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**DURHAM PLANNING BOARD MINUTES
WEDNESDAY, MAY 22, 2002 – 7:00 P.M.
DURHAM TOWN HALL – TOWN COUNCIL CHAMBERS**

MEMBERS PRESENT:

Dave Pease, Chair; Suzanne Loder, Vice Chair;
Annmarie Harris, Town Council Representative;
Amanda Merrill; Neil Wylie; David W. Watt;
Rachael Rouillard; Tracy Wood, Alternate; Julian
Smith, Alternate; W. Arthur Grant, Alternate Town
Council Representative

OTHERS PRESENT:

Jim Campbell, Town Planner; Interested Members
of the Public

Chair Pease called the meeting to order at 7:01 PM. He welcomed Julian Smith, who has been appointed by the Town Council to the Alternate seat on the Planning Board vacated by Bob Gearheart.

I. Approval of Agenda

David Watt MOVED to approve the agenda. Rachel Rouillard SECONDED the motion.

Amanda Merrill stated that it was important to allow enough time at the end of the meeting to get through approval of the accumulated minutes.

Chair Pease suggested that the Board move on to approval of minutes no later than 9:30 PM.

Neil Wylie MOVED to move on to item XII, Approval of Minutes, no later than 9:30 PM. Amanda Merrill SECONDED the motion, and it PASSED unanimously.

The motion to approve the agenda as amended PASSED unanimously.

II. Report of the Planner

Jim Campbell reported on the following:

- He gave a brief overview of the new materials pertaining to agenda items that he had distributed to the Board before the meeting started.
- He has no new applications for next week.

- The Town Council Public Hearing on the Allen Farm Conditional Use Permit and Planned Unit Development was postponed until June 3, 2002 for lack of a quorum.
- He asked that Board members interested in participating in the UNH Master Plan to notify him of this by e-mail.
- He stated that even though the UNH police facility plan is on hold for now, that the Board should still give him their remarks about the list of questions from the Public Hearing because he will be meeting with Doug Bencks later in the week.
- He stated that he would like the Board to discuss Rachel's e-mail if there is time later in the meeting.
- There has been a request to postpone the Gonet applications and the Fitts Farm applications until June 12.
- He stated that Duane Hyde had spoke with him about updating some of the charts in the Master Plan as part of the effort from the Land Conservation subcommittee to put forth a bond issue.
- He stated that he has notified by e-mail the Planning and Environmental Quality Legislative Policy Committee of the policy change the Town has proposed.

In response to a question from Amanda Merrill, Jim Campbell stated that any chart updates for the Master Plan would be proposed to the Board for adoption as amendments to the Master Plan.

III. **Continued Public Hearing on an Application for a Conditional Use Permit** submitted by MJS Engineering, PC, Newmarket, New Hampshire, on behalf of Charles & Susan Gonet, Durham, New Hampshire, and SGH Development Company, Inc., Newmarket, New Hampshire, for the purpose of constructing a Planned Unit Development in the Rural District. The property is located on Dame Road, is shown as Tax Map 19, Lots 1-2 and 4-0 and is in the Rural Zoning District. **(The applicant has requested that this public hearing be postponed until June 12, 2002)**

Chair Pease stated that applicant has requested postponement of this item, but he would allow anyone present wishing to speak on this item to do so.

Mike Sievert, MJS Engineering, requested the Board allow him to give a brief update on the project.

Suzanne Loder MOVED to open the Continued Public Hearing on the Application for a Conditional Use Permit and Application for Subdivision. Amanda Merrill SECONDED the motion, and it PASSED unanimously.

Mr. Sievert stated that he wanted to inform the Board that the project would be undergoing a significant change from a 9-lot subdivision to a 2-lot subdivision. He asked the Board if he should submit the plan under a new application, or if the current application can be amended.

In response to a question from Arthur Grant, Mr. Sievert stated that the site plans would be completely redone. He also stated that the new plan would not be for a Planned Unit Development, it would just be for a Subdivision. He stated that by the June 12 meeting he would either have the new plan to present or he would file a letter of withdrawal.

Jim Campbell stated that he would prefer to see a new application for this project.

