

This set of minutes was approved at the October 11, 2006 Planning Board meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, JUNE 28, 2006
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 PM**

MEMBERS PRESENT: Chair Kelley; Arthur Grant; Kevin Webb; Stephen Roberts; Bill McGowan; Richard Ozenich; Councilor Needell

ALTERNATES PRESENT: Councilor Carroll; Lorne Parnell; Susan Fuller

MEMBERS ABSENT: Annmarie Harris

GUESTS: Don Quigley, Professor of Forest Technology at the Thompson School of Applied Science
Jason Scott, Executive Director of the NH Timberland Owners' Association
Phil Bryce, NHDRED, Division of Forests and Lands
Sandy Crystal, NHDES Wetlands Bureau

I. Call to Order

Chair Kelley explained that this was the Planning Board's quarterly planning meeting, and said the topic to be discussed was the issue of timber harvesting/forested buffers as this related to the Town's Zoning Ordinance.

II. Approval of Agenda

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

III. Report of the Planner

Mr. Campbell provided background on changes made to the Zoning Ordinance over the last year concerning performance standards for timber harvesting, as well as language regarding forest buffers in the revised Shoreland Protection Overlay District Ordinance and the Wetland Conservation Overlay District Ordinance.

He explained that since those changes had been made, some members of the public had expressed concern about these provisions. He also said the Town had received letters from some foresters and the New Hampshire Timberland Owners Association. He said that because of this, the Planning Board had decided to address this issue at its quarterly planning meeting.

IV. Discussion on Timber Harvesting/Forestry

Don Quigley spoke before the Board. He explained that foresters had some of the same objectives as the Planning Board concerning forested land in Durham, but perhaps had different ways of getting there. He said the concept of deforestation was not a result of timber harvesting per se, but was the result of development.

He said the ordinances the Town had enacted addressed important concerns about the long-term preservation of critical habitats and forests. But he said they were not addressing the people who owned and were stewards of these lands.

Mr. Quigley said forests had been critical to the State of New Hampshire throughout its history, and among other things protected rural values. He explained that forest management was a tool to balance development.

He said the current use files for Durham indicated there were more than 1600 acres of managed forestland in Town, and said the people who owned this land had declared their intent to manage the forest over the long-term.

He said he believed the Zoning Ordinance provisions in question were burdensome at best, and perhaps were illegal. He said he did not mean to be negative, and said he recognized the hard work that had gone into the Ordinance. But he said foresters saw towns enacting ordinances which seemed to be in the best interest of a community, but which when looked at from a global perspective, didn't really serve the long term good of the town.

Mr. Quigley said he first wanted to speak about the legality of the Zoning Ordinance. He read from State RSA 672: 1. III c.

“Forestry, when practiced in accordance with accepted silvicultural principles, constitutes a beneficial and desirable use of New Hampshire's forest resource. Forestry contributes greatly to the economy of the state through a vital forest products industry; and to the health of the state's forest and wildlife resources through sustained forest productivity, and through improvement of wildlife habitats. New Hampshire's forests are an essential component of the landscape and add immeasurably to the quality of life for the state's citizens. Because New Hampshire is a heavily forested state, forestry activities, including the harvest and transport of forest products, are often carried out in close proximity to populated areas. Further, the harvesting of timber often represents the only income that can be derived from property without resorting to development of the property for more intensive uses, and, pursuant to RSA 79-A:1, the state of New Hampshire has declared that it is in the public interest to encourage preservation of open space by conserving forest and other natural resources. Therefore, forestry activities, including the harvest and transport of forest products, shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers”

Mr. Quigley demonstrated what would happen to the viability of a small woodlot in Durham when the current Zoning Ordinance was applied. He first calculated the reduction on what could be harvested on a woodlot with typical trees and tree volume, when the landowner had to comply with State RSA 227J – “Timber Harvesting”. He then showed how the current Zoning Ordinance in Durham reduced further what could be harvested, so that \$18,000 worth of timber was no longer available to the landowner.

He noted that timber was appraised as a real asset, and was taxed as a real asset. He said State law already applied restrictions through the State timber harvesting laws, and the Town applied a very significant restriction in addition to this. He said the question was how landowners were to be reimbursed for this loss, as well as for the cost of having to hire professionals in order to comply with the management planning process specified by the Ordinance.

