

*These minutes were approved at the July 14, 2021 meeting.*

**TOWN OF DURHAM**  
**DURHAM PLANNING BOARD**  
**Wednesday, June 23, 2021**  
**Town Council Chambers, Durham Town Hall**  
**7:00 pm**  
**DRAFT MINUTES**

**MEMBERS PRESENT:** Paul Rasmussen (Chair), Lorne Parnell (Vice Chair), James Bubar, Sally Tobias (Council Rep), Heather Grant, William McGowan

**ABSENT:** Richard Kelley (Secretary), Ray Philpot

**ALTERNATES PRESENT:** Chuck Hotchkiss, Nicholas Germain, Eleanor Lonske, Barbara Dill

**ALSO PRESENT:** Town Planner Michael Behrendt

**I. Call to Order**

Chair Rasmussen called the meeting to order at 7:00 pm.

**II. Roll Call and Seating of Alternates**

The Chair took Roll Call: Richard Kelley and Ray Philpot absent; seated Ellie Lonske to fill in for Richard Kelley.

**III. Approval of Agenda**

Chair Rasmussen noted that the two scheduled applications were both postponed and said the Board will cover some Workshop topics left undone.

***Mr. McGowan MOVED to approve the Agenda as presented; SECONDED by Mr. Bubar, APPROVED unanimously, 7-0, Motion carries.***

**IV. Town Planner's Report**

Town Planner Michael Behrendt said there was nothing new to report; two applications were postponed, 19 Main Street to July 14<sup>th</sup> and Mill Plaza to July 28, 2021. On July 14<sup>th</sup> will also be Gerrish Drive, and the Conservation Commission will have 4 guest speakers this Monday who are experts on pesticides; all are welcome to join in.

**V. Reports from Board Members Serving on Other Committees**

Reporting on Town Council: Ms. Tobias said the *Town Council* met Monday June 21, 2021 with a light agenda. Most significant for the Planning Board was the election of Barbara Dill as an Alternate and Heather Grant as a regular member; for Zoning Board appointed Leslie Schwartz

as Alternate and Neil Niman as a regular member. Council may have an update on VHB at their next meeting on July 12, 2021.

Reporting on Housing Committee: Ms. Grant said the *Housing Committee* met on June 14<sup>th</sup> and are still coordinating strategy for 2020 short and long-term goals. They discussed the potential for density with housing, workforce density, and 66 Main Street development potential. Next meeting July 12, 2021

Reporting on Economic Development: Ms. Tobias said they are down on *Economic Development Committee (EDC)* members and looking for interested people in the community. Update on 66 Main Street, parking lot put in; update on 121 Technology Drive property up for sale. Also UNH has 3 dorms going offline for renovation. EDC will meet every 2 months on Wednesdays at 10:00 am in Town Hall in Council Chambers.

## **VI. Public Comments**

**Dan Pezzato** of 4 Shearwater Street said he was here to discuss the rezoning aspects from Rural Coastal (RC) to Rural (R).

Chair Rasmussen said the process is we will talk about it tonight and decide whether or not it is suitable to go out for a Public Hearing, probably in July. The version posted for Public Hearing will be available for Public Comment; the Board will take in all comments, deliberate again, and decide whether to make changes, shelve it, or pass it on to the Town Council.

Mr. Pisato said he recently purchased a home on Shearwater Street in what he thought was an established residential area and had declined property which backed up on farmland. He said his major issues are related to possible rodents from the farmland behind his house, concerns relating to the community and possible economic issues with water runoff, erosion, effects on the river, or their community well, all of which affect property values.

Mr. Pisato said at another meeting a comment was made that this area was of interest due to the good quality of its soil. He said the conversion from RC to R relates to livestock animals and crops will not be started on the land right now. At the last meeting there was discussion regarding no setbacks and that fences could go right up to the property line with the land to be used for rotational grazing. He said there was also discussion to not do anything until there were complaints, and he felt the Ag Commission was not really thinking about the people living in the community. He said with RC designation applications are considered on a case-by-case basis and there is a need to step back and decide if it is necessary to do this in areas touching existing established communities.

## **VII. Review of Minutes (old) – None**

**VIII. *Public Hearing - 19-21 Main Street – Parking Lot***. Application for site plan and conditional use for parking lot on four lots and reconfiguration of the entrance.

