

These minutes were approved at the March 25, 2008 meeting.

**PLANNING BOARD
QUARTERLY PLANNING MEETING
WEDNESDAY, FEBRUARY 27, 2008
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

REGULAR MEMBERS PRESENT: Chair Bill McGowan; Vice Chair Lorne Parnell;
Secretary Susan Fuller; Steve Roberts; Councilor Jerry
Needell; Richard Kelley (arrived late); Richard Ozenich

ALTERNATES PRESENT: Councilor Diana Carroll; Annmarie Harris; Wayne
Lewis

MEMBERS ABSENT: Doug Greene

I. Call to Order

Chair McGowan called the meeting to order at 7:10 pm. He reviewed the Agenda for the quarterly planning meeting.

II. Approval of Agenda

Richard Ozenich MOVED to approve the Agenda as submitted. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0. (an alternate was not assigned as a voting member for this vote).

Mr. Campbell noted that there were some documents that had been provided to the Board from Administrator Selig concerning the Stonemark Management cases. He also reviewed other documents, among them a letter from Dan Sheehan, which he said the Board would discuss under New Business.

III. Discussion on Energy Issues with Energy Committee

Ken Gardner and Don Brautigam represented the Energy Committee, and they started out the discussion by presenting a slide presentation on "Energy Conservation Efforts in Durham".

A copy of the presentation highlights is attached to this set of minutes.

Councilor Needell discussed with Mr. Brautigam the fact that it was actually code changes, not Zoning related changes, that the Committee was recommending.

Mr. Brautigam suggested that the Energy Committee could create document of proposed code changes, which could also provide explanations on the reasons for, and the benefits of these changes. There was discussion on the precedent for making changes like this to the Town code.

There was then discussion about the fact that the Energy Committee had been charged with helping the Town come up with a long term energy plan for the Town.

Mr. Brautigam reviewed 5 Milestones the Committee had established:

1. Conduct baseline emissions inventory and forecast
2. Adopt emissions reduction target
3. Develop a local action plan
4. Implement policies and measures
5. Monitor and verify results

Mr. Campbell noted a bill currently before the State legislature concerning the idea of having a chapter of Town Master Plans devoted to energy issues. He said the bill had been written by Epping Town Planner Clay Mitchell.

Mr. Gardner said the Energy Committee would like to do a chapter on Energy for the Master Plan regardless of whether this bill passed, but he noted that this would be the Planning Board's decision.

Councilor Carroll then suggested that the Energy Committee was looking for some kind of response and direction from the Planning Board on the ideas the Committee was bringing forward. She noted among other things the slide on the different climate zones, and that Durham was in Zone 5, but was right on the border of Zone 6, which had somewhat different energy efficiency criteria. She said if they decided to take on the same criteria that Zone 6 contained, this would mean that they would ask that buildings be better insulated, etc.

Chair McGowan said he thought the Board would need more research results in order to move forward. He said a question was what the costs and net savings would be from going from Zone 5 to Zone 6.

Committee member Nate Balch said the things Mr. Brautigam had spoken about were not restrictive in nature, and should be looked at as an investment, a long term investment that would bring a return in the future.

Ms. Fuller said it went against her grain, and against the Granite State way, to regulate more. She also said that builders who could afford to make investments in these kinds of approaches already did so.

Mr. Gardner said what was being suggested by the Committee was not more regulations, but higher standards within the existing building code. He also said they all had a responsibility to future generations to be more energy efficient. He said he personally, as an engineer, had to behave in that way, according to his code of ethics.

He also said the Committee recognized the need for the kind of numbers Chair McGowan was talking about, concerning costs and net savings, which could then be evaluated by the Planning Board, Town Council and others.

Ms. Harris suggested that the Energy Committee could take on the role of educating residents on energy issues, energy saving incentives that were available, etc. She also noted that the

Planning Board had been talking about updating the Master Plan in segments, and she suggested that an effective approach might be to get started with updating the Master Plan, including an energy chapter, before bringing any recommendations to the Council.

She also said it would be helpful to provide some information to the community on the relative impacts of carbon dioxide, methane, and nitrous oxide, and the multiplier effects of these substances in the atmosphere.

