

Minutes
New Durham Planning Board
April 6, 2010

Acting Chair Bob Craycraft called the meeting to order at 7:01 PM.

Roll Call: Bob Craycraft (Vice-Chair), David Bickford (Selectman's Representative), Paul Raslavicus, Scott Drummey (Alternate),

Excused Absence: Dot Veisel **Unexcused Absence:** Jeff Kratovil (Alternate)

Others Present: Arthur Capello, Tom Varney, Luanne Varney, Pat Donahoe

Public Input: Chair Craycraft asked if there was any public input. Arthur Capello asked for guidance from the Planning Board. He said he had received a request for a building permit for an addition to a house that had been built without a permit. The Building Code requires the structure to meet the standards of the code in place at the time of the application, not at the time of construction. He said there was nothing in the Zoning Ordinance that spoke specifically to this issue, but noted that the Ordinance was clear that unless a situation was legally established before a change in the ordinance it would be required to meet current standards. He asked if the Planning Board saw the situation the same way, which would require assessing the new impact fee on the applicant in this case. Board members agreed by consensus with Mr. Capello's interpretation.

Donahoe Site Plan: The Board reviewed the application for completeness. **Paul Raslavicus moved to accept the application as complete with the condition that the vicinity plan be upgraded to standard size and detail. Scott Drummey seconded. Approved unanimously with no abstentions.**

Tom Varney presented Mr. Donahoe's plan to reopen the Flight Deck gas station on Route 11 as a gas station and convenience store. He plans to upgrade the site by building a canopy over the gas pumps. He will be paving an area for parking and regrading the site to improve stormwater management. Stormwater will flow into a dry well that will have a filter capable of separating gasoline, oil, or other contaminants from the stormwater before it goes into the dry well. The filter requires maintenance a couple of times a year which involves taking the old one to the Town Transfer station and replacing it with a new filter. It does not require treatment as hazardous waste.

Paul Raslavicus asked if the site needed a driveway permit. It already has one. Mr. Donahoe said the underground gas tanks are fairly new and were just re-permitted by

the State. Mr. Raslavicus asked if there would be any sales of automobiles from the site and was told no there will not be. Mr. Raslavicus also said he hoped the canopy will be a type of construction that will help to beautify the site.

Mr. Raslavicus asked what the long term plan was for the discontinued building. Mr. Donahoe said he hoped eventually he could replace it with a new commercial building.

Bob Craycraft asked if the septic system was adequate for the new use. Mr. Varney said it had been sized at 150 gallons per day which is typical for a small retail store. The issue in this case is that if many people stop to make use of the rest room convenience it could overwhelm the system. This happens frequently with convenience stores.

David Bickford asked what kind of items would be sold at the store. Mr. Donahoe said the standard convenience store items such as soda, beer, milk, and bread.

Chair Bob Craycraft opened the application to public comment at 7:44 PM. There was no public input and he closed comment at 7:45 PM.

Paul Raslavicus said it would be important for the Board to do a site walk. The Board agreed by consensus to 5 PM Saturday, April 10 at 5 pm for the site walk.

Paul Raslavicus moved to continue the application until the first business meeting in May. Scott Drummey seconded. Approved 3-1.

Fleming Lot Line Adjustment: David Bickford moved to approve the merger of lots 110-2 and 110-3. Scott Drummey seconded. Approved unanimously with no abstentions.

Election of Officers: David Bickford suggested waiting to hold the election until all members were present. Agreed by consensus.

Babb Excavation: Chair Bob Craycraft asked permission to change the order of the agenda and hear the Babb Excavation discussion at this time so that Arthur Capello can be allowed to leave. Agreed by consensus.

Arthur Capello shared photographs with the Board that he had taken at the site that showed significant erosion, and the potential for additional erosion. He asked the Board for guidance in handling the issue. **There was consensus that the erosion created a serious potential problem and the board should act immediately and proactively to reduce the risk of further damage.** The Board asked Mr. Capello to contact Mr. Babb immediately and ask him to be at the April 20 Board meeting and that Mr. Babb needs to be prepared to bring in a civil engineer to review the situation and ensure that all runoff and sediment is properly contained.

Minutes of March 16, 2010. Board members made the following corrections to the draft minutes:

Page 3, "Rules of Procedure": should read "replace the existing Section XVIII.A...."

Page 4, last paragraph: Change heading and text to "Ms. Morell." Strike the second phrase of the last sentence following "...Town Counsel, John Teague..." and replace it with "who advised that the minutes be taken off the Town website until the Board could reach consensus on how to deal with it."

David Bickford moved to accept the minutes as presented. Scott Drummey seconded. Approved unanimously with no abstentions.

Letter from Town Counsel re recusal: The Board agreed at its March meeting to seek a written opinion from Town Counsel regarding the propriety of David Bickford's participation in the discussion of the Town Center district boundary for a property he owns that lies partially within the new district. The Board was particularly interested in knowing if the state and/or town regulations required a person to recuse themselves from a legislative discussion as distinct from a quasi-judicial discussion.

John Teague wrote the response. He emphasized that the Town's Ethics ordinance is stricter than the state's and it does require recusal in certain situations from a legislative discussion. The law recognizes that there will be some legislative discussions that affect the entire town. Since all board members own property in town they could potentially be affected by the decision, but it would be impossible for the Planning Board to operate if all board members were recused.

Mr. Teague pointed out that he might not have all of the relevant information, but it appeared to him that the case in question was different than a widely held and shared common interest in a board member's real property, and instead was a discussion that focused on a handful of properties one of which is co-owned by Mr. Bickford. When the discussion narrows down to a handful of specific properties then the Board member's interests are much more specific, and the Board member should recuse himself. Mr. Teague emphasized that because he might be missing some information the appropriate move would be for the Board to take the question to the Ethics Committee for their review; i.e. to make use of the mechanism the Town had established in its Ethics Ordinance.

David Bickford said his interest in requesting the legal guidance was to clarify when a Board member should or should not step down. He said he appreciated the input and clarification. Scott Drummey agreed and said he saw no reason to take the question to the Ethics Committee because his interest was also in clarification and not in trying in any way to single out or punish any specific member of the Planning Board. The Board agreed by consensus that no further action was needed.

New/Old Business: David Bickford, speaking on behalf of the Board of Selectmen, asked the Board to reconsider the requirement for Planning Board concurrence in the Board of Selectmen's choice of staff for the Planning Board. He said the BOS recognizes this is not a change the Planning Board is making at this point, and they feel it could create the potential for a future power struggle between the two Boards.

Scott Drummey said he thought it was important for the Planning Board to have a significant role in the hiring of its staff, and he **moved the Planning Board keep the language as it has been. Paul Raslavicus seconded. Approved on a vote of 3-1.**

Paul Raslavicus moved the Board adjourn at 9:52 PM. Scott Drummey seconded. Approved unanimously with no abstentions.

Respectfully submitted,

David Allen
Land Use Administrative Assistant

Minutes approved as amended on 4/20/2010