

*These minutes were approved at the June 23, 2004 meeting.*

**DURHAM PLANNING BOARD MEETING MINUTES  
WEDNESDAY, MAY 12, 2004  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 PM**

**MEMBERS PRESENT:** Stephen Roberts; Arthur Grant; Nick Isaak; Kevin Webb;  
Richard Ozenich; Richard Kelley

**MEMBERS ABSENT:** Annmarie Harris; Amanda Merrill

**OTHERS PRESENT:** Jim Campbell, Town Planner, Victoria Parmele, Minute  
Taker; interested members of the public

**I. Call to Order**

**II. Approval of Agenda**

*Kevin Webb MOVED to approve the agenda as presented. The motion was SECONDED by Councilor Arthur Grant and PASSED unanimously.*

**III. Approval of Minutes January 29, 2003**

Jim Campbell said in doing some research, he had discovered these minutes had never been approved. He noted the Town Attorney didn't have a problem with approving them now, but said that only those Board members who were serving on the Board at the time of this previous meeting would vote on this.

*Councilor Grant MOVED to approve the minutes of January 29, 2003 as amended. The motion was SECONDED by Nick Isaak.*

Page 3, correct spelling - Jan Nisbet

*The motion PASSED on a vote of 2-0-4 (Stephen Roberts, Kevin Webb, Richard Ozenich and Richard Kelley abstained as they were not members of the Board at that time).*

**IV. Report of Planner**

Mr. Campbell welcomed Richard Kelley to the Board and explained that he would be serving a one year term, in Rachel Rouillard's place. He also noted that Richard Ozenich and Kevin Webb had moved up as regular members of the Board, leaving two vacancies for alternates.

Mr. Campbell said the Council had passed the residential portion of the Zoning Ordinance the previous Monday, and noted that the Board was very pleased about this. He said he and Mark Eyerman were working on the punch list of items to be debated further and possibly

changed. He also said there were some minor editing changes being made to clean up the Ordinance and make it official.

Mr. Campbell said he had held his monthly meeting with Doug Bencks of UNH, and noted Board members' packets provided some detail on the discussion.

He noted two articles on Board members' packets, one on Storm water management, and the other dealing with groundwater.

Mr. Campbell spoke about the upcoming May 26<sup>th</sup> Quarterly Planning Meeting, and said that Town Engineer Bob Levesque had asked that the proposed Storm water ordinance be placed on the agenda for discussion. Mr. Campbell said Mr. Levesque would like the Board to endorse the ordinance, and then would like to bring it to the Town Council.

Mr. Campbell said the recent Technical Review Committee meeting had dealt with 3 applications, all of which were approved, and said he would provide a report to Board members on these applications.

Mr. Webb asked Mr. Campbell if he had gotten in touch with Tony Federer regarding the upcoming Quarterly Planning Meeting. He noted Mr. Federer had been mapping conservation lands in GIS, and as part of this had been going through deeds, easements, and overlaying State data in the maps. Mr. Campbell said he would try to get Mr. Federer to come to the meeting. He also reviewed other Items to be discussed for the quarterly meeting, and provided some detail on each of them.

Steve Roberts noted an email from Neil Niman concerning the phasing of development ordinance, and asked whether he should perhaps present this at the Quarterly planning meeting. Mr. Campbell said this could be put on the agenda, and it was noted that the Board had had a discussion on this ordinance some time back.

Mr. Roberts said this was something that supposedly had been reviewed by Town Counsel and the Board, but was still sitting on sidelines. He said he didn't have a particular position on the ordinance, but asked whether it should be considered as an accompaniment to the Zoning Ordinance that was just approved. Mr. Campbell said to the best of his knowledge, the Council hadn't discussed it. He noted that phasing in could be included as part of the conditions of approval for the current Spruce Wood application. There was further discussion on the phasing in ordinance and whether to include this discussion on the Quarterly planning meeting agenda. Councilor Grant suggested it would be better to have this discuss at a regular Board meeting and other Board members agreed with this.

