



TOWN OF DURHAM
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Town Planner's Review
Wednesday, June 23, 2021

- 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).
- I recommend that the board review the proposal, review the map, determine how to treat excavation/mining, and schedule a public hearing for July 14 or July 28.

Please note the following:

- On June 14, the Agricultural Commission voted (8-0) to request that the Planning Board consider a rezoning proposal. Please see the attached map. We were going to present this proposal to the board on July 14 but since the agenda opened up on June 23 we included it here. Theresa Walker, chair of the Agricultural Commission, is not available on June 23 but she will be able to speak to the board at a July meeting assuming the board schedules a public hearing then.
- The commission is proposing rezoning all of the lots situated inside of the bold lines from Residence Coastal (RC) to Rural (R). The purpose is to facilitate agriculture for these properties. This area includes Emery Farm and a number of other parcels with current or historical agricultural activities. The reason for the request is that there is a more flexible process for establishing a number of agricultural uses in the Rural district than in the RC district. (We do not yet have the GIS program on line so the map is hand drawn; I will clean it up for public hearing.)
- See the enclosed table showing all of the differences between the Rural and RC districts. I also enclosed the letter that we sent to all property owners with lots proposed to be rezoning and to all other owners in this large RC area, including in the several small subdivisions. The commission held a public information session on May 10. There were a number of questions and comments.
- The Agricultural Commission is also recommending a change to the Table of Uses. **Excavation/mining** is allowed only in the Rural District, by conditional use. This use can be quite objectionable so the commission recommends changing the CU to X, so that it would not be allowed anywhere in Durham. I am not aware of any applications for excavation/mining that have been submitted to the Town in recent years. Excavation as an accessory or incidental use to development or road construction would still be allowed in all zones.

(over)

- However, after the meeting I came across the provision highlighted below in RSA 155-E, the general statute for excavation: <http://www.gencourt.state.nh.us/rsa/html/XII/155-E/155-E-mrg.htm>. If we prohibit excavation in all zones then a default procedure below comes into play which would affect the five commercial core zones and the four research-industry zones.
- I recommend that the Planning Board address this issue prior to scheduling the public hearing. I suggest allowing excavation/mining only in the ORLI and MUDOR zones by conditional use.

RSA 155-E:4 Prohibited Projects. –

The regulator [PLANNING BOARD] shall not grant a permit:

...III. When the excavation is not permitted by zoning or other applicable ordinance, provided, however, that in municipalities which have commercial earth resources on unimproved land within their boundaries, and which do not provide for opportunities for excavation of some of these resources in at least some, but not necessarily all areas within the municipality, or in municipalities which have zoning ordinances which do not address the subject of excavations, excavation shall be deemed to be a use allowed by special exception as provided in RSA 674:33, IV, in any non-residential areas of the municipality, and the zoning board of adjustment shall grant such a special exception upon a finding that:

- (a) The excavation will not cause a diminution in area property value or unreasonably change the character of the neighborhood;
- (b) The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof;
- (c) The excavation will not create any nuisance or create health or safety hazards; and
- (d) The excavation complies with such other special exception criteria as may be set out in applicable local ordinances.