

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

**DURHAM PLANNING BOARD MINUTES
WEDNESDAY, MAY 26, 2004
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 PM**

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

MEMBERS ABSENT: Annmarie Harris

OTHERS PRESENT: Town Planner Jim Campbell; Town Engineer Bob Levesque

I. Call to Order

Chair Roberts explained that this was a quarterly meeting of the Planning Board.

II. Approval of Agenda

Chair Roberts said the Stormwater ordinance discussion should directly follow the scenic roads discussion so that Mr. Levesque could participate in both discussions before he left.

*Councilor Grant **MOVED** to approve the Agenda, with the amendment that the discussion on the proposed Stormwater Ordinance would follow the discussion on Scenic Roads. The motion was **SECONDED** by Richard Kelley, and **PASSED** unanimously.*

III. Scenic Roads

Town Planner Jim Campbell said there were a lot of people in Town concerned about scenic roads. He noted that the Town presently did not have any local provisions concerning scenic roads, and so relied on the State statute. He said he had done a search of scenic road ordinances, and had found ordinances in Lebanon and North Hampton, both of which essentially reiterated the State statute. He provided language developed by Mike Hoffman for a resolution. He also noted an email from Beth Olshansky with a link to a rural character ordinance in Hollis, NH, and also said he had received email from Diane Freeman who provided another view on some of the downsides of scenic roads.

Mr. Campbell said there was a number of factors involved in the scenic roads issue in addition to tree cutting, and noted that providing enough room in the road shoulder for people walking and riding was a key issue. He said he would like the Board to have a discussion and give him some direction as to what the next step should be, - whether to maintain the current situation, to adopt the resolution from Mr. Hoffman, to create an ordinance similar to Hollis, Lebanon or North Hampton, or perhaps to do the resolution and an ordinance.

Chair Roberts noted a letter from a Durham resident who said the road resurfacing system had extended the white lines of the road out, making it harder for dog walkers and bike riders, although it was safer for motorists. He also noted that branches frequently hung over the white line, and sloped land in the vicinity of some of the white lines made it more

difficult for walkers and bikers to travel. He said there were important issues on both sides, but said Mr. Hoffman's proposal seemed a bit severe to him.

Town Engineer Bob Levesque explained that the Public Works Department tried to stay within the general parameters for scenic roads in the roadwork that it did, but said that the lanes could be reduced to 11 feet if desired.

Amanda Merrill said the provisions of RSA 231 spoke specifically about the removal of trees, stone walls, and other actions that required Planning Board approval, but she noted that Section V allowed for other kinds of provisions that Towns could include. She said she wondered what the limits to this were, and was interested to know how other far other Towns had gone with this. She also asked what the legal weight of a resolution would be as compared to an ordinance.

Mr. Campbell said even a resolution was one step further than what the Town currently had, for negotiation with developers.

Mr. Webb asked if scenic road regulations/provisions would belong in the Town's road ordinance, and was told they would go in the Zoning Ordinance. He also said some of Ms. Olshansky's ideas were good, but said he took exception to some of Hollis's provisions, also noting that Public Service most likely would also take exception to them. There was discussion about this.

Chair Roberts asked how Mr. Webb felt about Hollis' 200 ft. no-cut vegetative buffer. Mr. Webb said he agreed with this for subdivisions, but would not want to require it for gateway roads.

Mr. Campbell noted that this buffer was required as part of conservation subdivisions, and also discussed vegetative buffers widths that were more appropriate for areas of Town where economic development was planned.

Mr. Kelley asked which roads in Durham had been designated as scenic roads, and was told they included: Packers Falls Road, Bennett Road, Durham Point Road, and Bay Road. Mr. Kelley also said Section IV of the State statute said scenic road designation would not affect the rights of landowners with respect to work on their own properties, but said some of the local ordinances did significantly impact the working of the land.

Mr. Campbell said the Hollis ordinance provisions had gone beyond regulation of scenic roads in that Town, and pertained to the entire town. He said the Board might want to choose parts of the Hollis ordinance that it wanted for Durham.

Chair Roberts asked if any Board members would like to serve on a subcommittee to help draft an effective scenic roads ordinance, and Mr. Kelley said he would be willing to do some work on this topic.

Councilor Grant said this issue should be a secondary priority because there were other parts of the Zoning Ordinance that needed to be worked on before this.

Chair Roberts suggested that Mr. Kelley look into this issue, and suggested that the Board could discuss it from time to time.

Councilor Grant said he liked the Lebanon ordinance as a start.

