

These minutes were approved at the July 24, 2024 meeting.

**TOWN OF DURHAM
DURHAM PLANNING BOARD MEETING**

**Wednesday, June 26, 2024
Town Council Chambers, Durham Town Hall
7:00 pm**

MEMBERS PRESENT: Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Tom DeCapo, Peyton McManus, Heather Grant (Alternate Council Rep), Erika Naumann Gaillat (Alternate); Richard Kelley, Emily Friedrichs (Council Rep), Robert Sullivan (arrived late)

ALSO PRESENT: Town Planner Michael Behrendt

I. Call to Order

Chair Paul Rasmussen called the meeting to order at 7:01 pm.

II. Roll Call and Seating of Alternates

Chair Rasmussen called the roll and held off on seating Erika Naumann Gaillat.

III. Approval of Agenda

Vice-Chair Tobias asked that the email from Tom DeCapo and Peyton McManus be added under Other Business.

Richard Kelley, Emily Friedrichs, Robert Sullivan arrived at approximately 7:03 pm.

***Chair Rasmussen MOVED to approve the Agenda for June 26, 2024 as amended;
SECONDED by Peyton McManus; APPROVED 7-0, Motion carries.***

Chair Rasmussen said the Board is now down to one Alternate and hoping for a few more if anyone is interested. Mr. Behrendt said Robert Sullivan is now a full member and explained that Erika Naumann Gaillat has more seniority but feels more comfortable at this time as an Alternate.

IV. Town Planner's Report

Mr. Behrendt said he is working with Tideline on making a sandwich-board sign for the Town Hall parking lot on monthly meeting nights and they are paying; the design will have to go before the Historic District Commission.

V. Reports from Board Members who serve on Other Committees

Reporting from the Energy Committee: Councilor Friedrichs said there was a presentation on an area effort to do solar across the Seacoast, involving a summer competition with some potential discount pricing; ze will notify the Town if the Committee decides to partner in this effort.

Mr. McManus asked if anyone was offering incentives around solar for workforce housing. Councilor Friedrichs said ze had not heard of any for solar for workforce housing, but Service Credit Union is looking to do affordable housing with tax incentives like waiving property taxes on solar installations and giving 30% tax credits.

Responding to questions from the Planning Board, Councilor Friedrichs said carbon footprint goals are only tied to a town total versus a per capita measurement and industry standard seems to be by region; variability in student population could flux more quickly year-to-year. The Energy Committee is alternating years between greenhouse gas inventory and Climate Action Plan (this year), and is interested in drafting an EV Ordinance and revisiting the Energy Checklist only if it could be made mandatory.

Reporting from the Town Council: Councilor Friedrichs said Town Council is working on updating the Solid Waste Ordinance with IWMAC and Public Works; questioning whether there are violators of Best Practices for manure spreading; August 17 is Farm Day. There is growing demand for expanding K–3 grades at Moharimet Elementary with 20 families that might have to move to Mast Way; there may be some school expansions ahead.

Chair Rasmussen said the School District is out of space for K–3; Moharimet was to move 17 families to Mast Way who did not want to move; a temporary solution was found for this year. Councilor Grant said families go in knowing they may not have a choice; she added that Town Council also had a presentation from RKG on the final Housing Needs Assessment.

Reporting from the Integrated Waste Management Advisory Committee: Chair Rasmussen said IWMAC did not meet because of Juneteenth but met this morning and he was unable to attend; Rich Reine presented the Solid Waste Management procedures for the Town which he is updating; the meeting was not recorded.

VI. Public Comments – None

VII. Review of Minutes (old):

VIII. *Public Hearing - Updating the HDC Ordinance.* Proposed zoning amendment to update the old Map and Lot numbers to the current ones in the Historic District Ordinance. Requested by the Historic District Commission. *Recommended action:* Vote to initiate the amendment.

Chair Rasmussen asked if there were any other questions and asked Councilor Lund if he was representing the Historic District. Chairman Lund said he was but had no new information and reminded the Board that this ordinance will only update the definition of the Historic District with the new map numbers.

Peyton McManus MOVED that the Board open the Public Hearing for HDC Ordinance; SECONDED by Councilor Friedrichs; APPROVED 7-0, Motion carries.

Chair Rasmussen opened the Public Hearing for HDC Ordinance at 7:26 pm.

Richard Kelley moved that the Board close the Public Hearing for HDC Ordinance; SECONDED by Peyton McManus; APPROVED 7-0, Motion carries.

Chair Rasmussen closed the Public Hearing for HDC Ordinance at 7:27 pm.

The board discussed the language of “former” tax map versus “old” tax map; Mr. Kelley asked if there was a plan online showing the boundaries of the Historic District; Mr. Behrendt said the town’s GIS person will update that. Chair Rasmussen said GIS uses GPS points as opposed to lot lines as underlying main basis and does not use lot numbers to figure out districts.

