

These minutes were approved at the October 23, 2002 meeting
DURHAM PLANNING BOARD MINUTES
WEDNESDAY, OCTOBER 9, 2002 – 7:00 P.M.
DURHAM TOWN HALL – TOWN COUNCIL CHAMBERS

MEMBERS PRESENT:

David Pease, Chair; Suzanne Loder; Neil Wylie; Amanda Merrill; David Watt (arrived at 7:13 P.M.); Arthur Grant, Town Council; Julian Smith, Alternate (arrived at 7:04 P.M.); Annmarie Harris, Town Council Alternate (arrived at 7:12 P.M.); Rachel Rouillard

OTHERS PRESENT:

Jim Campbell, Planner; Todd Selig, Town Administrator; Paul Beaudoin, Business Manager; Interested Members of the Public

MINUTE TAKER:

Michael Bornstein

Chair Pease called the meeting to order at 7:01 P.M.

I. Approval of Agenda

Arthur Grant MOVED to approve the agenda. The motion was SECONDED by Amanda Merrill.

Julian Smith arrived at the meeting at 7:04 P.M.

Chair Pease stated that Mr. Smith would be voting until David Watt arrived at the meeting.

The motion was unanimously APPROVED.

II. Report of the Planner

Annmarie Harris joined the meeting at 7:12 P.M.

David Watt joined the meeting at 7:13 P.M.

Jim Campbell reported on the following:

He attended his first meeting as Chair of the Technical Advisory Committee for the Municipal Planning Organization. The Committee is in the public comment phase for

both the three year TIP and the long range plan. Mr. Campbell will keep the Board informed as to what projects are in the works for the Town.

He has been receiving more calls for the Zoning Re-write Committee and interest for the new ordinance is building.

He met with Doug Bencks, the UNH Interim Director of Campus Planning, on Monday as part of their monthly meetings. Mr. Campbell stated UNH will be coming to the Planning Board to make known its desire to build a new UNH Foundation building. Other projects discussed include renovations to Kingsbury Hall, the fueling station and the police station.

The UNH Master Plan is about to get underway. UNH had a meeting on Tuesday about the matter, which was attended by Mr. Campbell, Chair Pease and Arthur Grant.

He and Amanda Merrill attended the Seacoast Smart Growth Roundtable Conference in Hampton.

III. Discussion of Draft CIP

Arthur Grant stated that at the September 25, 2002 meeting, while discussing the CIP, he had used the words “taxes will go down” when he meant the “tax rate will go down.”

Neil Wylie read a prepared statement, which he submitted to the record, in reference to the library. Mr. Wylie stated a referendum may be required due to the size of the bond. The building should include meeting rooms for various community groups, adequate parking should be available for all activities held by the library, Courthouse and Town Hall, even if the activities are happening simultaneously. When considering space needs, the Town should plan for an increased population.

Administrator Selig stated no site has been selected for the new library or how big it will be and the Council has not voted on any plan. The Library Trustees have submitted a proposal to the Council to build the library in back of Town Hall. It may cost \$3.1 million. Part of the cost would be funded with monies the library has accumulated. The Town does not know how the rest of the cost would be financed but the Council would like most of it to be financed by private donations with the condition the Town would contribute to the cost.

Mr. Selig stated if the Town acquires the Route 108 Sunoco property, it would open up additional space for such things as parking but the acquisition of the property is up in the air.

In response to a question from Chair Pease, Paul Beaudoin stated he believes the operating budget impact for non-personnel for the building of the library refers to the impact of additional costs in the running a larger building.

In response to a question from Neil Wylie, Paul Beaudoin stated the library currently spends \$44,000 a year for rent to have the library in the Mill Plaza.

Mr. Selig stated any saved rent money could be put towards funding the new library building.

In response to a question from Chair Pease, Mr. Beaudoin stated a bond of \$44,000 a year would not support much.

Chair Pease stated if the Town was to bond an amount that would yield a \$44,000 a year payment for a new library, it would be a wash in that it would be the same expenditure as renting the Mill Plaza space but would make the money available in the present instead of later on.

Mr. Beaudoin stated a full financial plan should reflect what the costs will be for a new library.

Mr. Beaudoin stated the Town budgets \$500 a year for building maintenance of the current library but there is little maintenance needed at the library now as it is a part of the lease. The current library has a full-time Library Director and two part-time assistants. Mr. Beaudoin was unsure if the same level of manpower would be able to staff a larger building.

Neil Wylie suggested recommending that the Council not move forward with the building of a library unless 50% matching non-Town funds are available.

