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3 **TOWN OF DURHAM**
4 **DURHAM PLANNING BOARD MEETING**

5 **Wednesday, June 26, 2024**

6 **Town Council Chambers, Durham Town Hall**

7 **7:00 pm**

8 **DRAFT MINUTES**

9
10 **MEMBERS PRESENT:** Paul Rasmussen (Chair), Sally Tobias (Vice Chair), Tom DeCapo, Peyton
11 McManus, Heather Grant (Alternate Council Rep), Erika Naumann Gaillat (Alternate); Richard
12 Kelley, Emily Friedrichs (Council Rep), Robert Sullivan (arrived late)

13 **ALSO PRESENT:** Town Planner Michael Behrendt

14
15 **I. Call to Order**

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

17
18 **II. Roll Call and Seating of Alternates**

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

20
21 **III. Approval of Agenda**

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

24
25 Richard Kelley, Emily Friedrichs, Robert Sullivan arrived at approximately 7:03 pm.

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

29
30 Chair Rasmussen said the Board is now down to one Alternate and hoping for a few more if
31 anyone is interested. Mr. Behrendt said Robert Sullivan is now a full member and explained that
32 Erika Naumann Gaillat has more seniority but feels more comfortable at this time as an Alternate.

33
34 **IV. Town Planner's Report**

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

38
39 **V. Reports from Board Members who serve on Other Committees**

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

43

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

4
5 Responding to questions from the Planning Board, Councilor Friedrichs said carbon footprint goals
6 are only tied to a town total versus a per capita measurement and industry standard seems to be
7 by region; variability in student population could flux more quickly year-to-year; the Committee is
8 alternating years between greenhouse gas inventory and Climate Action Plan (this year), and is
9 interested in revisiting the EV Ordinance and would like to make it mandatory.

10
11 Reporting from the Town Council: Councilor Friedrichs said Town Council is working on updating
12 the Solid Waste Ordinance with IWMAC and Public Works; questioning whether there are violators
13 of Best Practices for manure spreading; August 17 is Farm Day. There is growing demand for
14 expanding K–3 grades at Moharimet Elementary with 20 families that might have to move to Mast
15 Way; there may be some school expansions ahead.

16
17 Chair Rasmussen said the School District is out of space for K–3; Moharimet was to move 17 families
18 to Mast Way who did not want to move; a temporary solution was found for this year. Councilor
19 Grant said families go in knowing they may not have a choice; she added that Town Council also
20 had a presentation from TRG on the final Housing Needs Assessment.

21
22 Reporting from the Integrated Waste Management Advisory Committee: Chair Rasmussen said
23 IWMAC did not meet because of Juneteenth but met this morning and he was unable to attend;
24 Rich Reine presented the Solid Waste Management procedures for the Town which he is updating;
25 the meeting was not recorded, and feedback is not available.

26
27 **VI. Public Comments – None**

28
29 **VII. Review of Minutes (old):**

30
31 **VIII. Public Hearing - Updating the HDC Ordinance.** Proposed zoning amendment to update
32 the old Map and Lot numbers to the current ones in the Historic District Ordinance.
33 Requested by the Historic District Commission. Recommended action: Vote to initiate the
34 amendment.

35
36 Chair Rasmussen asked if there were any other questions and asked Councilor Lund if he was
37 representing the Historic District. Chairman Lund said he was but had no new information and
38 reminded the Board that this ordinance will only update the definition of the Historic District with
39 the new map numbers.

40
41 ***Peyton McManus MOVED that the Board open the Public Hearing for HDC Ordinance;***
42 ***SECONDED by Councilor Friedrichs; APPROVED 7-0, Motion carries.***

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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

1 Tobias said the wait for vouchers is 5 years out. Ms. Naumann Gaillat asked for clarification that
2 the Board is now going back to the 65% affordable and 60% AMI numbers already discussed.

