22-153, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article VI.I., and other applicable standards in Article VI;
2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE and Coastal AE Zone, will meet the criteria of Article VI.R.; and other applicable standards in Article VI;
3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.N.2.a.;
4. a certified statement that bridges will meet the standards of Article VI.O.;
5. a certified statement that containment walls will meet the standards of Article VI.P.

L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,

M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee of \$50.00 shall be paid to the Code Enforcement Officer and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer, Planning Board, and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 - 1. the base flood and floodway data contained in the "Flood Insurance Study - York County, Maine," as described in Article I;
 - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review, and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.(1); Article VI.M.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
 - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b.(1), the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
 - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an "under construction" Elevation Certificate completed by a Professional Land Surveyor based on the Part I permit construction for verifying compliance with the elevation requirements of Article VI, paragraphs H., I., J., or R. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part

II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.I.1. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes but is not limited to: accessory structures as provided for in Article VI.L., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance, and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

ARTICLE VI - DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

A. All Development - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse, or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and,
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.

- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Utilities** - New construction or substantial improvement of any structure (including manufactured homes) located within:
 - 1. Zones A and AE shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least two feet above the base flood elevation.
 - 2. Zone VE shall meet the requirements of Article VI.R.2.
- G. **Physical Changes to the Natural Landscape** - Certain development projects, including but not limited to, retaining walls, sea walls, levees, berms, and rip rap, can cause physical changes that affect flooding conditions.
 - 1. All development projects in Zones AE and VE that cause physical changes to the natural landscape shall be reviewed by a Professional Engineer to determine whether or not the project changes the base flood elevation, zone, and/or the flood hazard boundary line.
 - a. If the Professional Engineer determines, through the use of engineering judgement, that the project would not necessitate a Letter of Map Revision (LOMR), a certified statement shall be provided.
 - b. If the Professional Engineer determines that the project may cause a change, a hydrologic and hydraulic analysis that meets current FEMA standards shall be performed.
 - 2. If the hydrologic and hydraulic analysis performed indicates a change to the base flood elevation, zone, and/or the flood hazard boundary line, the applicant may submit a Conditional Letter of Map Revision (C-LOMR) request to the Federal Emergency Management Agency for assurance that the as-built project will result in a change to the Flood Insurance Rate Map. Once the development is completed, a request for a Letter of Map Revision (LOMR) shall be initiated.

3. If the hydrologic and hydraulic analysis performed show a change to the base flood elevation, zone, and/or the flood hazard boundary line, as soon as practicable, but no later than 6 months after the completion of the project, the applicant shall submit the technical data to FEMA in the form of a Letter of Map Revision request.
- H. **Residential** - New construction or substantial improvement of any residential structure located within:
1. Zones AE shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation.
 2. Zone A shall have the lowest floor (including basement) elevated:
 - a. to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;
 - b. in the absence of all data described in Article VI.H.2.a., to at least two feet above the highest adjacent grade to the structure.
 3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.
- I. **Non-Residential** - New construction or substantial improvement of any non-residential structure located within:
1. Zones AE shall have the lowest floor (including basement) elevated to at least two feet above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least two feet above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K., and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
 2. Zone A shall have the lowest floor (including basement) elevated:
 - a. to at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D., or;

- b. in the absence of all data described in Article VI.I.2.a., to at least two feet above the highest adjacent grade to the structure; or,
- c. together with attendant utility and sanitary facilities, be floodproofed to two feet above the elevation established in Article VI.I.2.a. or b. and meet the floodproofing standards of Article VI.I.1.a., b., and c.

3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

J. Manufactured Homes - New or substantially improved manufactured homes located within:

1. Zones AE shall:

- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation;
- b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
- c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - (3) All components of the anchoring system described in Article VI.J.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:

- a. be elevated on a permanent foundation, as described in Article VI.J.1.b., such that the lowest floor (including basement) of the manufactured home is at least two feet above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.(1); Article V.B.; or Article IX.D.; or,
- b. in the absence of all data described in Article VI.J.2.a., to at least two feet above the highest adjacent grade to the structure; and,
- c. meet the anchoring requirements of VI.J.1.c.

3. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.R.

K. Recreational Vehicles - Recreational Vehicles located within:

1. Zones A and AE shall either:
 - a. be on the site for fewer than 180 consecutive days; and,
 - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
 - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.J.1.
2. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of either Article VI.K.1.a. and b., or Article VI.R.

L. Accessory Structures - New construction or substantial improvement of Accessory Structures, as defined in Article XIV, shall be exempt from the elevation criteria required in Article VI.H. & I. above, if all other requirements of Article VI and all the following requirements are met.

1. Accessory Structures located in Zone A and AE shall:
 - a. meet the requirements of Article VI.A.1. through 4., as applicable;
 - b. be limited in size to a one-story two car garage;
 - c. have unfinished interiors and not be used for human habitation;
 - d. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and, when possible, outside the Special Flood Hazard Area;
 - e. be located outside the floodway;
 - f. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure;
 - g. have hydraulic openings, as specified in Article VI.N.2., in at least two different walls of the accessory structure; and
 - h. be located outside the Coastal AE Zone.

2. Accessory Structures in Zone VE and Coastal A Zones shall meet the requirements of Article VI.R.

M. Floodways -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones A and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.M.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
3. In Zones A and AE riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

N. Hydraulic Openings/Flood Vents - New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs H., I., or J. and is elevated on posts, columns, piers, piles, or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIV;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:

- (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
- (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
- (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;

3. The enclosed area shall not be used for human habitation; and,

4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.

O. **Bridges** - New construction or substantial improvement of any bridge in Zones A, AE, and VE shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings or columns) is elevated to at least two feet above the base flood elevation; and,
2. a registered professional engineer shall certify that:
 - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.M.; and,
 - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

P. **Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones A, AE, and VE shall:
 - a. have the containment wall elevated to at least two feet above the base flood elevation;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.

Q. Wharves, Piers, and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in and over water and seaward of the mean high tide if the following requirements are met:

1. in Zones A and AE, wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; or,
2. in Zone VE, wharves, piers, and docks shall have a registered professional engineer develop or review the structural design, specifications, and plans for the construction.

