

D-R-A-F-T

DURHAM PLANNING BOARD WEDNESDAY, JANUARY 11th, 2006 TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL 7:05 PM

MEMBERS PRESENT: Chair Kelley; Arthur Grant; Richard Ozenich; Kevin Webb
(arrived late); Councilor Needell

ALTERNATES PRESENT: Councilor Carroll; Bill McGowan; Susan Fuller; Lorne Parnell

MEMBERS ABSENT: Nick Isaak, Stephen Roberts

Started at 7:05 pm

I. Call to Order

II. Approval of Agenda

Councilor Needell MOVED to approve the Agenda as submitted. The motion was SECONDED by Kevin Webb, and PASSED unanimously 7-0.

III. Approval of Minutes

October 12, 2005

Page 2, 4th paragraph from bottom, should read "... if the project were pushed back."

Page 7, top paragraph, should read Chair Kelley said it was because of the nature of a rural campus, where transportation choices were slim."

Page 9, the motion on the page should read "...newly created lot in a conventional subdivision.."

Page 11, the motion toward the bottom of the page, should say "...was SECONDED by...)

Arthur Grant MOVED to approve the October 12, 2005 Minutes as amended. Kevin Webb SECONDED the motion, and it PASSED unanimously 7-0.

October 26, 2005

Page 2, bottom paragraph, should say "He said the applicant agreed to show distances..."

Page 5, last two paragraphs on the page should be separated by a space.

Page 6, Arthur Grant's motion should read "...and to take it up after the following public hearing..."

Page 8, 4th paragraph from bottom should read "... wished to convey President Hart's thanks..."

Arthur Grant MOVED to approve the October 26, 2005 Minutes as amended. The motion was SECONDED by Councilor Needell, and PASSED 6-0-1, with Kevin Webb abstaining because of his absence from the October 26, 2005 meeting.

November 9, 2005

Page 4, 5th paragraph, should read "...where the shelter was proposed....."

Page 2, bottom paragraph, should read “..noted the site visit was held that same day...”

Page 3, 3rd paragraph, should read “..Verizon had responded to the Town staff report...” Same page, 4th paragraph from bottom, should read “Chair Kelley said the structural connection to the building....”

Page 6, 5th paragraph, should read “..and should no longer speak during deliberations...”

Page 12, 4th from paragraph from bottom, should read “ ..he said he thought that because it contained mostly University land, the MUDOR District was of little practical use, and should be merged with the ORLI District.”

Arthur Grant MOVED to approve the November 9, 2005 Minutes as amended. The motion was SECONDED by Kevin Webb, and PASSED unanimously 7-0.

IV. Report of Planner

- Mr. Campbell said he had met with University Planner Doug Bencks on Monday, and had provided Board members with a memo summarizing the meeting. He said most of the discussion at the meeting was on three upcoming University projects, and provided details on this. He noted there would be a public hearing at the January 25th Board meeting on these projects.

Mr. Campbell said he and Mr. Bencks had also discussed the Main Street project, noting the estimate for the project came back at a minimum of \$1.3 million, while the wish list was approximately \$1.8 million. He said there currently was about \$630,000 to work with, and said additional funding to make up the difference would be sought from the CMAQ committee, noting that there were some leftover CMAQ funds available. He said that whatever was received from this fund would be matched entirely by the University, and said the Town wouldn't have to put in any more than the \$80,000 it had already agreed to.

- Mr. Campbell said he attended a committee meeting where proposals for the Highland House were reviewed. He said some of the proposals reflected the fact that not enough attention had been paid to the Zoning Ordinance requirements, and he provided an example of this. He also explained that the lot lines for the property might be changed somewhat. He said applicants would have the chance to amend their proposals in order to fit better with the Zoning Ordinance as well as the new lot lines. He said the Committee would meet again in February, and said the public hearing on the project would also possibly be held in February.
- Mr. Campbell said the MPO Technical Advisory Committee had recently met, and he reviewed topics discussed at the meeting that would affect Durham. He said the Committee was informed there was a new round of SPR grants, noting that the Town had applied for these funds the previous year, for the northeast/southwest transportation linkage study, which included looking at the Northern Connector. He said he would be reapplying for these funds this year.