IX. Workforce Housing – Potential Zoning Amendment. Discussion about rough draft (second iteration) of a proposed workforce housing ordinance. Recommended action: Continued discussion.

Chair Rasmussen said the Board has the updated, very rough draft in front of them of the proposed Workforce Housing Ordinance. He said Mr. Behrendt has concerns about possibly making a scaled down amendment first, then coming back a second time to make it more robust, versus trying to go with an initial robust version. Mr. DeCapo respectfully disagreed with the notion of tailoring this more toward the one project if that means connecting it to 100% workforce housing and not addressing some of the other points.

Vice-Chair Tobias said she tended to agree with Mr. Behrendt’s suggestion and said she did not feel comfortable with where they are getting the percentages; she said units should be exclusively for rent and not for sale and rental units can be built quicker and cheaper. She said the overlay will only be working in two specific areas right now and said she liked the idea of going 100% affordable. Councilor Grant said they could have detached dwelling units.

Councilor Friedrichs said as part of this development the Board has the ability to exclude single-family residences outright on their own lots, and felt the board had this conversation already and came up with 65% to encourage diversity. Ze said the Board has invested a lot of time and resources, and if something is passed now that is only viable for one project and later extended there may not be any other workforce housing after that. Mr. DeCapo clarified that there was no consensus among Board members that it would be 100% workforce housing.

Mr. Kelley said he investigated HUD numbers and said they were not created for this use, and did not create zoning ordinances for affordable housing; looking at different numbers and parameters, it is probably best to go with HUD Fair Market rates. Chair Rasmussen added that

there are low-income tax credits and vouchers; developers do low-income tax credit on the front end and vouchers on the back end, which can help support someone at the 60% level. Vice-Chair Tobias said the wait for vouchers is 5 years out. Ms. Naumann Gaillat asked for clarification that the Board is now going back to the 65% affordable and 60% AMI numbers already discussed.

Councilor Grant suggested using 65% to 100% workforce with a density bonus for building more, and said pushing through zoning for only one project will not result in a living document. Mr. Behrendt said hopefully it is not only for one project but a model ordinance to cover the overlay district and a number of parcels with a few different types of developers; a particular model that might apply to different opportunities.

Mr. McManus said he initially approved HUD Fair Market rates as a simple way to manage, and was initially opposed to 100% because it could put developers at a disadvantage in the long term with less flexibility to moderate rental rates. Councilor Friedrichs said the Portsmouth Housing development is non-profit and he would be worried about for-profit for those same reasons. Mr. DeCapo said some Board members find HUD Fair Market rents expensive, and said he did not see the complexity of simply saying 85% of HUD Fair Market instead of 100%, tying that to the number of units at real fair market to bring in lower rents.

Councilor Grant asked to keep it simple and stay at 60%. Mr. McManus asked 60% of what: there will be a certain percentage of development units set at fixed low market rates and what constitutes affordable; one is rent, and the other is the percent of the complex. Ms. Naumann Gaillat said the percent of complex is 65% and the other is 60%. Vice-Chair Tobias said 60% is AMI for high rent and HUD rates are set at 60% of Average Median Income.

Mr. Behrent said he asked how HUD rates equated with 60% AMI and was told they were higher than 60% AMI but lower than 100% market rates. He said they are still high, and a lot of people are paying well over 30% of their income. Vice-Chair Tobias said the complicated issue is price to build; you can apply for LIHTC (tax credit) and get a certain amount (not 100%) then have to reapply the following year.

Councilor Friedrichs reiterated that the Board could restrict this to not allow any single-family homes on their own lots. Chair Rasmussen said if single-family homes on their own lots are allowed, they would have to be on town roads or situated at the edge of the development with separate access.

Mr. Sullivan said we need some number to start with and if we assume HUD Fair Market as the number, we need to spread the cost across as many renters as possible; the mechanism to do that is density bonus. Mr. DeCapo said another way to do it is to leave the density number at 65%/35%. Vice-Chair Tobias said that is where the community will have a problem because we are selling this as an affordable housing amendment for workforce housing. She said she likes

what Mr. Sullivan is saying and prefers 80% not 65%; to get the other 20% at the going rate you give a bonus for doing more units.

Mr. Kelley said the Board realizes the sale of houses will be problematic and the easy way out is rentals. Market rent is about 1.5% higher than fair market rent, a developer is making a significant capital investment to build these units, and 35% can rent at market rates. Mr. DeCapo asked if the Board is putting the burden on low-income people by trying to find a balance for developers to be able to fund the project; to create truly affordable housing, it can be subsidized with some real market value housing in the mix.