***POSTPONED TO JULY 14 AT THE APPLICANT'S REQUEST***

**IX. *Public Hearing - Mill Plaza Redevelopment***. 7 Mill Road. Application for site plan and conditional use for mixed-use redevelopment project.

***POSTPONED TO JULY 28 AT THE APPLICANT'S REQUEST***

**X. *Proposed Rezoning from Residence Coastal to Rural***. Proposal by the Durham Agricultural Commission to rezone numerous lots in the vicinity of Piscataqua Road (Route 4) from Residence Coastal (RC) to Rural (R).

Mr. Behrendt recommended the Board discuss how to treat excavation/mining, review the map and proposal, and schedule the Public Hearing for July. He said we do not know if there are resources, but State Law says they need to have said at least some zones where it is allowed, or it defaults to non-residential zones, and suggested the Board could pick two lots.

Mr. Bubar asked if dredging Mill Pond would be considered excavation, and Chair Rasmussen said the State Law comes from gravel excavation and dredging is different and permitted by different State offices. He said if we forbid it, it is special exception and every non-residential zone, R, RC, RA, and RB would all still be exempt. Right now we allow it under Conditional Use (CU) and Rural. Our Commission would like to make it X in the rural, so we need some place else to make it CU.

Mr. Bubar asked the rationale for making it X instead of keeping it CU. Mr. Behrendt said the Agricultural Commission proposal is to rezone the area off Route 4 from RC to R, and the one difference is R allows excavation and RC does not. Mr. Bubar said if this is high-value agricultural land they are talking about excavating loam, and Chair Rasmussen said for agriculture you do not want to be excavating the land. Ms. Tobias said in Rural you are still able to build a home and sell the excavated loam.

Mr. McGowan said it currently exists in rural areas and by making this change you are taking that away; it could be good in some situations and not others. Chair Rasmussen said it comes back to where do we want to allow the excavation; only in ORLI and MUDOR zones by conditional use. Ms. Grant felt it should not be changed; if it has been here in Conditional Use and has not been an issue and we are only doing it in case we approve rezoning from RC to R. Chair Rasmussen said the idea is to put them through as a package.

Ms. Lonske asked what initiated this whole idea, and Chair Rasmussen said the Ag Commission does not want to waste the soil. Ms. Grant said they spent so much time making changes to the agricultural section in general and they have put a lot of time into discussion tailoring Residence Coastal. Ms. Tobias said it is a significant change and abutters in that area see it as lifestyle changing.

Chair Rasmussen asked that the Board first come to a decision about excavation, and said some people want to keep it the way it is, and some have an interest in reducing it. Vice-Chair Parnell said as far as the Agriculture Commission is concerned are they assuming the Planning Board is going to take this, go through a Public Hearing, or can we say right now we do not think changing excavation is reasonable.

Mr. Behrendt said there are 2 pieces to this: Chairman Theresa Walker was unable to speak to you tonight and the Agricultural Commission is hoping the Board will go forward with a Public Hearing on land re-zoning. In terms of excavation, they would like to see Rural go from Conditional Use (CU) to X, and at the time they did not know about the default in the State Law. He said if you want to make it ORLI and MUDOR he was not aware of a concern on their part.

Ms. Dill said she hoped they would not do anything drastic without hearing from the Agricultural Commission on why they want to do this. Chair Rasmussen said the goal for the Agricultural Commission in a perfect world would be to get existing farms into a zoning situation where they are not in conflict with the zoning and doing that all in 1 step would be a step too far. They went with first providing zoning that would enable them to get there; right now half the active farms are in RC and the intent is to get to the more friendly R zone from RC.

Ms. Lonske asked if excavation could be referred back to the Ag Commission, and Chair Rasmussen said they asked the Planning Board to make a decision and they should decide whether that is the right thing to do. Ms. Tobias said they are considering ORLI and MUDOR where we now allow housing and asked if excavation would affect the housing. Mr. Behrendt said there is also light industry and research, and said he sensed when the Ag Commission discussed it that excavation is probably not a desirable land use anywhere in Durham, and if we get an application, probably as CU, it will likely not meet CU criteria and there is a good chance we would never see it.

Ms. Tobias said she had a problem with creating zoning because we are never going to say yes to it. Mr. Bubar said the issue is whether they want it in Conditional Use in the Rural zone or in MUDOR which is mostly University, and they can do whatever they want anyway, and he did not think adding MUDOR was an issue if they are swapping it out for the rural. Chair Rasmussen said I am with Mr. Bubar in limiting it to that part of town, with the added advantage they have easy access to Route 4.