Mr. Webb asked if it was the impact of the combined State and Town regulations that the \$14,000 figure represented, and Mr. Quigley said yes. Mr. Webb then asked what the incremental loss was that was due to the Town regulations, and Mr. Quigley said he did not have that information readily available.

Mr. Quigley said another question to be asked was whether the Town would reasonably be able to defend these provisions of the Zoning Ordinance, when weighed against RSA 672:1, III C.

He encouraged the Board to think carefully about this, stating that he and other professionals were willing to roll up their sleeves to find language that was more balanced.

Councilor Needell said if nothing were included in the Zoning Ordinance that related to forestry, he would like to know where the regulation would come from.

Mr. Quigley said it seemed that the Town wanted more than simply an open door policy concerning timber harvesting, but he said that RSA Chapter 227-J – “Timber Harvesting” provided adequate protection. He noted the State had made great strides concerning enforcement...

Councilor Needell received clarification that this State law that could be applied if there was no local ordinance to protect the community concerning timber harvesting.

Chair Kelley said regarding the question of who in the Town would determine the layout of setbacks, the condition of trees, the amount of basal area that could be harvested, he said with or without the Zoning Ordinance, that still would apply.

Mr. Quigley said the Division of Forests and Lands dealt with this.

Jason Stock of the NH Timberland Owners' Association next spoke before the Board. He provided some history on the Association, and noted that there was an active chapter in the Seacoast area. He said membership included forest landowners, loggers, foresters, sawmills, and paper mills, and said this gave the organization good perspective on the forest industry and on forestry related regulation. He said the mission of the Association was to promote working forests.

He described the Association's efforts in promoting open space protection, and also described its role in the training of loggers. He said that much of the training on regulations and best management practices was done in conjunction with NHDES, noting that although it was a voluntary program, it was very successful, and was the envy of neighboring states.

Mr. Stock explained that if a landowner owned timberland, and there was no market for the timber, it was difficult to justify it as an asset, which made it more vulnerable to development. He said the forest products industry added value to the trees, and thus was an antidote to sprawl.

He said the forest products industry in NH was significant, representing the third largest manufacturing sector in the State, with revenues of \$2.6 billion dollars a year. He noted that a lot of these revenues went to rural economies in the State.

He said there were timber-harvesting regulations at the Statewide level, and said the Association did not want to see a patchwork of local regulations that made forest management difficult. He said the Association didn't support the Durham Zoning Ordinance for a number of reasons. Noting that Mr. Quigley had spoken about the legality of the Ordinance, Mr. Stock speculated that the timber harvesting related provisions of the Ordinance were passed not to curb forestry, but out of concern about sprawl, and out of a desire to preserve open space and maintain the aesthetics of this open space.

He said if it were profitable for an individual landowner to own timberland and manage it for trees production, a landowner would do that. But he said if the Town removed the ability to cut trees, this landowner had few choices other than to develop the property. He said ordinances like Durham's backfired, because landowners wound up being developers, and cashing out. Mr. Stock noted that it didn't take said it didn't take a lot in terms of buffer areas to see a tangible loss in the value of forest land.

He provided details on the importance of best management practices to protect wetlands and riparian areas, and noted existing and recent publications that addressed these issues. He said the biggest challenge was distinguishing between development related tree removal and forestry related timber harvesting, and provided details on this, including the difficulty of trying to regulate in a way that would get at this.

Mr. Stock said the Association thought the Zoning provisions that had been passed were counterproductive. He said the organization would be happy to work with the Town on this issue.

Phil Bryce described the various roles of DRED's Forests and Lands Division, and provided details on its role in enforcement of the State's timber harvesting laws. He noted that some of the issues the agency dealt with were conversion of forests to non-forest uses, fragmentation of forestlands, invasive species, and the viability of the forest products industry.