Neil Wylie MOVED to continue the Continued Public Hearing until the June 12, 2002 meeting of the Planning Board. Annmarie Harris SECONDED the motion, and it PASSED unanimously

- IV. **Continued Public Hearing on an Application for Subdivision** submitted by MJS Engineering, PC, Newmarket, NH, on behalf of Charles & Susan Gonet, Durham, New Hampshire, and SGH Development Company, Inc., Newmarket, New Hampshire, for the purpose of constructing a Planned Unit Development in the Rural District. The property is located on Dame Road, is shown as Tax Map 19, Lots 1-2 and 4-0 and is in the Rural Zoning District. **(The applicant has requested that this public hearing be postponed until June 12, 2002)**

See the minutes under Item III above.

- V. **Deliberation on an Amended Application for a Conditional Use Permit** submitted by MJS Engineering, PC, Newmarket, NH, on behalf of EPB Properties Inc., and Fall Line Properties Inc., Portsmouth, NH, for the purpose of constructing a Planned Unit Development in the Limited Business District. The property is located on Main Street/Dover Road, is shown as Tax Map 4, Lots 50-0, 51-0, 52-0 and 53-0 and is in the Limited Business Zoning District.

Jim Campbell suggested going through the Conditional Use Permit and Planned Unit Development checklists as a discussion starting point. He gave a brief overview of the questions and concerns that have been raised regarding this item. He suggested some of the major issues that need to be prioritized in the discussion, particularly with respect to the acreage requirement, the qualification of the project as a non-residential PUD and the proposed building density.

Chair Pease noted that the Conditional Use Permit compliance checklist was a draft and not an official document.

The Board reviewed the Conditional Use Permit compliance checklist. It was the consensus of the Board that the application fulfilled the first 5 criteria on the checklist.

Annmarie Harris suggested reading section 175-10 K.1 of the zoning ordinance to help in determining the application's fulfillment of #6 on the checklist that pertained to site suitability.

Chair Pease read from section 175-10K.1. He suggested discussing the 20-acre waiver issue.

Neil Wylie spoke about the 20-acre provision for a Planned Use Development, as well as the issues relating to the appropriacy of waiving the acreage requirement to allow a PUD in the Limited Business District

Amanda Merrill stated that she questioned the granting of such a large waiver, but she was not entirely opposed to that action because she felt there was a purpose for the existence of the provision.

Rachel Rouillard stated that provisions have been given to handle this property as a unique parcel if there are benefits to such use, and that she felt the Board should discuss this.

Chair Pease stated that he was not troubled by issues relating to the magnitude of the waver or to setting a precedent because the Board will have to determine that this is a unique parcel, and by its character best developed as a PUD, if this application is to proceed.

David Watt stated that the 20-acre waiver is not an issue to him.

Annmarie Harris stated that she is having difficulty justifying such a large acreage waver for this particular use.

Suzanne Loder stated that she felt the Planned Unit Development Conditional Use provision was to allow the use of a parcel in a way that would create open space. She stated that the lack of open space provided on the property is a major consideration.

Tracy Wood stated that she was having difficulty characterizing this proposal as a Planned Unit Development, particularly because of the acreage deficit.

David Watt stated that he felt that the decision of the Board will ultimately be decided by issues relating to the impact of the project relative to site suitability and effects on Town/neighborhood, and he suggested the board discuss items 7-9 on the Conditional Use Permit checklist.

Suzanne Loder referred to the clause under 175-10 K that specifies "a conditional use permit may only be granted if the proposal, as submitted, is of benefit to the Town..."

Annmarie Harris stated that the Public comment would be essential in determining the proposal's benefit to the Town.

Neil Wylie stated that the other critical issue is to decide if this is a residential or non-residential Planned Unit Development.

Chair Pease stated that determination of this should be made early in the deliberation process.

Neil Wylie stated that he was having difficulty regarding this proposal as anything other than a residential PUD because the increase of residential use space proposed is much greater than the increase in commercial use space proposed.

The Board discussed the intended primary use of the property as indicated by the developer versus what is implied by the ratio of proposed usage. They also further discussed if the proposed use of the Planned Unit Development would define it as residential, according to the zoning ordinance. They discussed the meaning of the term "non-residential" in relation to the definition of "commercial".

