

MINUTES

NEW DURHAM PLANNING BOARD

JANUARY 8, 2008

Chair Cathy Orlowicz called the meeting to order at 6:31 PM.

Roll Call: Cathy Orlowicz (Chair), Bob Craycraft (Vice-Chair), Peter Rhoades (Selectmen's Representative), Paul Raslavicus. **Excused:** Don Voltz, Paddy McHale (Alternate). **Unexcused:** George Gale (Alternate), Chris LaPierre (Alternate).

Others Present: Dennis Neyland, Ron Gehl, Mary McHale, Susan Raslavicus, Marcia Clark, E. Camire, Jen Clay, Kathlyn G. Box, Michael Gelinis, David Bickford, David Lindberg, Fred Quimby, Cynthia Quimby, Gigi Giambanco.

The Board agreed by consensus to begin with the working session on Used Materials Storage because the posting for the formal Public Hearing stated the hearings would start at 7 PM.

Used Materials Storage: The Board reviewed the draft new ordinance as it was prepared by the Board of Selectmen. Paul Raslavicus expressed concern that the draft did not deal with old cars. Cathy Orlowicz pointed out that issue is already addressed in state law.

Ms. Orlowicz presented her thoughts for amendments to the draft ordinance with a written revision. The Board agreed by consensus to add her proposed item "iv" which states, "The use of the premises is in compliance with all other New Durham Zoning Land Use Ordinances and Regulations." It also agreed to add item v. which says, "The outdoor storage of machinery junk, or display of used, discarded, dismantled or salvaged items and materials located or maintained in violation of the provisions of this ordinance is hereby declared nuisance."

Also by consensus the Board agreed to add "machinery junk" to the list of controlled items, and to strike item iii from the original draft. This item would have prohibited any of the otherwise allowable junk from "required yard areas."

Finally, the Board agreed to add the following paragraph describing enforcement procedures at the end of the draft ordinance:

"Enforcement: The local governing body or other enforcement official of the Town may impose civil penalties for each day upon any person

whose land is deemed a nuisance pursuant to this Ordinance, until such time as the nuisance is removed or abated to the satisfaction of the governing board or is in compliance with the provisions of this Ordinance. The building inspector or other local official with the authority to enforce the provisions of this section may commence an action to collect the civil penalties in the district court. Imposition of civil penalties under this section shall not relieve the owner of any requirement to comply with the provisions of this Ordinance, nor shall it preclude the imposition of further actions or remedies under this Ordinance. The proceeds from the assessment of civil penalties under this Ordinance shall be for the use of the Town.”

Chair Orlowicz opened the issue for Public Hearing at 7 PM. David Bickford asked that the allowable space for storing used materials be changed from 20% of the floor area of the principal building on the lot to a standard 500 square feet. He also suggested that the ordinance only needed to address the issue of used materials in view from the roads and not on land that is sheltered from public view. Peter Rhoades noted that the ordinance would be enforced based on complaints and he and Selectman Ron Gehl did not think there would be complaints about hidden used materials.

David Lindberg expressed concern about how the ordinance would be enforced because one person’s junk may not be junk to another person, and because the Building Inspector/Code Enforcement Officer does not have time to add another responsibility. Cathy Orlowicz closed the public hearing at 7:10 PM.

Peter Rhoades suggested that the Board send the proposed ordinance to Town Counsel as written and see if any of the expressed concerns seem problematical to him. The Board agreed to this course of action by consensus and then to hold a first public hearing on the ordinance on Tuesday, January 22.

Penalties and Fines: The Board reviewed the draft ordinance amendment. David Allen informed the Board that Town Counsel John Teague had reviewed the draft and had no concerns. Chair Orlowicz opened the proposal for Public Hearing at 7 PM. There were no comments from the public. She closed the Public Hearing at 7:01 PM.

Bob Craycraft moved to place the proposed amendment to Article XVI: Penalties on the ballot for a vote of the Town Meeting. Peter Rhoades seconded. Unanimous with no abstentions.

