

**Durham Planning Board  
AMENDED Meeting Minutes  
August 6<sup>th</sup> 2014**

**Call to Order:** Chairman Joe Tomm called the meeting to Order at 7:00 p.m.

**Members Present:** Chairman Joseph Tomm, Vice Chairman Todd Beaulieu, Mindy Woerter, John Ackerman. Anne Torregrossa and Associate Michael Fitzpatrick excused

**Also Present:** Secretary Jill Toher, Codes Official Paul Baines, AA/TA Janet Smith, Selectman Mark Blake.

**Establishment of Quorum:** Chairman Tomm announced a Quorum has been met with four (4) members present.

**Public Present:** Kate and Larry Rugan, Kerri Larochelle.

**Pledge of Allegiance:** Completed.

**Amendments to Agenda:** **Vice Chairman Beaulieu Moves** to defer Acceptance of the June 4<sup>th</sup> 2014 Workshop and Regular Meeting Minutes to the end of the Agenda. Mindy Woerter Second. Motion Carried.

Add under New Business – Action and Review: d. Discuss and Act on AVCOG vs. GPCOG; e. Discuss and Act on change to E-911 Addressing Ordinance; f. Discuss and Act on update to Town of Durham CATV Ordinance.

**Informational Exchange:**

**Officials:** None

**Residents/Non Residents:** Larry and Kate Rugan who reside at 27 Hummingbird Lane, personally appeared before the Board to advise that they now have a Road Maintenance Agreement in place with her mom and son who each have back lot properties abutting theirs.

Mrs. Rugan advised that they dissolved a subdivision approximately fifteen years ago, and stated that at that time the land was divided into two lots. The Rugans stated they have resided at 27 Hummingbird Lane for somewhere between seven to eight years. Her mother has resided on the abutting lot for approximately fourteen years.

The Rugans reported that their attorney and the Codes Official advised them to appear before the Planning Board. Codes Official Baines requested the Rugans provide an update on recent activities to date as he was unaware that the Rugans planned to be present for tonight's informational exchange. Mrs. Rugan stated that the family is in the process of re-dividing the remaining property in order to be in conformance so that their son can build on one lot and the second lot to be sold. Hummingbird Lane is also a right of way the Rugans own that provides access to the back lots. Codes Official Baines stated that one of the lots also has some frontage on the Snow Road.

The main issues identified are road frontage, and how to best separate the property into conforming lots. Vice Chairman Beaulieu suggested that if plans include selling the mother's residence, than that property should remain separate. Chairman Tomm invited the Rugans back when their application is completed so that the Board can assist the Rugan's to make sure everything is in place prior to permitting. Chairman Tomm offered to answer any questions by phone, should the need arise and stated that the Rugans can also take their completed application directly to the Codes Officer as well.

The Rugans were given a family subdivision and a regular subdivision application this evening so they can have the opportunity to speak with their lawyer in order to determine which application will be best for them.

#### **New Business – Action and Review:**

##### **a. Kerrie Larochelle, Map #6 Lot #122-D – Application for Conditional Use Permit for Day Care Facility.**

Kerrie Larochelle who resides on the Old Brunswick Road personally appeared before the Board with her application and presented supporting documentation for a Conditional Use Permit to open a Licensed Day Care Facility in her home.

The Codes Official advised he included in each packet an Approval Criteria Checklist taken from MUBEC and an Approval Criteria Checklist for the Board's use this evening. Codes Official Baines further advised the Application Checklist is taken verbatim from the Land Use Ordinance.

Ms. Larochelle stated her property is located between Pleasant View Farm Road and Plummer Mill Road and is 7.32 acres, with approximately 190 feet road frontage which makes the lot non-conforming for road frontage. The road frontage includes a right-of-way owned by Ms. Larochelle so her father can access the back lot.

A. The application dated July 28<sup>th</sup> 2014 was reviewed with the applicant by Codes Official Baines. The Codes Official deemed complete with the \$50.00 application fee paid.

B. It was noted on the Checklist that a Waiver Request has been requested.

B-1. Complete

B-2. Two Certified Mail receipts dated July 27<sup>th</sup> 2014 have not as yet been returned. Questions were raised regarding lots #120-A and #121. Jeff Munn owner of undeveloped property located on Map #6 Lot #122-E and Lot #122J has not been notified. Lot #90-C may need to receive abutter notification. Depending on verification of actual road frontage abutting lots #90-A through 90-D may need to also be notified. Vice Chairman Beaulieu stated the owner of lot #90 may also own additional lots.

B-3. Complete

B-4. Complete

B-5. Complete.