Amanda Merrill asked what weight the classification of this proposal as commercial by financial institutions should have on their decision.

Jim Campbell stated that an assessor would tend to define the property in terms of income.

Suzanne Loder suggested consideration of the application in terms of the overall desirability of the proposed added residential space. She stated that she felt the intention of the Master Plan leaned towards addition of commercial space, rather than residential.

Rachel Rouillard stated that, although mixed use was a recommendation for this zone, she questioned if this proposal was really what was intended.

Annmarie Harris suggested the Board refer to the Master Plan's proposed professional office multi-unit district on Madbury Road, for guidance. She read the proposed permitted uses.

Neil Wylie read the current permitted uses in the Limited Business District.

In response to a question from Rachel Rouillard, Jim Campbell referred to the Master Plan for the outline of the term "mixed use".

Neil Wylie stated that the important decision is not to define the Planned Unit Development as residential or commercial, rather as residential or non-residential.

Julian Smith stated that with limited land availability in the Limited Business District, he questioned if there was a precedent to be set if this proposal was allowed.

Amanda Merrill asked to review information about the residential vs. non-residential issue, as provided in the minutes.

Chair Pease suggested taking a poll to determine if the board is defining this proposal as residential or non-residential.

Tracy Wood read from the 674-17 on the purpose of zoning ordinances, which spoke to "avoidance of undue population concentration". She suggested that some of provisions in the Limited Business District ordinances might seek justification in this statement.

Annmarie Harris stated that she felt that all the Board members should have a chance to review the minutes that refer to the issues raised regarding the definition of non-residential.

David Watt read from Peter Loughlin's letter about the project in comparison to a non-residential Planned Unit Development.

Chair Pease declared a 10 minute recess.

Chair Pease suggested putting a motion on the table to consider.

Neil Wylie MOVED that the Durham Planning Board consider the application as a Residential Planned Unit Development. Suzanne Loder SECONDED the motion.

Amanda Merrill suggested that the legal opinion of an unbiased attorney be sought.

David Watt stated that he would not be in favor of the motion because he feels there are other more important issues to still discuss on this application before it was denied.

The motion was DEFEATED on a vote of 3-4 (Suzanne Loder, Annmarie Harris, Neil Wylie were in favor of; David Watt, Rachel Rouillard, Amanda Merrill, Chair Pease were opposed)

David Watt MOVED that the Durham Planning Board consider the application as a Non-Residential Planned Unit Development. Rachel Rouillard seconded the motion and it PASSED 4-3 (David Watt, Rachel Rouillard, Amanda Merrill, Chair Pease).

It was the consensus of the Board that it was necessary to continue on with the agenda, and subsequently the deliberation on this item would be continued to the June 12th agenda.

- VI. **Deliberation on an Amended Application for Site Plan Review** submitted by MJS Engineering, PC, Newmarket, NH, on behalf of EPB Properties Inc., and Fall Line Properties Inc., Portsmouth, NH, for the purpose of constructing a Planned Unit Development. The proposed area has been designed to support commercial units and multi-family housing units. The property is located on Main Street/Dover Road, is shown as Tax Map 4, Lots 50-0, 51-0, 52-0 and 53-0 and is in the Limited Business Zoning District.

See the minutes under Item V above.

VII. Deliberation on an Application for Site Plan Review Phase II submitted by Spruce Wood Reality Trust c/o John Farrell, Gowdy & Farrell, Inc., Dover, NH, for an additional twenty-seven dwelling units to be built in the Spruce Wood Development. The property is located at the intersection of Mill Road and Packers Falls Road, is shown on Tax Map 13, Lots 14-14 & 14-15, and is located in the Residence B Zoning District, as a Planned Unit Development.

Jim Campbell reviewed a letter clarifying the lot size, which had been distributed to the Board at the start of the meeting.

In response to a question from Chair Pease, John Farrell spoke about the request to relocate one of the septic systems further from the buffer, and justified its location as a result of state requirements as advised by NH Soil Consultants.