Mr. Kelley received clarification that there was a right of way for all of the scenic roads in Durham.

IV. Storm Water Ordinance

Mr. Campbell explained that Mr. Levesque was looking for some kind of endorsement for the draft storm water ordinance, and would then be passing this along to the Council. He said the Board needed to decide whether these provisions should go in the Town Code or the Zoning Ordinance, noting that if they were in the Code, this wouldn't require action by the Planning Board. He said his feeling was that the provisions were more appropriate in the Code, and asked Mr. Levesque what he thought about this.

Mr. Levesque said he had intended to put the provisions in the health ordinance area, where they would have more teeth in terms of enforcement concerning illicit discharges. He also explained that the storm water ordinance would address violations, but did not address storm water issues for new developments, although he hoped these also would be addressed in the future.

He explained that the ordinance would put the power within the hands of the Town to use the new federal Storm water II requirements implemented by the EPA. He noted that the State was not involved in Stormwater II regulations, although it did oversee site specific subdivision applications in terms of their storm water impact.

Mr. Levesque provided an overview of the draft ordinance he had developed. He said that anyone who planned to disturb more than acre of land would have to apply for a storm water management permit, and had to develop a storm water plan as part of this. He provided additional detail of the ordinance provisions, and noted that one provision that was especially useful was the red tag system – which allowed a Town to stop all development a developer was working on until a specific problem area was cleaned up.

Chair Roberts asked how the issue of impermeable ratios fit with these storm water provisions.

Mr. Levesque said they were not considered as part of the provisions, noting that impervious surfaces relating to water quality were presently addressed in the subdivision regulations and site plan review regulations.

Mr. Levesque said nonpoint sources of storm water discharges were a major problem, and said there was a lot of theory, and numerous best management practices for handling this problem. He provided detail on some nonpoint source problems, including salt runoff.

Mr. Kelley noted that a key intent of the ordinance was to put storm water provisions into the Town Code so that they had more teeth. He said the compliance agent would be the Code Enforcement Officer, but asked if he would need some training for this.

Mr. Levesque explained how the enforcement process would work. He said he would first consider information on a problem area, and if appropriate, would then ask Mr. Johnson to carry out enforcement activity.

Mr. Kelley asked if this enforcement action would include being able to shut down the site and requiring the landowner to immediately address the problem, and Mr. Levesque said it would.

Mr. Webb noted this was the first local storm water ordinance in New Hampshire, and that Mr. Levesque had pieced together provisions from a variety of sources. He asked if the Town Attorney had provided any legal review of the document.

Mr. Levesque said it had not yet gone to legal counsel for review, but would be sent to the Town's attorney prior to its submittal to the Town Council. Board members asked Mr. Levesque to also send a copy to Strafford Regional Planning Commission.

It was noted that the draft had been sent out to a number of people in the State.

Ms. Merrill noted she had circled the wording "harmful" in a previous draft, and asked if the language for this could be more specific. Mr. Levesque said it was stated this way because there were no clear guidelines from the EPA on this.

Chair Roberts suggested that a cross-reference with MSDS coding in the ordinance would provide very useful information concerning harmful/hazardous substances.

Kevin Webb asked Mr. Levesque to also reference under the definition of "harmful quantity" the Clean Water Act for clarification.

Mr. Kelley asked how the wording in Section V – "in no case...have more than 5 acres of un-stabilized area at one time" came to be in the draft ordinance. Mr. Levesque said this language was included so a developer couldn't simply open up ten acres at one time perhaps, an entire site, and let it sit.

Mr. Kelley asked if the five acres number was for the aggregate of the individual house lots, or were they looked at this as applying to individual sites because the land had been subdivided. He noted there might be a conflict between the road contractor and the house contractor concerning erosion control measures, and asked what teeth the Town would have in those kinds of situations.

Mr. Levesque said the teeth would be in the next phase of the ordinance concerning subdivisions, which would require a contractor to vegetate within 60 days.

Mr. Kelley also suggested that under Section V, A, 1, (g) the wording "regular inspection and timely maintenance of vegetation" should be included. He also suggested that under (h) in

that same section, some kind of wording concerning signing off on the final stabilization should be included. He also questioned whether Section V, A, 2 – which said “0.5 inches” was large enough for a storm event. There was discussion about this.

Councilor Grant said he had misgivings similar to those he had when the draft ordinance was presented to the Town Council. He asked what other communities around Durham were MS4’s. He also said his concern was the size of the ordinance. He said it appeared to be too much regulation, and said it was hard to imagine developers being able to deal with it. He asked if there was a way to approach this issue with a first step that was gradual, yet addressed the most severe storm water issues.