He described the agency's concept of forest stewardship, and the goal of balancing the public interest with private rights, and said the policy and law concerning this were captured in RSA 227 G-L and the *NH Forest Resources Plan*. He said regulation of forestry took two forms: regulation of practitioners, and regulation of practices. He said there were significant costs associated with regulating practices, but noted there had been an increase in the ability to enforce forestry laws in recent years. He said the State did a lot of enforcement of the Basal Area law in water areas, and had also done a lot of tightening up of rule making to get at land conversion situations.

He said the questions that needed to be asked were whether current laws were being adequately enforced, and also whether the intent was to regulate forestry or to prevent land conversion. He said if it was the latter, the best place to deal with that was at the town level. But he noted that there was a need for regulations with a scientific basis.

Sandy Crystal of NHDES Wetlands Bureau provided background information on her work, explaining that among other things, she did educational workshops on these kinds of issues. Concerning the issue of buffers, she explained that NHDES didn't require buffers except in communities that had adopted prime wetlands. She explained that the agency didn't have enough people to enforce wetlands violations, and to deal with buffer issues, so it was a matter of not having sufficient resources and not that the science concerning buffers didn't exist. She said there was plenty of scientific data that addressed the importance of buffers, and provided details on this.

She said the issue of pre-development land clearing was a thorn in the side of the Wetlands Bureau, noting that landowners sometimes filled out notification paperwork that said there would be no development of a site, but it was later determined that a subdivision application had subsequently been filed.

She provided details on the logger certification program, stating that it was wonderful program, but was not mandatory. She also spoke about the idea of doing workshops for towns concerning forestry and land clearing issues. She said the Forests and Lands Division did a wonderful job with enforcement, but said it was hard to catch some of the people doing the land clearing. She said her gut feeling was that this was a development issue rather than a forest management issue.

Councilor Needell said there was no doubt that a buffer was desirable, but said he had seen nothing that supported a no cut zone in the reading materials. He said he was looking for someone to defend the language in the Zoning Ordinance.

Ms. Crystal said there was a large variation in buffers from town to town, stating that they served a number of purposes. She said they served more of a purpose for headwater streams than for forested wetlands, noting that these wetlands were not quite as sensitive to land disturbance as headwater streams. She provided details on this.

Councilor Needell asked if the provision of RSA 227-J:9, the Basal area law, provided sufficient buffer protection.

Ms. Crystal said this was hard to say, and said it depended on the landscape. She explained that of key importance was keeping a tree canopy over a stream.

There was discussion about the fact that forested wetlands were not subject to the Basal Area law, while forested shoreland areas were. Mr. Campbell asked Ms. Crystal if she thought at least some form of this law should apply to these wetlands.

Ms. Crystal said the cutting of trees in some wetlands was not necessarily a problem, especially those where access was not a problem. She said the biggest problem was damage from equipment used to allow access to forested wetland areas, as a result of not using best management practices. She said another problem was when timber harvesting was actually pre-development activity, where haul roads were converted to subdivision roads, and a developer then tried to avoid the scrutiny of NHDES concerning wetland regulations.

Mr. Campbell said that timber harvesting required a modified wetland permit, and asked Ms. Crystal to describe what was involved with this.

Ms. Crystal said notification of NHDES was required, and a project had to qualify as a minimum impact project. She said land with bogs, prime wetlands, or projects involving wetland crossings more than 10 ft wide were kicked out.

Mr. Campbell asked if it would make sense to have a wetland scientist be part of this process, rather than a forester, and also asked if this might complicate the process.

Ms. Crystal said it would be a good idea to have wetlands identified correctly, for various reasons.

Chair Kelley asked if NHDES responded to landowners concerning the notification forms.

Ms. Crystal said if there were no outstanding issues, a letter to the landowner said they could start work. She said a copy of this letter was also sent to the Conservation Commission of the town in which the work was being done.

Chair Kelley asked if staff resources allowed her and other NHDES staff to monitor these kinds of operations.

Ms. Crystal said not really, and said NHDES depended largely on receiving complaints, in which case staff went out in the field or called forest rangers to look at the problem.

Chair Kelley said he would like the concerned parties to know that the Planning Board's goal was to promote the economic viability of forestland. But he said the issue here was trying to regulate homeowners with chainsaws who wanted a better view. He said he might take the guests up on the offer to work with the Board as it moved forward on these issues.