B-6. Complete per C.O. Baines. Rural Residential. No additional construction or development being built. A discussion regarding points of clarification between the Planning Board Chairman and the Codes Official followed. Chairman Tomm stated the Board relies on information contained in a site plan.

B-7. Listed by hand on Application. Subsurface waste water disposal system application dated September 20<sup>th</sup> 2010 depicts proposed locations only. Septic designed to accommodate up to four (4) bedrooms.

B-8. Complete.

B-9. Complete

B-10. Incomplete. Needs to be done. Mark intersecting roads or driveways within 450 feet of the site including any that may be located across the road.

B-11. Incomplete. Needs to mark location of well.

B-12. Incomplete. Needs to mark drainage courses, wetlands and stands of trees, if any.

B-13. Incomplete. Needs to add drainage arrows depicting water flow around home.

B-14. Complete. One 12" by 15" two sided sign requested.

B-15. Complete. Deed (Exhibit "A") provided. Right of Way noted.

B-16. Complete. None requested.

B-17. Complete. Letter from DHS dated June 29<sup>th</sup> 2014 stating Kerri Larochelle qualifies for a Family Child Care Certificate, for up to six (6) children. Septic can accommodate up to four

bedrooms, and Ms. Larochelle plans on using the master bedroom for day care purposes.

Actual State permitting is to be issued when Ms. Larochelle receives and submits a copy her Conditional Use Permit to the State.

B-18. Complete. No renovations requested. Daycare to occupy less than 50% of 2600 square feet of living quarters by converting master bedroom into day care facility. The Conditional Use Application indicates 2840 square feet including porches and decks.

B-19. Complete. Non-Applicable

B-20. Complete.

A discussion ensued regarding road frontage, who owns the contiguous lot and the length of the right-of-way between Vice Chairman Beaulieu and the Codes Official. Codes Official Baines referred to Exhibit "A" of the deed. It was noted that Ms. Larochelle's father owns lot #121 and Lot #122-H. Lot #121 has a home on it and Lot #122-H remains vacant. Codes Official Baines stated a permit to build was issued on April 25<sup>th</sup> 2011 on the non-conforming lot with nothing noted as to set backs or other requirements. Ms. Larochelle advised the lots were split up in 2010.

Board Chairman Tomm stated that Lot #122-H is only 4.86 acres, making it a nonconforming back lot. One way to rectify this situation, would be for the owner of Lot #121 to deed over some property to Lot #122-H in order to make that a conforming back lot, and use the right-of-way as road frontage. The question remains as to whether the right-of-way was considered as road frontage at the time the building permit was issued. A lengthy discussion took place on this issue.

Board Chairman Tomm asked Ms. Larochelle what the speed limit is in front of her residence. She stated she thought it was 30 mph to 35 mph. Chairman Tomm voiced his concerns regarding the site distance and whether any trees would obscure vision. Vice Chairman Beaulieu stated he was familiar with the area and the site and he recalls the site distance appears to be adequate.

Planning Board Chairman identified the following issues need to be addressed on the Approval Criteria Check List in order for the Application Check List to be deemed complete.

1. Set backs – Measure lots and put numbers on the drawing.
2. Mark well placement on drawing.
3. Mark all intersections within 450 feet: driveways and intersecting roads.
4. Mark Water Run Off with arrows.
5. Supply any supporting paperwork, if any, as to how property was split.
6. Provide the Town with a copy of Ms. Larochelle's State License when received.

Chairman Tomm asked for the Board's thoughts and comments. Vice Chairman Beaulieu stated that although the house is on a non-conforming lot, in his opinion, it should not hold up Ms. Larochelle's application to open a licensed daycare facility and would like to see the back lot issue straightened out.

Codes Official Baines offered to personally measure Ms. Larochelle's lot in order to determine whether the figures on the Brian Smith survey are correct. He also suggested that Brian Smith be contacted by Ms. Larochelle to see whether he has more information. He also offered to assist her in completing missing items on the Approval Criteria Check List.

Chairman Tomm and the Board reviewed each items listed on the Conditional Use Permit Application. It was determined that the nearest fire pond is located near a brook in the vicinity of the Emerson dump Ms. Larochelle's Conditional Use Permit Application was deemed to be essentially complete, provided items #1 through #6 on the Approval Criteria Check List are addressed.

**Vice Chairman Beaulieu Moves** to Approve the Conditional Use Permit for Kerri's Daycare with the six conditions above being met per the Codes Official's review. Mindy Woerter Second. Motion Carried.

Vice Chairman Beaulieu opened up a brief conversation regarding the requirement to pave subdivision roads when the Town currently has no plans to undertake any more Town accepted roads.

