

*These minutes were approved at the August 18, 2021 meeting.*

**TOWN OF DURHAM**  
**DURHAM PLANNING BOARD**  
**Wednesday, July 28, 2021**  
**Town Council Chambers, Durham Town Hall**  
**7:00 pm**

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

**ABSENT:** Richard Kelley (Secretary), Chuck Hotchkiss (Alternate)

**ALTERNATES PRESENT:** Nicholas Germain, Eleanor Lonske, Barbara Dill, Ray Philpot

**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: Seated Barbara Dill to fill in for Richard Kelley.

**III. Approval of Agenda**

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

**IV. Town Planner's Report**

Town Planner Michael Behrendt said at the next meeting on August 11, 2021 we will have Gerrish Drive and 19 Main Street; August 25<sup>th</sup> is Mill Plaza postponed a few times now. He said because of their busy schedule the Planning Board wanted to set aside the third Wednesday of each month tentatively when we have business. He said he received a formal application for 74 Main Street which is on the agenda for August 18, 2021. Chair Rasmussen said if we decide to move forward with agricultural zoning, we could hold the Public Hearing on the 18<sup>th</sup> as well.

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

Reporting on Town Council: Ms. Tobias said the *Town Council* has not met since the last meeting.

Reporting on Conservation Commission: Mr. Bubar said the *Conservation Commission* met Monday evening with no applications and no public comment but followed up on pesticides.

There is an action plan to start working on specific items to present things to the public and push people more towards extension service to do research on their own. Discussed a Trail System in Durham on Town-owned lands and conservation lands and whether there is a way they can all be connected; may end up as an adjustment to the Master Plan from the Conservation Commission.

## **VI. Public Comments**

**Dan Pezzato** of Shearwater said he spoke before about the rezoning issue and hoped a compromise which was discussed at the last Agriculture Meeting could be reached. He said our neighborhood is an established residential neighborhood and we have concerns about the zoning change from Rural Coastal (RC) to Rural (R); 65% submitted letters addressing those concerns. He said the Agricultural Commission was split 50-50 on the compromise and he hopes the Planning Board will look to our concerns.

Mr. Pezzato said this change is being made to allow for livestock as crops are already permitted, and said livestock amounts to 15% of global greenhouse gases; also the Ag Commission said there is "good soil" in this area, and he questioned why they would want to put livestock there. He said there was a lot of discussion at the Ag meeting of best practices and guidelines being followed, but problems with a particular farmer could result in a worst-case scenario involving a long process with residents dealing with a bad situation not quickly resolved. There could also be issues with property value and environmental concerns with runoff and soil.

Mr. Pezzato said no setbacks are planned, with fences right up to their property lines which was determined to be for rotational grazing. He said the Ag Commission also asked at the last meeting if anyone was complaining about this proposed rezoning, and said the Commission knows residents will have issues with the change if the second alternative is not done, in which the areas around these neighborhoods will not be included.

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

**VIII. 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). Recommended action: Review of proposal and scheduling of public hearing.

Chair Rasmussen said this was discussed briefly at a prior meeting, the Board had questions for the Ag Commission, and Theresa Walker is here to address those. He said the goal tonight is to basically determine which of the 2 options regarding where to draw the new zoning line we want to submit for the Public Hearing, then select the Public Hearing date, possibly August 18, 2021. He said there is also the issue on whether we want to modify their table of uses regarding excavation. Mr. Bubar asked about Holgate Partnership on the map and Mr. Behrendt said it is privately owned and the lot is now vacant.

Theresa Walker, Chairman of the Agricultural Commission, said the Ag Commission was established 10 years ago with a mission to enable and advocate for agriculture and more local food production. She said they participated in the Master Plan rewrite and developed an Agriculture Resource Chapter. She said our next goal on the Master Plan was to look for opportunities for zoning adjustments and the Commission consulted closely with Mr. Behrendt looking at parts of town with agricultural infrastructure: soils, existing agricultural activity, and opportunity for more local food production.