Mr. Campbell said another amendment was made to the State 3-year Transportation Improvement Plan, which had pushed back the engineering work for Route 108 to 2006, and had pushed back the right of way work for the shoulders on Route 108 to 2007. He said the actual construction had been pushed up to 2010 in the 10-year Plan. He said he would be working through the Rockingham Planning Commission and the Strafford Regional Planning

Commission to express the Town's dismay at this, and to ask that the construction project be moved up to 2008.

Chair Kelley asked Mr. Campbell if he had known about this amendment before the MPO meeting.

Mr. Campbell said it had been in the works for awhile, and provided details on this. He said there had been some shifts in the schedule for the projects in the 10-year plan for financial reasons, and said as a result of this, the Route 108 project had been moved back.

Councilor Carroll noted that money had been put in the 2006 Budget for a transportation study, and she received clarification that if the SPR grant money came in, this would offset the budgeted transportation funds.

There was discussion about the purpose of the transportation study. Councilor Carroll noted she had previously asked whether public transportation options would be looked at as part of the transportation study, and said she continued to hope that they would be.

Mr. Campbell said the study would look at all of the transportation options.

- Mr. Campbell said that at the next Planning Board meeting on January 25th, public hearings would be held on remaining sections of the Ordinance. He also said that if the Board finalized its revisions to the Rules of Procedure at the present meeting, a public hearing could be held on it as well at the January 25th meeting.
- Mr. Campbell said there would be public hearings at the January 25th, 2005 meeting on the three upcoming University projects, and also said the Board would be doing a site plan review of the Scorpions application at that meeting.
- Mr. Campbell said Sumner Properties had two new applications, which would come before the Board in February. He provided details on this.

V. Discussion on Zoning Ordinance Amendment Parts B through G remanded by Town Council

Mr. Campbell said Section A of the Zoning amendments had been approved unanimously by the Council on Monday evening. He noted that the Aquifer Overlay provisions had been approved by the Council in December, and said Section B, D, F, and G were still to be approved.

Section B - Proposed Amendments to Chapter 175 Zoning to Implement the Master Plan Recommendations Dealing with the Non-Residential Zones.

Mr. Campbell specifically noted the Excavation issue, which had come up at the Council meeting on Monday, and said he had promised the Council that the Board would be addressing this land use issue as soon as possible, and was looking at model ordinances for guidance on this.

He reviewed the changes made to Section B of the Ordinance under the category of "Major Review Areas", based on discussion by the Council, and further deliberations by the Planning Board

- A. He said land uses with all X's in the Table of Uses were removed from the Table, noting he had checked with the Town Attorney concerning this.
- B. He said the change had been made to only allow drive-throughs for banks.
- C. He said the minimum open space/maximum impervious surface requirements had been removed from the Zoning provisions, and the impervious surface ratios were kept as is in the Table of Dimensional Requirements.
- D. He said the change had been made to allow multi-unit housing as a conditional use in the ORLI District.

Mr. Campbell noted that Mr. Eyerman's email indicated he had removed some of the definitions that were proposed to be added that were things the Board had taken out of the table of uses, and didn't appear anywhere else in the amendments or the existing ordinance, like body shops. He said he had left some of these in because they were used in other definitions or showed up elsewhere.

Mr. Eyerman's email also indicated he had revised the dimensional table to try to make it sequential with the housekeeping amendments adopted at the Council meeting that Monday. Mr. Campbell said he had reviewed this.

Mr. Eyerman's email also said he had added the change to the parking requirements dealing with curb cuts, and had edited the sign requirements. Mr. Campbell explained that these areas needed to be changed because they had still included wording on the Limited Business District.

Councilor Needell received clarification that the Board would have time to study these changes in more detail before the public hearing.

Section C Shoreland Protection Overlay District

Mr. Campbell said the only change made as a result of Council comments was to add language concerning biosolids. He said language was taken from the Aquifer Overlay District provisions, and was added to 175-73, as section l. after k. on page 6.

Councilor Needell noted there had been discussion by the Council on 175-75-1 H concerning docks and piers.

Mr. Campbell said as part of this discussion, it had been determined that because of the State requirement, no change was necessary.

The Board discussed whether it made sense to approve the various Sections individually or together, and it was agreed that each should be treated separately. Mr. Campbell noted that the Council had requested that not all of the revised Sections be sent to it at once.

It was clarified that the excavation and mining issue didn't have to be addressed by the Board in the next few weeks, but was still a high priority.

Chair Kelley appointed alternate Susan Fuller as a voting member in Nick Isaak's place, and appointed Alternate Bill McGowan as a voting member in place of Stephen Roberts.