**b. Codes Officer to present review of Robert Crowley, 430 Auburn Pownal Road: Conditional Use Permit – recommended amendments for year round use of Campground:**

AA/TA Smith advised that the Office received a complaint from a resident stating the campground is being used for twelve months per year. Codes Official Baines reviewed the Conditional Use Permit issued and found there is a condition that the campground would operate for six months (May through September) only per Mr. Crowley's application.

The Codes Official visited the Crowley property and advised that the Crowleys are operating outside of the Conditional Use and could be shut down immediately. Vice Chairman Beaulieu stated that last year the Crowleys held the survivor games.

Chairman Tomm, reading from the Conditional Use Permit, noted the Permit was issued without conditions. The Codes Official stated that the actual application is the legal document, and it stipulates operating May through September. Codes Official Baines represented that he spoke to Mr. Crowley and that Mr. Crowley stated the Crowley's original intention was to be open only between May and September only. Codes Official Baines represented that Mr. Crowley told him that due to unplanned internet interest, he continued using the campground year round.

Codes Official Baines represented that he advised Mr. and Mrs. Crowley that they were operating outside the conditions of his current Conditional Use Permit, that in order to avoid being shut down, Mr. Crowley would need to immediately complete an updated application to be considered at the August 6<sup>th</sup> 2014 meeting and would also need to make himself available to attend the August 6<sup>th</sup> 2014 meeting.

Codes Official Baines further represented that initially the Crowleys did not comply due to forgetting to submit the paperwork and finally completed an amended Conditional Use Application after several more contacts made by the Codes Official. He further stated Mrs. Crowley requested this issue be postponed to the September, 2014 meeting as the Crowleys already had plans to attend a family event. He again advised the Crowleys that they are in violation of the Conditional Use Permit and the risk of being shut down is a real possibility.

The Codes Official advised that three of the six Yurts applied for are now up and running in addition to twelve Wilderness camp sites.

The Planning Board Chairman stated that if Mr. Crowley couldn't attend the August, 2014 meeting in person, we'd move him to the September, 2014 meeting.

Chairman Tomm stated he would like to review the Minutes during which the Crowley's original Conditional Use Permit was considered and granted. AA/TA Smith located the Minutes and supplied them to Chairman Tomm. The Planning Board Chairman read those portions of several months Minutes which applied to the original Crowley Conditional Use Application.

There had been no interaction between the Codes Official and the Planning Board Chairman during July through tonight's meeting. Codes Official Baines stated that only some of the abutters notifications had been received.

It was mutually decided to put the Crowley matter on the September 3<sup>rd</sup> 2014 Agenda and that Mr. Crowley will need to notify each abutter again of the proposed twelve month operating schedule and present proof of all abutting notifications at the September meeting along with supplying any missing or updated information by August 25<sup>th</sup> 2014 at 4:30 p.m., at the Town Office for the September 3<sup>rd</sup> 2014 meeting. This will enable any abutter to come before the Planning Board. A Public Hearing on this matter, according to Statute, will also be scheduled for September 3<sup>rd</sup> 2014 in the Crowley matter in order to allow for public comment prior to considering the updated Conditional Use Application.

Planning Board Chairman Tomm will advise Mr. Crowley that he must have his updated application and all supporting documentation submitted by the August 25<sup>th</sup> 2014 deadline and request that he be personally present at the September 3<sup>rd</sup> 2014 meeting.

Codes Official Baines reviewed the Standard Procedure Protocol and purpose of holding a Public Hearing. The components are: 1) findings of fact (whether the application is complete): 2) Holding the Public Hearing; and, 3) Close the Public Hearing and 4) continue with the application review.

A very lengthy conversation followed regarding the Planning Board's process for Conditional Use Permits. Chairman Tomm stated that it has normally been the Board's practice to have an applicant come twice, once for the application review checklist for completeness then the second time to review the application itself.

**c. Janet Smith, Administrator and Paul Baines Codes Official Town of Durham - Discussion of Definitions of MUBEC Building Codes and Proposed Special Town Meeting concerning MUBEC Adoption:**

AA/TA Smith stated the previous Codes Official was operating under the assumption that Durham had a population of under 4,000 residents and did not need to adopt MUBEC formally although the Town was required use MUBEC standards per the 2010 Federal census.

As of September 28<sup>th</sup> 2011, a change in the law required municipalities of 4,000 or more (formerly 2,000) to enforce MUBEC as if they had a building code in place by August, 2008.

As of July 12<sup>th</sup> 2012, MUBEC must be enforced in any municipality with a population of 4,000 or more residents that had not adopted any building code on or before August 1<sup>st</sup> 2008.

Codes Official Baines, in a letter to the Selectmen dated June 23<sup>rd</sup> 2014, provided two proposed draft versions for adopting MUBEC. Version A and Version B. Each proposed version has different language for the Board to discuss prior to selecting which Version to put before the Town for a vote.

