

# DRAFT MINUTES

## NEW DURHAM PLANNING BOARD

### JULY 17, 2007

Chairperson Cathy Orlowicz called the meeting to order at 7:05 PM.

Selectman Ron Gehl conducted the swearing in for Paul Raslavicus as an alternate.

**Roll Call:** Cathy Orlowicz (Chair), Bob Craycraft (Vice-Chair), Don Voltz, Peter Rhoades (Selectmen's Representative), George Gale (Alternate), Paul Raslavicus (Alternate), Paul Gelinias, Jr. (Alternate)

**Others Present:** Bob Snow, David Lindberg, Duane Armstrong, Thomas Beeler, Marcia Clark, John Michaud, Dennis Gagne, Bill Malay, Mike Gelinias, David Bickford

**Public Input:** Chair Cathy Orlowicz asked if there was any public input. There was none.

**Recreational Vehicles and Campers:** Chair Orlowicz introduced Bob Snow. Mr. Snow had contacted the Planning Board and asked to present concerns to the board about the use of recreational vehicles and campers on residential lots. He expressed concern that the problem was growing and that it could affect property values, and lead to septic contamination of Merrymeeting Lake. Mr. Snow distributed copies of a draft ordinance that would restrict the use of recreational vehicles and campers as additional living space on a lot. His draft requires a permit and allows 14 days of use, and includes fines and enforcement mechanisms.

Peter Rhoades asked how the Code Enforcement Officer could tell by sight if a recreational vehicle or camper was being used. Mr. Snow said that wires and pipes connecting the camper to utilities were obviously visible in vehicles in use. Chair Orlowicz thanked Mr. Snow for his presentation and said the Planning Board would decide how to act on his proposal and would get back to him and inform him of the process.

**Protecting Forestry:** Chair Orlowicz then invited Mike Gelinias to explain his concerns related to forestry. Mr. Gelinias had come to a previous Planning Board meeting and requested that the Board make amendments to the Water Quality Ordinance to ensure that forestry could be continued on subdivided lots.

Mr. Gelinis suggested that the Planning Board adopt a statement of purpose related to forestry committing the board to support and encourage the continuation of forestry growth, management and harvest. He said he was afraid the Water Quality Protection Ordinance would “finish” forestry in New Durham.

He asked the Board to eliminate no cut areas from the ordinance, and to totally exempt forestry from any regulation or limitation by the ordinance. He suggested that the point system the state had adopted in the revised New Hampshire Shoreland Protection Act was a better tool for managing forestry near water resources than the previous rule of cutting no more than 50% of the timber over a 20 year period.

Mr. Gelinis said he had also read the New Durham Open Space Conservation Subdivision Ordinance very carefully and he was concerned that it could lead to permanently removing a great deal of the town’s forests from forestry uses. He also said there seemed to be a contradiction between the section of the New Durham Zoning Ordinance that allows poorly drained soils to satisfy up to 25% of the square footage requirement for a lot and the soil charts in the appendices which do not list all of the poorly drained soil types. Paul Gelinis noted that he had seen the same problem in reviewing the Zoning Ordinance.

David Allen acknowledged that there were some errors in the recompiling of the ordinance, and asked Paul Gelinis to provide him with written information about the errors he found. Allen said he would make corrections where no policy issues were involved and bring any policy questions to the attention of the Board.

Bob Craycraft said that he had joined Mike Gelinis for a tour of some of his woodlands recently and it helped him understand some of Mr. Gelinis’ concerns better. He emphasized that the Water Quality Protection Ordinance applies only to small residential lots and he did not think it posed the threat that Mike Gelinis was concerned with. He agreed on the importance of protecting forestry in town. David Allen said he thought it would be helpful to the board to clarify which of Mr. Gelinis’ concerns were already taken care of in the ordinance, which come from unclear or unintended language, and which represented clear differences of opinion from the intentions of the Board in writing the Water Quality Protection Ordinance. He offered to meet with Mike to sort out those issues.

Chair Orlowicz thanked Mike Gelinis for his presentation and said the Planning Board would decide how to act on his proposal and would get back to him and inform him of the process.

**Impact Fee:** Chair Cathy Orlowicz invited Mr. Bruce Mayberry to work with the Board on the Impact Fee Ordinance. Mr. Mayberry had provided material to the Board in advance that identified eight major questions the Board would need to answer in order to draft an Impact Fee ordinance. There was more or less board

discussion on each issue and the following points or comments were made:

1. What kind of age restrictions should qualify an applicant for a waiver from school impact fees?

*Several Board members expressed concern that any age cut-off might be problematic because of changing family structures: remarriage of an older person to a spouse with children, adoption into late marriages, caregiving by grandparents, etc. Mr. Mayberry pointed out that any waivers based on age limitations would have to meet federal and state human rights guidelines.*

2. Can an applicant present their own calculation to the Board and ask for a full or partial waiver?

*Board members questioned Mr. Mayberry on how frequently this occurs when offered. He said his impression was that it was infrequent.*

3. What is the definition of new development that is subject to the impact fee?

*Board members agreed that any first time construction was included. Some board members said new development should include anything that added another living unit, such as turning a single family home into a duplex. People were unsure how to treat in-law apartments. There was considerable discussion of what to do in a situation where someone tears down a small house and replaces it with a big one, or when a significant addition is built onto a house. Board members agreed that changes to a house that added only a few square feet should not trigger an impact fee.*

*Some board members suggested that the trigger for the fee could be an increase in size of a certain number of square feet. For example anything fewer than 150 square feet would not matter, but if it was more than 150 square feet the fee would be charged. Mr. Mayberry suggested in such a case there might be a maximum also—e.g., after 2000 square feet no more fee is added. Another suggestion was to use percentage increases rather than absolute numbers of square feet. For example, no fee if under 10%.*

*Board members discussed the criterion of adding bedrooms but were concerned about the difficulties in defining what is or is not a bedroom.*

4. Should the ordinance give the Town an affirmative obligation to notify people who have paid impact fees if the fee is not used in 6 years and a refund is due?