Ms. Walker said Mr. Pezzato mentioned the vote at the last Ag Commission meeting and said they were equally split with the 2 options on an informal vote, though not split on recognizing the concerns of abutters. She said we are asking the Planning Board whether they go forward with (1) Plan B which keeps Shearwater neighborhood out recognizing their land is not being rezoned or (2) what we feel is our charge with the Master Plan and the Town Council creating opportunities to help fulfill the idea of more local food production.

Ms. Tobias asked if this change was prompted as fulfillment of their Master Plan charge to make more land open for farming. Ms. Walker said a lot of conservation easement deeds prohibit agriculture. Mr. Bubar felt the eastern side by the Shearwater development is mostly going to be wetlands. Ms. Lonske said she understands that agriculture can be approved now with special exception (SE) and asked how many applications for SE Ms. Walker had received and if any were granted.

Ms. Walker said there have been no special exceptions requested, but they are trying to be more encouraging by enabling this activity to happen with zoning changes. Ms. Lonske said there does not seem to be a demand or need. Ms. Tobias asked Mr. Behrendt what the difference is between a housing lot in RC vs. R, and Mr. Behrendt said it was the same at 150,000 sq ft. Ms. Walker said this is also a result of the Agricultural Ordinance; before that there was no oversight of agricultural activity, no guidance regarding density, setbacks, or best management practices.

Mr. McGowan asked what lots they were speaking about for options, and Mr. Behrendt said everything inside the bold line is the original proposal, and option 2 is all the lots to the right of the hatched line inside the bold line. Mr. McGowan said Emery Farm and Wagon Hill will not make much difference and asked about proposals for the other lots. Ms. Walker said they are changing the table of uses to encourage a certain activity in a certain place. Ms. Tobias said it would be changing use on certain property purchased as residential and said she understood Shearwater concerns.

Ms. Walker said a property abutting Wagon Hill Farm on the south side, not included in the original boundary, asked to be included in the rezoning. Mr. Behrendt said the Board is not limited to these 2 options and can make a different plan. Mr. Bubar asked if the community well in Shearwater was spring-fed or aquifer and asked the distance from the well head to

proposed change in zoning. He said he was thinking it is up to the Ag Commission to tell us what they want us to do, and Ms. Walker said given time and abutter concerns the Ag Commission would be satisfied with Option 2. Ms. Tobias said she was inclined to Option 2. Mr. Bubar said the Society to Protect Forests and Fish & Game would not be into farming and the Keefe property has an abundance of wetlands.

Ms. Grant said they spent so much time on Agricultural Zoning and talked a lot about what to do in RC and said she thought they came to a fair agreement. She said she did not go through all that time and effort to have something come up again, and said the area also has residential potential.

Vice-Chair Parnell said Heather is talking about changes we made to residential zones, specifically to do with agricultural uses very recently, and had a long discussion about this particular issue, and decided to put it in as SE as a compromise, and now a short time later we are saying we have to change the whole thing to rural to accommodate commercial agriculture. He said he is not sure everyone in Durham thinks commercial agriculture should be more widespread within existing residential areas.

Ms. Dill said when she first looked into moving to the area, she was shocked by the beauty of all the farms and said she would never want to see that go away. However, she did visit the Shearwater area and understands why they would be concerned and thinks the compromise is good. Ms. Tobias said changing this does not protect any piece of land and they do not know what the needs of the land may be in the future and said they did have a lot of discussion about making it an option to be able to do farming.

Mr. Bubar said he was trying to balance the comments “commercial agriculture” and “subsistence farming”. He said it does not seem to matter which way we go because it does not look like anything is going to happen in that area to the left so taking it out makes the most sense at this point, and Option 2 pushes this forward though it does not satisfy the agriculturalists.