Mr. Webb asked if there was a demonstration forest where the Board could go to see good forest management practices. There was discussion about this, with Mr. Stock stating that UNH had some active forest management projects in the local area, and that the Timberland Owners' Association hosted a number of classes for municipal officials.

He said this was a way in which officials could see first hand something like the issue of forested wetlands, and which of these areas would and would not be ok to harvest in the winter. He said he would be happy to arrange something like this for the Board.

Mr. Webb said he would be interested in seeing something like this.

Mr. Quigley said there were some good examples of proper forest management on UNH property. He said it would be useful for the Board to see working operations where landowners, foresters and loggers were working together. In answer to Chair Kelley, Mr. Quigley said there were approximately 350 license foresters in NH, and said the science of forestry in the State was pretty highly evolved.

He said that 70% of the forestland in the State was owned by private, non-industrial landowners. He said licensed forestry consultants played a large role in working with these landowners. He said although logging operations could be conducted without a licensed forester, the process still worked pretty well. He also noted that New Hampshire had one of the strongest tree farm programs in the country.

Chair Kelley asked what the minimum size land area was where it would be economical to hire a licensed forestry consultant to develop a timber harvesting plan.

Mr. Quigley noted that the minimum acreage for current use assessment and tree farms was 10 acres. He said the average acreage was 40 acres, but said the number was decreasing. He also noted that foresters were working less and less for the federal government and the forest industry, and more and more for investment companies and organizations like the Nature Conservancy.

Chair Kelley asked if conservation groups generally implemented forest management plans, and there was discussion about this. It was noted that the Forest Society had an active forest management program.

Mr. Campbell said the Nature Conservancy didn't actively manage its properties for forestry, but sometime asked other organizations to manage some of its properties. There was discussion about this.

Chair Kelley asked Mr. Quigley if he as a forester imposed buffers on streams where there would be no, or minimal cutting.

Mr. Quigley said this varied, noting it was important to discuss with a landowner his long term intentions and objectives for the forested property. He also said it was also important to understand federal, state and town objectives, where they applied.

Mr. Campbell noted that the basal area law allowed a landowner to cut 50% of the timber within a 12-month period, and then to do the same thing in succeeding years. He asked Mr. Quigley if he had experienced that this happened, and if this was a form of forest liquidation.

Mr. Quigley said he had seen this kind of thing along the Lamprey River, where people wanted a view. But he said it wasn't a forestry issue at that level, and instead was a landowner education issue. He said a professional forester didn't have the ability to impact that kind of situation.

Councilor Needell said there was clearly a lot of oversight on the forest industry in New Hampshire, but he asked whether in the case of small landowners, where the development had already happened, the basal area law applied to a one-acre lot. He asked what role enforcement had in this instance, and also asked if there needed to be different rules for landowners who were not timber harvesting.

There was discussion about this, including the possible role of providing incentives to landowners.

Mr. Stock noted that the State Shoreland Protection Act was in the process of being revised, and said his Association was involved with this process. He said Councilor Needell had made a key point that it was not forestry that the Town wanted to regulate, it was landowners who wanted a view of the river.

He explained that work was being done to develop a basal area formula that landowners owning small lots on the water could readily understand. He noted that the State Maine had developed a point system, and said this was being looked at.

Mr. Bryce provided details on the fact that staff in his department didn't deal at the level of timber harvesting on house lots. He noted that the practice of harvesting 50% of basal area, and doing this repeatedly was usually not worth doing, and said this had been more the subject of intellectual discussion than something his department actually got complaints about.

Councilor Needell said it sounded like if the Board wanted to impose enforceable timber harvesting rules on house lots, the only place to do this was through the Zoning Ordinance, because State agencies didn't address this. There was discussion about this with Mr. Bryce.

Chair Kelley asked if the timber tax was paid directly to the community or instead went through the State.

Mr. Bryce said at one time it went to the State, but now went to the community.

Chair Kelley noted that a forest landowner could deduct the cost of transport of timber, as well as the road and landing construction costs associated with removal of the timber. He asked if a local municipality had the power to grant a deduction for a forest management plan developed by a licensed forester.