## **V. Election of New Officers**

***Kevin Webb nominated Stephen Roberts as Chair of the Planning Board. The motion was SECONDED by Nick Isaak.***

***Councilor Grant MOVED to close the nominations. The motion was SECONDED by Richard Ozenich.***

Mr. Roberts said he was interested in serving as Chair for one year. He said he was very impressed with the work of the Board, and noted that any one of its members would do good job as Chair.

***The motion PASSED unanimously.***

***Richard Ozenich MOVED to nominate Nick Isaak as Vice Chair of the Planning Board. The motion was SECONDED by Grant.***

Mr. Isaak said he was willing, with some degree of trepidation, to serve.

***The motion PASSED unanimously.***

***Richard Ozenich MOVED to nominate Amanda Merrill to continue as Secretary of the Planning Board. The motion was SECONDED by Kevin Webb, and PASSED unanimously.***

## **VI. Appointment of One Representative to the Historic District Commission and One Representative to the Conservation Commission**

Chair Roberts said Mr. Isaak had done an excellent job in his role as representative to the Historic District Commission.

Mr. Isaak said he would like to stay on because the design guidelines he had been working on were interrelated with the work of the Historic District Commission.

***Councilor Grant MOVED to nominate Nick Isaak to continue as the Planning Board representative to the Historic District Commission. The motion was SECONDED by Richard Ozenich and PASSED unanimously.***

Chair Roberts noted that Kevin Webb had been the delegate to the Conservation Commission, and asked him if he would like to continue. Mr. Webb said that he would like to continue his work with the Commission.

***Richard Ozenich MOVED To nominate Kevin Webb to continue as the Planning Board representative to the Conservation Commission. The motion was SECONDED by Nick Isaak and PASSED unanimously.***

Chair Roberts noted that the Zoning Rewrite process was continuing. Mr. Campbell noted that he had spoken in the past about re-forming it, and possibly cutting down the number of Planning Board members on it.

Mr. Roberts said there had been a good interrelationship of the Zoning Rewrite Committee and the Planning Board. There was discussion about the committee and the formal requirements regarding it.

**VII. Continued Design Review on an Application for Conservation Subdivision submitted by Spruce Wood Retirement Trust, Dover, New Hampshire, on behalf of Douglas & William Worthen, Springfield, Virginia. The property involved is shown on Tax Map 13, Lot 14-2, is located at Mill Road and Packers Falls Road and is in the Residential B zoning District.**

Councilor Grant recused himself from this discussion, because he believed it would involve possible water and sewer lines on Mast Road, which if constructed, he would be a potential beneficiary of.

Jack Farrell, the developer for the project, spoke before Board. He said that when he has last been before the Board, he had presented a plan that was a revision of what he had presented at the first design review meeting with Board. He said both the original plan and revised plan assumed on site septic and wells.

Mr. Farrell said that considerable interest had been expressed by the Board at the last meeting to have sewer and water extended for the proposed development because of several factors, including groundwater protection, and the size and scale of the proposed development. Mr. Farrell said there the Board had also expressed concern about the impact of the development on a meadow on the property, and noted at that time he didn't have a solution to this.

He said that since that time, he had met with various town departments, and said that the Public Works Department was on record as being very much in favor of public water and sewer for the development. He said that a number of ways to deal with this were discussed with the department, and also noted that Council approval for this would have to be obtained.

Mr. Farrell said the Conservation Commission had spoken to him about the habitat opportunity of the meadow on the site, and had asked him for ways to accommodate the same number of unit without having to go into that area. He said he had gone back to the drawing board, and had come up with a plan that still included 92 units, but assumed no land for septic and well areas was needed, so freed up acreage to fit all these units in the "main development area". He said the long cul de sac had also been eliminated, and the remaining units on the road out were repositioned, resulting in a few small cul de sacs that didn't pose much difficulty with the Town road regulations regarding cul de sacs. He noted this design reduced the total amount of road construction and drainage needed. Mr. Farrell said the design included a combination of duplexes and a few single units. He also noted that this was still a preliminary design but said that storm water management areas had already been sketched out for the development.