There was discussion about this. Mr. Levesque noted that much of the wording in the ordinance was EPA provisions. He also explained that the definitions made things more clear, and would be especially useful because this process would be new for everyone.

Mr. Isaak asked if there was a way to pare the ordinance down and reference the EPA, but Mr. Levesque said that would make things worse, because landowners would have to go through EPA’s lengthy materials.

Mr. Kelley noted that Durham was required to develop a storm water ordinance. He said this draft was a great effort, and asked what the timeline for it was. There was discussion about this.

Jim said it was still somewhat confusing as to who did what concerning the ordinance. He said it clearly stated that the Town Engineer administered and implemented the ordinance, and the Code Officer did enforcement, but the ordinance said that compliance monitoring could be done by both the Engineer and Code Enforcement Officer. He said he just wanted to be certain that the right person is reflected in the ordinance in each of the clauses in terms of administering the ordinance and enforcement of the ordinance.

Mr. Kelley asked if Durham would still have been classified as MS4 under the Federal regulations if UNH students were not factored in, and Mr. Levesque said no.

Kevin Webb asked if there had been any involvement from UNH in the development of the draft.

There was discussion about this. Mr. Campbell stressed that the Town had authority over UNH on this issue, and Mr. Levesque said the issue at hand was that if illicit discharges were found on UNH, it was Durham’s responsibility to force the University to clean them up. He explained that the MS4 classification was for the Town, and said the University was classified as a sub-MS4.

Mr. Webb said he recalled that the University had the majority of storm water discharges in Durham, some of which were unknown. He noted that the University had started to map these areas out.

Mr. Levesque said that part of the storm water management plan was the requirement that the location of all outfalls and catch basins be identified. He said the University was moving forward with looking into this.

Kevin Webb MOVED to endorse the draft storm water management plan, and encourage Town Engineer Bob Levesque to incorporate comments provided by Board members this evening. The motion was SECONDED by Nick Isaak and PASSED unanimously.

V. Economic Development

Mr. Campbell said the reason this issue was on the agenda was so Councilor Neal Niman could provide the Board with an update of the Economic Development Committee's activities. He noted that the Committee's list of recommendations had recently been forwarded to the Town Council for discussion, and the Council had discussed the first two items on the list.

Councilor Niman said he was there to update the Board on these recommendations, but also explained he was looking for input on them. He said he had brought these recommendations forward to Council, which had agreed to address the first two. He said there was also discussion by the Council about re-forming the committee, but said no decision was made on this. He said part of the difficulty for this committee was administrative, noting it had no power to make various things happen.

He said that as the Town moved into the next economic development phase, it need to vest administrative responsibility in someone's hands, preferably Town Planner Jim Campbell, with Town Administrator Todd Selig also playing a more active role in economic development. He said that redevelopment of the Economic Development Committee should be under the auspices of the Town Planner, but needed to have a close working relationship with the Planning Board.

Mr. Niman said that one of the recommendations of the Council was to establish development guidelines for the area around Technology Drive. He noted that this was primarily the responsibility of the Board, but said the Economic Development Committee could help with these guidelines.

Ms. Merrill asked for more specifics on what Councilor Niman meant by design guidelines, and there was discussion about this.

Mr. Niman said it was his understanding that an important goal in Durham was to expand the tax base, while not changing, or diminishing the character of the Town. He said that if a portion of the Town was going to be opened up for development as office research, this should be done in a planned, organized way that had the support of the community. He said those people working on this needed to do more to assure citizens that bringing in this kind economic development wouldn't change the character of Durham, yet at the same time couldn't be so restrictive in the development guidelines that they drove businesses away. He said there was a fine line to be walked.

Mr. Campbell said his sense was that the design guidelines should be similar to those developed for the Business Park and should be zone specific but not town-wide standards.

Mr. Webb said it was hard to imagine all the design possibilities and address them in guidelines, and said that if this were over-regulated, it would drive potential businesses away.

Chair Roberts suggested that a good way to get a guideline was to get a good development proposal, and then write guidelines around that. He also noted the excellent design of the New England Center, and said developments like this would be a credit to the Town.

There was discussion about the location of gas stations in Durham. Mr. Isaak suggested that the development rights of Gasoline Alley should be transferred out to Route 4, so the present location of Gasoline Alley could be redeveloped.

