

These minutes were approved at the July 14, 2004 meeting.

**DURHAM PLANNING BOARD MEETING
WEDNESDAY, JUNE 9, 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: Amanda Merrill; Annmarie Harris

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

I. Call to Order

II. Approval of Agenda

*Councilor Grant MOVED to approve the Agenda as submitted. The motion was
SECONDED by Kevin Webb, and PASSED unanimously.*

III. Report of the Planner

Town Planner Jim Campbell briefed the Board on the following:

- Mr. Campbell said he had met with UNH Planner Doug Bencks on Monday, June 7th, and would get his memo on the meeting out to Board members by Friday.
- Mr. Campbell said the Newmarket Planning Board had continued its review of the T-Mobile Cellular Tower off of Simons Lane. He noted that the tower would be located in Newmarket, but the proposed access drive for the structure would be on town-owned land in Durham.
- Mr. Campbell said he would be giving a presentation to the NH Department of Transportation on Friday concerning the State Planning and Research Grant he had submitted in April. He said the grant was for the Northwest & Southeast Transportation Linkage and Improvement Study, and noted that the Strafford Regional Planning Commission was the co-applicant.
- Mr. Campbell noted the information in Board members' packets entitled "Enhanced Planning Communication Through Graphics", and explained that the publication provided an exercise on how to use graphics to communicate about certain aspects of planning. He told Board members it was a very useful exercise.
- Mr. Campbell said that Fall Line Properties had requested a 90-day extension for completing the Conditions of Approval for the hotel project, and said this would be considered under New Business.

- Mr. Campbell noted that he had mailed copies of the updated revisions to the nonresidential sections of the Zoning Rewrite (Table of Uses; Dimensional Requirements; the Zoning District Provisions; and Definitions), for review by Board members.

IV Public Hearing on Subdivision Regulations

Richard Kelley MOVED to open the public hearing. The motion was SECONDED by Nick Isaak, and PASSED unanimously.

Chair Roberts asked if any members of the public had come to speak for or against the proposed Subdivision Regulations. There were no comments from members of the public.

Councilor Grant MOVED to close the public hearing. The motion was SECONDED by Kevin Webb and PASSED unanimously.

Mr. Webb asked if any additional written comments had been received recently at the Planning Office on the Subdivision Regulations. Mr. Campbell said the only other item was a short list of comments submitted by Chair Roberts who proposed including the language “true meridian” in parentheses after “North Arrow” on pages 15 and 21, concerning the Formal Application Submission”, so no one who get confused about whether this was magnetic north or not.

Mr. Campbell said the second comment had to do with requirements for the construction drawings on page 34, and recommended a larger scale for the vertical, profile view, perhaps 1” = 5 ft.

Mr. Kelley said that typically the vertical profiles would be exaggerated in this way.

Chair Roberts also said he had noted a few minor corrections that needed to be made to the Ordinance, such as typos, but said none of this was of any substance.

There was discussion as to how to proceed concerning approval of the Subdivision Regulations.

Chair Roberts noted that when the Board voted to send the Subdivision Regulations to public hearing, they struck out “on the same side of the road” concerning the scenic road issue. He noted this didn’t make it into the minutes, and asked what the recollection of Board members was regarding this. There was discussion about the language on page 27 as it related to this, and it was agreed that the language under 9.03 B should read “..shall be spaced not less than 1,200 feet from each other and from any existing road or driveway on either side of the road..”

There was discussion about language on page 10 under item 4 concerning Preliminary Design Review. Mr. Campbell said the language should say “Persons engaged in pre-application”

There was additional discussion about the language under Section 11.02 on page 34 concerning the scale of drawings. Mr. Kelley recommended that the wording read : “ the drawing shall be at a horizontal scale of 1” = 20 ft, and the profile vertical scale shall be 1” = 4 ft.

Kevin Webb MOVED to accept the Subdivision Regulations as amended. The motion was SECONDED by Richard Ozenich, and PASSED unanimously.