Mr. Farrell told Board members that the Conservation Commission had suggested that some of the land in the aquifer protection district had not been properly delineated, and had been chosen somewhat arbitrarily some years back when the property development first began. He noted that the Zoning Ordinance allowed building in that area as long as there was water and sewer, and said the new plan showed some limited construction in that area. He said the suggestion had been made that a hydrologist should look closely at this area to see if the delineation was correct, and said there was some rationale for this.

Mr. Farrell said he had noted on the plan that any water generated by roads should be contained, and drained away from the aquifer district, and said the Town Engineer had agreed with this. He summarized that the revised plan seemed to address more and more of the concerns expressed by various parties. He said the design would reduce the total amount of infrastructure required for the development, but would require municipal services in order to accomplish this.

Mr. Farrell said he had met with Administrator Selig and Mr. Campbell about the proper way to proceed. He said it was agreed that he should come forward with this version, with the assumption of water and sewer, and see if the Board would recommend that he then go forward to the Water and Sewer committee at this point. He stressed that it made more sense to him to find out if sewer and water was an option at this point, instead of going through the entire planning process and then finding this out.

Chair Roberts asked if any kind of financial feasibility analysis had been done on this.

Mr. Farrell said that based on engineering costs that were eliminated by not having to provide on site sewer and water, there would at least be an even trade. He noted that the developer would be paying for the sewer connection.

Mr. Isaak asked if the sewer line would tie into the existing development at Spruce Wood, and Mr. Farrell said it would, noting that although high tech septic systems had been constructed there, like all septic systems they had a limited shelf life.

Mr. Campbell noted at the meeting with Town staff, they had discussed possible future hookup to the Town water system, at least for the inn, for fire prevention purposes.

Mr. Farrell said there were larger issues beyond the development to consider, including the possible need to accelerate the Spruce Hole aquifer development, which might make putting water mains in now a good idea.

Mr. Webb asked if Town water and sewer were provided to the development, if water would be pumped out to the development from the existing water treatment facility, and sewage would be pumped back to treatment plant.

Mr. Farrell said not necessarily, if a water supply could be developed from the Spruce Hole aquifer nearby that could be given to the Town and also to the development.

Mr. Ozenich asked about the easements that were in hand, and Mr. Farrell illustrated these various easements. Mr. Ozenich asked if the Town would get its water through these easements. There was discussion about this, and Mr. Farrell discussed preferred options for constructing water mains, noting certain areas were difficult to build in because of soils with ledge. He showed Board members the preferred route.

Mr. Farrell noted that the revised plan had the same number of units as the previous one, but had been configured differently. There was discussion about a planned access road crossing the wetlands on the property, and Mr. Farrell noted that the wetlands crossing in the third

design had been returned to where it had originally been recommended in the first design, so was better than the crossing designed in the second design.

There was discussion that there would most likely be treatment swales, and Mr. Farrell said these had been roughly sketched out. He also noted that there was a great wetland area that was slow and marshy that was available on the site for storm water treatment. He noted that various people were pleased with that capability, and the buffer it provided for the river.

Mr. Kelley noted that the May 3<sup>rd</sup> plan showed a well with a protected radius near units 78 and 76, and asked if this was a possible location for the community well. Mr. Farrell said the marker for the well on the plan was arbitrary, and also said that if there were to be a municipal well, it would require larger radius, so they would have to find a different location for this. .

Kevin asked if the existing well for the existing development on the site had sufficient capacity to service the new development.

Mr. Farrell said it did not. He said there was plenty of land available on the property for water supply development, and said the water for the existing development was needed especially for fire protection purposes.

Chair Roberts asked if there had been any testing to see if there was sufficient water for a municipal water system. He also asked whether, if backup capacity were required, it would be stored in a similar way as was done for the existing development.