Ms. Tobias said excavation in MUDOR would not have much of an impact, but it has been allowed in rural all along and she would like an explanation as to why they feel it needs to be changed and taken away. Mr. McGowan questioned the process of changing RC to R and having the excavation piece and asked if they are 2 separate components that can be dealt with separately.

Chair Rasmussen said there are 3 ways the Board could proceed: simply not submit that change, set it to X and let the default happen, or do the switch with the other 2 zones. We can leave it alone, do what the Ag Commission said before they found out about the default, or modify based on knowing what the default will do. Mr. McGowan said if we decide now to make it X, are we giving the people now in Rural the opportunity to come back and say they do not want that. Chair Rasmussen said he would like to put the best option on the table for the Public Hearing and let the public provide input.

Mr. Bubar said if we make Rural X, then State Law comes in and says its permitted with special exception; we really cannot make it X without making something else CU and should either leave it alone as it is today or swap it out for a different district. Ms. Tobias mentioned abutters and Mr. Bubar said in sheer numbers there were fewer abutters to MUDOR than to Rural districts. Ms. Grant said just putting excavation in ORLI could mess up something else, if they start to look for potential areas for increasing housing.

Mr. Hotchkiss said the whole discussion regarding excavation seems premised on the assumption we are moving ahead with the Public Hearing on something from the Ag Commission in July.

Chair Rasmussen asked for a motion on any of the 3 options.

***Ms. Lonske MOVED that the Board wait to hear from Theresa Walker to get a better understanding of where this is coming from before bringing it to Public Hearing;  
SECONDED by Mr. McGowan, APPROVED 6-1, Motion carries.***

Chair Rasmussen said there will not be a Public Hearing, but the public can watch and attend this meeting. Mr. Behrendt said Theresa will be here for July 14<sup>th</sup>, and they have Gerrish Drive and 19 Main Street, with just Mill Plaza for the 28<sup>th</sup>. Vice-Chair Parnell recommended waiting until the 28<sup>th</sup> for the Public Hearing.

***Public Hearing for Proposed Rezoning from Residence Coastal to Rural postponed until July 28, 2021 by Planning Board.***

#### **XI. Discussion about general Planning Board process.**

Chair Rasmussen said this is a standard Workshop item and a good opportunity for new members to understand how the Board works. He said he noticed that a lot of members sit at the same spot at the table and said he would like to shake up the order in which people talk. Mr. Behrendt said they could mix the order randomly every meeting, or quarterly, or set the seating for the year. Chair Rasmussen said the Chair, Vice-Chair, and Town Planner will always sit where they are.

Ms. Lonske said she observed that answers for Gerrish Drive were always yes or no and was surprised on 190 Piscataqua Road to hear yes/no/other, not applicable or not pertinent, and felt the Board should standardize what "other" is and come up with specific wording. She said it is ambiguous and confusing and should be clarified.

Chair Rasmussen said the form actually says *yes*, *no*, and *not pertinent*. Ms. Lonske said it should be stated before the vote. Mr. Behrendt clarified that the Ordinance actually says: "CU shall be granted only if Board determines it conforms/applies to all the criteria except for specific criteria deemed by the Board to be not pertinent."

Chair Rasmussen said if 4 people say *yes* and 3 say *not pertinent*, you do not get a quorum. Mr. Behrendt said to approve a CU requires 5 votes, but on criteria it could be 4-3 as long as 5 people vote to approve. Mr. Bubar said "not pertinent" is the same as a yes vote, and Chair Rasmussen said yes because it is not a "no" vote. Vice-Chair Parnell said he understood 5 affirmative votes are needed on each item, and Mr. Behrendt said he would check with the Town Attorney and asked if there were any other questions on process.

Mr. McGowan said he has had difficulty with timeliness of speakers on Zoom and said some have spoken in excess of 20 minutes taking time away from other speakers and applicants. He said for Public Comment they do not have to respond, nor does the applicant, and sometimes the Board responds and not others; by setting a time limit speakers would need to be respectful of everybody's time and not get into dialogue back and forth.

Chair Rasmussen said Rules of Procedure are left to the discretion of the Chair; on a heavy night we will limit it to 5 minutes. Mr. Germain asked if they could also limit what is talked about, and Chair Rasmussen said in Public Comment people can talk about anything but in Public Hearing they need to stay on topic. Ms. Tobias asked if they were able to limit Public Hearing to the topic being discussed, and Chair Rasmussen said there has been limited success as some people come in with prepared statements.

