

Draft Minutes

New Durham Planning Board

November 1, 2011

(Please note: These are draft minutes prepared by staff from notes taken at the meeting. They have not been reviewed by the Board for accuracy, and should not be relied upon for accuracy. Reviewed, corrected, and approved minutes will be available at Town Hall and on the Town's website following the next scheduled Board meeting.)

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

Members present: Bob Craycraft (Chair); Scott Drummey (Vice Chair); David Bickford (Selectmen's Representative); Dorothy Veisel; Paul Raslavicus.

Members excused: Craig Groom

Capital Improvement Plan: Chairman Craycraft asked Chris LaPierre to present the Capital Improvement Plan to the Planning Board. Mr. LaPierre reviewed the summary of capital expenditures to the board. He noted that the total costs for 2012 would be \$339,000, which is down \$89,000 from 2011 expenditures. Board members asked a number of questions about the plan.

Bob Craycraft asked if the fire department has designated locations for dry hydrants. Mr. LaPierre answered they have not yet but they are working to produce that list. There was extensive discussion about the inclusion of gravel purchase in the Capital Improvement Plan. Mike Clarke, Road Agent, said that the town was court mandated to reclaim the gravel pit by the year 2015. The pit will be empty by that time and the town will need a source of gravel.

David Bickford said that he would like to see the plan reflect the current balances along with the budgeted amount in the summary section. He said it would also be helpful if the summary identified the areas in which major savings existed over the previous year.

Dot Veisel asked about the costs of repairing the old meetinghouse. Mr. LaPierre said the subcommittee had budgeted that the town would need to pay the full cost of the

repairs. They believe that the chances of getting LCHIP funds are very low but they will continue to try to find grant funding.

Chris LaPierre said the he will talk to the Town Administrator about the additional information requested by Planning Board members. Bob Craycraft said the board will hold a public hearing on the plan its next meeting. He asked board members to review the plan between now and then.

Healey Driveway Appeal: Chairman Craycraft introduced the issue of the appeal by Mr. and Mrs. Healy to the driveway permit that was issued by the Code Enforcement Officer and the Road Agent to Mr. and Mrs. Gull Nelson. He noted that the Planning Board had already held two public hearings and that this hearing should be short and focused. He suggested that the planning board had two issues to decide: 1) Is the gravel driveway a legal driveway? 2) Are there violations of the Driveway Regulations in the layout of the proposed modifications to the driveway?

Paul Raslavicus asked Mr. David Nelson if he had had the opportunity to submit additional materials as the Healeys had done. Mr. Nelson stated he had provided all the materials he needed to.

Mr. Craycraft invited Amy Manzelli to present brief comments on the Healeys' appeal. Ms. Manzelli said she had only one piece of new information to distribute to the board. She gave them a copy of a third letter that Mr. John Sevee, professional engineer, had prepared. She noted that the letter was most relevant to the appeal before the Zoning Board, but that it did relate to the slope of the driveway which is under consideration by the Planning Board.

Ms. Manzelli made five points for the board.

1. The Nelsons typed application in 1988 to the Zoning Board of Adjustment said they did not want to put their driveway parallel to the property line with the Healeys because that location was too steep and slippery in the winter.
2. The Nelsons are not protected from the driveway regulations adopted in 2006. RSA 674:39 specifically exempts regulations protecting health, including water quality, from "grandfathering". The Supreme Court in the case of Fisher v New Hampshire upheld this section of the law.
3. Ms. Manzelli noted that the very thick document she had provided to the board at the last meeting was missing a couple of pages. She apologized for the volume of

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materials and said that she had left out some pages because they had already been given to the board in an earlier document.

4. She confirmed that her proposed revisions to the minutes of October 4 would be included in the file of the case.

5. She stated that the Healeys had received a letter before the last meeting, indicating that they owed \$156 in filing fees and asked for confirmation that this amount had been paid. Mr. Allen confirmed that all fees were paid before the beginning of the October board meeting.

Paul Raslavicus asked for a clarification of facts. During the case both parties had spoken of paving the driveway with hardtop or asphalt and of a plan to pave with Turfstone. He understood the hardtop had been installed first, and it was that material which had been ordered removed by the courts. He further understood that the Nelsons had proposed to use Turfstone pavers as a cover material for the driveway but in fact the Turfstone had never been installed. Both Ms. Manzelli and Mr. Nelson confirmed his understanding of the facts.

Chair Craycraft asked Mr. David Nelson to share any comments or rebuttal. Mr. Nelson said it was important to be clear that the only question that had ever been asked of the courts or acted upon by the courts was the removal of the hard top pavement from the driveway. At no point had the Healeys asked for removal of the gravel driveway nor had they ever suggested it was an illegal driveway. The courts had never commented on the legality of the driveway. They certainly had that opportunity many times and if they had thought it was illegal they would have ordered the removal of the entire driveway not just the pavement.

The Nelsons had requested a permit to install Turfstone and that request was denied. The Turfstone was never installed.

