

**Minutes**  
**New Durham Planning Board**  
**March 2, 2010**

Chairperson Cathy Orlowicz called the meeting to order at 7:04 PM.

**Roll Call:** Cathy Orlowicz (Chair), Bob Craycraft (Vice-Chair), Dot Veisel, David Bickford (Selectman's Representative), Paul Raslavicus, Scott Drummey (Alternate), Jeff Kratovil (Alternate)

**Others Present:** Ryan Noonan

**Public Input:** Chair Cathy Orlowicz noted that no members of the public were present and said she would ask later for public input if any public arrived.

**Minutes of February 2, 2010:** Board members made the following corrections:

Page 2, Minutes of January 19: Replace "Paul Raslavicus seconded..." with Paul Raslavicus abstained..."

Page 3, Rules of Procedure discussion, last sentence: change to read "She suggested four items for revision."

**Paul Raslavicus moved to accept the minutes of February 2, 2010 as amended. Bob Craycraft seconded. Approved unanimously with no abstentions.**

**Minutes of February 16, 2010:** Chair Orlowicz asked Scott Drummey and Jeff Kratovil to sit on this issue in place of Bob Craycraft and Paul Raslavicus who were not present at the meeting. Board members made the following corrections:

Page 1, Roll Call: Strike Bob Craycraft and Paul Raslavicus and add Jeff Kratovil.

Page 1, Excavation Regulations: correct spelling of "referred"

Page 2, first bullet: change the word "mesh" to "concur".

Page 4, Rules of Procedure, 2<sup>nd</sup> paragraph: correct spelling of "same".

Page 4, Adjourn: correct spelling of "adjourn".

**Scott Drummey moved to accept the minutes of February 16 as amended. Jeff Kratovil seconded. Approved unanimously.**

**Rules of Procedure:** The Board reviewed a memo from David Allen describing his conversation with a Local Government Center attorney regarding RSA 673:16. After extensive discussion the Board agreed by consensus to the following change in language of Section XVIII.A:

“Within the limits of funding made available for its use by the Town Meeting and in accordance with RSA 673:16, the Planning Board may appoint such employees as it deems necessary for its work, subject to the rules established by the Board of Selectmen for corresponding civil employees of the Town. It is within the purview of the Board of Selectmen to name a supervisor for those employed. The Planning Board may also contract with planners, engineers, architects, and other consultants for such services as it may require.”

Cathy Orlowicz asked if any Board members felt this change represented a different intent than the previous language. None did. She suggested voting on this and the other changes accepted on February 2. David Allen said that since there had been such lengthy discussion on the wording, and Board members did not have the revised language in front of them in writing, he thought it would be wise to continue the hearing to the next Board meeting when Board members would have the changes in writing.

Scott Drummey asked for discussion of tenure of the Board of Selectman’s Representative on the Planning Board. He distributed a memo on the subject which said his reading of RSA 673:5 was that the wording “**673:5 Terms of Local Land Use Board Members.**

I. (a) Except as provided in subparagraph (b), the term of any ex officio member serving on a local land use board shall coincide with the term for that other office; except that the term of the administrative official appointed by the mayor shall terminate with the term of office of the mayor appointing the official, and that the term of the administrative official appointed by the town council, board of

selectmen, or village district commissioners shall be for one year,” meant that the Board of Selectman’s Representative should have a one year term only.

Mr. Drummey stated that when he quoted the law at “Candidates Night”, Thurs. Feb. 18th he understood the words “administrative appointment” to refer to the Selectmen’s Representative and he now understood that it did not mean that so he agreed there was not a mandate in state law for a single year term.

He argued that a single year term had been the practice for several years and challenged Mr. Bickford on why he had decided to have a second year on the Planning Board, contrary to the one year practice. Mr. Drummey added that the Planning Board Rules of Procedure in Section V.B. say that the tenure should be the same as the Selectman’s term as a Selectman but he did not believe that Planning Board had any authority to establish procedures for the BOS.

David Bickford responded that since the RSA and the Planning Board Rules of Procedure both suggest that the term of the Selectmen’s Representative be the same as his/her term as a Selectman there was nothing wrong with his request to the Board of Selectmen that he serve a second year, nor with the decision of the BOS that he serve a second year.

Cathy Orłowicz stated that historically the practice of the Board of Selectmen had changed from time to time on this question of how long the term of the Selectman’s Representative to other boards should be. She and others felt that it takes six months participation in the Planning Board to understand the issues and how the Board operates, so a one year term is too short for the Selectmen’s Representative to be effective.