3
4 Councilor Grant suggested using 65% to 100% workforce with a density bonus for building more,
5 and said pushing through zoning for only one project will not result in a living document. Mr.
6 Behrendt said hopefully it is not only for one project but a model ordinance to cover the overlay
7 district and a number of parcels with a few different types of developers; a particular model that
8 might apply to different opportunities.

9
10 Mr. McManus said he initially approved HUD Fair Market rates as a simple way to manage, and
11 was initially opposed to 100% because it could put developers at a disadvantage in the long term
12 with less flexibility to moderate rental rates. Councilor Friedrichs said the Portsmouth Housing
13 development is non-profit and ze would be worried about for-profit for those same reasons. Mr.
14 DeCapo said some Board members find HUD Fair Market rents expensive, and said he did not see
15 the complexity of simply saying 85% of HUD Fair Market instead of 100%, tying that to the
16 number of units at real fair market to bring in lower rents.

17
18 Councilor Grant asked to keep it simple and stay at 60%. Mr. McManus asked 60% of what: there
19 will be a certain percentage of development units set at fixed low market rates and what
20 constitutes affordable; one is rent, and the other is the percent of the complex. Ms. Naumann
21 Gaillat said the percent of complex is 65% and the other is 60%. Vice-Chair Tobias said 60% is AMI
22 for high rent and HUD rates are set at 60% of Average Median Income.

23
24 Mr. Behrent said he asked how HUD rates equated with 60% AMI and was told they were higher
25 than 60% AMI but lower than 100% market rates. He said they are still high, and a lot of people
26 are paying well over 30% of their income. Vice-Chair Tobias said the complicated issue is price to
27 build; you can apply for LIHTC (tax credit) and get a certain amount (not 100%) then have to
28 reapply the following year.

29
30 Councilor Friedrichs reiterated that the Board could restrict this to not allow any single-family
31 homes on their own lots. Chair Rasmussen said if single-family homes on their own lots are
32 allowed, they would have to be on town roads or situated at the edge of the development with
33 separate access.

34
35 Mr. Sullivan said we need some number to start with and if we assume HUD Fair Market as the
36 number, we need to spread the cost across as many renters as possible; the mechanism to do
37 that is density bonus. Mr. DeCapo said another way to do it is to leave the density number at
38 65%/35%. Vice-Chair Tobias said that is where the community will have a problem because we
39 are selling this as an affordable housing amendment for workforce housing. She said she likes
40 what Mr. Sullivan is saying and prefers 80% not 65%; to get the other 20% at the going rate you
41 give a bonus for doing more units.

42

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

7
8 Chair Rasmussen agreed the proper way to try to allow that is by saying the average of all units
9 will fall within 100% of fair market rate, which allows the renter to balance in whatever
10 percentage as long as the entire average of the development comes out at that level; for every
11 expensive one you have someone is getting a break at the other end. Mr. McManus asked what
12 the incentive would be for a developer to rent low market.

13
14 Vice-Chair Tobis said developers do it already in the market with LIHTC low-income housing
15 grants or tax credits, complying with certain standards and using income averaging and rent
16 averaging by building. She said if not doing 100% workforce housing, we need a number as high
17 as we can accept; to include for-purchase need to think about type of dwelling. Mr. Behrendt
18 said this is a new foray for the town and recommended the Board keep it relatively simple starting
19 at 100% and said communities will often adapt the ordinance to set certain thresholds; if nobody
20 wants to build anything then we come back.

21
22 Chair Rasmussen said last week the Board left off with 65% being affordable at Fair Market rates,
23 and asked if they want to work on something only offering 100% affordable or something more
24 tiered. Mr. McManus said he would agree with tiered, with special bonuses to get to 100%. Mr.
25 DeCapo said the benefit of tiered is to make affordable units more affordable. Mr. Sullivan said
26 tiering is done across our society, has precedent, and higher rents are subsidizing lower rents.

