

*These minutes were approved at the March 27, 2024 meeting.*

**TOWN OF DURHAM  
DURHAM PLANNING BOARD**

**Wednesday, February 14, 2024**

**Town Council Chambers, Durham Town Hall  
7:00 pm**

**MEMBERS PRESENT:** Paul Rasmussen (Chair), Heather Grant (Vice Chair), Sally Tobias, Peyton McManus, Chuck Hotchkiss (Alternate Council Rep), Erika Naumann Gaillat (Alternate); Richard Kelley ( arrived late)

**MEMBERS ABSENT:** William McGowan, Chris McClain, Tom DeCapo

**ALSO PRESENT:** Town Planner Michael Behrendt

**I. Call to Order**

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

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

Chair Rasmussen called the roll and seated Erika Naumann Gaillat for Bill McGowan.

**III. Approval of Agenda**

**Chair Rasmussen *MOVED to approve the Agenda for February 14, 2024 as presented; SECONDED by Ms. Tobias; APPROVED 6-0, Motion carries.***

**IV. Town Planner's Report**

Mr. Behrendt said tomorrow night is the second roundtable discussion of Oyster River Massacre Marker with final meeting in March; Town Assessor Jim Rice retiring February 29. Two items for February 28 meeting: St George's Church proposing a free-standing solar array involving Site Plan Review; CU for surface parking to be rented out at 3-family unit on Dover Road.

*Richard Kelley arrived at 7:03 pm.*

**V. Reports from Board Members who serve on Other Committees**

Reporting from IWMAC: Vice Chair Grant said the committee met February 7; discussed strategies with DPW on bulky waste and no curbside pickups, finalizing in next 2 weeks; system to issue one free bulky waste coupon to deliver what would have been picked up; working on ordinance change to correct dialogue on how bulky waste is managed; discussion on truck purchases for new curbside pickup using one EV vehicle.

Reporting from Energy Committee: Councilor Friedrichs said the committee met last Tuesday; presentation from UNH professor and students on analysis for Police Department on buying all electric cruisers; based on runtime Police Department looking at EV vehicles for other town uses. UNH Sustainability continues to work through Durham's Climate Action Plan with survey out in mid-March; getting ready to launch Community Power and encouraging opting up to a cleaner mix in competition with other towns.

Chair Rasmussen said if you are already on solar you cannot join. Councilor Friedrichs said you can join but are not automatically switched over and there is no credit for energy sold back if you switch now; but legislation is coming through to allow continuation of net metering while with Community Power.

Reporting from the Town Council: Councilor Hotchkiss said Council swore in new Deputy Fire Chief Rober Atwater; recognized Jim Rice for his service; appointed Michael Mulhern to Housing Task Force; presentation by Joan Osborne on planned Revolution of 1774 event; finished Town Administrator evaluation.

Reporting from Conservation Commission: Mr. Kelley said the commission met January 22; during meeting asked to prepare a letter in support of a Conservation Easement being acquired by SELT: 2 parcels 44 acres across and 19 acres on N side of Langley Road including Durham Point with 2,000 linear ft along Oyster River and Great Bay, and larger parcel on E side of Durham Point Road; 12.4 of the 44 acres are prime farm land still farmed for hay. Fortunate to have Dwayne Hyde and SELT working to conserve these parcels in Durham.

**VI. Public Comments – None**

**VII. Review of Minutes (old):**

**VIII. Workforce Housing – Proposed Zoning Amendment and Rezoning of Parcel.** Consideration of a set of proposed amendments to the Zoning Ordinance pertaining to workforce housing including adding a definition, adding a line to the Table of Uses, adding a section providing the standards for workforce housing, making several other text changes, and rezoning a 117-acre lot of land owned by the Leda M. Keefe Rev. Trust, c/o Daniel Keefe, at 59 Piscataqua Road, Tax Map 209, Lot 39, from Residential Coastal (RC) to Office Research (OR). The amendments have been endorsed by the Durham Housing Task Force. Recommended action: Discuss and set a public hearing.

Presentation from HTF by Chair Sally Tobias and Al Howland: Mr. Howland said he has served on the HTF since it was formed and also sits on Municipal Committee in NH State House. He said there are significant problems with housing in New Hampshire, ranging from transitional housing to workforce housing to senior housing. HTF talked about what Durham might be missing, combed through zoning code, and looked at ways to make changes to housing in Durham. More data was needed; applied for InvestNH Grant and received \$25,000, with \$20,000 to RKG

Associates to come up with a detailed Housing Needs Analysis of Durham; while working on it something has come to HTF through the Town Planner.