R. Coastal Floodplains -

1. New construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.R.7.
2. New construction or substantial improvement of any structure located within Zone VE or Coastal AE Zone shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least two feet above the base flood elevation. Systems, fixtures, equipment, and components shall not be mounted on or penetrate through walls intended to break away under flood loads.
3. New construction or substantial improvement of any structure located within Zone VE and Coastal AE Zones (as defined) shall:
 - a. be elevated on posts or columns such that:
 - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to at least two feet above the base flood elevation;
 - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
 - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
 - b. have the space below the lowest floor:
 - (1) free of obstructions; or,
 - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,

- (3) constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
- c. require a registered professional engineer or architect to:
 - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,
 - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.R.3.
4. The use of fill for structural support in Zone VE and Coastal AE Zones is prohibited.
5. Human alteration of sand dunes within Zone VE and Coastal AE Zones is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
6. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
7. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.I. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.M., and VI.N. are met:
 - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
 - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
 - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
 - d. The structure shall have unfinished interiors and shall not be used for human habitation.
 - e. Any mechanical, utility equipment, and fuel storage tanks must be anchored and either elevated or floodproofed to at least two feet above the base flood elevation.
 - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and, when possible, outside the Special Flood Hazard Area.

ARTICLE VII - CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

A. Review Procedure for a Conditional Use Flood Hazard Development Permit

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

ARTICLE VIII - CERTIFICATE OF COMPLIANCE

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:

1. an Elevation Certificate completed by a Professional Land Surveyor for compliance with Article VI, paragraphs H., I., J., or R.; and,

2. for structures in Zone VE and Coastal AE Zone (as defined), certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.R.3.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
 - C. Within 10 working days, the Code Enforcement Officer shall:
 1. review the required certificate(s) and the applicant's written notification; and,
 2. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law, local ordinances or regulations, and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

ARTICLE X - APPEALS AND VARIANCES

The Board of Appeals of the Town of Kennebunkport may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision,

or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
 - 1. a showing of good and sufficient cause; and,
 - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances; and,
 - 3. a showing that the issuance of the variance will not conflict with other state, federal, or local laws or ordinances; and,
 - 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - 1. the criteria of Article X.A. through C. and Article VI.M. are met; and,
 - 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Article X.A. through C.; and,
 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Variances may be issued for new construction and substantial improvement of Agricultural Structures being used for the conduct of agricultural uses provided that:
1. the development meets the criteria of Article X.A. through C.; and,
 2. the development meets the criteria of Article VI.M. and Article VI.N.
- G. Any applicant who meets the criteria of Article X.A. through C. and Article X.D., E., or F. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage; and,
 2. such construction below the base flood level increases risks to life and property; and,
 3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks, and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- H. Appeal Procedure for Administrative and Variance Appeals
1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
 2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the documents constituting the record of the decision appealed from.
 3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.

4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

ARTICLE XI - ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer, upon identifying a violation, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of:
 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
 3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
 5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

ARTICLE XII - VALIDITY AND SEVERABILITY

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

ARTICLE XIV - DEFINITIONS

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory Structure - a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure.

Adjacent Grade - the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Agricultural Structure - structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

Area of Special Flood Hazard - land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

Base Flood - a flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement - any area of a building that includes a floor that is subgrade (below ground level) on all sides.

Breakaway Wall - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building - see **Structure**.

Certificate of Compliance - a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

Coastal AE Zone - The portion of the Coastal High Hazard Area with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction, and substantial improvements in the Coastal AE Zone.

Coastal High Hazard Area - An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal High Hazard Areas are designated as Zone VE and Zone AE bounded by a line labeled “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM).

Code Enforcement Officer - a person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws.

Conditional Use - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

Containment Wall - a wall surrounding all sides of an above ground tank to contain any spills or leaks.

Development - any manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

Elevated Building - a non-basement building that is:

- a. built, in the case of a building in Zones A or AE, so that the top of the elevated floor, or in the case of a building in Zone VE or Coastal AE Zone, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, posts, or piers; and,
- b. adequately anchored to not impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.N. In the case of Zone VE and Coastal AE Zone, **Elevated Building** also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.R.3.b.(3).

Elevation Certificate - an official form (FEMA Form FF-206-FY-22-152, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program.

Existing Manufactured Home Park or Subdivision - a manufactured home park or subdivision that was recorded in the deed registry prior to the adoption date of the community’s first floodplain management regulations.

Flood or Flooding -

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study - an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see **Flood Elevation Study**.

Floodplain or Floodprone Area - any land area susceptible to being inundated by water from any source (see **Flood or Flooding**).

Floodplain Management - the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations - zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and contents.

Floodway - see **Regulatory Floodway**.

Floodway Encroachment Lines - the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard - a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use - a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic Structure - any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or,
 2. Directly by the Secretary of the Interior in states without approved programs.

Limit of Moderate Wave Action (LiMWA) - The landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical high tides, storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

Locally Established Datum - for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.N. of this Ordinance.

Manufactured Home - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level - for the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development - all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes but is not limited to: accessory structures as provided for in Article VI.L., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD) - the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and has been called "1929 Mean Sea Level" (MSL).

New Construction - structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

North American Vertical Datum (NAVD) - the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon the vertical data used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound and subsidence, and the increasing use of satellite technology.

100-year flood - see **Base Flood**.

Recreational Vehicle - a vehicle that is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and,
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway -

- a. the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, and,
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine - relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area - see **Area of Special Flood Hazard**.

Start of Construction - the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure - for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Substantial Damage - damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,

- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

Variance - a grant of relief by a community from the terms of a floodplain management regulation.

Violation - the failure of a structure or development to comply with a community's floodplain management regulations.