V. Acceptance Consideration for a Site Plan Application

Attorney John Springer explained that the applicants, the Town of Newmarket and Omnipoint, were here to obtain approval for a driveway crossing a wetland in the Town of Durham. He said the access driveway was needed to support a personal wireless facility. He noted that the facility was a permitted use in Newmarket, and was presently before the Newmarket Planning Board. He said the third meeting with the Board, which had been held the previous evening, had been continued because of a notice issue with abutters. He said the process in Newmarket would hopefully finish up in July.

Attorney Springer said the planned driveway was 10 ft wide, and said the length of the portion of the driveway in Durham was about 250 ft. He said the delineation of the wetlands in the area had been flagged, and said the total area of wetlands in Durham that would be impacted was 1400 sq ft. Attorney Springer said there should be little impact by the project on the grade, noting that the land was virtually flat in that area. He said the utilities for the facility would be run along the same route as the driveway, explaining that the pole would be located at Simons Lane, and would run underground through an easement.

Attorney Springer said the application had been reviewed by Code Administrator Johnson. He said Mr. Johnson had noted the following:

- The applicant needed to apply for a driveway permit; Attorney Springer said the applicants had done this.
- The applicant would need to apply for a wetlands permit from NHDES; Attorney Springer said they had not done this, and asked the Board to make this a condition of approval.
- The applicant might need approval from the Durham tree warden before doing any tree cutting.
- Construction related activity might need to be done in Newmarket (storage of trailers, etc.). Attorney Springer said the applicant had agreed to do that.

Attorney Springer said it had been determined that there was no alternative location for the driveway access that was outside of the wetland, or a location that would have less detrimental impact on wetlands than the proposed location. He noted that the land parcel in Newmarket where the facility would be located was odd shaped, and was actually landlocked, so it was somewhat difficult to find a way to access it. He said the Town of Newmarket had attempted to approach the owner in front on Simons Road, but he had declined to allow access over the property. He said the Town had then approached Durham about providing access. Attorney Springer said if the Durham Planning Board did not approve this proposed access, the applicant might be able to get access from another

landowner in Newmarket, but he said this access was not as good, and could possibly cause more impact on wetlands.

Attorney Springer provided some details on design, construction and maintenance methods that would be used in the driveway construction. He described the culverts that would be installed, and noted that a silt fence and hay bales would be used on the driveway during construction. He said the applicants would observe all Town requirements concerning driveway construction.

Attorney Springer said the applicants believed this access through Durham was chosen not for economic reasons, but because the first access that had been requested was denied, and this route was the best alternative. He noted that the Town of Newmarket would have to share some of its revenue from the facility with Durham.

Chair Roberts asked Attorney Springer if he had any pictures of the site, and also asked if it was believed that the project would have any impact on abutters.

Mr. Webb said he was curious as to why the driveway hooked up to the north rather than using a more direct route to Simons Lane, noting it looked like the more direct route would traverse less wetlands. Mr. Webb also asked about the length of the monopoles for the facility, noting his concern was that the trucks bringing in the poles might have a hard time maneuvering them on the driveway.

Attorney Springer explained that the driveway was curved up in order to have less impact on the wetlands. There was discussion about the ability to get the poles into the site, and Ms. Couch said the proposed access was designed by people who would have taken the length of the poles into consideration.

Councilor Grant asked what kind of wetland was found in that area. There was discussion about this, and Ms. Couch described the area, and noted that one could traverse the property from front to back.

Councilor Grant asked if one could traverse the path of what was proposed as the driveway, and Ms. Couch said yes, and noted one could actually park in that area.

Councilor Grant asked how much of the construction involved filling, paving, etc. of the land area. Ms. Couch said there would be no paving, and provided details concerning the placement of filter fabric and 3 “ trap rock for the driveway on top of the fabric.

Mr. Kelley said he believed Ms. Couch was describing a construction entrance detail, and said it was not clear that that was the typical cross section for the final road. There was discussion about the detail of the road construction.