Mr. Stock said Durham was probably already doing this through the Current Use Program, where the land was assessed based on its timber harvesting capability. He said having a forest management plan allowed a landowner to get an additional reduction in the current use assessment, and noted that enrolling in the tree farm program required that a forest management plan be developed, which automatically resulted in a tax reduction. He also provided details on tax credits that could be obtained for allowing recreational and other uses of forestland.

He provided details on how the timber tax was calculated, based on a number of variables, including accessibility to an existing road.

Mr. Bryce said that because a timber tax was a property tax, the question was what authority a town would have to reduce it. He said he would check into this.

Mr. Campbell noted that there was the opportunity to receive a variance from the State's Basal Area law. He asked for details on this process and what standards applied, as well as how often such a variance was granted.

Mr. Bryce said the State didn't see a lot of these, and said often they were requested because of trees that were a hazard because of disease, etc.

There was detailed discussion on existing and planned publications in New Hampshire on BMP's for streamside forest management.

Chair Kelley noted a comment by one of the guests that included wording that the Town was being "unreasonable". He said he could see where Durham was out of line with State laws, but said he wondered whether it was really unreasonable to impose a 25 ft. buffer from a stream.

Mr. Bryce said many of the publications had higher standards, but he said the question was what the appropriate standard was to require, from a regulatory perspective. He provided details on this.

Chair Kelley asked if a workable idea was for a town to say there would be a 2% reduction in the timber tax if a landowner agreed to implement a stream buffer where little or no land disturbance would occur.

Ms. Crystal said water quality was an issue that affected everyone, and she noted that surface waters belonged to the State, so this was not a private land use issue. She said using buffers, including no cut buffers, to protect water quality was a reasonable idea. She noted that this was why NHDES was addressing the idea of TMDL's (Total Maximum Daily Load), to look at what activities contribution to the degradation of water quality. She said forestry had been one of those activities, and she said this was a sensitive issue, in a state where forestry was a big business.

Mr. Stock said the existing State law on this was adequate, and also said where BMP's were properly implemented, there wasn't an impact from timber harvesting. He said the approach that nothing could happen in a buffer area was not prudent. He also said this was an issue of value, stating that if the goal was to maintain a forested landscape, having a forestry operation over a 15 year period was a lot better for water quality than having a subdivision. He said he could not support any regulations that went beyond State law, and he urged the Board to take a field trip to look at properly done forestry operations.

Chair Kelley said he recognized what in the current Zoning Ordinance was unreasonable concerning timber harvesting, but said the issue he struggled with was having a buffer for a stream. He noted that according to State law, a landowner could remove 50% of the basal area of timber every year.

Mr. Stock said from a forestry perspective, for a large property, this 50% removal approach was not economical, and provided details on this.

Chair Kelley noted that in terms of water quantity, if there were a 50-acre stand of timber and 47 acres of timber was removed, runoff would increase. There was discussion about this.

Mr. Stock said forest management in and around water-bodies was done in a number of drinking water watersheds in New Hampshire.

Gerald Smith, 1 Backriver Road, said he didn't have a wood lot in Durham, but did have a 30-acre wood lot in Madbury. He suggested that Durham could tax property owners who cut their trees in order to have a view of the water.

Ms. Crystal said the final report to update the Shoreland Protection Act was due in November. She noted again that the science for buffers to protect water quality did exist. She provided details on the fact that evergreen trees in particular prevented runoff, and noted that there were groundwater impacts as well from cutting trees.

She said it didn't appear that the Town had focused on protection of significant wetland resources, such as those things that would be inventoried as part of the Natural Heritage program. She provided details on this.

Councilor Carroll noted that one of the recent changes to the Zoning Ordinance was a requirement of a 100 ft. buffer from property lines regarding timber harvesting. She provided details on this, and asked what people thought about this buffer requirement.

Mr. Stock said he didn't agree with this. He noted that a policy committee had gone out to a wood lot in Durham and had considered it in terms of these buffer areas. He said this appeared to be geared toward aesthetics more than anything else, and said the consensus of the committee was that for a particular stand, the buffer would force the landowner and the forester to make poor silvicultural decisions, and would result in unintended consequences. He noted that the particular stand they had looked at required more thinning than the Zoning Ordinance allowed.