There was intense disagreement amongst Board members. Chair Orłowicz interrupted the discussion at one point to say that Planning Board policy on this issue was an appropriate subject of discussion, but the personal decision making process of a Board member was not, and she would call an end to the discussion if it did not stay on policy.

The discussion ended without agreement.

Paul Raslavicus asked about Section VII.D which reads in part:

“New Durham Planning Board members ..., who have a financial interest in a property, shall not participate in any discussion, hearing, or other consideration by the Planning Board which involves that property.”

He believes this paragraph explicitly relates to legislative activity of the Board as well as to quasi-judicial activity, and, therefore prohibits a member's participation in any discussion involving his specific property. He stated that since in his opinion there have been several instances of violation of this provision of the Rules of Procedure during this past year by one of the members of the Board, and since the majority of the Planning Board members have not seen fit to follow the Rule, he suggested perhaps they would like to delete it from the Rules of Procedure. He expressed his support for the rule as written.

Chair Orlowicz stated that this matter should be discussed at the next meeting of the Board. She further said that since....

Chair Orlowicz suggested that since the question had continued to arise in Board discussions the Board should ask Town Counsel for a legal opinion before taking any further action on the subject. Board members agreed by consensus.

**Dot Veisel moved to direct staff to pose the following question to Town Counsel: Can the Planning Board prohibit participation by a Board member in discussion of a legislative issue, based on the RSA, the Town Ethics Ordinance, and the Planning Board Rules of Procedure? The question should be posed in writing and Town Counsel should be asked for a written response. Bob Craycraft seconded. Approved unanimously with no abstentions.**

**Bob Craycraft moved to continue the public hearing on changes to the Rules of Procedure to the March 16 Planning Board meeting. Paul Raslavicus seconded. Approved unanimously with no abstentions.**

**Excavation Regulations:** Dot Veisel said she co-owned a former gravel pit that has been closed for ten years. In order to avoid the appearance of a

conflict of interest she will recuse herself from deliberations on the Excavation Regulations.

David Bickford said he purchased a property about 26 years ago that the Town had taken for gravel from prior to his ownership. He emphasized that he never sold gravel to the Town. The lot could at some point be re-opened for excavation. In order to avoid the appearance of a conflict of interest due to the atmosphere he will recuse himself from deliberations on the Excavation Regulations.

Board members reviewed highlights from discussions of the issue at the last two Board meetings. Cathy Orlowicz read information that had been collected by Board members. Jeff Kratovil reported on information he had collected from neighboring towns.

David Allen reported on his conversation with the Local Government Center attorney regarding the responsibility of the Planning Board for the gravel pits operated by the Town and a neighboring Town. The attorney said that if the excavated material is used 100% for road and highway work the Towns did not need a permit. She added that the Towns are required to meeting the operating and reclamation requirements of the law, and the Planning Board has some responsibility to ensure that those requirements are met.

Cathy Orlowicz asked if the Board wanted to try to revise the existing Barnstead Excavation Regulations, or start over. The Board agreed by consensus to start over. She noted that the Board had copies of Excavation Regulations from three towns: Alexandria, Ossippee, and Salisbury. She suggested that Board members choose one of these as the starting point for its work and edit it as needed. She asked Board members to review the three ordinances and indicate their preference to staff before the next Board meeting.

Ms. Orlowicz reminded Board members that Mary Pinkham Langer had offered her continued assistance to the Board as it works on the regulations, including an offer to review the Board's draft regulations before they are sent to Town Counsel.

**New/Old Business: True Value:** Jeff Kratovil asked if True Value would be coming before the board soon for action. David Allen replied that they had verbally indicated intent to do so, but no formal application had been received. Paul Raslavicus asked Board members to review the legal comments that Bob Craycraft had submitted in regard to vesting in situations of conditional approval of an application.

**Soil Based Lot Sizing:** The Conservation Commission has not yet contacted Jim Gove to ask him to talk in a public forum hosted by the Commission about this subject. He will bring it to their attention at their March meeting.

**Water Quality:** Mr. Craycraft has asked Don Kretchmer to meet with the Planning Board regarding this issue. Mr. Kretchmer has agreed and Bob expects to have a date settled for the discussion soon.

**Cathy Orlowicz:** Paul Raslavicus thanked Cathy Orlowicz for her long and effective service on the Planning Board. He said her work was an inspiration for him. Other Board members made similar comments.

Jeff Kratovil asked when the Board would select a new chair. Cathy said that was usually done at the first meeting in April following the election.

**Dot Veisel moved to adjourn at 9:47 pm. Bob Craycraft seconded. Approved unanimously with no abstentions.**

Respectfully submitted,

David Allen  
Land Use Administrative Assistant

Minutes approved as amended on March 16, 2010

Town of New Durham