Amanda Merrill stated that she was uncomfortable receiving new information on this item and not having reasonable time to review it before the deliberation.

Jim Campbell noted that the lateness of the new material was not the fault of the applicant.

Neil Wylie suggested reviewing the Finding of Fact and Conditions of Approval for the Revised Master Plan.

Chair Pease stated that there is an existing Master Plan and Conditional Use Permit for the entire Spruce Woods project that needs to be amended to allow for the changes incorporated in the proposed site plan. He read the Findings of Fact and Conditions of Approval noting that the document was incorrectly titled and should be "Findings of Fact and Conditions Recommended for Approval".

Neil Wylie noted that the revised Master Plan date was incorrectly stated and should be changed to April 4, 2002.

Jim Campbell recommended omitting "and further revised on" after the revised Master Plan's date.

In response to a question from Annmarie Harris, John Farrell stated that the first condition of approval will require that ALL residents be 62 years and older.

Amanda Merrill asked if it was procedure to vote on drafts of Findings of Fact and Conditions of Approval if they were not received ahead of time.

Chair Pease suggested the deliberation be continued if the Board was not comfortable making a decision based on new materials they received .

Amanda Merrill and Rachel Rouillard agreed with this suggestion

It was the consensus of the Board to continue deliberation on this item to the June 12, 2002 agenda.

- VIII. **Deliberation on a Request to Amend the Spruce Wood Planned Unit Development Conditional Use Permit**, submitted by Spruce Wood Reality Trust, Durham, NH. The amendment to the 140- unit Planned Unit Development pertains to changes to the Phase II portion of the development. The property is located at Mill Road and Packers Falls Road and is shown on Tax Map 13, Lots 14-13, 14-14, 14-15 and 14-2, and is located in the Residence B Zoning District, with a Planned Unit Development designation.

See the minutes under Item VII above.

- IX. **Continued Deliberation on an Application for Boundary Line Adjustment** submitted by Smithfield Construction, Portsmouth, New Hampshire. The properties involved are located on Edgewood Road, are shown on Tax Map 1, Lots 16-20, 16-21, 16-5, and 16-6 and are located in the Residence A Zoning District.

Chair Pease stated that the applicant has requested this item be continued to the June 12, 2002 agenda.

There was no objection to this request.

- X. **Continued Deliberation on an Application for Site Review** submitted by Smithfield Construction, Portsmouth, New Hampshire, for the purpose of constructing twelve elderly housing units. The properties involved are located on Edgewood Road, are shown on Tax Map 1, Lots 16-20 and 16-21 and are located in the Residence A Zoning District.

See the minutes under item IX above.

XI. **Other Business**

- A. New Business: **Review request for extension of time to fulfill Conditions of Approval for J.R. Collier Corp. and Sandy Brook Corporation for Allen Farm Subdivision, Map 17, Lots 39-0 et. al.**

Chair Pease stated that a condition of approval for this application required Town Council approval within 6 months. He stated that the delay could be attributed to both the applicant as well as the approval process before the Town Council.

Neil Wylie MOVED that the Durham Planning Board approve the request from JR Collier Corp. & Sandy Brook Corp for a 3 month extension to fulfill the condition of approval #4, requiring Town Council approval of the Conditional Use Permit as a residential Planned Unit Development. David Watt SECONDED the motion.

Neil Wylie stated that the extension should be granted as the delay has resulted from the Town Council not yet being able to rule on the Conditional Use Permit.

Arthur Grant read a letter from Joe and Nancy Smath, stating that the Town Council's delay has been as a result of the applicant's late submittal of materials. The letter spoke to the changed school situation since the application was originally submitted. They urged the Board's reconsideration of this matter after the expiration of the conditions of approval.

Malcolm McNeill, on behalf of the applicant, attributed the delay to procedure, stating that it is the developer's interest that this matter be resolved soon.

Arthur Grant stated his disapproval of having new materials pertinent to deliberation distributed immediately before the Planning Board meeting.

Chair Pease expressed his agreement with Arthur Grant's disapproval.

In response to a question from Rachel Rouillard, Chair Pease stated that there is not a mechanism for the Board to reconsider a decision they have made, and subsequently this is a procedural decision.