Councilor Grant said that with the exception of Power Span, the Town had not had an inquiry from a company that met the conditions or had the financial resources to put up the kind of facility at the Business Park that the Town would want to see. He noted some earlier applications included a warehouse and an auto repair facility. He said it was difficult not to write the guidelines too tight, or not tight enough. He said that Power Span had been an ideal research and development facility, but noted that the person who wrote the guidelines for the Business Park reviewed the Power Span proposal, and the proposal didn't come close to what is required in the guidelines.

Chair Roberts said to him the issue was not the guidelines being less restrictive to make them more accommodating to business, but to make the guidelines more creative so that the Town demands and architectural standard and can define this standard in a more conditional use manner.

Mr. Isaak said a building design that was more residential or agricultural looking would probably fit better in Durham, in terms of the view.

Mr. Niman said the economy continued to change in the area, and noted that the success of Pease could have an influence on what happened in Durham. But he said it was important to be proactive rather than reactive in terms of economic development in Durham. He noted that the Town had done nothing to market the Business Park in the last few years, and said at this point it was important to try it, and then if it didn't work, something else could be done with it. He asked Board members how they thought this process should be structured.

Mr. Kelley said he was somewhat concerned about the Planning Board being too involved in economic development because it would also eventually have to review a developer's plans.

Councilor Grant asked how members felt about the Economic Development Committee functioning as a subcommittee of the Board, noting that one of the problems was that the committee didn't have a home. There was discussion on this, and he said it might make more sense for the Planning Board to hear periodic reports from the committee.

Mr. Isaak said it seemed that the Economic Development Committee should be similar to the Historic District Commission, but noted, as Mr. Kelley had, that there could be a possible conflict of interest.

There was additional discussion about this by Board members and Mr. Campbell. Mr. Niman said there at least needed to be some kind of connection between the Economic Development Committee and the Planning Board, in order to talk about issues. He said everyone should be invited to attend these kinds of sessions, which Mr. Campbell should run. He stressed again that there needed to be some way to work cooperatively and in an organized fashion to move this issue forward.

Chair Roberts said it was important that Council members should also be included in this process, and Mr. Webb also said there should be someone from the Economic Development Committee on the Zoning Rewrite committee.

Chair Roberts said he had a concern that the Town's facilities plan needed to have economic development plans built into it.

Councilor Niman agreed, and said he had had discussions with Administrator Selig and Mr. Campbell that there needed to be administrative support and Town resources dedicated to this so the Town could have a Capital Improvement Plan that included economic development ideas. He said it was difficult to bring a few citizens together in a committee do economic planning for the Town, and said it just wasn't going to happen that way.

VI. Review of Design Guidelines for Durham Business Park

Jim Campbell noted some recent discussions with a potential developer of the Business Park that was looking at mixed uses for the site, and said the developer understood the need for a design that fit with the surrounding area. He provided some detail about this discussion.

He said the reason for putting this issue on the agenda was to have Board members take a serious look at these guidelines and consider whether they should be changed because they were too restrictive, or were not restrictive enough. He noted that they were adopted by the Town Council, and any changes would have to go back to the Council for consideration. He said if the Town was serious about doing some kind of economic development and tax stabilization, it needed to be realistic. He said if they were going to implement these guidelines with its constraints, this would affect how the property was marketed and would mean they wouldn't be marketing to companies of the scale of Power Span.

Councilor Grant noted there was no limitation on the size of facility in the Business Park design guidelines.

Board members discussed some of the kinds of building designs that would be effective for the site.

Mr. Kelley said there was nothing in the design guidelines that alarmed him as long as the developer was not held to each and every one of them, and some negotiation was allowed.

He said the architects had a higher burden to bear under the building design criteria, which were somewhat subjective.

Mr. Webb said in his view, guidelines were not mandatory, and said either this needed to be re-titled as Design Standards or they should be considered as very negotiable.

Mr. Campbell said this was approved by the Town Council as part of the Power Span process, and was what the Council wanted to see on Town land. He said if the Board decided to be flexible in terms of a guideline, the Council might not agree. Board members discussed this.

Councilor Niman asked if there was a better way to accomplish the goal than the design guidelines. He said the political decision would then be whether to adopt this document or the alternative document, and said if they adopted an alternative document, they could get a greater variety of interest in the Business Park

Chair Roberts noted the process used by the University in the development of the New England Center, where a building that was very harmonious with the site came to be built. He said this worked very well, and said he would think the Town could develop such a process.

Councilor Niman said he agreed, and would like more flexibility in the guidelines, but said he would like to have this conversation as well with the Council, with the Board's help.

Mr. Kelley said that perhaps the guidelines could be improved by changing some of the language to reflect the fact that this was not a checklist. There was additional discussion about the guidelines.