Councilor Grant asked if the driveway would support the weight of a fire truck.

Mr. Isaak noted that if the driveway could support the weight of the trucks used as part of the construction of the facility, it could probably support a fire truck.

Mr. Kelley noted that when Attorney Springer described the two culverts to be installed, he said they would be located at the high point of the roadway. He asked Attorney Springer if he actually meant to say they would be located at the low point, and also asked if water flowed from north to south in that area. There was discussion about the culverts as they related to the land gradient.

Attorney Springer said that water appeared to flow north to south in that area.

Mr. Kelley asked if the wetlands shown on the site plan were part of a much larger wetland area. Attorney Springer said he believed the wetlands continued into Newmarket, and Ms. Couch said the land throughout that area varied from wetland to upland knolls.

Mr. Kelley said both electric and communication conduits were going to be put underground and asked if their proposed location was shown on the plan. There was discussion about this, and it was noted that these would be placed within the roadway bed, within the right-of-way. Attorney Springer said the right-of-way itself is approximately 2-1/2 feet wider on each side than the roadway itself for utilities.

Mr. Kelley asked how many conduits had to be brought in, and noted there could be a temporary impact to the wetland from this. Ms. Couch said that each carrier on the pole needs two ducts.

Mr. Kelley noted that Attorney Springer had said that “at this time” it is the solution that provided the minimum impact to wetlands, and asked if there were solutions out there in the future that could provide less impact. There was discussion about this, and Attorney Springer clarified that he did not mean to imply that. There was discussion about other possible alternate routes for the driveway.

Mr. Kelley asked about the duration of construction activity, and the time of day when it would be conducted. Attorney Springer said the applicant was willing to agree to something concerning the hours when work would be conducted. He said the duration of construction would probably be about 30 days, depending on the weather. Ms. Couch said this would depend on the conditions, and noted that a soils analysis was needed in order to determine the footing.

Mr. Webb noted that the cell tower would be located about 90 ft. from the Durham town line. He asked if a noise report had been prepared as part of the application, and also asked Board members whether a noise report would be needed for this.

Mr. Campbell said he had discussed this with the planner in Newmarket planner, noting the Town didn't have a noise ordinance. Mr. Campbell said it would be difficult as part of this application to require a noise report, and said that Newmarket would work with the applicant concerning the noise issue.

Chair Roberts asked if there was any noise a Durham resident would be able to hear from the facility, and Attorney Springer said there was not.

Chair Roberts asked if a generator would be needed for the facility.

Ms. Couch said there would be a temporary generator on site when needed, for outages lasting longer than 6 hours.

Chair Roberts noted that there were simply ways to minimize noise impacts at the facility if needed.

Attorney Springer said the applicants understood the concerns about noise, and said he would be happy to address noise issues with the Town of Newmarket.

Mr. Webb made note of the fact that noise did not honor town boundaries, and Attorney Springer said he understood this.

Mr. Kelley asked whether, if children in the neighborhood gained entrance to the facility, if extra precautions had been taken to make sure they didn't gain access to the facility. Attorney Springer there would be a 6 ft. high barbed wire fence.

Mr. Kelley asked if they did get inside the facility, what there could harm them, and Attorney Springer said the pole was not climbable, and provided other detail about the facility.

Chair Roberts asked about voltage at the facility, and Ms. Couch said it would be 220.

Councilor Grant asked if T Mobile/Omnipoint was considering other potential carriers when they put the poles up, or would this have to be done again. Attorney Springer explained that generally, enough ductwork was put in to handle other carriers. Ms. Couch noted that it was the Town of Newmarket that would own the facility.

Councilor Grant said he just wanted to be sure that they wouldn't have to dig up the area again to put in more ductwork.

Ms. Couch said the Newmarket ordinance required them to provide for themselves and 2 others, which meant that there would be a minimum of 3 carriers.