Mr. Howland said after adjusting for student population, Durham needs 455 units of housing by 2040 focused on Workforce (WF) housing. Durham was broken up into 4 census tracts and the property in question has been identified as a priority area for multi-unit residential development: areas 801, 802.2, 802.3 and 802.4. He said 45.8% of Durham's households are non-family (university town) and we are missing tracts for 34-44 and 45-54 demographic. Workforce housing is defined as 60% of median income used for rent; family of 3 for a 2-BR apartment tracks out to be \$1,830.

Mr. Howland said the study pointed out which tracts of land are best suited to build needed housing types; 802.2 shows there is land with potential to be developed, which could be hooked up to city water and sewer. He said the owner of the property met with the Town Planner wanting to explore building workforce housing on their property. HTF also reached out to workers in our community to get a sense of their challenges in terms of the housing market in Durham. The parcel turned out to be ideal for providing density in workforce housing.

Mr. Howland said the Town Council is asking why HTF is bringing zoning changes forward; data being gathered from the housing needs assessment supports these proposed zoning changes, HTF endorsed this as a good idea and is handing this off to Planning Board to begin work on it. Rezoning the lot immediately E of OR zone from RC to OR. Lot at 59 Piscataqua Road owned by Leda M. Keefe Revocable Trust, c/o Don Keefe who lives on the property of 117 acres. Ms. Tobias said, currently the RC Zone would not allow workforce housing and more could be done with the density in OR.

Mr. Behrendt said the owner actually met with John and Maggie Randolph of Harmony Homes, who are strong advocates regarding the housing crisis and its effects on economic development. The property has some wetlands and Johnson Creek, and by calculations of Mike Sievert for a conservation subdivision would only allow 6 dwelling units; the owner approached me for workforce housing to have a higher density and I spoke with HTF. He said it is reasonable to simply extend the OR district E to encompass this lot allowing a much higher density; allowed density in RC is 150,000 sq ft per dwelling unit and in OR it is 4,200 sq ft.

Ms. Tobias showed the Durham Town map with the property in blue bordering OR; she said it is a priority area from Housing Assessment, the area E of Johnson Creek would not be developed, and property would take into account all shoreland setbacks. Amendment Details: adding definition of Workforce Housing to Article II Definitions; change Table of Uses allowing WF housing in OR, ORLI, MUDOR, and DBP (Durham Business Park); rezoning property to OR (Office Research), senior housing and conservation subdivision.

Mr. Behrendt explained there would be a new line in the Table of Uses with Workforce Housing as a new use category; currently not allowed in residential or core commercial but will be allowed in all four research industry zones by right; workforce housing could be any kind of housing with density standards established. To meet those standards, the project would need to comply with numerous requirements: meet WF housing definition, rent levels meeting the 60% threshold, 100% threshold for sale of area median income, levels maintained in perpetuity, open space, income issues, site design. The proposed new ordinance will be Option A; Option B is a provision in Conservation Subdivision never used and should be disregarded.

Mr. Behrendt said this lot is the single best opportunity for WF housing in all of Durham; second largest developable lot in town; only one other in rural zone with no available water and sewer. He said Route 4 is a gateway and many people in town are sensitive about gateways; all units could be placed so they are never seen and screened from abutters; would be a substantial amount of open space as proposed. Number discussed in range of 200-250 dwelling units; parcel is large and can easily accommodate; density flexible with water and sewer.

Chair Rasmussen said there are 4 circled areas on the map, 2 off Route 4 and 2 in cottages/lodges area; we are including all industrial zones because of those other 3 circles. ORLI and MUDOR are two properties to left: ORLI includes area along Route 4 and down to Mast Road; should consider reviewing ORLI map as part of this consideration and move some ORLI into Rural to protect Spruce Hole and Oyster River Forest: take everything south of Mast Road to Packers Falls Road out of ORLI.

Mr. McManus asked about Statute 674, which speaks to WF housing. Mr. Howland said it is supposed to have potential to develop WF housing but never really worked. He said the needs of the community change and zoning should reflect what those needs are. Mr. McManus said the income levels for rental and ownership looks relatively high. Mr. Howland said Durham is tagged into a group with Portsmouth and said \$1,840 for a family of 3 for would be income of \$73,000 for rental market, with ownership income of \$136,000, which will buy a \$407,000 home. Mr. Kelley said there is density on Route 4 and Route 108, but square footage requirements would not be applicable in Durham Business Park.