Arthur Grant MOVED to submit the proposed amendments to 175 Relative to the Shoreland Protection Overlay District provisions for public hearing on Jan 25, 2006. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Section D -Wetlands Conservation Overlay District

Mr. Campbell explained that wording had been added under F. on page 11 concerning a septic system setback. He explained that it had previously been thought that the performance standards in the provisions covered this, but it was realized that they only covered new development. He said the Council's feeling was that this additional language was needed.

There was discussion on existing wording in the provisions about failed septic systems within 125 ft. of wetlands, concerning the roles of the Health Officer and Zoning Administrator.

Mr. Campbell said the Health Officer's role was to discuss the placement of the replacement septic system with the septic designer from a technical perspective, and said the Zoning Administrator's role was to consider whether the location of the replacement system was the best that could be achieved in regard to the setback.

There was discussion that it would be a good idea for Mr. Johnson to take a look at this language. It was agreed that whatever language change might come out of this was not substantive, and in fact could be made as part of the public hearing process.

Mr. Grant asked what the Basal Area Law was, in 175-65 D, Timber Harvesting, and there was discussion on this.

Mr. Campbell said he would get an explanation for this, and Mr. Grant suggested that it would be helpful to place a reference concerning this in the Ordinance.

Arthur Grant MOVED to submit the proposed amendments to 175 Relative to the Wetlands Overlay District for public hearing on January 25, 2006.

Richard Ozenich said he didn't realize that snowmobiles were allowed in the Wetland Protection Overlay District, noting wording on this on page 11, under trails.

Mr. Webb said he believed this language was left in because it was felt that when snow covered the ground, there was less likely to be damage to wetlands. He also said this language was intended to prevent snowmobile and ATV people from taking the Town to court.

There was discussion about this language. Councilor Carroll suggested that someone could bring up this issue at the public hearing. Mr. Ozenich said he would bring the issue up at the upcoming Conservation Commission meeting.

The motion PASSED unanimously 7-0.

Section E -Aquifer Protection Overlay District

It was noted that these provisions had been adopted by the Council unanimously at its November 30, 2005 meeting.

Section F - Historic District Overlay Provisions

Mr. Campbell explained that under the previous language in 175-94 A. 10., the first two paragraphs, which were not mandatory, had now been put into a new section B “Activity that is Advisory.” He said “Activity Exempt from Review”, which had previously been section B, was made into a new section C.

There was discussion about the Masiello group property, and the fact that it was not located in the Historic District, but probably should be. Mr. Ozenich said the signs there were out of character with the area, and there was additional discussion on this.

It was agreed this was simply an organizational change to the provisions, so was non-substantive. The Board said because the change was non-substantive, the Historic District Overlay provisions could be sent on directly to the Council for a public hearing. A motion made by Mr. Grant, and seconded by Mr. Webb to send these provisions on for a Planning Board public hearing was withdrawn, after discussion.

Arthur Grant MOVED to forward Article XVIII Durham Historic Overlay District Ordinance to the Town Council for review and approval. The motion was SECONDED by Kevin Webb, and PASSED unanimously 7-0.

Section G - Personal Wireless Facilities Overlay

Mr. Campbell reviewed the changes that had been made to these provisions based on input from the Council. He said that the definition of Alternative Tower Structure under 175-7 had been changed to read “Innovative siting techniques that include artificial trees..”, (not human-made trees). He also said the definition of Concealment was changed to read “..resulting in the facility being either not seen from the outside, or made part of the feature enclosing it.”

There was detailed discussion on the purpose of the provisions on Page 2, 175-101 A. Location – “Applicants for new PWSF shall place antennas and towers at locations which do not adversely impact residential neighborhoods...” It was noted that the Council had asked that the Planning Board define “adversely impact”.

Mr. Campbell said he had asked Mr. Eyerman to either define this, or remove the wording if it couldn’t be done. There was discussion that this language was subjective.

Mr. Webb suggested alternative wording such as “..at locations which minimally impact residential neighborhoods..”

Mr. Campbell said the provision was trying to discourage companies from locating in residential neighborhoods, although this could not be prohibited.

Mr. Webb noted it was rare that this would even happen anyway because towers couldn’t be built unless there was no other option, and said existing structures that were tall enough to hold the equipment were unlikely, unless there was something like a water tank. There was discussion about this, and other tall structures that might be introduced into a residential neighborhood.