Chair McGowan said that in terms of long-term planning, a question was how much further they needed to go in terms of baseline research before making some decisions. He said it was important to know what the time frame was for these kinds of things.

Mr. Gardner said a lot of small changes needed to happen in order to have a real impact, in terms of reducing the carbon emissions profile on a community level. He noted that UNH was collecting data on the various strategies that were under way, in order to get a better sense of what was happening.

Ms. Harris said something that would make a big difference would be retrofitting homes. She said energy audits could be done, and information on costs and payback periods of including energy saving measures could be provided to residents. She said these were things residents knew they should do, but she said the question was how many people had gotten around to doing them.

She and Mr. Balch spoke about the ever increasing price of oil, and that it might even get up to \$300-400 per barrel by the summer. Mr. Balch stating that because of this, it was in everyone's best interest to make some changes while they still could.

Ms. Fuller agreed that energy conservation was very important, but she said this was something that people had to be able to embrace. She said more education on these issues was needed. She also said that while most young people would like to be able to live in a smart house, people her age were more likely to want to do things like put seals around their windows.

Mr. Roberts said that concerning the recommendation to change the Zone from 5 to 6, Durham's Zone was what it was. He also cautioned that in the 1970's, when efforts had been made to be energy conservation minded, people wound up with rotted roofs, put formaldehyde in living spaces, etc. He asked that the Energy Committee show people data on how to make changes that wouldn't wind up hurting them. He also noted that from a planning perspective, some people were now trying to live in multi-unit developments that were designed to be more energy efficient.

Councilor Needell said he thought the biggest bang for the buck would come from educating residents on retrofitting and other energy efficient measures that could be put in place concerning their homes. He said if there was a huge housing boom going on, there might be a significant return from having some additional regulations. He also said it made more sense for government to have more of a role in the commercial sector, where the biggest energy usage occurred, and where the users had the least amount of control over the energy they used.

Mr. Gardner said the Energy Committee recognized the important piece that education played in all of this, and he noted that the Committee had an education subcommittee.

There was discussion on the fact that developers wanted to put out a good product, but would pass on the cost resulting from additional regulations to consumers.

Mr. Campbell said education was definitely the key, and said the Energy Committee was certainly on the right track. He also said that the exercise of updating the Master Plan, and creating a specific Energy chapter was a great idea, and would be useful to everyone. He said this chapter could provide a pathway into the future, without the force of law, and said it would be something that could be referenced when new regulations were created.

Councilor Carroll noted that the Planning Board had recently approved two multi-unit developments, and she said while energy saving technologies existed, there was nothing in the Town's regulations that required that they be used for these developments. She said regulations concerning energy efficiency were not meant to cause problems for developers, but rather were intended to help the people who lived in a building. She asked if the developers of these two projects were doing anything on their own in the way of energy conservation, and suggested that if they were not, the Town could still speak with them about the fact that this would be a good idea.

Ms. Fuller noted that developer Perry Bryant had recently come before the Board for a conceptual consultation concerning a green development he was proposing.

Councilor Carroll said she realized that this kind of thing couldn't be mandated, but she said the question was what Durham could do as a community to encourage energy conservation measures for new developments.

Ms. Harris said it would be worthwhile to encourage developers to include energy conservation features, and she suggested that perhaps some guidelines on this, and incentives of some kind could be provided. She asked if something could be put together on these kinds of things.

Mr. Campbell suggested that information like this could be passed along to developers when a proposed development came forward.

Mr. Parnell said any developer could do the calculations on this, and said government mandates weren't needed. He said he thought the Committee's general approach was excellent, and said most of the benefits would come from focusing on existing residential properties in Durham. He said creating new regulations would be difficult, and said he thought the emphasis should be on education. He said the average person understood the benefits of energy conservation, and said it was simply a matter of doing it. He said there should be some kind of program to get residents on board with this.

Mr. Gardner said these were some difficult problems, but said the voters were pretty clear that something should be done. He said this was an issue that should be put before the residents, because it was difficult, and did impact individual homes. He said for Durham, it came down to making changes in individual homes and to the transportation system.