The motion to approve the requested extension PASSED unanimously

- XII. **Approval of Minutes** – March 6, 2002
March 27, 2002
April 10, 2002
April 24, 2002
May 8, 2002

The Board reviewed the March 6, 2002 minutes

Chair Pease noted that in the motion to approve the agenda, 1st page, that Annmarie's last name should be Harris, and Mr. Cheney's first name should be Walter. He stated that on page 5, 1st paragraph, the phrase "a new master plan is impending" should be changed to "a new zoning ordinance is pending."

Arthur Grant stated that the unidentified member of the Public from 41 Emerson Road was most likely Ron Clark.

Chair Pease stated that on page 6, 2nd paragraph from the bottom, last sentence, "The Planning Board" should replace the mention of "Chair Pease."

Suzanne Loder stated that on page 14, in the motion at the top of the page, the last sentence "Suzanne Loder..." should be omitted because it was inappropriately placed.

Chair Pease stated that because there is some question as to the validity of the statements that have been included in the minutes, that he suggested having someone verify them with the taped record of the session.

Arthur Grant stated that he agreed with this suggestion. He felt it was important to keep the record short and to the point. He volunteered to review the March 27, 2002, and April 10, 2002 minutes because he was in attendance at those meetings.

The Board discussed having the minutes revised using the taped record of the meeting. They came to no conclusion on this matter and continued review of the minutes.

David Watt stated that on page 16, in the paragraph recounting Jim Campbell's statements, that "had enjoined" should be changed to "included."

Chair Pease asked to either omit or verify the entire paragraph on page 23 that starts "Chair David Pease..."

It was the consensus of the Board that the content from this set of minutes, as well as the minutes from March 27 and April 10th should be verified.

The Board reviewed the minutes from April 24, 2002.

Amanda Merrill stated that on page 5, the 5th paragraph under item V. there should be an outcome stated after the mention of the Board's discussion of continuing with deliberation. She suggested adding the sentence "They agreed that deliberation should proceed."

Arthur Grant stated that he should not be included in the poll on page 6 of the Board's position, as he was not a voting member.

Amanda Merrill stated that on page 6, 2nd paragraph from the bottom, that the statement was made by Rachel Rouillard, and not by her.

Chair Pease suggested that on page 7, 2nd to last paragraph, that after "Planning Board's standards of review" should be added "of applications."

The Board discussed changing the phrase in the last paragraph on page 7 from "may not be in the interest of the Planning Board to support" to "have not yet been considered by the Planning Board."

***Annmarie Harris MOVED to approve as amended the minutes from April 24, 2002.
David Watt SECONDED the motion, and it PASSED unanimously***

The Board reviewed the minutes from May 8, 2002.

Amanda Merrill stated that on page 5, 2nd paragraph, that the question was from her and not from Annmarie Harris. She also stated that the information given by Mr. Berton was incomplete, and after "30% vacancy" should be added "for the first 2 years, and 50% turnover."

Annmarie Harris stated that on page 5, 5th paragraph, that the question was not from her and that "from Annmarie Harris" should be omitted.

NW suggested that on page 6, the statement from Sally Hochgraf about the Library be amended to "stated that there was no interest by the Library to lease the property."

The Board discussed their understanding of the statement from Mr. McNeill as recounted on page 7, 3rd paragraph, and asked that it be verified with the tape.

Jim Campbell stated that the mention of the "regulation" in his statement at the bottom of page 10 should be changed to "Site Plan & Subdivision regulations."

David Watt MOVED to approve as amended the minutes of May 8, 2002. Neil Wylie SECONDED the motion, and it PASSED unanimously.

Chair Pease suggested that the minutes of March 6, March 27, and April 10 be redrafted using the tape recordings of the sessions.

It was the consensus of the Board, after a brief discussion regarding Chair Pease's suggestion, that Arthur Grant could correct the March 27 and April 10 minutes.

XIII. Adjournment

Neil Wylie MOVED to adjourn. Rachel Rouillard SECONDED the motion, and it PASSED unanimously

The meeting adjourned at 10:30 PM

Dave Watt, Secretary
Durham Planning Board