

# DRAFT MINUTES

## NEW DURHAM PLANNING BOARD

### MAY 15, 2007

**Call to Order:** Chairperson Cathy Orlowicz called the meeting to order at 7:12 PM.

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

**Public Input:** Cathy Orlowicz asked if there was any one in the audience who wanted to give public input on an issue that was not on the agenda. There was none.

**Conceptual Discussion, Mike Gelinis:** Chair Cathy Orlowicz asked if any board members had a conflict of interest in sitting on an application from Mike Gelinis. There were none. David Allen pointed out that all conceptual discussions are non-binding.

Mike Gelinis explained to the Board that he would like to subdivide the existing house and buildings off of a parcel of property that he owns and which is about 75 acres in size. He asked for guidance on the process.

He asked if the contour measurements that were completed by the septic designer could be used in the application. Bob Craycraft informed him that the plan for the subdivision required the signature of a licensed surveyor. Don Voltz noted that he would not have to show contours on the entire 75 acres, but would need to show all detail on enough land on both the new and the remainder lot to demonstrate that the lots meeting requirements in the Zoning Ordinance for lot size. Cathy Orlowicz reminded him he would need to file a written request for waivers.

**Natural Resources Inventory:** David Allen reported that he was working with the Conservation Commission to pull together in one document the work the Commission has done over the last few years on a natural resources inventory.

**Letter to Conservation Commission:** Bob Craycraft moved to send a letter to the Conservation Commission inviting their input on resources to protect in the zoning process, and inviting them to attend Planning Board work sessions on the ordinance. George Gale seconded. Unanimous with no abstentions.

**Zoning Districts:** David Allen introduced Julie LaBranche, Senior Planner from the Strafford Regional Planning Council. He noted that he and Ms. LaBranche had

**PLANNING BOARD DRAFT  
MINUTES OF MAY 15, 2007**

exchanged emails while planning for this part of the meeting. Don Voltz indicated concern about not having seen them emails. He noted that the Board was beginning a major project and was worried that email was being exchanged without the Board's knowledge. Allen assured him the emails related only to the process of working with the Board and had nothing to do with the content of Zoning District design.

Julie LaBranche facilitated a dialogue amongst Board members about the criteria for identifying areas of town that should be protected from development and areas where future residential or commercial development should focus. This framework of areas to protect and to develop was part of the orientation she had given the Board at its April workshop meeting. Board members identified the following criteria:

<b>Criteria for selecting areas of Town for Protection</b>	<b>Criteria for Selecting areas of Town for Commercial or Residential Development</b>
The quality and the quantity of New Durham's water resources (e.g., Merrymeeting Lake)	Commercial development
Areas where development would be scattered or premature	Close to current high traffic areas, especially Route 11
Forested areas of town (e.g., Cooper Cedar Woods, Jennings Woods)	"Downtown" and town center
The historic center of town	Infill areas, or areas that are gaps between existing development
Operating farms and good agricultural soils	Look for opportunities for flexibility
Wildlife habitat	Plan for a range of incomes and housing costs, including housing affordable for workforce
Wildlife corridors	
Recreation resources (e.g., snowmobile trails)	
Areas where the visual cost or visual impact of development would be very high	
Steep or rocky slopes	

**PLANNING BOARD DRAFT  
MINUTES OF MAY 15, 2007**

<b>Criteria for selecting areas of Town for Protection</b>	<b>Criteria for Selecting areas of Town for Commercial or Residential Development</b>
Any of the above that connect to similar resources in neighboring towns	
Viewshed	
Wetlands	
Aquifers	
Large open spaces that are unfragmented by development	
Watersheds	
Rural character of Route 11 corridor	
Areas that are close to winding roads or low traffic roads	

Chair Orlowicz expressed concern about identifying areas for development or protection without having full information about their natural resources or limited use. As an example she mentioned that Shirley Forest shows on the Master Plan Map as an area for development but in fact it is a protected property and cannot be developed. Don Voltz agreed saying he could not be sure which properties might be fully available.

David Allen noted that the Master Plan is a broad-brush indication of intent, where as zoning ordinance must be more precise. Julie noted the importance of looking for areas that are suited for growth and currently underutilized, and looking to see if some kinds of additional flexibility in regulation could facilitate development in the appropriate areas. George Gale noted the difference between the Board identifying what is appropriate for growth and the reality of the market at work. The Board cannot control the market. And it is the job of the Board to look toward what will work best for the Town even if it cannot fully control how much the reality will match its ideas over the longer term.