Councilor Needell agreed that setting goals and embracing them were critical steps that needed to be taken. He also said Town government wouldn't be what caused the greatest amount of change, noting that it wasn't the Town that was the biggest user of energy in Durham. He said he didn't think they should be afraid to make some code changes, but said these changes should be specific. He also said that regarding a possible change from Zone 5 to Zone 6, he would prefer instead to pick out individual criteria that could be targeted.

Filson Glanz, a member of the Energy Committee, spoke about the fact that there wasn't that much difference between the two zones.

Councilor Needell said he thought it would be simpler for the Committee to focus on specific changes that ought to be in the Town Code, and to bring them forward if it felt these were important.

Mr. Ozenich said that from a planning standpoint, there could be a set of guidelines and a rating system concerning energy conservation for multi-unit developments, and even perhaps a density bonus. He said that otherwise, the developers weren't going to do this on their own.

IV. Discussion on Stormwater Ordinance/Regulations with Town Engineer

Mr. Cedarholm said updating the draft Stormwater Ordinance and regulations was something he had inherited from former Town Engineer Bob Levesque, who had put the first draft together in 2003. He said he had basically started from scratch, given a number of factors. He said he had put the draft together after looking at a variety of storm water ordinances in NH, and the model storm water ordinance from NHDES. He then presented a slide presentation on the draft ordinance/regulations.

A copy of the presentation highlights is attached to this set of minutes.

Mr. Cedarholm explained the reasoning behind having both a storm water ordinance and stormwater regulations. He said the two documents were linked, with the ordinance defining the legal authority for regulating stormwater management approaches. He said the regulations were the nuts and bolts, for someone bringing a project forward.

He said that as part of the draft documents, he was introducing the idea of a stormwater connection permit. He said that currently, the Town only required a development to have a sewer permit. He said what he was proposing was a utility connection permit that would work for water or sewer. He provided further details on this.

Mr. Cedarholm explained that keeping the stormwater ordinance separate from the regulations kept it as a succinct document, and allowed the Planning Board the flexibility to update the stormwater regulations to keep up with innovations in the field of stormwater management. He spoke about the fact that there were a number of new technologies coming along. He reviewed in some detail what the stormwater ordinance included, and then spoke in detail about the nuts and bolts aspects of the stormwater regulations. He noted that the Town had an old, impaired stormwater system, and said it was therefore important to look at every project that would contribute to this system.

Mr. Cedarholm spoke about the requirements in the ordinance that a stormwater management plan be developed. He noted the recent Jenkins Court site plan application before the Planning Board, and the stormwater management plan that was put together for this application. He said this plan would meet the requirements of the draft ordinance. He said the ordinance wasn't really asking people to do anything different, but said what was being asked for was better defined. He also provided details on the fact that sites with no storm water issues would not need to prepare a stormwater management plan.

He said the biggest change in the regulations was how to deal with impervious surfaces. He said the stormwater regulations introduced the idea of effective impervious cover, which came from DES's model ordinance. He said the draft regulations required that the effective impervious cover be no greater than 10% of the total site area. He said with this approach, the engineer and the developer had the opportunity to develop a system that captured stormwater, and recharged the groundwater with it. He provided additional details on this.

He noted that everything to date in the stormwater regulations had focused on managing stormwater discharge rates. But he said these draft regulations addressed the importance of managing discharge volume as well. He also said the plan was to come back to the Board on a regular basis to iron things out with these regulations.

He outlined the process he had envisioned, concerning moving these draft documents forward. He said ideally the ordinance would go to the Town Council in March, and if passed, would give the Town Administrator the authority to adopt rules and regulations. He said the Planning Board could continue to work on these regulations after the ordinance passed. He noted that once the ordinance passed, this would satisfy EPA's requirements, and the Board could take its time with the regulations. He said the Board could get input from the Town Council as part of this process.

Mr. Campbell said he envisioned that applying the idea of effective impervious cover to someone who wanted to build a house on a lot could be onerous. He said he thought getting a waiver for that kind of situation should be an option. There was detailed discussion about this with Mr. Cedarholm.

Councilor Carroll said it was great that stormwater was being taken into account, when a site was paved. But she said there were other things that were impacted when the ground surface was paved over, stating that this condemned the soil, and the entire ecology of a piece of land.