Mr. Farrell described this layout for the existing development, and said he didn't have details of these kinds of things worked out yet for the proposed development.

Chair Roberts said it looked like the site development was now further down hill and thus further away from the contours that had previously been of concern to him, so there would not be as much of an intrusion on the meadow.

Mr. Farrell said this appeared to be a far superior plan from every point of view including the amount of road relative to the homes and the maintenance costs. He said most of the intensity of use was concentrated in one place, because on site sewer and water systems were not needed there.

Chair Roberts asked if this was a sellable concept.

Mr. Farrell said he believed it was, because people liked the village aspect, surrounded by natural areas. He noted that there was a good amount of area for each lot that didn't have to be disturbed, especially because grading for septic systems wouldn't be needed, so they could be much more particular about what vegetation was cut and what was preserved.

He said that the main development area was considered by the Conservation Commission to be the area of least concern, from a habitat point of view, noting that it was a grown over woodland. He said the meadow, on the other hand, was a rapidly disappearing area in the seacoast.

Mr. Ozenich asked if the roads for the development would be public or private.

Mr. Farrell said they would be Town roads, noting that the Town did a better job of maintaining roads.

Mr. Isaak considered whether the Spruce Hole land to the west of property was mostly Town land, and said if so, the water system wouldn't necessarily have to be squeezed on to the developer's property.

There was discussion as to where at Spruce Hole the Town proposes to put the well head for the Town water supply.

Mr. Farrell noted that the water supply requirements of the development were much less than what was needed for the municipal well, and said the development well could be created now and could then connect to the larger municipal well later on.

Mr. Isaak said it might make more sense to combine efforts and do this once rather than twice.

Mr. Farrell said he agreed, but said it was a timing issue. He noted that the reason the existing Spruce Wood development was not serviced by community supplies was that the discussion had taken too long. He said this was what this meeting was about, and said he needed the Board's recommendation one way or the other.

Chair Roberts asked if the revised plan would mean putting houses closer to Spruce Hole than was proposed before.

Mr. Farrell said yes, given other limitations put on the property and the expectation of Town sewer.

Chair Roberts noted that the land contours were such that drainage of lots would be away from the aquifer.

Mr. Farrell said that was one of the things that Mr. Levesque had stipulated – that all runoff would be collected and taken out of the aquifer district to be treated elsewhere.

Chair Roberts asked Mr. Farrell whether, if Board members concurred that the new proposal was favorable, what the timeline for the project would be.

Mr. Farrell said he would like confirmation on two things: 1) was the Board in favor of voting to endorse extension of services; and 2) if so, was this plan considered to be progress, as compared to the previous plan.

Chair Roberts asked when the plan would be coming back to the Board, assuming they provided this confirmation to Mr. Farrell.

Mr. Farrell said he could not say specifically, given the fact that the proposal would go on to the Water and Sewer committee, and if recommended, would go on to the Town Council, before coming back to the Board.

Chair Roberts asked, assuming Mr. Farrell got these approvals, how soon he would be coming back to the Board.

Mr. Farrell said he could be back at the following Planning Board meeting if he got this approval.

Chair Roberts said in other words, Mr. Farrell was close to providing the Board with a formal proposal.

Mr. Farrell said that was correct, with the understanding that he had not yet developed the final engineering for drainage and roads because they were still in the design phase. He said 3-4 months seemed about right.

Mr. Campbell noted that the Water and Sewer and Town Council schedules were beyond Mr. Farrell's control.

Chair Roberts said he was pleased with the plan, and would support the sewer and water coming to that area, especially because of the proximity to Spruce Hole.

Mr. Webb said he had not attended the Conservation Commission site walk, and asked if minutes from this were available. He also received clarification that the plans without and with water and sewer were for the same density, and were based on HISS maps. He said it was his understanding that Conservation Commission members' concerns about the proposed development had been addressed quite well by the revised design, noting that it contained preservation of the meadow, and long term habitat and open space management. There was discussion about the site opportunity area and that anything left over from it would become conservation area.