Councilor Needell asked if this provision was enforceable, noting an applicant might follow the rules and determine there was no other place to locate a personal wireless facility other than a residential neighborhood.

There was discussion about this, and on what minimization of impact really meant. Mr. Webb said this language could be used to justify asking for things like noise modifications, etc.

Board members agreed that language similar to what Mr. Webb had suggested should be included in the Ordinance.

Mr. Campbell explained that the Council had questioned what the word “reasonable” meant in the context of 175-101. F. “All applicants for PWSF shall submit information related to the availability of reasonable alternative technologies.”

Board members discussed in detail the possible implications of removing this word.

Mr. Webb said he preferred that the word be left in, noting the list of possible reasonable technologies could be long.

Councilor Needell said what this provision was saying, even without the use of the word reasonable, was that an applicant needed to show that alternative ways of doing this had been looked at.

Chair Kelley and Mr. Webb agreed it was acceptable to remove the word reasonable.

Board members agreed with Chair Kelley that Section F should go to public hearing, since the wording on “minimizing impact...” was substantive.

Arthur Grant MOVED to submit the proposed amendments to 175 relative to the Personal Wireless Overlay District provisions for public hearing on Jan 25, 2005. The motion was SECONDED by Kevin Webb, and PASSED unanimously 7-0.

There was additional discussion by the Board on Section B -Proposed Amendments to Chapter 175 Zoning to Implement the Master Plan Recommendations Dealing with the Non-Residential Zones.

Mr. Grant said he would like to have more time to look through the changes that had recently been made to Section B, based on comments from the Town Council. There was discussion about this.

Councilor Needell asked if Items 9-12 in the revised Section B should be simply be appended into Section B, or should be handle as a separate piece, Section H. He said his concern was that these sections had not been looked at by the Council yet, but had simply been alluded to. There was discussion about this, and what the process should be.

Board members agreed there needed to be greater clarification of what the abbreviations for the various districts stood for in Section B.

Mr. Campbell said the rows of X's for uses meant to be excluded from the Table of Uses had now been removed from the Table. He noted that the excavation and mining was still in the Table, but was not permitted, and said this issue would be addressed later.

There was discussion that heliports was now an excluded use and had been removed from the Table of Uses, but that the facility already existing at Goss could still be used.

Chair Kelley asked if anything land uses might have been taken off the Table of Uses inadvertently, and Mr. Campbell said he would double-check this.

Mr. Campbell said Attorney Mitchell's email indicated that fisheries uses needed to be addressed in some way in the Ordinance.

Mr. Grant said the Board had discussed fish farming and aquaculture, and didn't want these uses in Durham.

Mr. Campbell said Attorney Mitchell had pointed out there was a mandate for mobile homes, and mobile home parks, that came with failure to abide by from RSA 674:23 He said the courts had ruled that if a Town didn't allow the opportunities provided by the Statute, mobile homes could be placed anywhere in Town.

There was detailed discussion on the definition of manufactured housing and mobile homes, and that the Town's Ordinance's definition on manufactured housing did include mobile homes.

Chair Kelley said the Town appeared to be covered, because it included manufactured housing in the Table of Uses.

Mr. Campbell said he didn't think what the Town was doing fit the requirements of the Statute, and he read through the Statute. Which said a local Ordinance "...should allow in its sole discretion, manufactured housing to be located on individual lots in most, but not necessarily all land areas in districts zoned to permit residential uses.....or in manufactured housing parks....." He said Durham allowed mobile homes in one district, the Rural District.

Chair Kelley said in terms of land area, the Rural District was the largest district in Durham.

Mr. Campbell said in terms of land value, the Rural zone acreage was expensive, and required 3 acre lots.

There was detailed discussion about this issue.

Mr. Webb said realistically speaking, the Town did allow mobile homes somewhere, although this didn't meet the statute exactly. He questioned whether anyone who want to put up a trailer park, so would challenge this.

Councilor Needell said it was possible that someone in another district who had a buildable lot would like to put manufactured housing up, and could therefore challenge the Ordinance.

There was additional detailed discussion by Board members on this issue, and about how the wording in the State statute should be interpreted.

Mr. Campbell suggested that the Board should not do anything now concerning this land use, and said this was an issue along with affordable housing and elderly housing that the Board needed to have a larger discussion on.