Chair Kelley said he was still struggling with the stream buffer issue concerning water quality, and what the Town should require concerning this. He asked if the number of certified loggers had increased over time, and was told that the number varied over time.

Mr. Quigley said as a forestry practitioner, dealing with local ordinances with innovative forestry related provisions was problematic. He provided details on this, and said if this issue was important enough to a community, it should be tackled at the State level. He said he hadn't seen any heavy cutting in Durham, and suggested that it would be a good idea to collect some data on whether forest degradation was occurring.

Mr. Campbell noted a conversation he had had with Will Abbott of the Forest Society, about the fact that the forest industry had worked hard to come up with consistent rules and regulations at the State level. He said the concern was that there were all of these towns, each of which could address timber harvesting in a different way, which could be burdensome to forestry professionals. He provided additional details on this conversation.

There was additional discussion about whether BMP's, and "should" vs. "shall" language was the right approach to take.

Chair Kelley thanked the attendees, and said he would keep them in the loop as the Board moved forward concerning the timber harvesting/forest buffer issue.

Break from 9:30 - 9:40 pm

The Board agreed to table further discussion on the timber harvesting/forest buffer issue until the July 12th meeting.

V. Other Business

A. Old Business:

B. New Business: Request for Technical Review of a satellite dish installation at the Holiday Inn Express, 2 Main Street, Map 4, Lot 50-0.

Kevin Webb MOVED to move to the Technical Review Committee the technical review of the application for a satellite dish installation at the Holiday Inn Express, 2 Main Street. Arthur Grant SECONDED the motion.

Mr. Webb said the satellite dish didn't project above the roofline, and was not obvious, so was not an issue the Board needed to worry about.

There was discussion as to what exactly was being referred to the Technical Review Committee, and whether this included a determination as to whether the Personal Wireless Ordinance applied in this instance.

Mr. Campbell said if this application were referred to the Technical Review Committee, he and Mr. Johnson would review whether the satellite dish installation was covered under the Ordinance.

After further discussion, Mr. Webb said he would like to amend his motion.

Kevin Webb MOVED to amend the motion, to say that the Planning Board would send the application for a satellite dish at the Holiday Inn Express, 2 Main Street to the Technical Review Committee subject to the Planning Director and Zoning Administrator reviewing the applicability of the Town's Personal Wireless Service Overlay district to this facility prior to going to technical review. Richard Ozenich SECONDED the motion, and it PASSED 6-1, with Chair Kelley voting against it.

C. Next meeting of the Board: July 12, 2006

Mr. Campbell said there was a question of whether the Zoning Rewrite committee should meet to tackle some of the Zoning Ordinance issues that had come up. He said it would be difficult for the Planning Board to get through these issues on its own.

Chair Kelley said it had been decided to put the Master Plan work on hold until the Board got through the Zoning issues. He said he would like the Zoning Rewrite committee to have a meeting on the Zoning issues on July 19th. IT was agreed that the issues would be gone through one or two at a time, and that all of them wouldn't be tackled at the same time.

VI. Approval of Minutes

April 26, 2006

Arthur Grant MOVED to approve the April 26, 2006 Minutes as presented. Chair Kelley SECONDED the motion, and it PASSED 6-0-1, with Councilor Needell abstaining because of his absence from that meeting.

May 10, 2006

The minutes should note that Mr. McGowan arrived at the meeting late.

Page 9, 4th paragraph, delete “Mr. Caldarola said he would try to work this into the plan”, and replace with “Mr. Caldarola said he would try to take this into consideration”.

Page 20, - Under Item B –include the following wording “see Agenda Item VII”.

Also, under Approval of Minutes, replace “OZ” with “Richard Ozenich”.

Arthur Grant MOVED to approve the May 10th, 2006 Minutes as amended. Kevin Webb SECONDED the motion, and it PASSED unanimously 7-0.

May 24, 2006

It should be noted on Page 1 that Annmarie Harris was present at this meeting.

Arthur Grant MOVE to approve the May 24, 2006 Minutes as amended. The motion was SECONDED by Councilor Needell, and PASSED unanimously 7-0.

VII. Adjournment

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

Adjournment at 10:05 pm

W. Arthur Grant, Secretary