Mr. Campbell said he was aware that Doris Wiggins from the New Hampshire Department of Environmental Services Wetland Division had walked the property. He asked Ms. Couch to provide the Board with more detail as to why Ms. Wiggins was at the site. Ms. Couch explained that the Town of Newmarket had initially looked at this site for construction purposes and had done the initial ground work for a project. Newmarket also had the wetlands flagged. At that time, Doris Wiggins had indicated to Newmarket that this would be a preferred access. However, Ms. Couch said she could not obtain that information directly from New Hampshire Soils and therefore could not testify to the accuracy of that statement.

He noted that the final easement language had not been finalized with the Town Council, but was on the Agenda for June 21st. He said this language would need to be part of the conditions of approval. He also said he had received a comment from the Fire Department that the 10 ft road width was narrow if they needed to access the site. Mr. Campbell said the Town would need absolute assurances that the road would be at least 10 ft. wide; that there would be a 15 ft height clearance; and that these would be maintained, for access purposes.

Mr. Kelley asked who performed that maintenance, and Ms. Couch said the Town of Newmarket would do this.

Chair Roberts asked if the service that this cell tower would provide would fill the coverage gap that Omnipoint had described during a previous application process. There was discussion about this, and Ms. Couch said this facility would complete the coverage. Mr. Webb noted that the cell tower facility would be sited on ledge outcrop, and asked if any blasting would be required.

Ms. Couch said ledge would be used as part of the foundation, and Mr. Webb asked for verification of this.

Councilor Grant asked if the application was complete, and Mr. Campbell said that it was.

Councilor Grant MOVED to accept the Site Plan Application submitted by Omnipoint Holdings, Inc., East Providence, Rhode Island, as presented.

Mr. Kelley said it was not clear that the culverts were sitting on the right spot, based on the grades indicated in the plan. He said he would like to be shown that they were in the correct spot, so the construction would not create a possible adverse condition for the abutter to the north. He also said he would like to clearly understand how many ducts were being proposed, whether they would go over or under the culvert location, and what the associated impacts would be of that installation. He noted there might be as many as 12 conduits running in the duct bank, with all of this inside of a wetland. Mr. Kelley said he was also reluctant to grant the conditional approval before the wetlands permit was obtained from the State.

The motion was SECONDED by Kevin Webb, and PASSED unanimously.

Mr. Campbell said the public hearing would be held on June 23rd. Board members scheduled a site walk for June 23rd, at 8:00 am, and noted that the public was invited to attend.

Chair Roberts noted a beautiful sketch of the noise containment plans for components of a cell tower facility had been provided by a previous applicant.

Councilor Grant explained that the application hearing that evening was not meant to be a public discussion, and said that the public hearing was the time for the public to provide comments on the application.

Chair Roberts noted that if members of the public could not attend, they could provide their comments and concerns in writing to Mr. Campbell.

VI. Request for Voluntary Lot Merger

Mr. Campbell explained that as part of the conditions of approval, the applicant would have to merge all four lots. There was discussion about this, and Mr. Campbell noted that the original 2-lot merger that the Board approved was never actually submitted, so was irrelevant at this point. Mr. Campbell read the language of the proposed lot merger.

Mr. Kelley asked if the merger included the moving of houses, and was told it did not.

Mr. Webb noted that this would allow Fall Line properties to retain their duplexes, and Nicks Bricks, because otherwise, there would be too much density on the small lots.

Chair Roberts said the abutters approved of this because it was part of a larger effort to stabilize the area, by re-doing the duplexes.

Nick Isaak MOVED to accept the Request for a Voluntary Lot Merger submitted by Fall Line Properties, Inc, Portsmouth, New Hampshire, to merge four lots. The motion was SECONDED by Richard Ozenich, and PASSED unanimously.