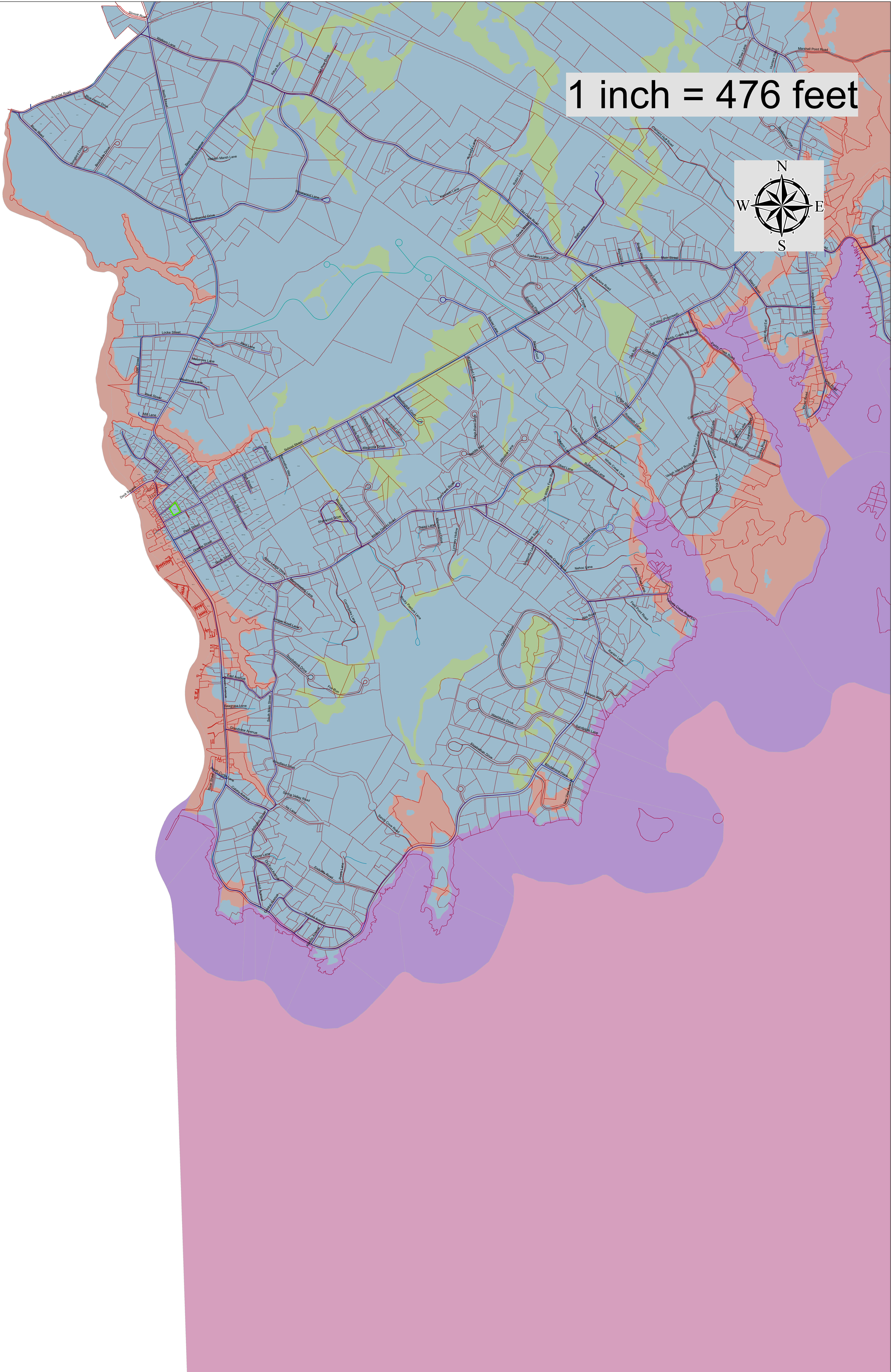
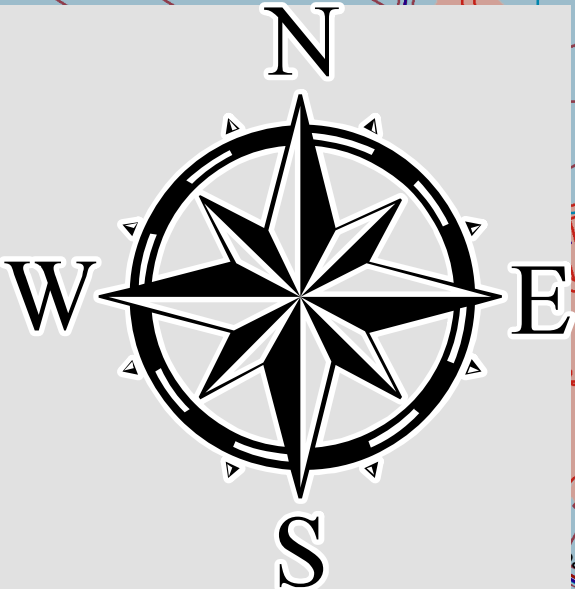
ARTICLE XV - ABROGATION

