

These minutes were approved at the February 11, 2004 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, JANUARY 7, 2004
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: David Watt, Chair; Nick Isaak, Arthur Grant, Annmarie Harris; Neil Wylie, Richard Ozenich; Kevin Webb; Stephen Roberts; Rachel Rouillard; Amanda Merrill

MEMBERS ABSENT: None

OTHERS PRESENT: Jim Campbell, Planner, Mark Eyerman, planning consultant, members of the public, Victoria Parmele, Minute Taker

I. Call to Order

II. Approval of Agenda

Amanda Merrill MOVED to approve the agenda. The motion was SECONDED by Stephen Roberts and PASSED unanimously.

III. Introduction

Chair Watt explained that Item IV was a Public Hearing on the most recent revisions of the Zoning Ordinance, and Item V was a continued Public Hearing from December 17th on the revisions to the Subdivision Regulations. He explained that following the hearing, Planning Board members had looked at the comments, some fairly extensive, and had worked through them section by section. He said the Board had developed a revised draft that tried to address the comments which it felt was reasonable, and noted that the changes that had been incorporated since the July 7th, 2003 Public Hearing version were now shown in italics.

Chair Watt asked Mark Eyerman to summarize the changes that had made to the Zoning Ordinance since the previous public hearing. Mr. Eyerman then presented a brief summary of these changes, which included:

- Changes in Rural and RC districts relative to uses
- Changes in conservation subdivision provisions regarding performance standards
- Conditional use provisions process
- A number of edits to clarify language

- Jim Campbell said there had also been a change in the definition of useable area relating to conservation subdivisions, as well as addition of an article on septic systems, which was not previously in the ordinance.

V. Public Hearing – on Part A, B and C and the Zoning Map of the Zoning Ordinance

Chair Watt explained that the Planning Board had completed its review of these Zoning Ordinance sections, noting that Part A consisted of the Administrative Provisions, including the new language for Conditional Use Permits, Part B –Zoning Districts, including the table of uses and dimensional requirements and Part C – the Performance Standards.

Councilor Grant MOVED to open the Public Hearing. The motion was SECONDED by Amanda Merrill and PASSED unanimously.

Jesse Gangwer, 105 Durham Road, read a letter he had written to the Planning Board and made the following points concerning his property, which because of a change in the Zoning Map had been re-zoned to OR. He said his property was located just beyond the Durham bypass bordered by the Canney Farms Development.

He asked how many Planning Board members had walked the boundary and interior of his land, and also asked if they had consulted with the Town of Madbury relative to this zoning change. He noted that there was no water or sewer available to his land, which didn't make economic sense if there was to be an office or research park. He also said that the only access to his land was through residential land in Madbury, onto Perkins Road and onto Canney Road.

Mr. Gangwer noted there was a large residential development to the east of his land. He asked if the Planning Board had contacted the members of this association to get their thoughts on an OR zone next to their homes. He also explained that the land to the west, north and east was residential, while land to the south was restricted by a limited access bypass. He said there was a pond and brook on the west and south side of his property that would be very costly to cross. He also explained that in the residential development planned for his property, which had been in the planning stage for the past 2-3 years, the area beyond this brook and pond was to remain in open space. He noted that the land had been under contract to the Green Companies, which had now dropped the contract.

Mr. Gangwer urged the Planning Board to leave his land as residential, because this would best serve the abutters. In his letter, Mr. Gangwer also asked what studies had been done on this, or if any engineering firms felt this was the proper use or zone for this land.

Chair Watt said that land had been addressed in the Master Plan process, and the zoning rewrite process was implementing that process. He said he didn't think the

Planning Board was legally entitled to modify the zoning map proposed in the Master Plan in its implementation.

Mr. Gangwer said it seemed strange that this was all of a sudden being implemented, and Chair Watt repeated that the map was in the Master Plan.

Councilor Harris said the Planning Board had not yet received a legal opinion as to whether this parcel had to reflect exactly what the Master Plan said, and noted that at the last Zoning Rewrite meeting, Board members had agreed with Mr. Gangwer. She said members had not felt they could change it because the Master Plan had told them to change it to OR. She noted that the map had not yet been approved.

Mr. Gangwer gave some history on his efforts to work with the Town in terms of land development, including a time when he was asked to develop his land into an office research park. He said he cooperated with this idea, and noted that after it fell through, he had gone to the Town and asked if it would like to buy the land, but by that time, the Town was not interested. He said for the Town to now come and re-zone his land, when there was a lot of residential growth in the area, didn't make sense.