Annmarie Harris stated another potential site for the library is a former UNH fraternity house on Madbury Road. The site may be attractive for fund raising.

In response to a question from Julian Smith, Chair Pease stated the Library Trustees have figures available referring to the use of the library by people in Town.

Suzanne Loder stated she did not want to suggest an amount of non-Town funds needed for the library but wanted to wait until the Library Trustees came to the Board with a proposal.

Administrator Selig stated the CIP is not a budget document but a planning document that assists the Town in planning out what costs may be.

Mr. Selig stated while it was unlikely the library building project, as presented on the CIP, was going to move forward in 2003 it was more likely to move forward in 2004.

Mr. Beaudoin stated no money was set aside for land acquisition for the library building project and the \$3.1 million is the estimated cost for a new library to be built on land the Town currently owns.

Neil Wylie suggested the Board affirm the value of the library and Town Center as consistent with the Master Plan and that in the CIP the library building project should be labeled under 2004 instead of 2003 and private contributions should be maximized to pay for the project.

The Planning Board agreed with Mr. Wylie's statements and recommended them to Administrator Selig.

Chair Pease read from the CIP that the Route 108 Sunoco property was listed as costing \$700,000 and was to be acquired in 2003.

Administrator Selig stated that the Route 108 Sunoco property was actively for sale.

In response to a question from Jim Campbell, Mr. Selig stated \$700,000 for the property was a realistic price. There are a number of interested buyers. It is likely the Council will have a presentation from the realtor, representing the owner, about different uses that have come forward for the property. The sale will most likely happen within the next year.

Chair Pease stated for acquiring the land the Master Plan describes a process with the first step being to buy an option for the Town so the property will not be sold to someone else. The second step was to form a committee and hire a consultant to perform a program and a site analyst to study the feasibility, affordability and appropriateness of the site and other appropriate sites for a Town or community center.

Administrator Selig stated these steps have not yet been done but the purchase of the property will be driven more by a desire from the Town to purchase the area with long-term plans about how to use the property coming after it is bought instead of first deciding what the Town will do with the land before purchasing the property. Mr. Selig stated he believed the Council would come up with a developing plan for the site.

Mr. Selig stated the Master Plan calls for the Town to assess the contamination on the site and the cost of clean up. This has been done. The Town found the amount of contamination was minimal as well as the cost of clean up.

Chair Pease stated he believed the Master Plan was not a recommendation to buy the property. It is a recommendation to move swiftly to discover if the Town wants to do something with the land and to secure the option to do so, and only then purchase the land. He was concerned that the Town has a \$700,000 capital item to purchase the property but for the next nine years the Town has no funds to do anything with the land.

Administrator Selig stated the Library Trustees may be interested in resituating the new library building on to some portion of the property. The Council has discussed marketing the site and putting it back on the Town tax rolls. The Council has discussed not acquiring the entire site but swapping a portion of the land for Town owned land. This

would help to make the property at the Town Offices contiguous with and connected to the Courthouse property. No decision has been made on any of these alternatives.

It was the consensus of the Board to recommend purchasing the land. Chair Pease stated he believed it should be studied first and was puzzled as to why the work recommended by the Master Plan has not been done. He could not support buying the property without a plan.

In response to a question from Rachel Rouillard, Administrator Selig stated three years ago a sales analysis was done on the property and the appraised value was found to be in the \$250,000 to \$300,000 range but that amount was not reflective of the sale price. He stated if the property was bought by another entity besides the Town to be used as another filling station, the result would be that every other filling station along Route 108 would have an increase in value. The Town has not had many sales of similar properties and it has been hard to come up with a competitive market rate.

Chair Pease stated the next CIP item to be discussed was extending the Council chambers at a cost of \$45,000.

Administrator Selig stated the cost of expanding inward would be \$35,000. It would add 12 feet and allow for central air conditioning in the Chambers and for the DCAT area in the next room.

He stated the Town was thinking more of expanding outward towards the parking lot by 12 feet. With the central air conditioning the estimate from Public Works was \$45,000. The Council has been trying to get a free bid for the project and a firm bid should be received in a month.

Neil Wylie stated he believed the expansion was critical to the success of the Council form of government. The chamber is often filled to beyond capacity during public hearings and that sends a bad message that the Town does not care what the people think. He suggested the chamber expansion could include a moveable center divider to permit two smaller meetings to be held at the same time if need be.

Mr. Wylie suggested seeking the input of the Historic District Commission if any changes to the exterior of Town Hall are proposed.

Administrator Selig stated the seating would be increased by 18 chairs.

Chair Pease stated there was no objection by the Board to the CIP item.