Chair Rasmussen agreed the proper way to try to allow that is by saying the average of all units will fall within 100% of fair market rate, which allows the renter to balance in whatever percentage as long as the entire average of the development comes out at that level; for every expensive one you have someone is getting a break at the other end. Mr. McManus asked what the incentive would be for a developer to rent low market.

Vice-Chair Tobis said developers do it already in the market with LIHTC low-income housing grants or tax credits, complying with certain standards and using income averaging and rent averaging by building. She said if not doing 100% workforce housing, we need a number as high as we can accept; to include for-purchase need to think about type of dwelling. Mr. Behrendt said this is a new foray for the town and recommended the Board keep it relatively simple starting at 100% and said communities will often adapt the ordinance to set certain thresholds; if nobody wants to build anything then we come back.

Chair Rasmussen said last week the Board left off with 65% being affordable at Fair Market rates, and asked if they want to work on something only offering 100% affordable or something more tiered. Mr. McManus said he would agree with tiered, with special bonuses to get to 100%. Mr. DeCapo said the benefit of tiered is to make affordable units more affordable. Mr. Sullivan said tiering is done across our society, has precedent, and higher rents are subsidizing lower rents.

Chair Rasmussen said there are several details on tiering: what is the maximum and minimum we would ever want to require and how many incentives do we have to go in-between. Mr. Behrendt suggested 80%, 90%, 100%. Chair Rasmussen asked the Board to really think about that and said we cannot really be talking about incentives until we have actual incentives on the table. Councilor Grant said the more detailed we get, we are trying to design for the developer, and they know more about what they can provide.

Mr. Sullivan said in the end it will be a spreadsheet and said he liked 80%, 90%, 100% as numbers; put in the rents, have adjustments, and the math will dictate in the end; open green space piece is another layer to think about. Chair Rasmussen said Heather's point makes a lot of sense; developers are putting in their dollars, allow them to create in the process. Mr. DeCapo asked if the Board is able to create zoning that says come in and negotiate with us. Mr. Behrendt said the

easiest tiering/incentives is hard numbers; they may be able to have a real developer give feedback on your discussion.

John Randolph of Harmony Homes said from a developer's side of things it is a very mathematical process; everything from bringing water and sewer to a property to school impact fees and building costs; add them up and divide by number of units you build to determine what you can rent the property for, as well as going to the bank to determine if there is enough property cash flow to finance. He said HUD Fair Market rates over last 4 or 5 years have had significant jumps to try to catch up to where rents are in the area, and HUD is also going to go up 3%-5% every year and is in the ballpark of 60% AMI.

Mr. Randolph said the other side of this does not translate into number of bedrooms or amount of income, and it is difficult with affordable housing to make it affordable for everyone. If you target 60% AMI and use HUD Fair Market and bring some units below HUD Fair Market and some above, your average at the end of the year would be to take number of units, divide by the rent, and you would know if you met HUD Fair Market or not; still allows developer to budget the HUD Fair Market number over the total number of affordable units.

Mr. Randolph said he personally did not think 80% too high and said his development in Dover is 100% fair market, though he did not have the ability to go higher, with some rents dropped below based on renter income. He said at end of year rents just need to average HUD Fair Market, then you have flexibility, and it would not be hard to manage or maintain. He added that these projects also tend to create diversity in themselves and become naturally diverse.

Chair Rasmussen said if the Board uses a minimum of 60% AMI and the whole project must average out to 100%, this allows people to control their own spreadsheets year-to-year and create that mix that works. Councilor Friedrichs asked about vouchers; Mr. Randolph said vouchers fill in the gap between what the individual can afford to pay and covers the rest. He said Section 8 is actually exceeding HUD Fair Market right now because of the difficulty finding people to take the vouchers. Mr. Behrendt said he put a requirement in the Ordinance to accept Section 8 vouchers.

Mr. Sullivan asked the meaning of 30% AMI; Chair Rasmussen said it is 30% of the average median income based on household count, looking at bottom 15% of income-generating households. Vice-Chair Tobias asked how renters are income-checked; Mr. Randolph said they have an application requesting pay stubs and check what they make, focusing on 60% AMI. Chair Rasmussen said rents need to qualify for Dover HUD but who is paying does not matter.

Mr. Randolph said they do not turn over what someone makes to City of Dover; our leases track the income side and level of renting. Mr. Kelley asked if they are allowed to turn someone away because of salary and whether they accept that without calling their lawyers. Mr. Randolph said he has not had a lawyer come so far. Chair Rasmussen said he felt that this is a workable baseline.

Councilor Friedrichs said Portsmouth Housing Authority sets priorities for their lease applicants with multiple different criteria, with priority to those employed in the city of Portsmouth. Mr. DeCapo said there should be an income priority and other requirements to be met by renters. Chair Rasmussen said implementation is difficult and may place a burden on the person leasing. The Board discussed the issue of increasing salaries of renters and rental rates.