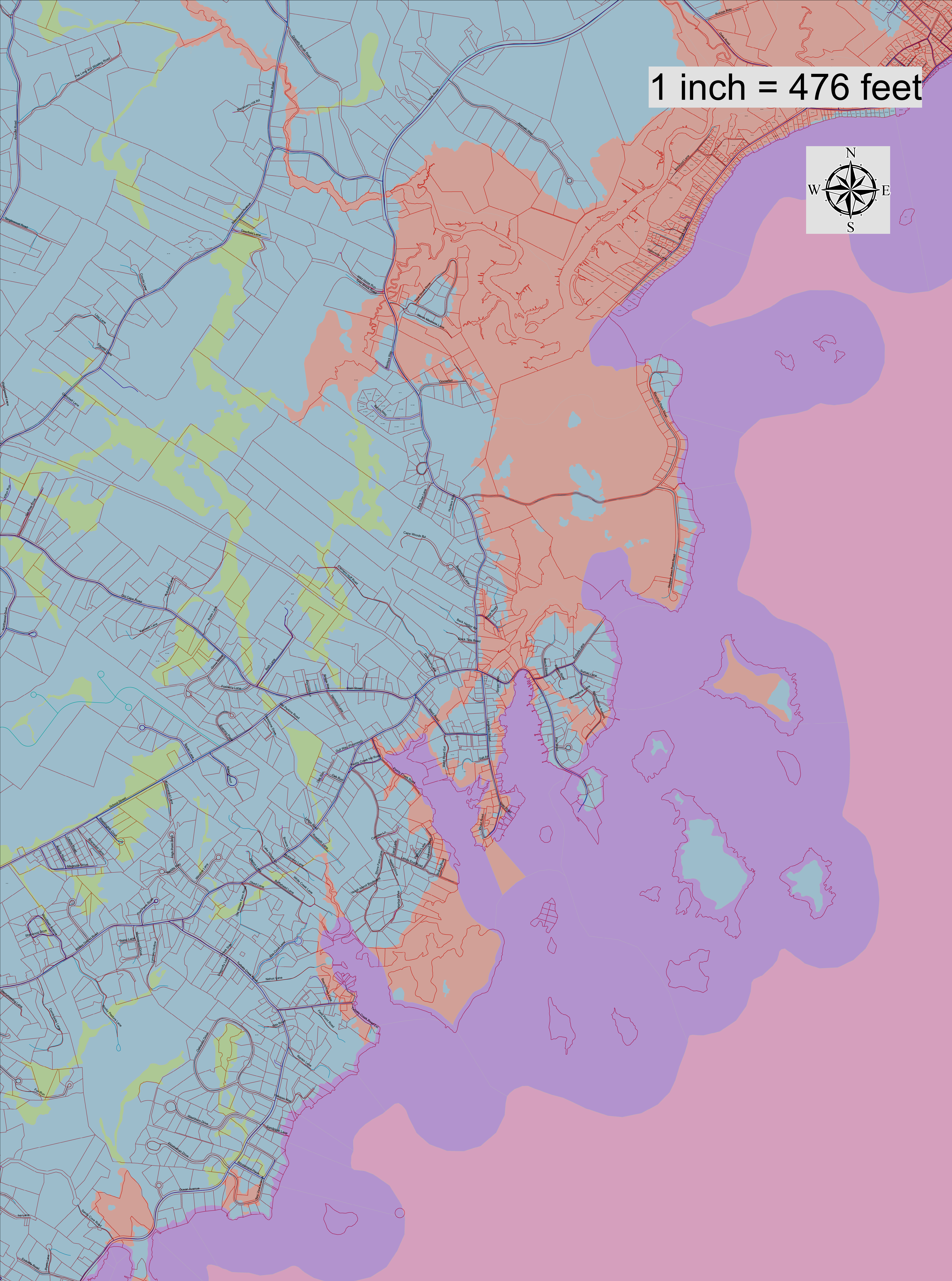
This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

ARTICLE XVI - DISCLAIMER OF LIABILITY

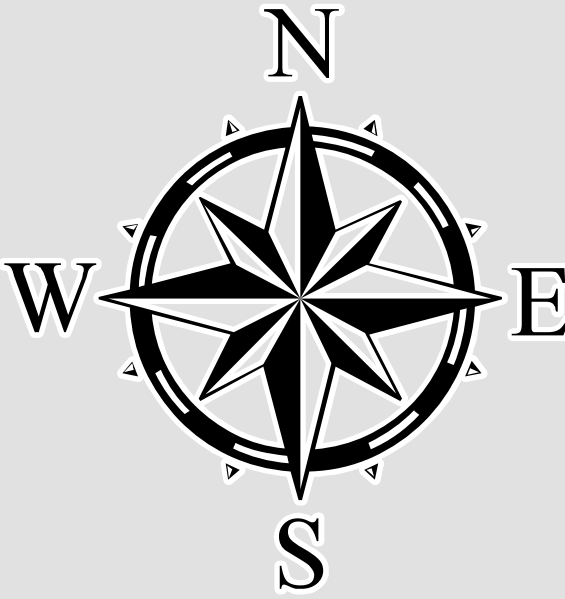
The degree of flood protection required by the ordinance is considered reasonable but does not imply total flood protection.