Arthur Grant stated the Town had bought the Business Park down by the sewer treatment plant to avoid being sued in a lawsuit. The lawsuit contended that odors from the treatment plant made it impossible for the developer of the park to sell lots. The park was purchased from the sewer fund as that was the department that would have paid the court

settlement. UNH takes care of 67% of the sewer fund while the Town takes care of the rest.

Mr. Grant stated he had no argument with refunding the sewer fund once the Town knew what it was going to be used for. He was concerned that once the Town reimburses UNH and the sewer users no one would care what happened to the property.

David Watt stated if a building is put on the property that generates significant tax revenue everyone would care about that.

In response to a question from Neil Wylie, Paul Beaudoin stated there was interest on the fund balances that had accrued to the waste water fund. Mr. Beaudoin suggested replacing the cost of the \$657,750 during a course of 10 years. If the Town decides to reimburse the sewer fund it could be determined what the impact of the sewer users was when the Business Park was purchased.

Neil Wylie stated it looked like the sewer users paid more than anyone else in Town. He suggested this may argue that there should be a separate sewer and water entity instead of it being managed by the Town.

Administrator Selig stated the sewage treatment plant was composting sludge and that the owner of the Business Park was unable to sell the property due to the odor. It would have made no difference if the sewer treatment plant was separate from the Town as the lawsuit was to force whoever owned the treatment plant to reimburse the owner of the park.

Mr. Selig stated the Town hopes to resell the land, making it taxable property, or transforming the land into something else useful to the Town.

Paul Beaudoin stated 900 properties are a part of the water and sewer but there were just 2,400 parcels in Town.

Mr. Beaudoin stated the intent at the time of the lawsuit was to purchase the Business Park using the funds from the sewer users and if the land was used or sold by the Town, the users would be reimbursed. If the land was never used or sold by the Town, the original intent was never stated.

Chair Pease stated there was no recommendation by the Board on the matter of the sewer funds.

Paul Beaudoin stated the fiscal software expense listed on the CIP of \$125,000 would put the functions of taxing, assessing, registration and finance management all under one program. The Town currently uses four separate vendors. The new software will cut down on redundancy, mistakes and duplication of work.

Mr. Beaudoin stated the time is coming when current software the Town is running will not be supported anymore.

Chair Pease stated the Board recommended leaving the fiscal software as it was on the CIP plan.

Chair Pease stated the next item on the CIP to discuss was land purchases for \$2.5 million in 2003 and \$100,000 a year thereafter.

Administrator Selig stated last year the Town established a contingency fund in the 2002 budget of \$50,000 that could only be used by the Council. If it wasn't used the money would be deposited into a land acquisition fund. In the 2003 budget the contingency fund will be increased to \$100,000. The fund was not reflected on the CIP plan.

Mr. Selig stated last year the Council discussed finding grant funds to buy land. The Council had budgeted \$100,000 upfront for land acquisition only to be used if the grants were not available.

Mr. Selig stated he was concerned about moving forward with a \$2.5 million bond unless the Town offsets the cost of the bond issue. If the Town is going to be aggressive about land acquisition it needed to make some hard decisions about services it may be willing to do without to free up the money to buy the land.

Annmarie Harris stated the Land Acquisition Committee has done a study of properties likely to become available that meet the criteria of the Master Plan. The \$2.5 million bond would increase the tax rate by under \$1.

Ms. Harris stated the study indicated that by protecting open space, a Town would save on costs associated with development. Presentations to the public on the matter will be given.

Rachel Rouillard stated the reason Towns need to have money available for land acquisition is due to the volatility in the real estate market and that Towns have lost land as funds were not available when it came time to buy.

Administrator Selig stated if the Board recommended the Town move forward with the bond for land acquisition he will be looking at cuts within the Fire Department, Police Department and solid waste.

Chair Pease stated if the process gives the Council a checkbook to buy land, that is not a good approach.

In response to a question from Julian Smith concerning the cost of \$9 million for a new swimming pool in 2007, as listed on the CIP, Administrator Selig stated the UNH pool was still open but it does not meet many current standards. UNH has indicated it would not be willing to pay to make pool improvements but instead wants to build a new one.

UNH believes having a pool is one way it contributes to the Town as most of the users are citizens and UNH takes care of most of the upkeep. UNH prefers an indoor pool that would serve students and citizens all year long.

Mr. Selig stated there is no firm plan to replace the pool in 2007 but was listed on the CIP as a place holder. The price will continue to go up each year and it will affect the tax rate.

Chair Pease stated the Town's part of paying the \$9 million would be \$3.3 million.