Mr. Howland said the role of HTF is to provide the Planning Board with the data and potential zones that could be done; it is the role of the Planning Board to look at the zones and the minutiae of zoning to make it fit. He said looking at the number of available parcels in Durham being presented he would recommend looking at types of housing that fit and determine if 100% is the right mix.

Chair Rasmussen provided an explanation for Mr. Kelley that HTF was running short on time and wanted to get this to the Planning Board and did not really look at lot sizes in ORLI, MUDOR, and DBP; Planning Board would need to review to find out what numbers make sense. The thought was rather than a 1-project change make it for all 4 industrial zones. Mr. McManus asked if 80/20

or 70/30 is a better mix than 100%; Mr. Howland suggested reaching out to NH Housing regarding other projects in the state for mix.

Ms. Tobias said HTF just received the Housing Assessment and there is still a lot to go through with more suggestions possible in future; density and amount of land is key. Chair Rasmussen said regarding transportation, the only other area is Coe's Corner on bus routes. Mr. Kelly asked what would prevent someone buying a home and renting to 3 students. Chair Rasmussen said there is an income requirement and WF housing excludes full-time students.

Vice-Chair Grant said if a house was sold, most investors would want to see a lot of increase in their sale value; with a HUD sale they would not make market-rate profits. If you are in a condo development with a home-owners document, you can actually limit rental of the homes. Chair Rasmussen said you can also do a deed restriction that if sold still has to list at HUD level. Mr. Behrendt said you could probably require income limits but did not recommend it. Vice-Chair Grant said if they come up with a site plan they should come up with a control.

Mr. Behrendt said the proposed Ordinance in front of you says to qualify for WF housing, if rental all units there must be in perpetuity and set at annual HUD level at 60% affordable for AMI; also varies by number of bedrooms. In our proposed Ordinance we are not saying who it can be rented to; the goal of this is WF housing, people who are working; you must have income from employment to cover your rent or from personal income for retired people.

Mr. Howland said it is hard to build WF housing; this is probably one of the most consequential projects on the Seacoast right now. He said it must be economically viable for a developer to come in; with too many restrictions a developer will go elsewhere and you will not be able to meet your housing assessment needs. He said if you want to build something you will have to take some risks; a lot of communities in NH are now clamoring for WF housing.

Mr. Kelley asked if Durham HTF has done any collaboration with Lee or Madbury. Mr. Howland said they do not, Lee is challenging because most of Lee does not have sewer and water and Madbury is not a centralized government, but it is something we would like to pursue. He said the Housing Assessment will be presented to the community; RKG will be at the HTF Monday meeting but there will also be a regular forum and outreach to the public.

Mr. Behrendt said regarding the number of units, the landowner needs a certain amount of money he is hoping to make to sell the property; with enough units they would be able to build a road internally from Route 4 up to Dover Road (Class 6 road); for this property, at this size at this location, 200-250 units may be viable. He said a lot of people are excited about this and he thinks it is doable; biggest challenge will be dealing with the Schools. Vice-Chair Grant said the State is requiring we provide a realistic opportunity for development of WF housing, but perhaps only make the zoning change for that property right now.

Councilor Friedrichs asked that the board consider adding within the definition of WF housing something that more specifically addresses student housing. Chair Rasmussen said he would rather go to the Public Hearing with what they have and tweaking later. Mr. McManus felt it might be important to convey the human nature of WF housing. Mr. Howland said HTF did reach out to the local workforce about what it is like to pay 50% of income for housing.

Ms. Tobias said NH is drastically aging and young family ages are leaving Durham. With the age of Durham residents and the need for care, without workers who can afford to live here, care cannot be provided for those people. Chair Rasmussen asked if the Board was ready to send this to a Public Hearing. Mr. Behrendt said he would need to send out a lot of notices under State Law; hearing could be held on February 28, 2024.

Councilor Friedrichs said ze did not think the Board should be putting density in DBP. Chair Rasmussen said there are two properties in DBP that could potentially take density: UNH zoned area and Harmony Homes lot; Harmony Homes still has phase 3 to come. He recommended they put out all 4 zones for the Public Hearing. Mr. Kelley said MUDOR is limited and surrounded by UNH land; Chair Rasmussen said it could allow UNH to do their own WF housing.