Mr. Isaak said it would be worthwhile at that point to have a discussion about the more general design guidelines he had developed

VII. Discussion of Design Guidelines and Urban Design Studies

Mr. Isaak said that the town of Meredith had developed a town-wide design review ordinance, and said any building of 3 units or above had to go through the process, which was fairly flexible. He said the ordinance incorporated historic district issues, and prevented various design details from falling through the cracks. He said that the design ideas in it might lean a little too much toward the New England village look, but generally were good. He said the ordinance fit well with the Town's Master Plan. He also said the ordinance seemed appropriate to Durham's issues.

Mr. Kelley said perhaps the parts of town where design guidelines were needed could incorporate a more general mission statement, and then the architectural design ordinance could cover the details, and could include some of the real site-specific issues.

Mr. Isaak went through the document he had developed, which he said was based in large part on the Meredith ordinance. He said it needed some more work at this point, and said he hoped the Historic District Commission would provide some review of it.

Mr. Kelley asked if the Council might be receptive to revisions to the Business Park guidelines, as well as development of guidelines for Technology Drive.

Board members discussed said these guidelines seemed excellent. There was discussion as to whether these provisions should be made part of the Zoning ordinance, and whether the Business Park guidelines should be kept separate.

Councilor Niman suggested the document could include site-specific guidelines for places such as the Durham Business Park as categories within the more general design guidelines. He said that in this way, there would be a master document to insure that everything was cohesive, but accounted for unique locations in Town. There was about the pros and cons of having all of the Town's design guidelines in one place

Mr. Campbell noted that a more appropriate title for the document would be "Design Review Ordinance". He also said that psychologically, it made sense to keep all of the design provisions in one place.

Chair Roberts asked how they should proceed concerning these proposed guidelines.

Councilor Grant said the guidelines Mr. Isaak had developed were a first priority, especially since the Zoning Rewrite committee was currently looking at the OR districts. Mr. Campbell noted that were looking at design standards as part of looking at the various districts.

Mr. Webb questioned whether it was legal to put site-specific regulations in the ordinance concerning a particular property, and noted the possibility that this would be considered spot zoning.

Mr. Isaak said that there shouldn't be a problem with this, because the more general guidelines he had developed were similar to the Business Park guidelines.

Mr. Niman suggested that a good exercise would be to compare the more generalized guidelines and the Business Park guidelines, in order to see if there were large areas that didn't intersect. He said if that was the case, there should be a conversation about this.

Chair Roberts noted that communities around the country had rescued themselves by addressing specific areas that had been holding them back from the economic development they wanted.

Mr. Isaak said development guidelines for a specific property could be considered reactive zoning, and said something that was broad enough to cover all the unknown factors might make more sense.

Chair Roberts asked Mr. Isaak to do some more work on this and develop a second draft. He thanked Councilor Niman for coming to the meeting.

Mr. Isaak noted that the Town of Meredith had had no legal problems with the ordinance to date.

VIII. Process for Updating Master Plan and Continuous Ordinance Revision

Chair Roberts said the Strafford Regional Planning Commission would be developing a proposal to do a build-out analysis. He said it was important to make this a manageable task, and said there were a number of ways this could be approached.

Mr. Kelley asked if the Planning commission would be outlining how they planned to go about doing this analysis, and Chair Roberts said yes.

Mr. Campbell said the quarterly meetings would be useful in making the continuous zoning ordinance revision happen, but said continuous update of the Master Plan was a whole different story. There was discussion about this.

There was discussion about the need for additional staff to work with Mr. Campbell, and also the need for ready legal assistance for the Board.

Chair Roberts noted the quality systems used by industry to track how they were doing might have some relevance to the operation of town government. He described a report that provided information on this, and said Board members at least ought to know that it existed, and might find it useful.

IX. Town Council Feedback on Ordinance Revisions

Chair Roberts said he agreed with just about everything on the Council's punch list. There was discussion as to whether the Board should wait to get specific recommendations from the Council before responding to the list.

Councilor Grant suggested it would be a good idea for Board members to answer some of these punch list issues for themselves so they would be ready to discuss them at the appropriate time. Chair Roberts agreed, and asked Board members to spend some time thinking about the list.

Mr. Campbell said the Board would have time to discuss these items at their June 9th meeting. Board members agreed that they could probably go through the punch list fairly quickly at that time.

Councilor Grant MOVED to adjourn the meeting. The motion was SECONDED by Richard Kelley, and PASSED unanimously.

Adjournment at 10:00 pm