Councilor Grant said he thought there was agreement about the Gangwer parcel in the Zoning Rewrite Committee's last discussion about it. But he said the problem was that others had come in and asked for changes as well. He explained that in the writing of the ordinance, the Rewrite Committee had worked very hard to keep the changes to it in line with the Master Plan and he noted that the map being referred to was in the Master Plan, which was done 2 years ago, and this map had not changed. He acknowledged that some of the committee members would like to change some of those things, but asked on what basis they could make those changes, not make other changes, and not do other things in the Zoning Ordinance because they were not in the Master Plan. He said particularly regarding this parcel, it did not make sense to have OR designation but that was in the Master Plan, and there was the feeling that the committee could not deviate radically from what the Master Plan recommended.

Joan Sundberg, Madbury Selectman, spoke about the Gangwer property. She said she understood what the Committee was saying but that the Town of Madbury had some problems with the zoning change of this property. She said that part of Madbury was zoned residential agricultural and was long established, and noted its Master Plan called for it to remain residential. She said Madbury had been actively trying to develop conservation land in the area to maintain the rural character there, and said this change would directly affect Madbury because it would bring in increased traffic, including heavy equipment, with more wear on roads not equipped for this use. She noted that Madbury's zoning didn't allow for a road that would accommodate industrial use. She also said emergency vehicles would have to come in through another community, noting that Madbury had a part-time police department and a volunteer fire department.

Neil Wylie said he appreciated her attendance at the hearing, and noted that Durham's RB district allowed more density (twice as much) as the adjacent residential zoning

district in Madbury nearby (2 acre zoning as compared to 1 acre zoning). He asked Ms. Sundberg if that would be a dilemma as well, if the land in Durham were fully built out for residential use, so that more density would come about than the roads were designed for.

Ms. Sundberg said it was not difficult in the same way because it was residential in a residential area and the kind of traffic would be different. She said whatever was built in Madbury, through the access area, would have to meet Madbury's zoning requirements, so any residential impact would be felt in Durham rather than Madbury. She said Madbury was concerned about traffic impacts and changes in the character of the neighborhood.

Kevin Webb asked if Durham had contacted Madbury when the Town was working on the Master Plan in 1999-2000. Ms. Sundberg said she didn't know.

Jim Jelmberg, Park Court, thanked the Board for its work. He noted the hotel definition on page 15, which said the maximum length of stay was 2 weeks, and said he applauded the addition of that clause. He asked if the definition could also include "within a 30 day period" or whatever period would be reasonable, noting that the developer had already agreed to the 30-day period. He said otherwise, there could be the situation where students could come back and forth at the hotel.

Dale Ober, Griffiths Drive, requested that the Planning Board amend or change the Zoning Ordinance to allow occupancy of a single-family residence located in the R District by a family, as defined in the Zoning Ordinance, or no more than three (3) unrelated persons. He said this change would make the Ordinance consistent throughout the RA, RB, RC and LB Districts, and would benefit all citizens of Durham. He said the only requirement in the R District was that there needed to be 300 feet of living space per person. He said he lived in the Rural District, but it was very residential and certain things could happen to change the character of the neighborhood quickly.

Jim Campbell clarified that the R District, OR District and Central Business District did not have the 3-person limit.

Councilor Grant asked for it to be noted that he would like to discuss these other zoning districts not covered by the 3 unrelated person rule at a later date.

Beth Olshansky, 22 Packers Falls Road, thanked the Planning Board, with deepest sincerity, for the tremendous job it had done. She read through specific comments/suggestions for additional changes to the Ordinance.

She said she was very supportive of the soils based density calculations that were included in the ordinance, noting that earlier in the process it had been pointed out that the Conservation subdivision ended up adding a density bonus that hadn't existed before, which would have resulted in more houses rather than less. She said the soils based density calculations helped balance this out, and added important protections to natural resources.

She said she strongly supported the definition of useable area and portions of the ordinance related to that, and also noted that Eileen Fitzpatrick had suggested taking this definition out of the definitions section and putting it into a separate article, because it contained regulatory language.

Ms. Olshansky said she also supported the stricter septic regulations that had been included in the Zoning Ordinance, noting she had done substantial research on what other communities had done and that these tougher standards were consistent with what other communities had been doing for years. She said that by preventing leach fields from being approved on marginal soils, this would protect the Town's natural resources.