Cathy asked Julie to explain more about grants that might be available to help the Town pay for her assistance. Julie said that the Strafford Regional Planning Council had already received grants from various sources to be used to help pay for work with towns in the region around specific issues such as coastal protection. Parts of her work with New Durham will be able to be paid by these grants. In some cases the town will need to provide matching funds that can often be done with Board member volunteer time and David Allen's staff time.

**PLANNING BOARD DRAFT**  
**MINUTES OF MAY 15, 2007**

Mr. Allen suggested that the list of criteria above should be set up in Town Hall for residents to see and respond to. Ms. LaBranche suggesting using the town website in addition.

Cathy Orlowicz emphasized the importance of tying its design of zoning districts to concrete criteria and information.

Letter to Conservation Commission inviting input

Chair Orlowicz called a 10-minute recess at 8:38 PM. She called the Board back to order at 8:50 PM.

**Impact Fees:** David Allen asked the Board to begin thinking about how they would define “new development” that would be subject to the impact fee, and what situations might trigger a waiver of the fee. There was a consensus among board members that the ordinance should identify the capital items on which an impact fee would be levied. George Gale suggested that the Town Meeting decision to establish a Capital Improvement Subcommittee would be very helpful to the Board’s work on an impact fee.

**Bob Craycraft moved to contract with Bruce Mayberry for up to \$2750 to assist the Board in writing an ordinance for 2008 Town Meeting that would authorize the establishment of an impact fee on new development. Don Voltz seconded. Unanimous.**

Board members discussed a definition of “new development”. George Gale said the crux of it was what was the impact of the construction on the need for services. Board members felt that changing a house from seasonal to year round would probably have an impact, as would the addition of new bedrooms.

Board members felt that housing limited to elderly should probably have the school part of an impact fee waived. Don Voltz pointed out that the elderly use fire and safety services 3 times as much as others, and that should be considered when granting waivers.

Mr. Voltz asked staff to get questions from Bruce Mayberry to Board members at least a week before the meeting so that Board members can work on them in advance.

**Subdivision Regulations:** David Allen said that subdivision regulation revisions were not yet available and he would send them to Board members in a few days.

**Mission:** David Allen recommended that the Board add the Planning Board mission that it agreed upon on April xxx to the Planning Board Rules of Procedure as part 2a, what is there becomes 2b. Cathy Orlowicz read the proposed change as follows:

“The mission of the Town of New Durham Planning Board is to

**PLANNING BOARD DRAFT**  
**MINUTES OF MAY 15, 2007**

- Generate a shared community vision of the future of the Town;
- Encourage--through education, ordinance, regulation, and other means--land uses that help create that vision;
- Foster a well informed and active electorate; and
- Encourage other public and private groups to help create that future.”

Cathy noted it would be added to the agenda for the June 5 regular business meeting.

**Zoning Ordinance:** David Allen asked the Board if anyone knew why the Home Occupation Ordinance and the Flood Plain ordinance were included with the Zoning Ordinance as Appendices instead of a separate stand alone ordinance. Consensus of Board to take it out. Allen

Work Session: Subdivision Regulations: Bob Craycraft noted the need to revise the Subdivision checklist to include items required by the newly adopted Water Quality Ordinance. He said he would provide staff with a list of items to add. Allen asked the status of a checklist if it is part of subdivision regulations or an administrative item. Board said administrative and Board should sign off on it. Also site plan regulations and checklist. And need to finalize Ila checklist.

New/Old Business: Peter Rhoades moved to elect George Gale as a regular Planning Board member to fill the position vacated by Mike Clarke’s resignation; and to appoint Paul Raslavicus as an Alternate member of the Board. Bob Craycraft seconded. Cathy Orlowicz said she would prefer to treat the items as separate motions. Peter agreed to that. Bob Craycraft agreed to second that change.

Don Voltz said he saw no reason to rush into appointing an alternate to fill the vacant position. Leaving the Board at 4 members means the Board will need 3 members to pass anything that would prevent the Board from rushing in to any decisions. Bob Craycraft said he disagreed. He pointed out that George had been an alternate for 6 years and had been very active during that time, including doing research on issues before the Board. Skip Fadden, resident, pointed out that many people had complained about the difficulty in getting residents to serve on town boards, and it would send the wrong message to deny a person who volunteers the opportunity to serve.

Chair Orlowicz declared that it had always been Board practice that only elected and Selectmen appointed members of the Board would vote and George Gale, as an alternate would not vote. Peter Rhoades said his understanding was that an alternate should sit for any vote when there is not a full complement of board members. He requested that the Board take action tonight and then rescind the action if it turns out there is a legal problem in Mr. Gale voting. Ms. Orlowicz said if there was any doubt about the law she would wait until the question was resolved before having the Board vote on it.