Mr. Cedarholm said there was a good reason to include provisions in the site plan regulations that spoke to issues other than stormwater, and he agreeing that there were other reasons to limit paved, impervious areas on a site. He suggested that perhaps the site plan regulations in general could be updated at the same time, to make sure everything fit together.

Mr. Campbell noted the 100% impervious surface ratio for the Central Business District, and asked how this would work. He said in most cases, there wouldn't be any recharge that would occur there.

Mr. Cedarholm noted that page 6 of the regulations said recharge was governed by soil type. He said if it was impossible for recharge to occur, this wouldn't be required, but the

development would still be required to satisfy the water quality standards. He noted again that the Jenkins Court project would have met these new regulations. He said the owner had been asked to manage the discharge rate, and said he thought the relatively simple system that had been designed would do a good job.

Mr. Cedarholm discussed in some detail the water quality aspects of the draft storm water regulations. He spoke about the impaired waters in Durham, and said the Town was responsible for addressing this, and perhaps would have to do some TMDL studies. He said DES and EPA hadn't come down hard on towns like Durham that were in this situation, but he said with the new NPDES permit in 2008, there would be some new requirements.

After discussion on why these surface waters in Durham were impaired, Mr. Cedarholm said he anticipated that the water quality requirement would be better defined when the next permit came out. He said the Town might be required to do sampling of discharges for storm events within an hour of when the storm started. He provided details on this, and said the sampling process was very difficult to accomplish.

He then summarized the benefits to the Town from the revised regulations, stating that conventional stormwater management systems were a big reason for the flooding that had been seen in recent years. He said he thought the regulations would make it easier for the Town to get what it wanted, and noted that developers generally wanted to provide adequate stormwater management, and wanted to be sure the Town accepted a project. He noted that the review process would be streamlined, with the new regulations, and also said they would be a fantastic platform for innovation.

There was discussion on the difference between a stormwater pollution prevention plan required by EPA as part of an NPDES permit, and a storm water management plan required by the Town in the draft stormwater ordinance. Mr. Cedarholm said the stormwater management plan was the more important document for the Town, but said to a developer, they were essentially the same document.

There was discussion that what was in the draft stormwater ordinance/regulations was the process the Planning Board already went through, but was more formalized. Mr. Cedarholm said this clarified the process for EPA and also for developers, so there could be consistency.

Mr. Parnell asked Mr. Cedarholm if he could highlight provisions in the stormwater regulations that might be different than the site plan regulations, so the Board could then sort this out.

Mr. Cedarholm agreed that this was a good idea

There was further discussion about the fact that passing the Ordinance would satisfy the EPA, and that Mr. Cedarholm and the Board could then make sure the stormwater regulations were exactly what was wanted. He said perhaps the process could be finalized by early summer.

Chair McGowan asked what had to happen in order to move the stormwater ordinance to the Town Council.

Mr. Campbell said he didn't think the Planning Board needed to take a vote on it, but said the Board did need to understand it, and how it was integral to the Board's review process. He said the public hearing on the ordinance would take place at a Town Council meeting.

Mr. Cedarholm said if Board members had comments concerning the draft ordinance, it would be good to get them to him as soon as possible. He said these comments would be provided to the Town Council. He said these comments could include some direction regarding the impervious surface issue.

Mr. Parnell asked how provision D 2 on page 5 of the regulations would happen, and Mr. Cedarholm said he would look into this.

Councilor Needell said the ordinance required the involvement of the Planning Board in terms of enforcement. He asked whether, if the ordinance was adopted as it currently stood, enforcement would therefore fall to the site plan or subdivision regulations, until the stormwater regulations were in place.

There was discussion about this, and whether things would be in limbo until the stormwater regulations were in place. Mr. Cedarholm said there was the potential for that to happen, so it would be good to get them in place as soon as possible. But he said developers understood that the existing regulations had been behind the times, and said they could be asked to meet the proposed stormwater regulations. He said if there was a problem with this, the Town could back off. He said he didn't see this as a huge concern, and said he felt that developments in the works would meet these requirements.

There was detailed discussion on the authority of the Planning Board in relation to the stormwater regulations.