Chair Rasmussen said homesteading is already allowed in the RC with animals as accessory use to your house, so what we are really talking about is the primary use of that land is being changed. Mr. Behrendt said you can still have a single-family house or apartment complex with more animals than allowed under the “accessory provision”. He said this is more of a middle ground with very small accessory agriculture which is specified in the Ordinance now, and he does not think they will see a large commercial operation in Durham. Ms. Tobias said best uses of that property would be for home development.

Ms. Walker said they take seriously the idea of local food production and the resilience we want to build as a community. Zoning change creates a framework for that to happen under the guidance of the Zoning Ordinance for food grown here for us.

Chair Rasmussen said the big difference between accessory use and principal use is a site plan is needed for principal use. Mr. Behrendt said yes if they have any significant physical changes like a building or parking. Chair Rasmussen asked for a motion to form a Public Hearing for one of these 2 maps, then discuss the excavation issue.

***Mr. McGowan MOVED to bring forward proposed rezoning for Option 2, from RC to R, as presented; SECONDED by Mr. Bubar; VOTE: McGowan-aye, Grant-nay, Bubar-aye, Rasmussen-aye, Parnell-aye, Tobias-aye, Dill-aye; APPROVED, 6-1, Motion carries.***

*Chair Rasmussen said it will be Option 2 for Public Hearing on August 18, 2021.*

Vice-Chair Parnell asked Mr. Behrendt if he will be notifying people of this change and Mr. Behrendt said it is required under State Law to notify property owners and abutters. Vice-Chair Parnell said the letter should tell them what is happening, provide the table of uses, and let people decide for themselves whether it is significant. Ms. Tobias said any abutters of the black line need to be informed, and Mr. Behrendt said everyone in the larger area except Cedar Point.

### **Excavation Issue**

Chair Rasmussen said Michael suggested we change excavation from being “conditional use” (CU) in the rural (R) zone to CU MUDOR and ORLII.

Ms. Dill said Bill spoke against taking excavation out of R because there could be people in R who rely on being able to do it. Mr. McGowan said the question is how to separate this rezoning, and Mr. Behrendt said it probably makes sense to leave excavation alone for Rural. Ms. Walker said excavation and mining are not allowed in RC, so allowing it in R would leave abutters concerned.

**IX. Zoning Rewrite Discussion.** Consideration of proposed amendments to Administrative Provisions: Articles I, III through VI, and VIII. This is the first section of the zoning ordinance being reviewed as part of the planned comprehensive zoning rewrite. *Recommended action:* Discussion of proposed changes and any other changes to these articles.

Chair Rasmussen said the Zoning Rewrite Discussion was started a few years ago and is being brought up again as a spinoff of the definitions discussion. Mr. Behrendt has provided the first piece and we can discuss the proposed changes and decide if we want to submit the changes immediately or hold for later. Mr. Behrendt said this Zoning Rewrite comes out of the 2015-2018 Master Plan and he had planned a rewrite of the entire Zoning Ordinance going through section by section and presenting possible changes to the Board for their review. He said he will put a draft together and fold in all miscellaneous changes; parts that are a problem and pressing can be processed immediately.

Ms. Dill said a committee was formed previously and asked if a committee will assist with this. Chair Rasmussen said when we get to the Definitions section, he would like the Committee involved. Mr. Bubar said definitions are more of a process issue and he would like to see them be number one. Chair Rasmussen said as we do a new section, we may find we need a new definition, but looking at definitions as a set also needs to be done.

The Planning Board reviewed Articles I-VIII page by page and discussed inconsistencies in use of terms. Ms. Dill said there is a big split between substantive stuff and the grammar and format, but they are not separate from content. Mr. Bubar recommended the word “qualitative” be removed on page 1. Ms. Tobias agreed quality of development can be subjective, and said our guidelines are extensive and precise and need to be followed. Vice-Chair Parnell agreed the statement should be removed, and Chair Rasmussen felt it was confusing.