Ms. Grant said it is difficult because it does not leave the Board enough time to talk about it. Ms. Tobias said the Council limits to 5 minutes to hear as much as they can to be able to discuss some of those points. Ms. Grant felt they could come up with a start date for limiting to a reasonable time to manage this better. Ms. Lonske said 5 minutes is good with a possible extension of 2 minutes, and strongly endorsed not getting into a back-and-forth which is not professional and counterproductive.

Ms. Tobias said the meetings go late and people complain but the more they talk the less time we can talk about what they just told us. Mr. Bubar said he had 2 issues (1) that some people come in and tell us essentially the same thing meeting after meeting about a particular application, and (2) people who say effectively the same thing someone else did. He said at that point he has trouble concentrating and it is not an efficient way to get something done.

Chair Rasmussen said people repeat themselves because they feel we are ignoring them. If we do not respond to them or do not get a chance to talk about it later and it goes to the next meeting, they feel they are being ignored. He said we cannot take the time to talk about everything and try to choose things we feel are important, but if someone feels it is important *to them* it becomes an issue.

Ms. Tobias said it becomes tiring to everyone including the audience and we want people to share opinions and be concise; also the Planning Board puts in a lot of time and energy the community does not see. Mr. Behrendt said when people speak at a Public Hearing we are just here to listen, but when they ask a question, I think it is a good idea to respond in the moment when you can, which is up to the Chairman. If someone asks a question about an application, we do not have to respond but people do not understand the process.

Chair Rasmussen said if it is a process comment he usually responds in the moment, but said he finds that they start going back and forth too often. He said people are in the habit of asking the applicant and they will also respond, and he asked if the Board really wants to address that in the moment or ignore the question and ask the applicant after everyone has finished. Ms. Grant said in Public Comment when asking detailed questions of a specific abutter is it the responsibility of the applicant to be reaching out to answer those concerns, or how does the abutter get those detailed answers.

Chair Rasmussen said it is the choice of the applicant to ignore or choose to work closely with the abutter. If there is difficulty in getting the abutter on their side, it is in the applicant's favor for getting approval and to work with the abutter. Vice-Chair Parnell said the Planning Board can also make a decision that the applicant and the abutter will get together and sort out their problems. Chair Rasmussen said he will put what he has in writing.

**XII. Architecture Presentation.** Presentation by Durham Town Planner about the purpose and function of Architectural Regulations (Time permitting).

Mr. Behrendt said he gave this presentation to NHMA at a conference of the New England Chapter of ATA and covers architectural regulations and architecture in general.

#### Architectural Regulations for Planning Boards

Mr. Behrendt said Architecture matters and buildings should be well-built, functional, and beautiful, and we are good at the first two but the last one not so much. He showed various examples of great and successful buildings as well as awful buildings erected at the lowest possible cost using poor-quality materials, and said badly designed buildings affect people in negative ways.

Mr. Behrendt said architecture differs from all other arts in that you can turn away from artwork you do not like but not from a building. He showed some UNH examples of buildings that make students feel good and others that are generally reviled. Architecture is elusive,

organic, and ever-changing, and to have good building you have need well-crafted standards that promote design that is functional, attractive, and harmonious.

Mr. Behrendt asked why older buildings are so satisfying and why newer buildings are so awful and showed examples of both. He said most new architecture is not contextual, not respectful of surroundings, and not compatible with buildings around it. What happened: (1) Modernism, (2) loss of knowledge of traditional design, (3) technology, (4) the automobile, and (5) acceptance of cheap and shoddy buildings; we forgot what beautiful buildings look like and lost confidence we can build them today.

Mr. Behrendt said the Greeks came up with form and Romans copied that, followed by the Romanesque period, then the Renaissance, Baroque and Rococo, and Neoclassical. Gothic was very different as a kind of romantic picturesque form in contrast to rational architectural design with new forms and new details. But 20<sup>th</sup> Century architecture changed all that and sought to literally bring an end to history and largely succeeded.

The Bauhaus School of Design founded by Walter Gropius in 1919 sought to make a new art and architecture appropriate to the 20<sup>th</sup> Century. Modern buildings were to be functional and forthright with clean lines and without embellishment. Traditional architecture was deemed outdated, irrelevant, inauthentic, and effeminate bourgeois. The problem is we are now ashamed to look to history for inspiration and include any ornamentation, and the result is the impoverishment of architecture and a crisis of the profession.