George Gale said he was sure the statute said the Chair must appoint an alternate if a

**PLANNING BOARD DRAFT**  
**MINUTES OF MAY 15, 2007**

position was vacant. Chair Orlowicz said there would be no more discussion on the issue. Don Voltz said that since there was disagreement on a legal matter the Board should wait until it has a legal opinion.

David Allen said he had expected this issue might come up and he had checked with a Staff Attorney at the Local Government Center. Paul Sanderson, the attorney, said that RSA 666:12 said the "Chair shall" appoint an alternate when there is a vacancy. He said whenever the status say "shall" there is not a choice. Allen reported that Sanderson also said there was nothing in the statutes that mentioned any exceptions to that rule. RSA xxx says that when there is a vacancy in a position (not just a temporary vacancy) the alternate to fill that position will be elected by the entire board. Sanderson said that when an alternate sits for a temporary vacancy they take on all powers and responsibilities of an elected Board member. Allen reported that Sanderson had said he knew of some situations similar to the current New Durham situation in which the alternate had recused himself from such a vote.

Don Voltz read the language of 67:12 and said "remaining board members" means those who were elected by the public. Allen said he had specifically asked the attorney if "remaining board members" included the alternate sitting temporarily and that Sanderson had said that was his reading of the law. Don said it has been Board practice to have the question and answer in writing when there are legal questions. He said the Town's definition of board members is elected board members, not including alternates.

Cathy Orlowicz said in her experience with the New Durham Planning Board alternates had not been allowed to vote on the filling of vacancies. She said alternates did not participate in the vote to replace Brian Chasse. Since Mr. Sanderson's interpretation would change practice she wants to see it in writing before the Board takes any action on the motion.

After extensive and heated discussion, Bob Craycraft called for a vote on the motion to elect George Gale to fill the elected position vacated by Mike Clarke's resignation. Don Voltz asked if only elected members would vote on the motion. Chair Orlowicz said that was the way she understood it but she wanted to table the vote until the Board has information from legal counsel. Bob said he wanted to have the vote with the four elected members. Cathy agreed to call the vote:

Peter Rhoades	yes
Don Voltz	no
Bob Craycraft	yes
Cathy Orlowicz	no

Chair Orlowicz announced that with a tie vote the motion failed.

Bob Craycraft asked Cathy and Don why they voted against George. Cathy said she voted against him based on the fact that after she was elected chair at the April x

**PLANNING BOARD DRAFT**  
**MINUTES OF MAY 15, 2007**

meeting George had said he did not know if he could continue to work with the Board with her as chair. Also he has made it known that he has a bias about some members of the Board. She said she was looking for a board that can reduce the animosity and contention that goes on. Don Voltz said that Mr. Gale had personally attacked him in the past that helped create the animosity and tension.

Peter Rhoades asked Ms. Orlowicz if the Board received a written statement from Mr. Sanderson stating the position that Mr. Allen had reported, would she support a revote with the alternate voting. Cathy said she would be working with Mr. Allen to get written clarification on the legal questions and would proceed accordingly.

Cathy Orlowicz asked the Board to vote on the second part of Peter Rhoades' motion to appoint Paul Raslavicus as an alternate member of the Board. Bob Craycraft asked Mr. Raslavicus to tell the Board some of his experience. He said he had worked in a number of situations in the medical industry that involved strategic and long range planning and he now had time to give to the Town. Unanimous with no abstentions. Ms. Orlowicz said she would need to check the records to find the ending date for Mr. Raslavicus' term.

George Gale welcomed Paul Raslavicus to the Board. Mr. Gale said he felt the large workload of critical issues before the board made it really important to have members with experience and knowledge of planning and the working of planning boards. He said the reason he had not supported Ms. Orlowicz for chair was because she lacked experience working on major subdivisions and other key issues before the Board and he wished her great success now that she was elected. He said he had had strong differences of opinion with Mr. Voltz on policy issues but had never attacked him on personal grounds.

Peter Rhoades asked for clarification on how the Board would get written legal advice. Cathy said she would work with David Allen

Minutes: Bob Craycraft asked to hold the April 3 minutes until the June board meeting to get clarification on Ron Gehl's request to True Value Homes, LLC for changes in the area set aside for septic leach field on their application.

Peter Rhoades moved to adjourn at 10:22 PM. Don Voltz seconded. Unanimous.

Respectfully submitted,

David Allen,  
Land Use Administrative Assistant

A video recording of this meeting is on file with the Office of Town Clerk. It is available for public viewing during normal business hours, and will be retained in accordance with the New Hampshire Municipal Records Board rules established under RSA 33-A:4, or for a minimum of 24 months.
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