Mr. McGowan questioned the use of the term “designee” for an assistant administrator on page 2; Vice-Chair Parnell asked about “this chapter these regulations” on page 4 and “these regulations” was deleted. Mr. Bubar said it is not clear who the “affected party” is in the first sentence on page 5, and Mr. Behrendt said the applicants or someone in violation. Chair Rasmussen said the provisions of the chapter are not being applied to you, but to the person you raised a concern about – the violator. Ms. Grant suggested they just put “the minimum requirements shall apply”; Mr. Behrendt added “minimum requirements *as specified in this chapter* shall apply”.

Mr. Bubar said in his experience they never meet the 60-day submission deadline for referring changes to the Town Council at the bottom of page 5. Chair Rasmussen said on page 6, paragraph E is too complicated and goes too far into the weeds after “Town of Durham ordains” and suggested leaving out formatting after “shall clearly indicate”. Mr. Behrendt said this is just about an ordinance form; they could just say “the Town of Durham ordains” and then say “clearly indicate proposed changes”.

Ms. Dill said in paragraph D under Notices, there have been complaints that postings are not in 2 public places as specified. Mr. Behrendt said this is close to the statute, and the 2 public places are usually bulletin boards and on the website. Chair Rasmussen said this is about Zoning changes and not application. Mr. Bubar questioned paragraph C, 4<sup>th</sup> line stating “X number of registered voters” and said he would like property owners to be included. Mr. Behrendt said registered voters are easiest to verify. The Board agreed to allow both registered voters and property owners.

Mr. Bubar questioned paragraph B on page 8 “to ensure the ordinance is consistent with the adopted Master Plan” and said the Master Plan is not binding. Chair Rasmussen said any ordinance we pass is supposed to be consistent with our Master Plan per RSA. Ms. Grant said from training she did the Master Plan is a guideline but not the rules. Chair Rasmussen said the Master Plan guides the ordinance, and the ordinance applies to applicants. He said he would also have a problem with an ordinance that is completely inconsistent with the Master Plan.

Ms. Dill said each chapter fulfills its own vision. Chair Rasmussen said each chapter is supposed to be consistent with the others and that is where we fail.

Mr. Bubar questioned some language on page 9 in regard to appealing decisions of minor sub-committees to the Planning Board “within 30 days of the committee decision” which he felt should be committee *published* decision, and Mr. Behrendt said that is the language in State Law. Chair Rasmussen said on page 10 to keep in mind that the term “Board” means Zoning Board of Adjustment (ZBA). Vice-Chair Parnell asked why “if/and” was added on page 11 under paragraph B. Mr. Behrendt said it is a term of logic to clarify the correct meaning.

Mr. Bubar asked who the keeper of the records is on page 12, and Mr. Behrendt said the Planning & Building Department and said he assumes Karen keeps a master list as records are kept indefinitely. Mr. Behrendt said he would put this section aside; if you want to process them, we can have a hearing or wait until the review is completed.

Chair Rasmussen asked when they might expect the next section. Mr. Behrendt said he does a section as there are openings on the agenda and said he can do a draft of the next section then meet with the Sub-Committee. Ms. Dill stressed the advantage of working with at least one other person and suggested they rotate people. Mr. Behrendt said he needed to write it himself. Chair Rasmussen said Mr. Behrendt needs to identify key sections that need to be worked, give the Sub-Committee a draft, and the Sub-Committee cleans it up before it comes to us. He recommended the Sub-Committee be kept to 2 persons.

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

***POSTPONED TO AUGUST 25 AT THE APPLICANT’S REQUEST***

**XI. Other Business**

Mr. Bubar mentioned that the Conservation Commission moved the review of minutes on their agenda to right after Public Comment to make sure they were addressed.

**XII. Review of Minutes (new):** No minutes

**XIII. Adjournment**

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

Chair Rasmussen adjourned the meeting at 9:00 pm.

Respectfully submitted,

Patricia Denmark, Minute Taker

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Richard Kelley, Secretary