Mr. McManus said the model being considered provides lower priced housing for 20% of the population, made up on the other side and averaged out at the end. He said rentals sometimes are not all based on income, just let the model sort everything else out. Mr. DeCapo said they will get right back to Fair Market values if they do not continue to have some mechanism that maintains what is put in place. Councilor Grant again emphasized keeping it simple; the developments must all meet that 100% average and the mix will stay in some sort of balance.

Chair Rasmussen said the Board is not done on this topic; once a renter is in, we do not want to throw them out but at the same time want to make sure the renter is paying an appropriate share. Mr. Behrendt said the Board needs to be careful about not micro-managing here as this is in perpetuity. Chair Rasmussen agreed the Board needed to be careful about how it is enforced but said they have made the final call on how it will work.

Councilor Friedrichs said the conversation is assuming 100% workforce rental units, and said it is a very different game for income-qualifying people. Vice-Chair Tobias said they should stop talking about income qualifications at this point, and Mr. McManus said the market is fairly efficient at rating credit risk. Mr. Kelley asked what working formula the Board had settled on. Chair Rasmussen said it is not settled but they have a working formula: to require 20% of units rented at a level below 80% of Fair Market rates and the whole average for development needs to come in at 100%.

Mr. Kelley said as you increase the percent affordability, you are then allowed to increase the number of fair market rental units; allows developers to play around with their spreadsheet to find their best balance. Chair Rasmussen said in the end, it is total revenue over what 100% of market rate would have been. Mr. Sullivan said the developer needs to decide the number of units at number of bedrooms, and obtain more rent with more units.

Mr. Kelley said considering the amount of time already spent on this zoning amendment, the Board does need to bring it to a close. Mr. Behrendt said an extra Planning Board meeting is scheduled for July 31st. Mr. Kelley suggested making this topic the Board's only agenda item and said it is time to get something on paper. Mr. DeCapo said he will unfortunately miss the next two meetings.

- X. **Zoning Rewrite – Table of Uses.** Discussion about possible changes to the Table of Uses in the Zoning Ordinance, reviewed as part of the ongoing Zoning Rewrite. **Recommended action:** Discussion about possible changes.

XI. **Other Business**

- **Discuss whether to change the definition of “Household” which includes “Family” in the Zoning Ordinance**

Chair Rasmussen said the Town Council sent the definitions back to the Planning Board to take a look at their questions and comments for clarification; Board needs to send them back with a written addendum providing answers. He asked that Mr. Behrendt prep the document and schedule as the last item on the next agenda.

Councilor Friedrichs said the Town Council had some questions about how the Table of Uses was being affected. Councilor Grant said people went through the Table of Uses not knowing the Board had not fully reviewed them. Chair Rasmussen said household, family, and maybe Table of Uses will get bundled into review of definitions. Board discussed other concerns raised by the Town Council.

- **Discussion of Downtown Housing – Peyton McManus, Tom DeCapo**

Mr. DeCapo said several meetings ago the Board discussed whether to extend the Workforce Housing Overlay District to other districts that could not be done as a zoning amendment. He said he and Mr. McManus worked to develop something that would ultimately come back to the Planning Board, with a question on density factors, and said he and Mr. McManus will continue to work on it.

Mr. McManus said they have a rough draft with language outlined essentially from the Master Plan to limit sprawl, mapped in some objectives and defined an area, and are now looking at bonuses and density with additional language put into play. He said they are working on a draft and looking to Mr. Behrendt for assistance. Chair Rasmussen asked that they first bring in a list of bullet points for a preliminary discussion. Vice-Chair Tobias suggested they also reach out to Rich Reine.

XII. **Review of Minutes** (new): April 24, May 8, and May 29, 2024

Approval of Meeting Minutes of April 24, 2024

Peyton McManus moved that the Board accept the minutes of April 24, 2024; SECONDED by Vice-Chair Tobias; APPROVED 5-0 with 2 abstentions, Motion carries.

Approval of Meeting Minutes of May 8, 2024

Chair Rasmussen moved that the Planning Board accept the minutes of May 8, 2024; SECONDED by Vice-Chair Tobias; APPROVED 7-0, Motion carries.

Approval of Meeting Minutes of May 29, 2024

Chair Rasmussen moved that the Planning Board approve the minutes of May 29, 2024; SECONDED by Vice-Chair Tobias; APPROVED 7-0, Motion carries.

XIII. Adjournment

Tom DeCapo MOVED to adjourn the Planning Board Meeting; SECONDED by Richard Kelley; APPROVED 7-0, Motion carries.

Chair Rasmussen adjourned the meeting at 9:46 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker

Durham Planning Board