6:45 PM: Amendments to Open Space Conservation Subdivision: The Board reviewed the draft amendments to the Open Space Conservation Subdivision Article. Two changes were considered. Paul Raslavicus wanted to be sure the language was

clear that any proposed yield plan must comply with all parts of this ordinance and any other applicable requirements. The Board agreed by consensus to revise Section D3: Residential Dwelling Units as follows:

The total number of residential units allowable within an Open Space Conservation Subdivision shall not exceed the number of units that would otherwise be allowed in the existing zoning district using conventional subdivision design and meeting all applicable Town, state, and federal laws, regulations and standards.

Based on the recommendation of John Teague, Town Counsel, the board also agreed by consensus to edit Section G: Application and Review Process as follows:

The application and review process for an Open Space Conservation Subdivision shall be per the Town of New Durham Subdivision Regulations, except as provided herein, but including conforming to the Subdivision Regulations requiring both a preliminary conceptual consultation and a design review phase prior to formal application submittal.

Chair Cathy Orlowicz opened the issue to public input at 7:31 PM. Ron Gehl suggested changing Section D.12.m to read "Existing non-motorized recreational and snowmobile trails." The board agreed to this by consensus. He also suggested changing Section B.13 to refer to trails in a more generic manner. The board also agreed to this by consensus.

Greg Quimby asked about the reference to a wildlife plan. He was told it refers to the Department of Fish and Game Wildlife Plan. Quimby asked if there is a local plan and said there should be. Bob Craycraft indicated that the Conservation Commission is working on one. Chair Orlowicz closed the public input at 7:40 PM.

Bob Craycraft moved to approve the amendments to the Open Space Conservation Subdivision Ordinance with the edits made at this meeting and send the proposal to a 2nd public hearing on Jan 22. Paul Raslavicus seconded. Unanimous with no abstentions.

Steep Slopes Ordinance: The Board reviewed the draft of the Steep Slopes Conservation District ordinance. David Allen reported to the Board that he had discussed the draft ordinance with both William Straub of CMA Engineers, who serves as the Town Engineer, and John Teague of Upton-Hatfield who is the Town Counsel.

Because of the references to driveways in the draft steep slope ordinance, Mr. Teague had reviewed the Town's Driveway regulations. He noted that the driveway regulations cover only that part of the driveway that is within the public road right of way. He said there was no reason to limit the regulations in that way, and that in his

experience the problems with driveways were usually the biggest problems related to steep slopes, and the problems always happened away from the public road. He recommended changing the driveway regulations to cover the entire driveway, and adding a note in the steep slope ordinance that any driveway or other access way must comply with the driveway regulations. The Board agreed by consensus to make these changes in the steep slope ordinance and to take up the Driveway Regulations as soon as they finished working on the Town Ballot.

Mr. Teague also expressed concern about the exemption for impacts less than 500 square feet. However, Mr. Straub felt this was a reasonable exemption and was similar to his experience in many towns. The Board agreed by consensus to leave this item as is.

Bill Straub suggested the Board consider making the ordinance take effect at 17% rather than 15% slope, and cutting off all development at 27-28% instead of allowing it to go to 30%. Julie LaBranche, Senior Planner with the Strafford Regional Planning Council noted that she had used the percentages because they were commonly found in most other steep slope ordinances. The Board discussed the slope percentages for some time and ultimately decided by consensus to leave them as is, and seek additional comment from the experts.

The Board agreed to move the part of Section III that would allow the Planning Board to waive parts of the ordinance once adopted to Section VI which deals with application procedures. A couple of Board members had noted that the Planning board does not have the authority to waive an ordinance once adopted, but it can adjust the application process or requirements.

Julie LaBranche suggested the board should add in an exception for utilities and wireless towers, since they are specifically exempted by state law. Ms. LaBranche also emphasized that the draft ordinance in no way prohibits construction on most steep slopes. Instead it requires the builder to take more extensive action to prevent erosion that would have a negative impact on the quality of downstream waters.