Councilor Needell said a project that would be connecting to water or sewer would trigger these stormwater regulations, but he said this would go to the Public Works Department, not the Planning Board. He asked if there were circumstances that would trigger it coming to the Planning Board. He said he wanted to be clear on whether it was only through the site plan regulations that the Planning Board would get involved.

Mr. Ozenich asked who inspected these storm water systems, and Mr. Cedarholm said the intention was to have the developer pay a consultant to do this. Mr. Ozenich asked who followed up after storm events to see if the system is working, and Mr. Cedarholm said the operational management plan would provide details on this.

There was discussion on the operational management plan, including the fact that it had to be done on a yearly basis. It was noted that a homeowners association was often responsible for this.

There was discussion on drainage easements, with Mr. Cedarholm stating that the deed should define what could happen in the easement.

Councilor Carroll suggested that for the phrase "minimum requirements" in the Purpose statement, the word minimum should be removed. Mr. Cedarholm agreed that this would be taken out.

There was discussion about why page 8 of the ordinance indicated that the Town Administrator administered these provisions. Mr. Cedarholm said he had taken this language from the Solid Waste Ordinance, and said the Planning Board should be included there as well.

Mr. Campbell provided details on the Planning Board's authority concerning regulating storm water management, but he said it was up to the Town Administrator to make sure the Ordinance was administered.

Councilor Needell spoke about how this process worked with the Solid Waste Ordinance, in that the Town Administrator came to the Town Council for advice, but not necessarily for approval.

Mr. Cedarholm said that was the intent with the stormwater ordinance as well.

Councilor Needell cautioned that getting the storm water ordinance adopted by April, when the stormwater regulations piece wasn't ready yet, would be no simple task. He said a fair amount of work would be needed to get the regulations ready

Mr. Cedarholm agreed, and said it would be great to flesh out the major points on the regulations within the next couple of weeks. He said the biggest issue was probably the impervious pavement portion.

Councilor Needell noted that the Planning Board had some experience in discussing this issue. He asked whether the part of the Zoning Ordinance that addressed pavement had to be changed in order to adopt the storm water regulations, and said if it did, he could guarantee that the regulations wouldn't be completed by April.

James Houle, 95 Mill Road, said he supported the stormwater ordinance and regulations, stating that they represented the minimum protection needed for the Town in terms of stormwater management. He said they protected the Town's waterways and developed areas, and also protected the municipal infrastructure for present as well as future generations. He also said if developers weren't required to put these measures in place, he as a taxpayer would be a beneficiary of externalized costs.

He spoke in some detail on State and Federal requirements concerning stormwater management, and about addressing impaired waterways in Town. He then said the Board should demand the best management practices that were available, and he said this ordinance/regulation represented this approach.

Chair McGowan said if they couldn't do one document without the other, there was a time constraint. He asked how they could get them both done, within a short time frame.

Councilor Needell said he had not implied that it had to be done that way. He said he didn't see a problem, but said they just needed to be clear on what the situation was.

Mr. Cedarholm said there were regulations that addressed stormwater, and they were working on new stormwater regulations.

Mr. Campbell suggested that references to stormwater regulations should be taken out of the draft stormwater ordinance, and Mr. Cedarholm said it could simply reference “Town regulations”, so the existing site plan regulations and subdivision regulations could govern until there were stormwater regulations.

Mr. Campbell said Planning Board members could email him specific comments on the ordinance/regulations, and said he would get them to Mr. Cedarholm. He also said the Board could look at the draft regulations again at a future meeting.

V. Discussion on Draft Shoreland Protection Overlay District Amendments

Mr. Campbell said the draft had been sent to the Conservation Commission, but said their comments on it had not been received yet. He said the Commission would be meeting the following day, and said he hoped to have something from them after that. He said he would try to get something back to the Board for the March 12th meeting.

VI. Other Business

A. Old Business:

B. New Business:

Mr. Campbell said Dan Sheehan has written him a letter proposing to put in some office and retail businesses in the commercial space formerly occupied by Zyla’s. He asked whether the Planning Board wanted to send this to the Technical Review Committee. He noted that it was an existing building, that the work would be done inside, and that the parking for retail and office were the same.