The Codes Official recommends adopting Version A which would add a fee schedule (by amendment), and add reference to MUBEC in the Land Use Ordinance. He added that nothing can be added or deleted from MUBEC.

A general discussion followed, with the Codes Official answering the Board's questions.

**Vice Chairman Beaulieu Moves** to go with Version A and take the fee schedule and more it into the Land Use Ordinance. Mindy Woerter Second. Motion Carried.

**d. Discuss and Act on AVCOG vs GPCOG:**

AA/TA Smith advised the Town will be changing it's affiliation from AVCOG to GPCOG. She

further advised that AVCOG membership is good through September 1<sup>st</sup> 2014. The Town is in need of the last amendment from John Maloney.

Arrangements will be made to have representatives from GPCOG introduce themselves and answer questions. A meeting date will be scheduled in October, 2014.

**Chairman Joe Tomm Moves** to change from AVCOG to GPCOG. Vice Chairman Beaulieu Second. Motion Carried.

**e. Discuss and Act on Update/Change to E-911 Addressing Ordinance:**

AA/TA Smith advised that the current E-911 Addressing Ordinance lists the Administrative Assistant as the official overseeing the Ordinance, and stated that the E-911 Addressing Ordinance should be under the purview of the Codes Official. She stated she had been temporarily filling in since Durham's prior Codes Official, Dan Feeney left the Town's employ.

AA/TA Smith further stated that the E-911 Addressing Officer is part of the Codes Official's job description.

**Planning Board Chairman Tomm Moves** to change the administration of the E-911 Addressing Ordinance from the Administrative Assistant to the Codes Official. Vice Chairman Beaulieu Second. Motion Carried.

AA/TA Smith advised the proposed update/change to the E-911 Addressing Ordinance will be set for a Special Town Meeting.

**f. Discuss and Act on update to Town of Durham CATV Ordinance:**

AA/TA Smith stated that the Telecommunications Committee is working on updating the Franchise Agreement. She provided the Board with a draft update to the CATV Ordinance for review and stated that the CATV Ordinance, which is under the control of the Selectmen, needs to be brought up to date. She advised the proposed updates were reviewed by the Telecommunications Committee and has been sent to legal for approval.

AA/TA Smith advised that the proposed changes made are based on the current MMA model, and the application needs to be updated every ten years.

Chairman Tomm questioned the change in application fee from \$25.00 to \$100.00. AA/TA Smith advised that the application fee is used to cover advertising, and the increase to \$100.00 is more in keeping with today's advertising costs.

AA/TA Smith stated no motion is required by the Planning Board. She advised the PIT is the liaison between the Telecommunications Committee and the Franchise Attorney.



AA/TA Smith raised a question regarding the Solid Waste Disposal Ordinance and asked if any current Board members were on the Solid Waste Disposal Committee as she is trying to determine why this boiler plate type of Ordinance, enacted in 1991, was not handled by contract. It was noted that no current Planning Board Members served on this committee.

AA/TA Smith stated the Solid Waste Disposal Ordinance may need to be repealed as it includes only one solid waste provider which hasn't served Durham in as much as fifteen years. A general conversation followed.

AA/TA Smith stated she intends to call a meeting with Planning Board Chairman Tomm, Codes Official Baines, herself and the Planning Board Secretary Jill Toher in order how to best move forward towards a smooth transition.

Codes Official Baines stated it is against State Law for any Planning Board member to discuss a proposed application with the potential applicants outside of a Town forum, stressing there are clear legal lines on this subject. Chairman Tomm stated it is his intention to begin communicating with the Codes Official on a regular basis. Codes Official Baines stressed proposed applicants should be going to either the Codes Official directly or address the entire Planning Board during a meeting. A lengthy debate followed between the Codes Official and the Planning Board Chairman.

**Continuing Business:** None.

**Other Business:** None.

**Approval of June 4<sup>th</sup> 2014 Regular Meeting and June 4<sup>th</sup> 2014 Workshop Minutes:**

Deferred until next Regular Planning Board meeting scheduled for September 5<sup>th</sup> 2014.

**Chairman's Comments:**

Chairman Tomm announced the following:

- a. Next Regular Meeting – Wednesday, September 3<sup>rd</sup> 2014 at 7:00 p.m.**
- c. Applications Due – Monday, August 25<sup>th</sup> 2014 by 4:30 p.m., at Town Office**

**Adjournment:**

**John Ackerman Moves** to Adjourn at 9:45 p.m. Seconded by Vice Chairman Todd Beaulieu.  
Motion Carried.

Respectfully submitted,

---

Jill S. Toher, Secretary