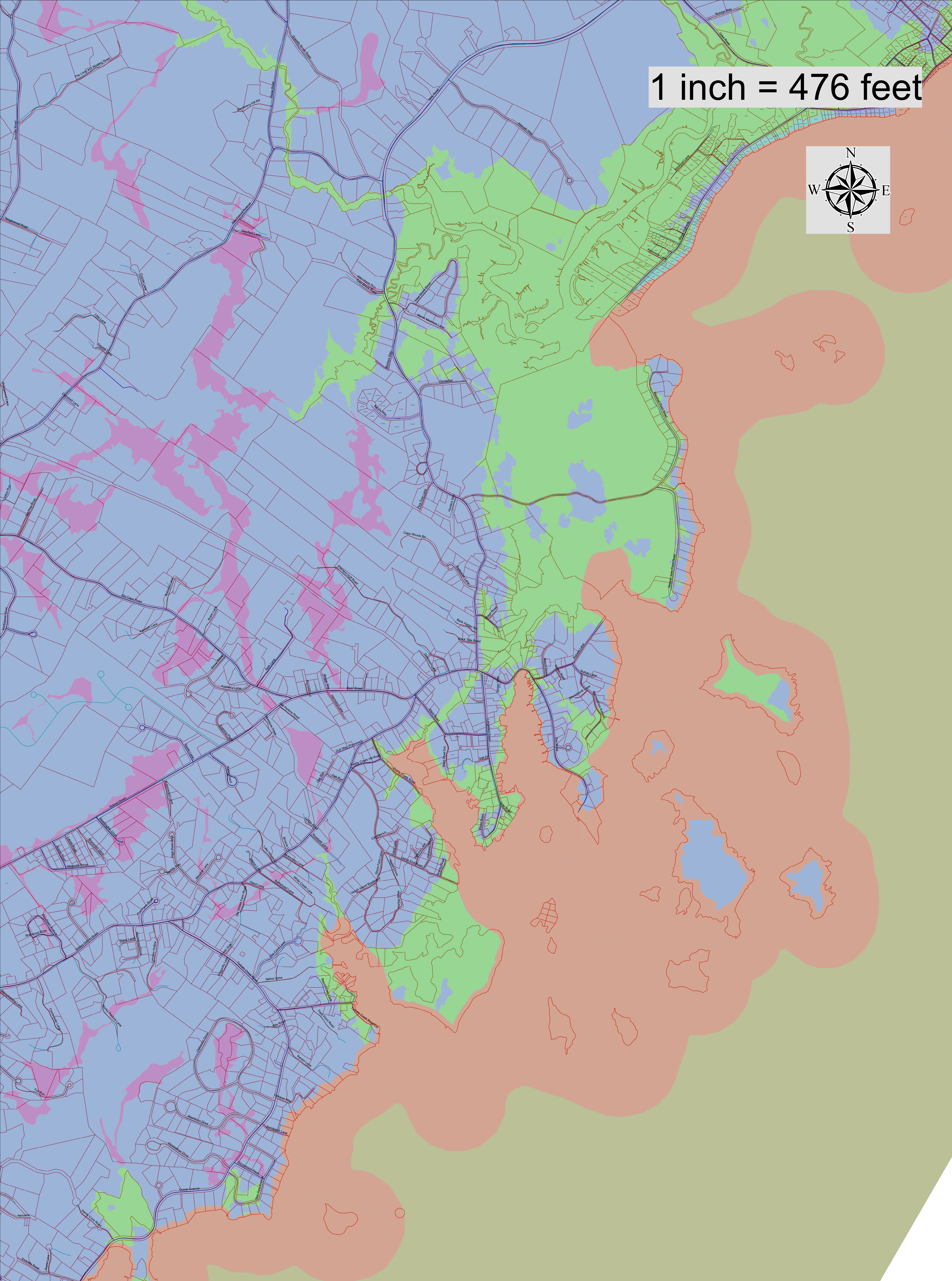
1 inch = 476 feet



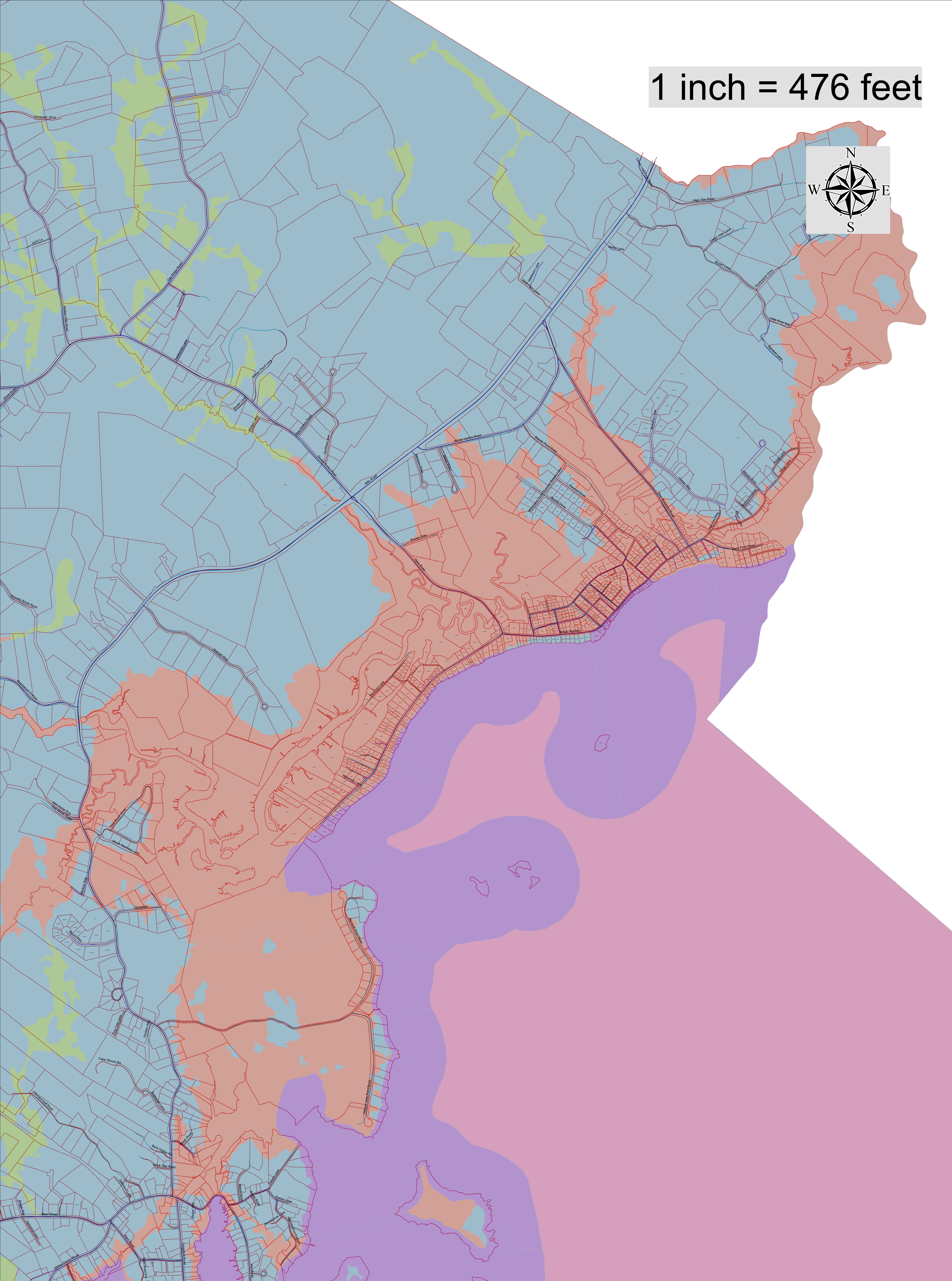
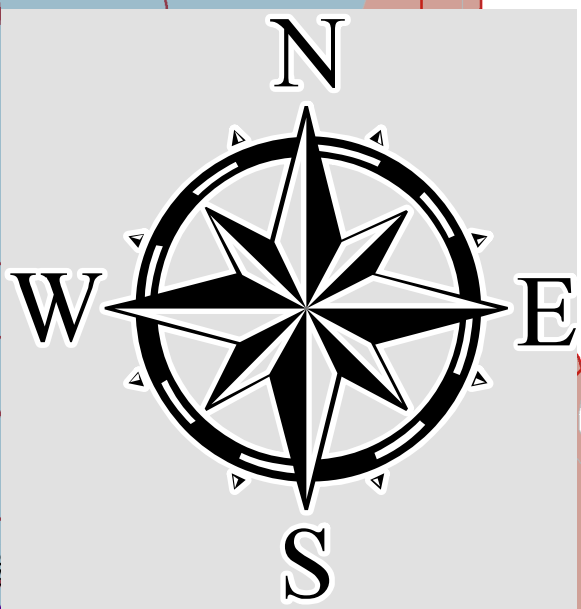