Ms. Harris noted that the entranceways for the Library and Zyla’s were really bad. She said they were very small, and there was no effective egress. She suggested that there should be a new door for those two spaces, and that the Library should have its own entrance.

Mr. Roberts said the proposal from Mr. Sheehan should come before the Planning Board for review. He said there weren’t just technical matters to be worked out, and said among other things, the uses would be different.

Ms. Fuller said she disagreed, stating that if the use would be something other than retail or office, that would be a different story.

Councilor Needell confirmed that the developer would have to meet the Zoning Ordinance and the building code, so the review would be the same, regardless of who did it.

Mr. Roberts disagreed. He said the Planning Board was responsible for considering every change of significance in the downtown area, whether it was in regard to technical details or the impact on the community. He said that was the purpose of planning, and said if there was a project of some significance, the review process should always take place at the Planning Board level.

Councilor Needell said Mr. Roberts made a good argument about why the Planning Board should look at this. But he asked for clarification that what the Technical Review Committee and the Planning Board would review would be the same.

Mr. Campbell said they did review the same information.

Ms. Fuller said in this instance, the property owner was trying to reconfigure the space in order to get it back up and running. She said the Technical Review Committee could streamline this process, and she said it was important to the community that this get done.

Mr. Roberts noted that the Board had supported the recent change to Durham Marketplace, and that the purpose in having a site plan review before the Board on this application was in part to suggest thematic changes. He said this wasn't the kind of thing that Town department heads addressed.

Ms. Fuller said if the owner was proposing to change the use, she would say this should come before the Board.

Mr. Roberts said his intent was not to get in anybody's way, but he said the Planning Board's role in the process was missing when it didn't review the application.

Councilor Needell asked for clarification of what would be sent to the Technical Review Committee, and there was discussion. He said he was frustrated by the lack of specific information on what was being sent to the Committee, and said he would feel better if he could see the plan first.

Mr. Campbell noted discussion over time about the importance of helping businesses in Durham thrive, and about how the review process sometimes stretched out in time.

Ms. Harris suggested that the owner could have come to the meeting to have a discussion with the Planning Board.

Mr. Campbell recommended that the Board vote on this matter that evening.

Chair McGowan appointed Mr. Lewis to vote in place of Mr. Kelley.

***Susan Fuller MOVED to send the Sheehan request to the Technical Review Committee.
Richard Ozenich SECONDED the motion.***

There was further discussion on the kinds of applications the Planning Board had sent to the Technical Review Committee in recent years.

Councilor Needell said the key thing was that the plan the Board had been presented with was what would be sent to the Technical Review Committee, and that there would be no changes.

Ms. Fuller said she would amend her motion.

Susan Fuller MOVED to send the Sheehan request to the Technical Review Committee, provided that he will be doing office and retail on one side, with a breakdown of five offices on the other side, and if this plan changes, Mr. Campbell will come back to the Planning Board. Richard Ozenich SECONDED the motion.

Mr. Parnell noted that the Planning Board had done a site plan review of Scorpions, and there was discussion.

Mr. Roberts pointed out that he had been in support of the proposed change for Durham Market Place, but had asked that the Board review the site plan application.

Mr Ozenich said that application had involved a change to the exterior of the building, and some traffic related modifications.

The motion PASSED 6-1, with Steve Roberts voting against it.

Ms. Fuller asked that a discussion on Planned Unit Developments (PUD's) be put on the Agenda for the next meeting.

Councilor Carroll said this was her last meeting as an alternate Council representative to the Planning Board. She thanked Board members and Mr. Campbell for the opportunity to work with them, and said she had learned a lot about the planning process. She said there were good things on the horizon, including Mill Plaza and a new Library, to knit the community together. She said she thought this was very important for the psyche of Durham, and said it should also be a fun time to be on the Planning Board.

Mr. Campbell said Councilor Carroll was welcome to come back.

Ms. Harris asked if it would be appropriate to send a notice to the Library regarding the former Zyla's property so they could provide some input on the entrance if there was a change.

Ms. Fuller left the meeting at 10:06 pm.

VII. Adjournment

Richard Ozenich MOVED to adjourn the meeting. Lorne Parnell SECONDED the motion, and it PASSED unanimously

Adjournment at 10:08 pm

Victoria Parmele, Minutes taker