Neil Wylie MOVED to suspend discussion on the CIP until the next meeting and to allocate one hour at the start of the agenda. The motion was SECONDED by Annmarie Harris and was unanimously APPROVED.

IV. Continued deliberation on an application for Site Plan Review submitted by David M. Garvey & Co. Ltd., Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to amend a previously approved parking plan. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District.

Chair Pease recused himself from the discussion at 8:30 P.M. and David Watt became pro tem chair.

Jim Campbell stated the applicant wants to follow through with the site plan using three phases with the first being to amend the previous parking plan, the second being to build a roadway leading to parking on a hill, and the third phase being building the parking spaces on that hill.

Mr. Campbell stated if the expansion was denied the applicant would need to have the stop work order rescinded by the Code Enforcement Officer.

Chair Pro Tem Watt read a letter into the record from Planning Consultant John Harwood concerning the matter. Mr. Harwood addressed the amount of parking that should be available, the access road, connection to Chesley Drive, the impact on College Brook, what the Board may have meant when it first approved the plan in 1977 and what the current board could consider.

Julian Smith stated with some spaces being used by charitable organizations and other spaces rented to people who park in the lot, that was a clear indication the spaces were not needed for the customers.

Mr. Smith stated it was clear from looking at the conditions of approval from 1977 the spaces were not paved then but were paved subsequently and that no one desired to pave them as there was no need. The Board would have to approve a change of use concerning the rented spaces and he was not sure the Board should approve it.

Arthur Grant stated the responsibilities of the Board concern the present request and the board must determine if the prior conditions of the 1977 conditions of approval had been met. There are issues about the bike path, asphalt curbing, buffer and dividers between the parking lanes.

Mr. Grant read the 1977 conditions of approval.

Neil Wylie stated he did not see how the Board could let the applicant move forward without remedying the deficiencies from the original approval. He would like to see the applicant provide a plan that had on it an affirmation of the missing entities from the original approval and drainage and catch basin improvement.

Jim Campbell stated he could not find any discussions about the buffer but the buffer is on the site plan. The plan shows a buffer but nothing describes what it is there for. and the buffer is not in any of the conditions of approval.

Neil Wylie stated a redesigned site plan could have 370 parking spaces without needing as much impervious area as the previous plan, resulting in a savings of paving.

Chair Pro Tem Watt stated if the Board was going to deny the application he wanted to clarify if the use of parking spaces for rent is a change of use or if it is an accessory to the business. He wanted the Board to find out all the ways the site is noncompliant with the original approval.

In response to a question from Neil Wylie, Jim Campbell stated he believed the Code Enforcement Officer did not believe renting out spaces was a change of use.

Arthur Grant stated he was a strong proponent of having more parking in Town but he was troubled by the implications the project may have on College Brook. UNH is working on cleaning its part of the Brook. The Board has a responsibility to minimize the pollution that flows into the Brook. He will vote to deny the application as it does not provide enough protection to College Brook.

Annmarie Harris stated she found it inconceivable that accidentally someone would excavate areas for additional parking and a slope. She did not understand how an upper parking lot on a hill could be completed using the three phases described.

Julian Smith stated the Board was not looking at permitted parking spaces but required spaces as businesses expand and that the plan was an encroachment into spaces that are required by the 1977 approval for customers or employees.

Chair Pro Tem Watt stated the 1977 Board stated there could be 370 required parking spaces and that is why under the conditions of approval they permit the development of more spaces.

Neil Wylie MOVED to deny the application. The motion was SECONDED by Julian Smith.

Mr. Wylie stated that he did not believe enough provisions had been made to protect College Brook, the original conditions of approval have not been met and the Board should review the conditions to decide if they have been fulfilled or need to be.

In response to a question from Rachel Rouillard, David Garvey stated there is not a catch basin missing on the property and it is under a pile of old fence posts. He is working on cleaning the basin.

Chair Watt stated he was more troubled by the noncompliance with the original site plan than he is with the runoff the project would create.

Amanda Merrill stated the extra 2,400 square feet the project proposes only brings with it the benefit of five more parking spots and that was not enough for her to be comfortable making the decision to contribute more to the degradation of College Brook.

Chair Watt stated he believed denying a project due to an existing negative impact being made marginally worse does not help College Brook in the absence of any other clean up.

Neil Wylie stated if another site plan came before the Board it could discuss where snow would be stored on the property and what kinds of mitigation may be placed.

Jim Campbell stated he is concerned with the buffer but would not be if other evidence could be found from the 1977 board as to what the buffer was there for.

Neil Wylie stated his motion would include directing Mr. Campbell to include why the Board denied the application. It was denied due to concerns about the buffer, noncompliance with the original site plan, there was not enough provisions for the protection of College Brook and the board was unsure if renting parking spaces on the property is a change of use.