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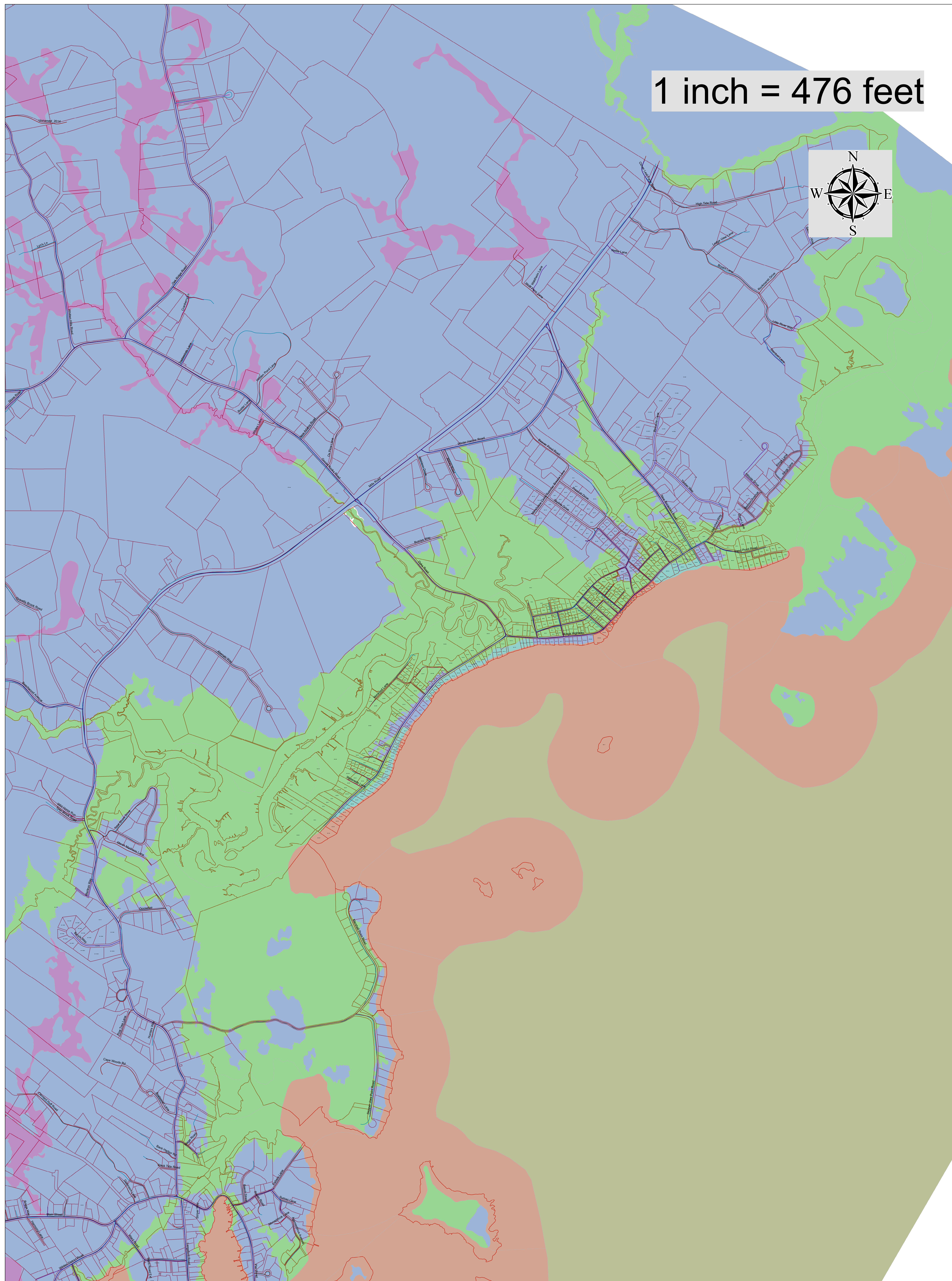
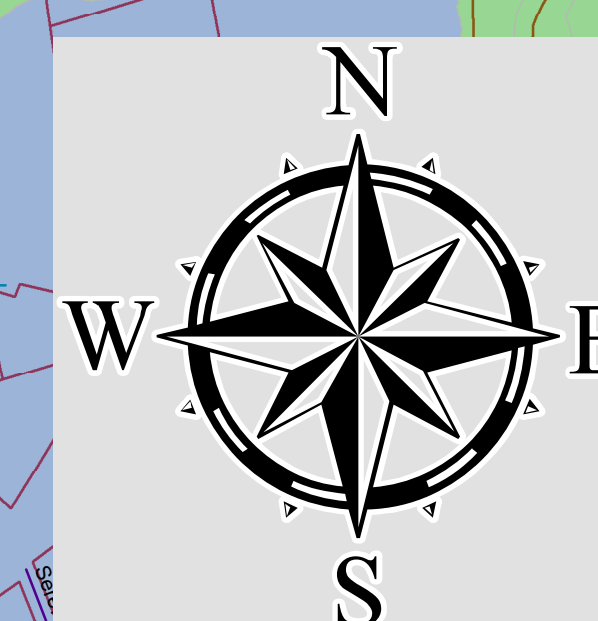




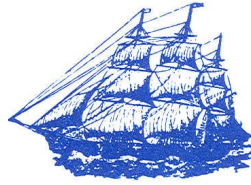
1 inch = 476 feet



1 inch = 476 feet



AGENDA ITEM DIVIDER



KENNEBUNKPORT WASTEWATER DEPARTMENT

MEMORANDUM

Dt: February 1, 2024
To: Laurie Smith, Town Manager
Fr: Eric Labelle, P.E., Town Engineer/Deputy PW Director
Re: Aeration Tank Mixer Bridges

In the FY24 Capital Improvement Plan, \$60,000 was approved to design, manufacture, and install the Mixer Bridges. We felt the most cost-effective method to approach the project was to utilize a design-build approach. This would require the fabricator to manage the bridges' structural design, fabrications, and crane installation.