VI. Town Council Feedback on Ordinance Revisions

Mr. Campbell provided background information about the punch list that had been developed by the Town Council, and said the Board could begin to respond to the concerns of the Council. He said Councilor Grant had agreed to take the lead on this, and suggested going through the minutes to get a good idea

Councilor Grant said they had the punch list as well as the minutes from the May 10th meeting to work with. He said the Council had concerns other than those listed in the punch list, for example, Councilor Smith' concern about government entity language. He noted that this had not been discussed formally by the Council yet, and also said there might be other issues of concern that would be coming along.

Chair Roberts noted the proposal from Strafford Regional Planning Commission concerning the build-out analysis, and said it seemed to be a reasonable quote.

Councilor Grant said an important question was whether there was money in the budget for this. He said if there were not, it would seem to be reasonable to appropriate that amount. He said he assumed this was the right way to go because such an analysis was requested as part of the Council's proceedings on the Zoning Ordinance.

Chair Roberts asked Jim to check into this, and said he understood that timing might be an issue. He noted that the build-out document would be an important starting point for future master planning.

Chair Roberts also said Mr. Campbell had put together a rough time chart leading up to when there would be a public hearing on the completing Zoning Ordinance revisions. He said it

was important to consider, at the next Zoning rewrite meeting, the details of what it would take to complete this process.

Councilor Grant said he would be willing to go through the Town Council minutes for May 10th, when the Zoning Ordinance, when the final deliberations on the Ordinance were held and the Ordinance was approved, in order to outline for the Board what the Council's ongoing concerns were. He provided a brief summary on the issues the Council had grappled with when they had reviewed the Ordinance.

Conditional Use Process – Councilor Grant said the Council reluctantly approved the continued use of this process, but seriously questioned the words “of benefit to the Town” in the conditional use provisions. Councilor Grant noted these words were criticized at hearings held by the Board and the Council, because it wasn't clear what they meant. He said the Council had suggested taking the words out, but was not sure what to put in its place.

Chair Roberts noted that this wording had survived court cases, and provided additional detail about the wording. Board members discussed in significant detail how the wording could be improved, and agreed to take out the wording “provided that these uses are determined by the Planning Board to be of benefit to the Town”. Board members developed wording that should be put in place of this at various places in the ordinance.

Mr. Kelley asked if it was difficult for the Council to come to terms with the conditional use process. Councilor Grant said one Councilor had spoke specifically about problems with the process, but said no one had said recommended doing away with it. He said the discussion had primarily centered on “of benefit to the Town”.

Mr. Kelley asked if a motion was needed to change this wording, and there was discussion among Board members and Mr. Campbell as to how to proceed. Councilor Grant suggested that the Board could say these were the Board's suggestions for addressing the concerns that were raised.

Councilor Grant said the religious uses issue had been discussed by the Council, and said the Council had questioned why this use was allowed in all districts. There was discussion about this issue, and how it was addressed in various parts of the country.

Chair Roberts said at least if it was a conditional use, it gave the Board the ability to control the amount of parking, and other possible impacts on surrounding properties.

Mr. Kelley said he was concerned about such facilities being located in the Rural zone.

There was additional discussion about the intention of the Board as to how it had zoned religious uses. Councilor Grant noted that land uses for commercial zones and research zones were not spelled out yet, and when the Zoning rewrite committee got to them, they might not want to include religious uses. He said the Council's concern was that there was strong federal law in this area. But he said it seemed that if the Town allowed religious uses in the

majority of zones, but didn't allow them in some other districts, the courts would be ok with this.

Councilor Grant noted that one of the areas that needed research was the excavation provisions.

Mr. Campbell said he had gotten a legal opinion on this, and was told that the Town couldn't exclude excavation from every zone. He said it was probably appropriate to exclude it in most of the residential zones, but said in the Zoning Rewrite round, the Board would need to look at allowing excavation in at least one zone.

Chair Roberts noted the provisions concerning galleries and museums had been a concern for some Council members. Councilor Grant said the issues seemed to be a matter of the definitions. He said he thought of galleries as stand alone buildings, requiring a lot of parking, but said the Council pointed out, that especially in Durham, a gallery was more likely to be a room for a small art gallery. He said Council members had said these small galleries should not be limited. Councilor Grant said that planning consultant Mark Eyerman had pointed out that home occupations would cover this issue, but Councilor Grant said the gallery issue could also be addressed in the definitions section.