Mr. Behrendt said ancient Greeks developed a rich set of principles for creating functional buildings with optimal proportions and countless small details as part of a classical temple, even adding a slight curving taper to the columns to make them more graceful. Thomas Jefferson was an amateur but copied examples from the Renaissance and Roman antiquity for his temple at the University of Virginia, but architects no longer study Greek and Roman architecture. Good design will appeal to a knowledgeable professional and a lay person alike.

Traditional architecture includes first period Medieval, Georgian Colonial, Gothic Revival, and Greek Revival and should be a template for any significant building in your community because we know it works. You should always allow for non-traditional modern buildings provided they are good. Other styles include the Mansard style inspired by Paris, Italianate, 2<sup>nd</sup> Empire, Queen Anne, and Colonial Revival which is like Georgian but in a grander form.

Building elements include context and setting, site placement, massing and overall form, roof, organization of façade, entrance, windows, materials and textures, colors, highlights and focal points, as well as character, style, cohesiveness and integrity. He said Planning Board members should be sensitive to “transect” which is context and setting.

Mr. Behrendt said the built environment can be seen as a sequence of environments and showed examples from most natural to most built up. He said you should be sensitive to



context, with some zones more sensitive than others like residential. Site placement is important and special buildings can be treated differently to emphasize special characteristics. In massing and overall form buildings can be appealing or unappealing; horizontality vs. verticality.

Mr. Behrendt said the square in architecture is very unsatisfying as we want to see some hierarchy. The vertical and horizontal are the same length, each square competes with itself and there is lack of resolution. Roofs crown the building, and the organization of the façade should be variety within unity with pleasing structure and balance. Proportion refers to ratio and a building involves an interplay of multiple ratios: height vs. width, window area relative to wall space, columns. A beautiful building has good proportions with many harmonies reflecting careful unseen manipulations by the architect.

Mr. Behrendt explained the principle of the Golden Rectangle with a proportion of 3:5 where the ratio of the short side to the long side is the same as the ratio of the long side to some of the long side and short side which is an irrational number; the Parthenon has numerous Golden Sections. The treatment of the entrance is critical; windows are important for rhyming, proportion, and character and are the eyes of the building.

Mr. Behrendt said traditional building materials are wood, brick, and stone which are durable and substantial. Brick should be used for downtown, and the use of vinyl siding prohibited; stone should be laid in structural horizontal lines. Color selection is critical and highlights and focal points should fit into the overall design and not be just tacked on. A building should have character, style, and integrity, and design elements should be integral to the building.

Mr. Behrendt said modern design has to be done well, and questions should be asked regarding character: whether it fits in with neighboring structures or plays off them in a positive way, whether it meets the street effectively, if the rationale is clear, if materials are good, if it is nicely designed avoiding large blank walls, if the building is interesting and engaging, and whether or not you like it. Components of architectural regulations are all in Durham's regulations.

Mr. Behrendt said for expertise you need one person who understands the technicalities and the Board should educate themselves about design, style, history, and building elements. Architects are artists, and everything is in the regulations as long as they work with us.

### **XIII. Other Business**

### **XIV. Review of Minutes (new): March 24, 2021, May 26, 2021 & June 9, 2021 site walk**

Meeting Minutes of the March 24, 2021:

***Mr. Bubar MOVED to accept the Meeting Minutes of March 24, 2021; SECONDED by Chair Rasmussen, APPROVED unanimously 7-0, Motion carries.***

Meeting Minutes of the May 26, 2021:

Ms. Dill said she had a list of minor typos which she gave to Mr. Behrendt to pass on to Karen.

***Mr. Bubar MOVED to accept the Meeting Minutes of May 26, 2021; SECONDED by Vice-Chair Parnell, APPROVED unanimously 7-0, Motion carries.***

Meeting Minutes of June 9, 2021 Site Walk:

Chair Rasmussen thanked Ms. Graham for taking the minutes.

***Mr. Bubar MOVED to accept the Meeting Minutes the June 9. 2021 Site Walk; SECONDED by Chair Rasmussen, APPROVED 6-1 with 1 abstention, Motion carries.***

#### **XV. Adjournment**

***Mr. McGowan MOVED to adjourn the meeting; SECONDED by Ms. Tobias, APPROVED unanimously 7-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 9:29 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker  
Durham Planning Board

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Richard Kelley, Secretary