In the fall of 2023, I approached a reputable local vendor, Malings Welding Service, to design, manufacture, and install the bridges. Nate Malings, the owner, conducted multiple visits, contracted with his structural engineer, and has provided us with "turnkey" pricing to complete the manufacturing and installation of three bridges across the aeration tanks. Mr. Malings also hired a professional engineer to complete the design of the bridges at a cost of \$3,000.

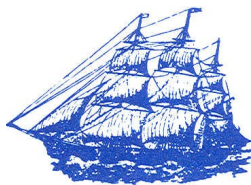
While we are installing 2 mixers into the anoxic zones, we anticipate creating a third anoxic zone in the third aeration tank in the future. The price provided would allow us to build and install all three bridges within our budget with an economy of scale. Mr. Malings has provided us with a cost of \$57,703.02 to complete the project, including manufacturing and installation. This cost includes the already completed design work.

We have conferred with Apex Construction, our pump station and dewatering contractor, and they confirmed the pricing was competitive. Apex's preliminary estimates exceeded the proposed price.

Recommendation

We are requesting to sole source Malings Welding Services and authorize them to complete the manufacturing and installation of the bridges at a cost of \$57,703.02.

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE

*– INCORPORATED 1653 –***MEMORANDUM****To:** Selectboard**Fr:** Laurie Smith, Town Manager
Craig Sanford, Police Chief
John Everett, Fire Chief
Chris Simeoni, Director of Public Works**Re:** Response to January 13, 2024, Storm

On January 10th and 13th, severe weather events brought historic flooding to the Maine coast, destroying homes, roads, buildings, docks, and iconic landmarks. Winds, with gusts up to 60 mph, combined with torrential rain and an astronomically high tide, caused significant flooding, inundating low-lying areas. In Portland, the high tide broke a record set back in 1978. The National Weather Service in Gray recorded a 14.57 feet level at noon on the 13th, above the record of 14.17 feet set more than four decades ago and higher than expected. Another contributing factor was the southeast nature of the storm, which has become more prevalent in the last few years. We have reported \$850,000 of storm damage to the Main State Emergency Management Agency. At this juncture, the State is awaiting word from the federal government regarding the declaration of assistance to respond to these January events.

In Kennebunkport, we saw inland flooding from the rain event in the morning and 17 streets impacted by high water. Most locations were known entities from previous storm events, but some were new to our list, including Langsford Road, New Biddeford Road, and Cape Porpoise Square. Even streets that are often affected by nuisance flooding were under levels of water previously unseen. One of the worst neighborhoods impacted was the West End of King's Highway, which took days to alleviate. The storm surge worsened the effects of flooding by destroying portions of Ocean Avenue, including areas of sidewalks. Although we certainly expected some flooding as usual, weather forecasts did not capture the severity of the storm surge and unexpected substantial rainfall (3.1 inches) we received in a short period of time. In addition to the excessive rainfall and snow melt, the ground was already saturated and frozen leading to excessive run-off that overwhelmed what drainage infrastructure we have in town.

Our public safety team has evaluated our response to this event and developed protocol recommendations for the future. We have broken this analysis into strengths, challenges, and recommendations:

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Strengths:

- Deployment of all traffic safety barricades on Friday prior to the storm. Public Works crews came in ahead of high tide the evening before the worst of the storm to monitor roadways and set up barricades.
- Timely response of Public Works Crews on Saturday ahead of high tide. They responded by erecting barricades and responding to other calls associated with the storm.
- The EMA Officer was able to procure 20 jersey barriers to help block off damaged areas and hazards from the Maine Turnpike Authority. Public works deployed these immediately upon receipt. The suggestion would be to purchase these for future use.
- Debris was moved, and roads were opened promptly to the extent we were able to other than severely damaged areas.
- The Fire Department managed a large number of calls for service in a short time period.
- The on-call crew was engaged and able to serve in a variety of roles.
- Police had five officers available to assist, including the Chief, Deputy Chief, and other patrol officers.
- Wastewater staff were available and able to respond to a large number of alarms and challenges at the plant.

Challenges:

- The weather reporting did not seem to come close to what happened. While the reporting was not the reason for all the difficulties encountered, it was a factor in our response.
- Lack of jersey barriers to have at our disposal for immediate deployment during the storm.
- Public Works did have enough barricades available for the event. However, the motoring public drove around and/or moved these on multiple occasions, exposing themselves to hazards. Multiple police units ended up manning these locations to prevent the motoring public from going around and exposing themselves to hazards.
- We experienced “storm tourism,” and the public was visiting areas that were unsafe, leading our staff to spend time removing them wherever possible.
- King’s Highway flooding at the west end of GRB. In years past, this subsided within a quicker time frame. However, due to ground saturation, frost, lack of good drainage, and residential sump pumps exacerbating the problem, the water would not subside.
- Public Works does not own or have at its disposal a diesel-driven trash pump for situations like this. Upon calling around, attempts to rent one from multiple rental companies were met with no availability. All we were able to secure were small gasoline-driven trash pumps.

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- Fire quickly became overwhelmed with emergency calls for service and non-emergent flooded basement calls. For all emergency calls, a crew was dispatched immediately. No true emergency calls were delayed due to the number of non-emergent calls received.
- Dispatch became overwhelmed as well with the volume of calls.
- The number of requests to pump out basements stretched the crew thin, putting them in dangerous situations.
- Impossible to manage hydraulic capacity in wastewater system due to saturated ground, elevated rain levels, and inflow infiltration (I & I) –sump pump connections to the system.
- Unprecedented alarms from flooded grinder pumps in the sewer system.