Mr. Webb said he was in favor of revised plan. He said he had walked the site, and noted that the development area was secondary scrub growth. He said protection of the meadow was important, as was keeping development impacts away from the aquifer important, and said off site sewer and water could achieve this.

Chair Roberts noted that avoiding drainage into the Oyster River was another important reason for supporting sewer and water for the project.

Mr. Kelley said it was his understanding that this design would require sewer service but not necessarily water service, and that in order to bring the sewer out there, the lines would have to run out to Mast Road and then down Mast Road to the intersection with Concord Road. He said that from an economic perspective, it made sense to install that line as opposed to septic systems on site. He asked if, in addition, the developer would be willing to run a water line in the same locations while the sewer line was being constructed, with the thought that in the future the Town would be using it.



Mr. Farrell said it would be cheaper to build a well on site. He said an alternative to that was to create, or contribute line to service only the development, and if the Town wanted a larger line to connect to Spruce Hole, money for that could come from the Town. He said the most economical approach for them would be to put on site system in, and let the Town make the link when it was ready. H said it was much easier to make the case for the economics of the sewer than for the water.

Mr. Isaak asked what the cost would be to the Town for a sewer line.

Mr. Farrell said the developer would pay for this, and it would be available to additional users beyond the development. He noted that the sewer line for this would go down old Concord Road and said there were some engineering questions regarding the University's sewer piping in that area.

Mr. Campbell explained that the sewer line went from a bigger to a smaller line in that area, and said there had been discussions about fixing this, because UNH couldn't develop further to the west until the problem was fixed. He said if the Spruce Wood project went forward, the solution to that problem would have to move forward as well

Mr. Farrell also noted that the problem was a further impediment to development of Technology Drive.

Chair Roberts noted that solving this problem would therefore support other planning issues facing the Town.

Mr. Webb asked if Mr. Farrell could come to the Conservation Commission meeting the following evening to get confirmation that their concerns had been addressed, and Mr. Farrell said he would be happy to attend.

Mr. Ozenich said that the Town would have to own the well, noting that some towns couldn't have town sewer if they didn't also have town water, because the utility bill was based on water consumption. There was discussion about this.

There was discussion as whether to include Town water in the motion.

***Nick Isaak MOVED to encourage the applicant to seek extension of municipal water and sewer, especially sewer, to the Spruce Woods Development. The motion was SECONDED by Kevin Webb.***

Richard Kelley said it was a good idea to encourage the applicant to seek this, but said he was reluctant to vote in favor of this motion without information on the sewer capacity and the system itself. He asked whether Board members had information to share on this.

Mr. Campbell said the sewer system was presently running at about 50% of capacity at present.

Mr. Webb clarified that the Board was not the body that decided whether or not extension of sewer or water could be granted. He also asked if this was approved by the Council, what the

expiration date for this approval would be, and also asked how the Council process and the Planning Board processes should be meshed. There was discussion about this.

***The motion PASSED 4-1-1, with Richard Kelley voting against the motion.***

Chair Roberts said the Board understood that once these issues were resolved, the applicant was ready to move with all due speed to the final proposal.

## **VIII. Other Business**

### **A. Old Business**

Mr. Campbell outlined the following:

- The Board still needs two alternate members
- May 26<sup>th</sup> is the Quarterly Planning meeting
- **June 19<sup>th</sup>**, a public hearing will be held on the Subdivision Regulations, now that the residential sections of the Zoning Ordinance have passed. He noted there had already been one public hearing on the subdivision regulations.

Mr. Webb noted for members of the public that the Subdivision Regulations were something the Planning Board voted on, and did not have to go to the Council for approval. He also clarified that 11/7/03 was the most recent draft of the regulations

Mr. Kelley noted the previous discussion about the Zoning rewrite committee. He received clarification that Planning Board members could serve on the Rewrite committee.