Chair Orlowicz opened the issue to public input at 8:37 PM. Ron Gehl said it was important for people to be clear that most construction would not be impacted by this ordinance and the requirement for a conditional use permit was not very demanding. Mr. Gehl also expressed concern about the accuracy of the map of the town's steep slopes prepared by SRPC. He pointed to some specific locations that were shown as exceeding 30% that he was very sure were closer to 15%. Julie LaBranche said she would have Dale Abbott, the SRPC mapper, make a careful review of the data. Mike Gelinas said he totally supported the ordinance in regard to new subdivisions but thought that existing lots should be mostly exempted from it. He suggested a separate chart in the ordinance for existing lots. David Lindberg said in his role of building

inspector he had seen extensive unnecessary erosion and thought the limits were good, but he worried about some parts of the ordinance being unclear and difficult to enforce.

Ron Gehl said he disagreed strongly with suggestions that it would cost several thousand dollars to apply for a conditional use permit. He noted that a hand held "inclinometer" tool that measures slope—much like a GPS tool—could be purchased for only \$100. In 95% of the applications this tool would be all that was needed.

There being no further public comment, Ms. Orlowicz closed the issue to public input at 9:19 PM.

Bob Craycraft moved to continue the Public Hearing to January 22 at 7 PM. Peter Rhoades seconded. Unanimous with no abstentions.

Conservation Overlay District: The Board reviewed the draft of the proposed Conservation Overlay District Amendment. There was extensive discussion on the density level to require. Eventually the Board agreed by consensus to set the density level at one dwelling per 5 acres.

The Board agreed to specify that applications that include land located in the Conservation Focus Area District should show all water bodies or wetlands that could be affected by activity on the lot.

Chair Orlowicz opened the issue for public hearing at 9:31 PM.

Mike Gelinas said it was his understanding that the Board had decided at its December 18, 2007 meeting that the Forestry, Agricultural and Trails sections of the Steep Slopes ordinance would be copied into the Conservation Focus areas ordinance. He noted that the Forestry and Agricultural sections had been incorporated but not the trails sections. Julie LaBranche pointed out that there were differences between the focus areas and the steep slopes, and there were some particularly sensitive areas in the focus areas that should not have trails. She added that the Natural Heritage Bureau has the authority to require specific kinds of protections for species of special significance. The Board agreed that it had intended to add the trails section and asked that it be added back in.

There being no other public input Ms. Orlowicz closed the public input at 9:39 PM.

The board discussed the question of a 100 foot buffer from perennial streams. Some felt it was unnecessary and already covered by the Water Quality Ordinance passed in 2007. Others argued the need for larger buffers, especially for wildlife. The Board ultimately left the buffer at 100 feet as drafted.

Bob Craycraft moved to schedule the Conservation Focus Area District Ordinance, with the 5 acre density and the addition of the Trails section from the Steep Slope Ordinance, for public hearing on January 22. Peter Rhoades seconded. Unanimous with no abstentions.

The Board agreed without objection to suspend its rule against starting new business after 10 PM.

Storage of Use Materials: The Board reviewed the draft of the proposed Used Materials Storage Amendment. Cathy Orlowicz presented a draft of suggested changes and additions to the draft Amendment. The Board discussed the proposals. Ms. Orlowicz opened the issue for public input at 9:47 PM.

David Bickford expressed concern that the first condition of the Regulation section was difficult to measure and enforce and not the appropriate way to decide if the ordinance should apply. He also said he thought the focus should be on materials that can be seen from the road, and should exclude materials that might be stored in a location that is not visible to the general public.

Chair Orlowicz closed the public input at 7:52 PM.

The Board agreed to many of Ms. Orlowicz' suggestions, including adding the term "machinery junk" to the list of regulated items; adding items iv and v to the list of conditions; changing the word xxx to "Exemption"; and adding a section on Enforcement.

Bob Craycraft moved to schedule the Storage of Used Materials Amendment, as amended this evening, to public hearing on Tuesday, January 22. Paul Raslavicus seconded. Unanimous with no abstentions.

The Board agreed to schedule a workshop session on Tuesday, January 15 to further review the proposed amendments, consider outstanding budget issues, and respond to a letter from Mr. Stan Kuzia.

Paul Raslavicus moved to adjourn at 10:30 PM. Peter Rhoades seconded. Unanimous with no abstentions.

Respectfully submitted,

David Allen
Land Use Administrative Assistant
Minutes Approved 2/19/2008