Paul Raslavicus said his reading of the record showed that the town building inspector had made a site visit to the Nelson property and had determined that all requirements of the courts had been met. Mr. Nelson agreed.

Ms. Manzelli the August 17, 1998 report from the town Code Officer, which Mr. Raslavicus appeared to be referencing, was not a decision about meeting the court requirements. It was only a report on the status of the Nelson property. Furthermore, she noted, the Healeys never responded to that document in any way that indicated they agreed with it.

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Mr. Nelson made his closing comments. He said that RSA 674:39 referred to by Ms. Manzelli is a law relating to subdivision and has no relevance to this case. He emphasized that there has never been a complaint by anyone about the gravel driveway being an illegal driveway. All concerns that have been expressed about the driveway have regarded pavement or pavers. The Nelsons had complied many years ago with all requirements of the court and zoning board decisions, and those events had no bearing on the current application.

Chairman Craycraft asked if town staff had any comments. There were none. He asked if there were any comments or questions from members of the public. There were none. He closed the public hearing at 8:15 PM, and opened the issue for board discussion.

Mr. Craycraft said the information that was most compelling to him was that in its second decision the superior court had referred to the gravel area as a driveway, and in no way had indicated concern about the fact of a driveway in that location.

Mr. Raslavicus said the applicants in their own materials had referred to the driveway as non-conforming. He said it is very important to understand that nonconforming does not mean illegal. At the time the driveway was first installed there were no Driveway Regulations, and there was no requirement for a variance in order to install a second driveway. He concurred that the language of the court decisions always refers to removing pavement and never says anything about removing or changing the driveway in any other way.

Mr. Raslavicus suggested it would be more appropriate to use the term "access way" instead of driveway to refer to the area in question. He gave an extended explanation of his reasoning, but other board members did not agree with him.

Dot Veisel agreed that the driveway was illegal because it had been there for so many years Uncontested. She said it appeared the proposed permeable pavers are an improvement over the current gravel surface for storm water management and erosion control.

Scott Drummey said he too could find nothing in the court documents that indicated the driveway was illegal. He pointed out that the Road Agent, Mike Clarke, had testified there had been a driveway in that location before the Nelsons purchased the property.

Ms. Veisel moved to deny the appeal by Charles and Doris Healey requesting that the driveway permit issued to Mr. and Mrs. Gull Nelson, 34 South Shore Rd., (Map 120 –

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014) be denied. Scott Drummey seconded. Approved unanimously with no abstentions.

Chairman Craycraft said the Planning Board now needed to address the question raised by the Healeys of technical violations of the driveway regulations. Mr. Craycraft said it was his understanding that because the driveway was a pre-existing nonconforming driveway, it did not need to meet all requirements of the Driveway Regulations in order to be modified or repaved.

David Bickford stated he understood the Healeys' concern about storm water runoff and in particular runoff onto their lot. He acknowledged they had gone to considerable effort to make their case before the Planning Board. He said, however, the Planning Board was not in a position to grant their request because they must work within the law and the ordinances and it is clear that the driveway has been there for a long time and therefore is a pre-existing structure.

Scott Drummey moved to deny the appeal filed by Charles and Doris Healey of the driveway permit granted by the Road Agent and Code Enforcement Officer to Gull and Shirley Nelson, 34 South Shore Rd. (Map 120 – 014) to “resurface/modify” the gravel driveway that parallels the Nelson Healey property line. The denial is based on the fact that the driveway regulations are not applicable in this situation because the driveway is a pre-existing legal nonconforming driveway. Dot Veisel seconded. Approved unanimously.

Paul Raslavicus noted that he was voting in favor of the motion with reservations about the language which he believes should include reference to access ways.

Scott Drummey moved that both the previous motions are subject to review, comment, and revision by the Town Counsel. The effective date of the motions will be the date these motions are read and voted upon by the Planning Board after Town Counsel has reviewed them. Paul Raslavicus seconded. Approved unanimously.

Budget: Mr. Allen shared feedback to the Planning Board from the Board of Selectmen and the Budget Committee relative to the Planning Board's proposed budget for 2012.

Master Plan: Mr. Allen reported that both the Board of Selectmen and the budget Committee would like to see firmer numbers regarding the cost of the Master Plan for the next round of budgeting for 2013. Board members discussed the process and contents for the master plan. Dot Veisel reminded the board that the Parks and Recreation Commission is planning a major celebration of the town's 250th anniversary for July next year. She noted this would be an excellent time to involve citizens in the

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planning process. Paul Raslavicus said that he preferred to have a significant block of time set aside to work on the master plan rather than working in small segments.

Minutes: Scott Drummey moved to accept the minutes of October 18, as amended. David Bickford seconded. Paul Raslavicus abstained as he was not present at the meeting. The motion was approved 4-0.

Scott Drummey moved to adjourn at 9:56 PM. David Bickford seconded. The motion was approved unanimously.

Respectfully submitted,

David Allen
Land Use Administrative Assistant

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