Recommendations for the future:

- Consider issuing a notice to evacuate hazardous/flooded locations in town that have a history of being isolated during storms of this magnitude. The alert would be determined on information from the National Weather Service.
- Consider purchasing additional message boards to deploy before the storm to convey various messages.
- Call in additional fire and dispatch personnel in advance of the storm. Have fire crews stationed with equipment in advance.
- Provide a storm refuge while people wait out flooding events.
- Deploy jersey barriers in hard closure locations in advance of the storm and after notice to evacuate to free up personnel (Police/Fire) from having to monitor and enforce these locations.
- Consider the purchase of a diesel-driven trash pump to deploy after a storm to help evacuate water from flooded streets after a storm.
- Consider capital drainage projects for problem flooding areas to help with evacuating water from flooded streets.
- Staff dispatch and town office to answer increased phone calls outside of routine business hours to answer and prioritize requests for service.
- Create a nuisance flooding alert program and improve communication during storm events.
- Educate the public regarding needed preparation and their role during emergencies.
- Establish a new pump-out policy for the fire department that safeguards crews and sets public expectations in advance.
- Communicate and prepare personnel at all levels regarding the town's protocols, policies, and response during storm events.
- Focus on resolving I & I issues, including sump pumps.

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These recommendations come with cost, whether those be in capital expense, or through additional hours required for personnel. In the future, should we implement these recommendations, there is no guarantee that we won't expend funds for storms that are lesser in nature than anticipated. The same concern will be said for evacuation protocols. The public may choose to ignore our alert system and make their own choices to stay in their homes. Ultimately, public safety's mission is to safeguard lives first and property second. These recommendations will not entirely prevent future damage to private and public property.

Lastly, please find attached a list of road, property, and infrastructure issues identified in this most recent storm. Some of these issues are on private roads and property, which are highlighted in yellow. The wastewater infrastructure has multiple issues, which are noted below in blue. We have taken our first attempt to prioritize them based on three categories, including life safety (is this the only access point), frequency (does this street/area flood frequently), and population impact (how many populated buildings or businesses are impacted). Each of these categories can change based on our seasonal population and other impacting factors, such as power availability. This is not a perfect rating system but rather an attempt to begin the process of prioritizing which projects to attack first.

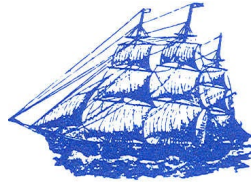
Yellow = Private
 1 = Low
 2 = Medium
 3 = High

STORM SURGE CONCERNS

<u>Road/Property</u>	<u>Issue</u>	<u>Life Safety Priority</u>	<u>Frequency</u>	<u>Population Impact</u>	<u>Total Score</u>
Dyke Road	flooding	2	3	3	8
Pier Road - Head of the Harbor	flooding	2	3	3	8
Ocean Avenue- Green St. to Chick's Creek	flooding	2	3	2	7
Ocean Avenue- Nonantum to Colony Ave.	flooding	2	3	2	7
Ocean Avenue- St. Ann's	flooding	2	3	2	7
Ocean Avenue- Wandby Beach	flooding/safety	2	3	2	7
New Biddeford Road	flooding	2	1	3	6
Dock Square	flooding	1	3	2	6
Ocean Avenue- Dock Square	flooding/safety	1	3	2	6
Langsford Road	flooding	2	1	2	5
Beach Private Roads	flooding	1	2	2	5
Cape Square	flooding	1	1	3	5
Kings Highway- East Bridge	flooding	1	2	2	5
Kings Highway- West	flooding	1	1	3	5
Parson's Field	flooding	1	3	1	5
Summit Avenue	drainage	1	2	2	5
AWOL Maine Street	flooding	1	2	1	4
Bowsprit Subdivision	drainage	1	2	1	4
Eel Bridge Lane	flooding	1	2	1	4
Fishers Lane	flooding	1	2	1	4
Marshall Point	flooding	1	1	2	4
Old Fort Point	drainage	1	2	1	4
Parks and Recreation Building	flooding	1	2	1	4
Skipper Joe's Point Road	flooding	1	2	1	4
Tidal Shore Drive	flooding	1	2	1	4
Towne Street	flooding	1	1	2	4
Recreation Way	drainage	1	2	1	4
Prescott Drive	use of private roads	1	2	0	3
Turbats Creek	flooding	1	1	1	3
Union Square	flooding	1	1	1	3

WASTEWATER INFRASTRUCTURE

AGENDA ITEM DIVIDER



TOWN OF KENNEBUNKPORT, MAINE

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Memorandum

To: Board of Selectmen and Laurie Smith, Town Manager
Fr: Yanina Nickless, Director of Support Services
Re: Dock Square Parking Lot fees
Dt: February 1, 2024

Per the Town Ordinance, the Board reviews and sets parking fees and hours of operation for the Dock Square municipal parking lot every year. The fee was \$4.00 / hour for the past few years. The Board discussed increasing it to \$5/hour for the summer of 2024 while keeping a 5-hour allowance of free parking for the Kennebunkport residents – this is implemented through the real estate property taxpayer voucher system, also known as the chaser tickets program.

This program is described in our ordinances in *Part I: General Ordinances, Chapter 160 Traffic and Vehicles, Article I Dock Square Shuttle and Parking, §160-4 Fee Structure, C: Real estate property taxpayer voucher system*. “The Board of Selectmen shall provide for the distribution of five tickets/vouchers to each distinct real estate property taxpayer that will enable each distinct real estate property taxpayer one hour of parking per ticket/voucher at the Dock Square Parking Lot; such tickets/vouchers will be valid only in the year that they are issued.”

The staff recommends the Board consider whether the continuation of this program benefits the town’s operations. It is labor intensive for the Town Clerk’s office due to an extensive process: Kennebunkport residents receive an application in the mail, which they can fill out and return to the Town Clerk. Then, town employees mail out five chaser tickets per household. In the calendar year 2023, the department issued 7,675 chaser tickets, and only 20% were used.

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