In response to a question from Arthur Grant, Jim Campbell stated the applicant would have to put back land that had been removed from the property in order to have the Code Enforcement Officer rescind the stop work order.

The motion was unanimously APPROVED.

Chair Watt called a five minute recess at 9:34 P.M.

The meeting reconvened at 9:42 P.M. and Chair Pease returned to the meeting.

Arthur Grant MOVED to have item VI. on the agenda to be considered at the next meeting. The motion was SECONDED by David Watt and was unanimously APPROVED.

V. Deliberation on an application for subdivision submitted by David M. Garvey, Garvey & Co., Durham, New Hampshire, on behalf of Rockingham Properties I LLC, Belmont, Massachusetts, to create 15 new lots of which 12 are to be commercial use and 3 are to be residential use. The property involved is shown on Tax Map 11, Lots 8-1 and 9-1, is located along Dover Road and Stone Quarry Drive and is in the Limited Business Zoning District and the Residence B Zoning District.

In response to a question from Arthur Grant, David Garvey stated Town water and sewer will be used on the property and that the applicant will be paying the cost of hooking it up.

Chair Pease stated the applicant is requesting a wavier from sections 4.03 and 4.17 of the Town road regulations concerning minimum shoulder width and minimum center line curb radii.

Jim Campbell stated the Town engineer supports approval of the waiver.

David Watt MOVED to approve the waiver concerning minimum shoulder width and center line curb radii. The motion was SECONDED by Annmarie Harris and was unanimously approved.

Chair Pease stated the applicant is requesting a wavier from section 4.03 in the Town subdivision regulations concerning open space requirements.

Jim Campbell read the Town's definition of open space and stated it must perform a needed or desirable function in relation to the adjoining residential use. Except for three lots, the property being discussed is commercial not residential. He did not believe the open space was needed for the commercial development.

Chair Pease stated the subdivision regulation concerning open space does not state what kind of lots it is applying to.

David Watt MOVED to approve the waiver from section 4.03 of the Town subdivision regulations. The motion was SECONDED by Rachel Rouillard and was APPROVED with a vote of 6-1 (Chair Pease voting against.)

Chair Pease stated the applicant is requesting a waiver from section 9:06 of the Town subdivision regulations concerning storm water drainage.

David Garvey stated the regulation requires a storm water drainage report be submitted to the Town but the Town engineer believes it is not needed.

Jim Campbell read section 9:06 of the Town subdivision regulations.

In response to a question from Neil Wylie, David Garvey spoke to the engineering of the drainage on the property.

David Watt left the meeting at 10:06 P.M. and Chair Pease stated Julian Smith would again be a voting member.

Neil Wylie MOVED to approve the applicants request of a wavier from section 9:06 of the Town subdivision regulations concerning a stamped engineered drainage plan after due consideration and consultation with the Town engineer and for reasons contained in the written record. The motion was SECONDED by Rachel Rouillard and was unanimously APPROVED.

Neil Wylie stated there should be three more findings of fact on the application. The first is that the applicant proposes to bring Town water and sewer services to the subdivision at no expense to the Town with the second being that only the Council can give permission to extend Town water and sewer to the subdivision. The third is the applicant must request and receive permission from the Council to extend Town water and sewer service and if Council approval goes beyond six months the applicant can come back to the board and request the conditions of approval be extended.

Arthur Grant and Suzanne Loder left the meeting at 10:33 P.M.

Chair Pease read and confirmed all of the findings of fact and conditions of approval.

Julian Smith MOVED to approve the application for subdivision submitted by David M. Garvey, Garvey & Co. Ltd., Durham, New Hampshire, on behalf of Rockingham Properties I LLC, Belmont, Massachusetts, to create 15 new lots; along with the findings of fact and conditions of approval as amended. The motion was SECONDED by Annmarie Harris and was unanimously APPROVED.

Chair Pease stated with Arthur Grant gone, Annmarie Harris had become a voting member.

VI. Other Business

Jim Campbell stated the Board had to elect a new Vice Chair.

Neil Wylie suggested that the board change its rules of procedure in that it will only consider new applications at the first meeting of each month to allow for better scheduling.

Chair Pease stated the board would need to evaluate the regulations to see if any of them conflict with Mr. Wylie's suggestion.

VII. Adjournment

Neil Wylie MOVED to adjourn the meeting. The motion was SECONDED by Julian Smith and was unanimously APPROVED.

The meeting ADJOURNED at 10:40 P.M.

David Watt, Secretary

