

# DRAFT MINUTES

## NEW DURHAM PLANNING BOARD

### OCTOBER 30, 2007

Chairperson Cathy Orlowicz called the meeting to order at 7:06 PM.

**Roll Call:** Cathy Orlowicz (Chair), Bob Craycraft (Vice-Chair), Don Voltz.

**Excused Absence:** Paul Raslavicus (Alternate), Peter Rhoades (Selectmen's Representative) **Unexcused Absence:** Christopher LaPierre (Alternate), Duane Armstrong, George Gale (Alternate)

**Others Present:** Phil Auger, Jack Savage, Mike Gelinas, David Bickford, Skip Fadden, daughter Fadden.

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

#### **Forestry, Water Quality Ordinance, and Conservation Subdivision Ordinance.**

Ms. Orlowicz asked Bob Craycraft to introduce the evening's guests. Jack Savage is chair of the Middleton Planning Board and Vice President for Communications at the Society for Protection of New Hampshire Forests. Phil Auger is on the Strafford conservation Commission, has served as County Forester for Rockingham County, and has done forestry and community work for the University of New Hampshire Extension Service.

Mr. Auger said that he like the language in Mike Gelinas' proposed Forestry Ordinance that says the town wants to support forestry, agriculture and recreation and will not unreasonably regulate them.

He had several comments and suggestions related to New Durham's Conservation Subdivision Ordinance. He thinks it should have a strong statement of purpose that focuses on preserving special natural resources, especially those identified in the Master plan and the Natural Resources Inventory. He thinks the requirement that at least 50% of the buildable land in a Conservation subdivision must be protected is a good standard.

Mr. Auger and Jack Savage had a long conversation with the Board about the difference between fee ownership and ownership of an easement. They feel the New Durham ordinance, by using the term "management authority" does not clearly

distinguish between the two. Mr. Auger said he thought only the homeowners association could have fee ownership of the open space. Unless specified otherwise, the responsibility for doing the groundwork to maintain the terms of the easement rests with the fee owner.

The easement, in this case an easement for protection, cannot be with the same organization that has fee ownership. The responsibility of the easement holder is not to manage the property according to the terms of the easement, but rather to enforce the terms of the easement so they are managed by the fee owner or homeowners association.

Mike Gelinis challenged Mr. Auger in regard to who could hold fee ownership and referred to the Town of Dublin Conservation Subdivision Ordinance which lists a private individual or organization as a potential fee owner. Mr. Auger expressed surprise and encouraged the Planning Board to get clear legal clarification before allowing private ownership.

Jack Savage pointed out that easement enforcement is a significant responsibility and it is not unusual for the holder of the easement to need to go to court to enforce it. For that reason the Forest Society requires easement donors to make a contribution of \$20,000 or more to the Society's Easement Enforcement Trust. Earnings from the trust pay the cost of ongoing monitoring and any necessary legal action.

In response to a question, Mr. Savage encouraged the Town of New Durham to have a similar policy. Mr. Auger said the Town would need to establish a special fund for that purpose that would be managed by the Trustees of Trust Funds. Funds paid or granted to the town for that purpose could not be used for any other purpose.

Jack Savage said that private ownership would not be his first choice, but single ownership is generally better than collective ownership because with collective ownership individuals tend not to take responsibility. Phil Auger said he had had the opportunity to work with many homeowners associations and had ultimately given up expecting anything from them over the long term.

Cathy Orłowicz said she was worried about situations in which buffers—as in the Water Quality or Conservation Subdivision Ordinances—can reduce the availability of agricultural or forestry land. Mr. Savage noted that in a Conservation Subdivision the landowner gives up something in order to get something and it is a negotiated process; therefore it is not a forced taking in the legal sense.

Both he and Mr. Auger agreed, however, that buffers are best when they focus on structures, septic systems, and impermeable surfaces; and they can in some situations be counter productive in regard to agriculture or forestry. And Jack Savage said that it is important to keep land uses other than development financially viable so that the landowner is not forced to develop if he or she needs to earn some income from the

land.

Mr. Auger and Mr. Savage also told the Board that too stringent regulations can have a negative effect when responsible foresters or farmers try to abide by them and the careless or problem foresters and farmers ignore them and reap the benefits. Generally, enforcement in these situations is very difficult.

Don Voltz asked if a Town Planning Board can override state regulations regarding forestry with more stringent regulations. Phil Auger said he does not think they are supposed to because the state has not delegated that authority to towns, but town Planning Boards frequently do it and enforcement is slow.

Both men said the best thing for Towns to do is to reference the documents regarding best forestry management practices.

Phil Auger made some additional suggestions related to Open Space Conservation Ordinances. He strongly believes the Planning Board should be making the choice of whether a subdivision should be done by open space or conventional. If the developer has the choice, they are likely to use the open space process to increase the number of house lots they can build on a “problem lot”—a lot with many natural constraints such as wetlands or steep slopes that block access to much of the property.

Mr. Auger likes the fact that Section 12.b does not count setbacks and lawns. He questioned the clarity and specificity of some items in the list of resources that are “high priority for inclusion” in open space; and he worries that the requirement for 75% of the open space to be contiguous could be a problem in some specific situations.

Both gentlemen said their agencies have model easement language which states goals in a broad and general way and are quite specific in how they measure compliance. They noted that the language in the ordinance and subdivision regulations should dovetail with the easement language.

Jack Savage told the board that the purpose of the Planning Board is to ensure the orderly and appropriate growth of the town. It is very important for the Board to exercise that responsibility very proactively.

**Conservation Subdivision Ordinance:** Bob Craycraft suggested several changes that would improve the Conservation Subdivision Ordinance.

1. Require a landscaping plan for the entire subdivision. There was much discussion and no conclusion;
2. Inscribe a building envelope on each lot. There was consensus that an envelope that excluded inappropriate areas for building and showed all

- acceptable areas would be useful;
3. Cap the cul de sac length at 1500' and identify potential conditions which would make a waiver allowable. Consensus on the concept with the conditions to be worked out;
  4. Add a list of specific natural resource information that should be available to the Board at the earliest possible stage. Consensus that it was appropriate in concept and the details would need to be worked out;
  5. Add a definition of a yield plan. Craycraft suggested two options. This item was not fully discussed; and
  6. Change the Yield Plan formula. Bob Craycraft suggested two options. There was discussion of using a yield plan vs. a formula. Don Voltz suggested just a yield plan and said that most of the towns that used a formula seemed to have a fixed minimum lot size instead of variable according to soils. David Allen reminded the Board that a yield plan that included regulations from other sources such as NHDES generated a lot of imprecise and fruitless "what if" discussion. Cathy Orlowicz said she needed more time to study the issue.

**New/Old Business: Town Counsel:** Cathy Orlowicz informed the Board that Town Counsel John Teague wanted to meet with the Board at 6 PM on Tuesday, November 6 to review legal issues and answer legal questions.

**Blocking Rights-of-Way:** She also reported she had met with the Police Department regarding the issue of parking in rights-of-way and was told there is an existing ordinance that protects the town.

**Pine Point Road:** Ms. Orlowicz said she was drafting a response to the Board of Selectmen regarding the request to the Town to accept a section of Pine Point Road as a town road, and would have the draft available for review at the 11/6 or 11/13 Board meeting.

**Minutes:** Chair Orlowicz said she would table the minutes again because of the time.

**Adjourn:** Don Voltz moved to adjourn at 9:59 PM. Bob Craycraft seconded. Unanimous.

Respectfully submitted,

David Allen  
Land Use Administrative Assistant