Chair Kelley said the language and supporting information in the Statute said that since the passage of the Statute, some towns had complied with it by zoning in such a fashion as to regulate manufactured housing to districts where land characteristics or costs effectively eliminated this kind of housing as an alternative to regular housing. He said it sounded like this was what Durham had done, by allowing this land use in the Rural District, and said the Town was clearly in violation of this Statute.

9:10-9:25 Break

Chair Kelley said Board members needed time to look at the revised Section B more carefully, so it didn't make sense to have the hearing on this section on January 25th. Board members agreed with this.

Chair Kelley suggested that portions of Section B where wording had been revised after the Council remanded it to the Board should be indicated in a different color to make it easier for Board members to review the document.

There was discussion as to whether the Board could finalize Section B at its January 25th meeting. Councilor Needell said it would be good if the Zoning Amendment process could be completed by the currently sitting Council.

Board members discussed the idea of having an extra meeting in January to finish going through Section B. It was determined that the Board could get the annotated version Chair Kelley had requested within the next few days. It was agreed that there should be an extra meeting on January 18th, to finish up Section B.

There was then detailed discussion on how the Planning Board and Town Council hearings, and final deliberations, could be completed before the new Town Council took effect. It was determined that the Board could hold its remaining public hearings on the Ordinance at its Feb 1st meeting, and could then send these Sections on to the Council for reading on February 6th, and public hearing on February 20th.

Councilor Needell provided details on how this would probably give the Council enough time to complete the Zoning amendment process before new Councilors took office.

Chair Kelley asked Councilor Needell to please convey to the Council that the Board would step up to the plate to get its work on the Ordinance done, and that the Board would appreciate the Council's cooperation in finalizing the process.

VI. Review By-laws/Rules of Procedure

Chair Kelley asked what State statute said about Nonpublic meetings.

Mr. Grant explained these could only be held for matters concerning personnel, purchase of property, and other legal matters. He said the statute set limitations on what the purpose of such a meeting could be.

There was discussion on whether the Planning Board ever had nonpublic meetings, and what such a meeting would be needed for.

Chair Kelley asked if a Letter of Intent was supposed to be developed as a separate letter, and Mr. Campbell said it was, but was part of an application.

It was clarified that concerning the wording under G. on Page 5, questions by any members of the board could be asked at the discretion of the Chair.

Board members decided that under Records, a section D, should say that audio and video of all public meetings shall be made open to the public if available.”

Mr. Webb said the wording under Amendments to Rules of Procedure implied that the Planning Board couldn't have a public hearing and then vote to approve the amendment. Board members agreed the wording should say "...prior to the vote adopting the amendment.”

There was discussion that the Planning Board didn't have to hold a public hearing when it amended the Rules of Procedure, but chose to do so.

There was discussion on provisions in the Rules of Procedure concerning joint meetings.

Mr. Campbell noted that something like might happen for an upcoming subdivision application where most of the property was located in Newmarket , but a corner portion was in Durham.

Chair Kelley he thought this kind of joint meeting was at the discretion of the Boards, but apparently it was at the discretion of the applicant.

There was discussion as to whether the wording on joint meetings addressed joint meetings with other towns, or with other boards in the same town.

Board members agreed that the present language on this in the Rules of Procedure was acceptable.

The Board agreed that the Annual Report (discussed under Miscellaneous in the Rules of Procedure) developed by the Chair each year would be distributed to members of the Board next year.

Arthur Grant MOVED to pass the Rules of Procedure on to public hearing for the February 1, 2005 Meeting. The motion was SECONDED by Susan Fuller, and PASSED unanimously 7-0.

VII. Site Visits – Visit sites of some recently approved subdivisions

Mr. Campbell requested that the Board put off doing these site visits until April or May.

VIII. Other Business

A. Old Business: Implementation strategy for Master Plan

It was determined that discussion on this would be put off until a future meeting.

Councilor Needell said it was important to clarify what the plan was for working on the Master Plan, for the people involved and for the public. There was discussion on this with Mr. Campbell.

B. New Business

Mr. Campbell requested that Chair Kelley provide a letter endorsing the request for additional CMAQ funds.

C. Next meeting of the Board: January 18, 2006 – to discuss Section B

IX. Other Business

Arthur Grant MOVED to adjourn the meeting. The motion was SECONDED by Kevin Webb, and PASSED unanimously 7-0.

10:15 pm adjournment

Victoria Parmele, Minutes taker