The Board continued discussion. Mr. McManus asked if there would be multiple public hearings where the Board would come back and clarify; Chair Rasmussen said it depends on how much we modify; if minimum changes after first hearing, wrap up and send to Town Council; if major edits may go to a second Public Hearing. Mr. Behrendt said this Board is going to have to have a real dialogue with the community for their full understanding with the School issue. He said however you shape this, it is a very positive thing for the community.

**IX. Review of Definitions in Zoning Ordinance.** Review of the Zoning Ordinance as part of the *zoning rewrite*. *The board completed a first pass through the Definitions. The board is conducting its second review. Once the board is satisfied with the changes an amendment will be presented for a public hearing.* **Recommended action:** Finalize the draft if time permits and set a public hearing.

Chair Rasmussen said the current document is a collection of all changes agreed on to date; need to give the public enough time to digest before a Public Hearing, at least a month out.

Councilor Friedrichs recommended keeping *Golf Course* as it has its own item in the Table of Uses and should be separate from other outdoor recreational facilities.

**Golf Course** – Board agreed to keep definition.

Councilor Friedrichs said the Wetlands Subcommittee discussed adding a definition for **Porous Pavement** and **Porous Pavers**; on Site Plan Ordinance but not defined in Zoning Ordinance; use exact same definition as in Site Plan Ordinance. Board agreed.

Councilor Friedrichs said the Board also agreed to add **Wildlife Corridor**.

Mixed Use with Parking – After discussion the Board agreed to strike from definitions and Table of Uses.

Motor Vehicle Sales Facility – Changed wording to “display, sale, and lease”; added “This use may include repair facilities, but only for vehicles offered for sale, lease or trade in.”

Motor Vehicle Service Facility – “A business that provides service, maintenance, and repairs for motor vehicles and engines, including the accessory sale of parts and supplies.”

Nursing Home – Shorten to “A facility licensed by the State of New Hampshire as a nursing home.”

Councilor Hotchkiss deleted “necessarily” from first page of definitions, last sentence in black.

Page 6: Typo under ATV – delete the entire thing.

Vice-Chair Grant asked that under Category of Uses: Student Housing definition be added with Xs all the way across except Professional Office. Board discussed and agreed.

Erika Naumann Gaillat left the Planning Board meeting at 9:33 pm.

Richard Kelley asked that before the next meeting each of the districts with zoning changes has a purpose which currently does not include WF housing and it needs to be added: 175-48.A, 175-50.A, 175-51.A, and 175 52.A.

Richard Kelley left the Planning Board meeting at 9:35 pm.

Vice-Chair Grant questioned “Wholesale sales” on Table of Uses; marked as deleted in definitions; changed to Warehousing; deleted from Table.

Councilor Friedrichs said the Table of Uses has principal uses for utilities and transportation and has accessory parking with necessary off-street parking to serve allowed use permitted in every district. Ze asked why parking lots are allowed as stand-alone uses, when from a land-planning perspective and tax base, a parking lot is a very poor use of land. Chair Rasmussen asked that this be brought up for discussion at the next meeting along with “shared parking”. Mr. Behrendt said regarding that there is an application coming up for CU in Courthouse District will Public Hearing probably in March which needs to go before zoning changes.

Chair Rasmussen said after the definitions are finished, the Board will take a fresh look at the Table of Uses for easy ones not touched as part of definitions. Mr. Behrendt said he will update definitions for the next meeting including the rest of the ordinance, and will have a proposed amendment regarding Public Notices.

## **X. Other Business**

## **XI. Review of Minutes (new): January 10, 2024, and January 24, 2024**

Meeting Minutes of January 10, 2024:

***Vice-Chair Grant MOVED to accept the Planning Board Minutes of January 10, 2024; SECONDED by Ms. Tobias; APPROVED 4-0 with 2 abstentions, Motion carries.***

Meeting Minutes of January 24, 2024:

Councilor Friedrichs corrected page 5, line 1 adding period after *conservation lands*, changing line 2 to: *would be allowed to be mowed with width of 6 feet*. On page 6, line 11, changed “the Board” to: *the Table of Uses and Zoning Ordinance*.

***Acting Chair Grant MOVED to accept the Planning Board Minutes of January 24, 2024 as amended; SECONDED by Chair Rasmussen; APPROVED 5-0, Motion carries.***

**XII. Adjournment**

***Ms. Tobias MOVED to adjourn the Planning Board Meeting; SECONDED by Vice-Chair Grant; APPROVED 5-0, Motion carries.***

Chair Rasmussen adjourned the meeting at 9:58 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker  
Durham Planning Board