27
28 Chair Rasmussen said there are several details on tiering: what is the maximum and minimum we
29 would ever want to require and how many incentives do we have to go in-between. Mr. Behrendt
30 suggested 80%, 90%, 100%. Chair Rasmussen asked the Board to really think about that and said
31 we cannot really be talking about incentives until we have actual incentives on the table.
32 Councilor Grant said the more detailed we get, we are trying to design for the developer, and
33 they know more about what they can provide.

34
35 Mr. Sullivan said in the end it will be a spreadsheet and said he liked 80%, 90%, 100% as numbers;
36 put in the rents, have adjustments, and the math will dictate in the end; open green space piece
37 is another layer to think about. Chair Rasmussen said Heather's point makes a lot of sense;
38 developers are putting in their dollars, allow them to create in the process. Mr. DeCapo asked if
39 the Board is able to create zoning that says come in and negotiate with us. Mr. Behrendt said the
40 easiest tiering/incentives is hard numbers; they may be able to have a real developer give
41 feedback on your discussion.

42

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

8
9 Mr. Randolph said the other side of this does not translate into number of bedrooms or amount
10 of income, and it is difficult with affordable housing to make it affordable for everyone. If you
11 target 60% AMI and use HUD Fair Market and bring some units below HUD Fair Market and some
12 above, your average at the end of the year would be to take number of units, divide by the rent,
13 and you would know if you met HUD Fair Market or not; still allows developer to budget the HUD
14 Fair Market number over the total number of affordable units.

15
16 Mr. Randolph said he personally did not think 80% too high and said his development in Dover is
17 100% fair market, though he did not have the ability to go higher, with some rents dropped below
18 based on renter income. He said at end of year rents just need to average HUD Fair Market, then
19 you have flexibility, and it would not be hard to manage or maintain. He added that these projects
20 also tend to create diversity in themselves and become naturally diverse.

21
22 Chair Rasmussen said if the Board uses a minimum of 60% AMI and the whole project must
23 average out to 100%, this allows people to control their own spreadsheets year-to-year and
24 create that mix that works. Councilor Friedrichs asked about vouchers; Mr. Randolph said
25 vouchers fill in the gap between what the individual can afford to pay and covers the rest. He said
26 Section 8 is actually exceeding HUD Fair Market right now because of the difficulty finding people
27 to take the vouchers. Mr. Behrendt said he put a requirement in the Ordinance to accept Section
28 8 vouchers.

29
30 Mr. Sullivan asked the meaning of 30% AMI; Chair Rasmussen said it is 30% of the average median
31 income based on household count, looking at bottom 15% of income-generating households.
32 Vice-Chair Tobias asked how renters are income-checked; Mr. Randolph said they have an
33 application requesting pay stubs and check what they make, focusing on 60% AMI. Chair
34 Rasmussen said rents need to qualify for Dover HUD but who is paying does not matter.

35
36 Mr. Randolph said they do not turn over what someone makes to City of Dover; our leases track
37 the income side and level of renting. Mr. Kelley asked if they are allowed to turn someone away
38 because of salary and whether they accept that without calling their lawyers. Mr. Randolph said
39 he has not had a lawyer come so far. Chair Rasmussen said he felt that this is a workable baseline.

40
41 Councilor Friedrichs said Portsmouth Housing Authority sets priorities for their lease applicants
42 with multiple different criteria, with priority to those employed by the city of Portsmouth. Mr.

1 DeCapo said there should be an income priority and other requirements to be met by renters.
2 Chair Rasmussen said implementation is difficult and may place a burden on the person leasing.
3 The Board discussed the issue of increasing salaries of renters and rental rates.
4

5 Mr. McManus said the model being considered provides lower priced housing for 20% of the
6 population, made up on the other side and averaged out at the end. He said rentals sometimes
7 are not all based on income, just let the model sort everything else out. Mr. DeCapo said they
8 will get right back to Fair Market values if they do not continue to have some mechanism that
9 maintains what is put in place. Councilor Grant again emphasized keeping it simple; the
10 developments must all meet that 100% average and the mix will stay in some sort of balance.
11