Mr. Webb said he questioned whether a quorum was necessary for Zoning rewrite meetings because no votes were taken, and issues were decided by consensus. There was discussion about this

### **B. New Business**

1. Release January 8, 2004 document from attorney/client privilege communication.

***Arthur Grant MOVED to release the January 8, 2004 document from attorney/client privilege communication. The motion was SECONDED by Richard Ozenich, and PASSED unanimously.***

2. Discussion on build out analysis- chair noted Lee had buildout analysis done by Strafford Regional commission.

Mr. Campbell said Strafford Regional Planning Commission couldn't do anything with this until July. He said that what Tony Federer had done would help significantly, and would allow something to be accomplished more quickly. He asked how the Board

wanted to proceed, asking specifically why the build-out should be done, and what the Board wanted it to tell them.

Chair Roberts said it might make sense to do this in two parts, and start by taking some selected parcels and showing the effect of the new Ordinance, as opposed to whole Town. He noted that the Spruce Wood application showed a large tract that was planned according to the new Ordinance, and said the Board could also look at some other areas of Town with different kinds of site conditions.

Mr. Campbell noted that the old build-out, was a lot easier to develop, but said that with conservation subdivision and HISS mapping, more time and money was needed in order to accomplish this

Mr. Isaak said if they took each undeveloped lot and applied the conservation subdivision formula to get the maximum yield, without HISS mapping, this would show the worst case scenario, and they could then note that HISS Mapping, if applied, would effect these numbers (in both directions).

Chair Roberts said the current Strafford soils information appeared to be inaccurate given today's world, so it would be a good idea to look at parcels where more was known about the soils there: Spruce Wood, Fitts Farm, Allan Farm, and some other areas.

He said the Board should send a letter to the Strafford Regional Planning Commission requesting support of this work, so the Commission could tell the Board what it could and could not do. He said it would be good to have a record of this, and an estimate of how much it would cost. He said the Board would then be able to proceed from there to find a strategy with Mr. Federer or on its own to do a build out analysis on a less comprehensive basis. He said he still questioned how the Board should handle the soils issue, which was a key issue at the public hearings.

Mr. Kelley noted that he was one of those people who had expressed concern at the hearings. He said he was not questioning the criteria individually, but rather as an aggregate. He asked if the Council had approved the conservation subdivision provisions of the Zoning Ordinance.

Chair Roberts said it had, but said this was only with the understanding that there were other unresolved issues. He described the process where there would now be an amendment phase.

Mr. Campbell noted that the Council didn't talk about the conservation subdivision in Council deliberations, but said the Council could initiate its own process to look at this and other issues. He said the Board could also continue to look at this issue. He said usable area as currently defined was restrictive, noting that the application discussed that evening involved property that had good soils, and so got more units, but said there would be other places in Town that wouldn't be as fortunate.

Councilor Grant said the Board would be in a better position to talk about these issues after it heard Tony Federer's presentation. He said a lot of useful information would come forward at that time.

Mr. Kelley asked what GIS capabilities the Town had. There was discussion about this.

Mr. Webb noted that Mr. Federer had volunteered his time and resources, and had given a presentation to the Conservation Commission that was very impressive.

Board members agreed to send a letter to the Strafford Regional Planning Commission and Mr. Federer requesting the time and cost needed to do a full buildout analysis as well as a partial, "comparable" analysis.

#### **IX. Approval of Minutes – April 14, 2004**

The header on pages 2-15 should be corrected.

***Councilor Grant MOVED to approve the April 14, 2004 minutes as amended. The motion was SECONDED by Nick Isaak, and PASSED 5-0-1 with Richard Kelley abstaining.***

#### **XI. Adjournment**

***Councilor Grant MOVED to adjourn the meeting. The motion was SECONDED by Kevin Webb, and PASSED 6-0.***

Adjournment at 9:10 pm

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Amanda Merrill, Secretary