*George Gale and Cathy Orlovicz felt strongly the Town should be responsible to notify the owner of record at the time a refund would be due according to statute. No one disagreed.*

5. Who will have custody of fees paid to the town?

*This question was not discussed.*

6. Should there be waivers for affordable housing and how should affordable be defined.

*Board members were sympathetic with the idea of waivers for affordable housing but felt it might not be an immediate issue for New Durham. Mayberry suggested that "affordable" might relate to ownership housing below a certain price as well as rental housing. He also suggested that waivers should require permanent affordability, not just affordability for the first buyer. Some felt that if the Board used square footage of a house as the basis for setting the impact fee that would lower the cost for more modest homes and help affordability in that way.*

7. Should a local appeals process be set up, or should any appeals go straight to superior court? What body should handle any local appeals?

*A couple of Board members agreed when Mr. Mayberry said that most Zoning Boards of Adjustment were not equipped to handle appeals related to policy—though they might handle more straightforward questions such as "is this new addition a bedroom or not"?*

8. How much does the board want to specify in this ordinance about how the process for adopting an actual fee schedule will work?

*There was no Board discussion on this question*

9. General Impact Fee Issues

- *Mr. Mayberry was asked what benefits there were for a town to adding extra categories or conditions in order to make the impact fee coverage broader and bring in more income. He said his experience was that there was seldom any significant benefit, and he noted that in the court cases in which he had been involved the courts were interested in the broad policies used to ensure fairness, but did not probe for details or how the ordinance dealt with unusual situations..*
- *Mayberry the ordinance should clearly preserve the board's right to establish off site exaction fees for capital improvements necessitated by a specific development. He said these were often a more precise way to determine road impacts than a more general impact fee, especially in small towns.*
- *Don Voltz noted the need for additional clarification on the timing of assessments and payments.*

Chair Orłowicz thanked Bruce Mayberry for his assistance. The Board agreed it would take up the question again at its August 21 workshop meeting. Board members will send additional comments and questions to David Allen by the August 7 Board meeting. Allen will send them on to Mr. Mayberry who will provide an amended set of working documents to Board members in time to review prior to the August 21 meeting.

**Board Vacancy:** Chair Cathy Orlowicz reported that two people had contacted the Board since the last meeting to indicate their willingness to help the board fill its vacancy by serving on a temporary basis until Town meeting 2008. She introduced Dwayne Armstrong. Mr. Armstrong said he was a 2 year resident of New Durham. He has a Masters Degree in Public Administration from the University of New Hampshire. He completed an internship at the Strafford County Regional Planning Commission as part of his course work. His internship project made him very familiar with the town ordinances in Strafford County.

In response to questions Mr. Armstrong said he was particularly interested in the longer term impacts of the Board's work because he plans to be a long time resident and wants the town to maintain the rural and small town atmosphere that attracts people to the town. He said he felt the Board was on the right track with its recent proposals for the Open Space Conservation Subdivision and Water Quality Protection Ordinances.

Cathy Orlowicz moved to appoint Dwayne Armstrong as a regular member of the New Durham Planning Board. Don Voltz seconded. Passed on a voice vote 3-1. Mr. Armstrong is appointed.

**Board Working Relationships:** David Allen reported to the Board that he had sought advice from Cynthia Copeland, Executive Director of the Strafford County Regional Planning Commission in order to help the Board find a facilitator/mediator who could help them develop better working relationships. Based on her advice he had contacted Attorney Susan Slack, the New Hampshire Mediators Association, and Michelle Gagne with the Cooperative Extension Service.

He said Attorney Slack was interested and had considerable experience working with municipal boards in a negotiating capacity as well as legal. The director of the mediators association said the issues were on the edge of the work they do, and she would try to find someone who might be able to help. Allen had not heard back from Ms. Gagne.

Bob Craycraft said he was upset that the Board was not dealing with a potential conflict of interest situation. Don Voltz said that with the change in membership on the board there would be a new dynamic and the mediation might not be necessary. He suggested waiting a few weeks to see what happened.

Peter Rhoades asked what the cost would be for hiring Ms. Slack. Allen reported that her hourly rate was \$150 and she might adjust that down slightly. Ms. Orlowicz said she thought that was more than she wanted to spend.

David Allen asked the Board to keep in mind the costs of not addressing the problems and pointed out that he was spending about 10% of his time on work

related to or caused by the conflict. He reported that the Board would have money left over in its consultant line items which could be used for this purpose. He said he thought the issues involving trust and skills in handling conflict would not be automatically resolved by the addition of new members. He objected to the fact that the Board had unanimously agreed at its last meeting to hold a working session with a facilitator and had directed him to invest time in the project and now some wanted to drop it. Chair Orlowicz said she thought it might be a necessary thing to do and the Board should proceed.

Peter Rhoades moved to instruct Mr. Allen to arrange and schedule a working session with Susan Slack at a cost not to exceed \$500. Allen said he would work with Ms. Slack with input from Board members to set out the objectives for the session. Chair Orlowicz asked him to try to keep it on the Board's usual Tuesday meeting night.

**Minutes:** The Board agreed by consensus to hold the minutes of July 10 for consideration at the next meeting.

Don Voltz moved to adjourn at 9:24 PM. Peter Rhoades seconded. Unanimous.

Respectfully submitted,

David Allen  
Land Use Administrative Assistant