12 Chair Rasmussen said the Board is not done on this topic; once a renter is in, we do not want to
13 throw them out but at the same time want to make sure the renter is paying an appropriate
14 share. Mr. Behrendt said the Board needs to be careful about not micro-managing here as this is
15 in perpetuity. Chair Rasmussen agreed the Board needed to be careful about how it is enforced
16 but said they have made the final call on how it will work.
17

18 Councilor Friedrichs said the conversation is assuming 100% workforce rental units, and said it is
19 a very different game for income-qualifying people. Vice-Chair Tobias said they should stop
20 talking about income qualifications at this point, and Mr. McManus said the market is fairly
21 efficient at rating credit risk. Mr. Kelley asked what working formula the Board had settled on.
22 Chair Rasmussen said it is not settled but they have a working formula: to require 20% of units
23 rented at a level below 80% of Fair Market rates and the whole average for development needs
24 to come in at 100%.
25

26 Mr. Kelley said as you increase the percent affordability, you are then allowed to increase the
27 number of fair market rental units; allows developers to play around with their spreadsheet to
28 find their best balance. Chair Rasmussen said in the end, it is total revenue over what 100% of
29 market rate would have been. Mr. Sullivan said the developer needs to decide the number of
30 units at number of bedrooms, and obtain more rent with more units.
31

32 Mr. Kelley said considering the amount of time already spent on this zoning amendment, the
33 Board does need to bring it to a close. Mr. Behrendt said an extra Planning Board meeting is
34 scheduled for July 31st. Mr. Kelley suggested making this topic the Board's only agenda item and
35 said it is time to get something on paper. Mr. DeCapo said he will unfortunately miss the next
36 two meetings.
37

38 **X. Zoning Rewrite – Table of Uses.** Discussion about possible changes to the Table of Uses
39 in the Zoning Ordinance, reviewed as part of the ongoing Zoning Rewrite. Recommended
40 action: Discussion about possible changes.
41

42 **XI. Other Business**

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

3
4 Chair Rasmussen said the Town Council sent the definitions back to the Planning Board to take a
5 look at their questions and comments for clarification; Board needs to send them back with a
6 written addendum providing answers. He asked that Mr. Behrendt prep the document and
7 schedule as the last item on the next agenda.

8
9 Councilor Friedrichs said the Town Council had some questions about how the Table of Uses was
10 being affected. Councilor Grant said people went through the Table of Uses not knowing the
11 Board had not fully reviewed them. Chair Rasmussen said household, family, and maybe Table of
12 Uses will get bundled into review of definitions. Board discussed other concerns raised by the
13 Town Council.

- 14
15 • Discussion of Downtown Housing – Peyton McManus, Tom DeCapo

16
17 Mr. DeCapo said several meetings ago the Board discussed whether to extend the Workforce
18 Housing Overlay District to other districts that could not be done as a zoning amendment. He said
19 he and Mr. McManus worked to develop something that would ultimately come back to the
20 Planning Board, with a question on density factors, and said he and Mr. McManus will continue
21 to work on it.

22
23 Mr. McManus said they have a rough draft with language outlined essentially from the Master
24 Plan to limit sprawl, mapped in some objectives and defined an area, and are now looking at
25 bonuses and density with additional language put into play. He said they are working on a draft
26 and looking to Mr. Behrendt for assistance. Chair Rasmussen asked that they first bring in a list
27 of bullet points for a preliminary discussion. Vice-Chair Tobias suggested they also reach out to
28 Rich Reine.

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

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32 Approval of Meeting Minutes of April 24, 2024

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

36
37 Approval of Meeting Minutes of May 8, 2024

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

41
42 Approval of Meeting Minutes of May 29, 2024

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

3

4 **XIII. Adjournment**

5

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

8

9 Chair Rasmussen adjourned the meeting at 9:46 pm.

10

11 Respectfully submitted,

12 Patricia Denmark, Minute Taker

13 Durham Planning Board

DRAFT