Mr. Isaak noted that parking was the issue of concern when the Board had discussed museums/galleries, and said that perhaps a stipulation should be put in concerning parking. There was discussion about this, and also about whether it made sense to distinguish between two sizes of galleries.

Councilor Grant said the Board had permitted galleries only in the Rural and RC zones, but had not allowed them elsewhere, and said the Council had questioned this. He said the question was, if galleries were permitted in the Rural and RC districts, why not allow them by conditional use in the other two residential districts.

Mr. Isaak said that perhaps galleries should be a conditional use in all of the zones.

Mr. Webb said they should continue to disallow them in the RA district, because this seemed inappropriate.

Mr. Campbell noted that galleries could be put in barns, and could be considered quaint, by people out doing antiquing

Mr. Isaak noted that conversion of a fraternity into a gallery on Madbury Road would be a good example.

Board members agreed they should not decide on this issue yet.

Councilor Grant stated again that he would be willing to summarize the information from the Council minutes in a document for discussion at the next Board meeting, and Board members agreed that he should do this.

Chair Roberts asked Mr. Campbell about the legal review of the Zoning Ordinance, and Mr. Campbell said the Town Attorney had gone over the conditional use issue. Mr. Campbell said he had not heard back from him yet concerning Conservation subdivision.

Mr. Kelley noted he had recently had a discussion with a person who said that for the most part, challenges to zoning ordinance revisions had been unsuccessful, that the Town could change the zoning, and it did not amount to a taking.

Chair Roberts said the process the Board had gone through had in large part been derived from the State's land use regulations, and had been guided by the Master Plan.

VIII. Other Business

A. Old Business

B. New Business

Request for 90-day extension request on Conditions of Approval for Fall Line Properties Site Plan

Mr. Webb asked why this was needed, and Mr. Campbell said the applicant had some details that needed to be worked out, but was very close to meeting the conditions.

Councilor Grant MOVED to grant the Request for a 90-day extension on the Conditions of Approval for the Fall Line Properties Site Plan. The motion was SECONDED by Nick Isaak, and PASSED unanimously.

Mr. Campbell told Board members that the developer of Spruce Woods had recently come to speak with him about how he wanted to market existing units at Spruce Woods. He said the developer would like to change the age limit from 62 to 55, and Mr. Campbell said he told him would check with the Board on this. He noted that changing the age limit would open up a wider market for the developer.

Mr. Webb noted that it also opened up the possibility of children, since only on family member would be required to be 55 or older.

Mr. Campbell noted that the original approval was under the PUD provisions. He said with the changes to the conditional use process, including the removal of the Council from the process, he had wondered how this should be handled. He noted that the Town Attorney had said that an amendment of a conditional use permit could go through the Board.

Mr. Campbell said this was not a formal request, and Board members agreed the issue deserved to be heard and discussed.

Chair Roberts asked Jim Jelmsberg (who was in the audience) how he, as a landowner in the vicinity of the proposed hotel, felt about changing the allowed length of stay at the

hotel from 14 days to 21 days. Mr. Jelmberg said this would be acceptable to him if the 21 days were allowed within a 45-day period.

Mr. Kelley asked if there had been any feedback about the ordinance for Young Drive related to movement of cars to parking spaces on nearby streets.

Councilor Grant said there had been some movement of cars, but it was somewhat hard to tell because school was out. But he said that if this persisted in the fall, a permit system would be put in.

Minutes April 28, 2004

Nick Isaak MOVED to approve the minutes of April 28, 2004 as presented. The motion was SECONDED by Richard Ozenich, and PASSED 5-0-1, with Richard Kelley abstaining because he was not a member of the Board at that time.

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

Meeting adjourned at 9:25 pm.

Amanda Merrill, Secretary