Ms. Olshansky said she appreciated that the minimal dimension for the R and RC Districts had been increased to 150,000 sq. feet, noting that this would help to compensate for the clustering of houses and would balance out the unintended density bonus that the Conservation Subdivision allowed for. She said that based on this, the Planning Board should consider making the dimensional standards in the RA zone 25,000 sq. feet, and in the RB zone 50,000 sq. feet, which would create the same ratio as before. Concerning the argument this could raise concerning not wanting to make more non-conforming lots, she suggested a provision could be included stating that the lot requirements would apply to any new lot, and all lots previously subdivided under the old ordinance would remain in compliance.

She said she was pleased to see the additional safeguard, on pages 93-94, that "At least 50% of each newly created lot in a conventional or conservation subdivision located in the RA, RB, RC and Rural Districts shall consist of a rectangle of Useable Area that ranges in shape from square to at least one-half as wide as it is long." She said this language would help in trying to prevent abuse of the ordinance, and also suggested that the word "contiguous" should be inserted in this statement before "Useable Area".

Ms. Olshansky said she supported the reduction in the number of conditional uses listed in the ordinance. But said she thought the Zoning Rewrite Committee had decided to make Kennel and Veterinary Clinics conditional uses rather than permitted uses in the R and RC zones because of their possible noise problems, and asked the Planning Board to correct this as agreed upon.

Board members noted this was an oversight on their part.

She also recommended that for the Rural District, other noisy activities/uses, such as temporary sawmills and timber harvesting, be made conditional uses.

Chair Watt noted the amount of time that temporary sawmills and timber harvesting operated was relatively short. Neil Wylie said temporary was defined as 90 days, and Chair Watt said this was comparable to the time it took to build a house.

Ms. Olshansky said that because Conditional Use Permit proposals were often controversial, she supported the tougher bar of a two-thirds (2/3) vote of the voting members present. She said this was important because on a day when there was barely

a quorum of the Planning Board (four members) an important conditional use decision could be determined by only three favorable votes. She also noted that these three votes could conceivably come from new, easily threatened members of the Planning Board, and recommended that the Ordinance should state that a Conditional Use Permit required five votes for approval.

Ms. Olshansky said she still supported Town Council involvement in overseeing the entire Conditional Use Permit process, as a second set of eyes. She said she would like to see Council authority actually extended beyond just fiscal oversight, because she believed it was important that the elected body of the Town review any issues the Planning Board had neglected to thoroughly look at.

Ms. Olshansky spoke last about streetscape buffers and their importance as the Town continued to be developed. She noted that the new ordinance required a 100-foot vegetative buffer between any existing road and any new subdivision. She said that in her experience, seeing the Allen Farm subdivision developed with 100-foot buffers, this distance would not be sufficient to fully protect rural character, because the houses could still be seen beyond the buffer. She recommended a 200-foot buffer, as included in the Hollis Zoning Ordinance, and said it would better protect Durham's rural character as the Town was further developed. She also noted a typo on page 135 regarding the reduction of the buffer to 25 ft., noting that was appropriate with the original 30 foot buffer, so the reduction should be 5 feet less than the final buffer distance included in the Ordinance.

Jay Gooze, 9 Meadow Road, noted that including the 3 unrelated persons provision for the R zoning district probably wouldn't pass. He explained that he had been co-chair of the committee involved with developing the 3 unrelated persons ordinance, and that discussion with Attorney Charlie Tucker, at that time, indicated there needed to be some residential districts in Town that did not have this provision.

Chair Watt asked if there were any legal opinions or documents reflecting these discussions. Mr. Gooze said this was expressed verbally within the committee.

Councilor Harris asked if this related to all zones in the Town, or just all residential zones. She said that because 3 unrelated people were allowed in some of the other zones, this might be sufficient. There was additional discussion on this.

Ted McNitt, 101 Durham Point Road, thanked the Board for the work and the care that had been taken in revising the Zoning Ordinance. He said the results were spectacular, and the Town owed the Board an enormous debt of gratitude.

He said he has reservations about the temporary sawmill comment, as a practicing tree farmer. He said forest management was one of the best uses for open space, and that although it was generally preferable to take logs away to a sawmill at distant site, road systems did not always allow this. He said the Planning Board had wisely allowed temporary sawmills so there would be an economic way of getting the wood out. He

said he would hesitate to put any more restrictions on them than had already been put into the ordinance.

Mr. McNitt said his second point was concerning expansion of the basic underlying minimum lot size for the Rural and Residential Coastal District, which would cause an enormous increase in the number of nonconforming lots. He noted that the procedures for dealing with nonconforming lots had been simplified, and he heartily endorsed them, saying this would ease the strain on the ZBA.

Mr. McNitt said that he would like to add another exemption for conservation subdivisions on page 130 of the Zoning Ordinance. He recommended an exemption for a situation where a landowner wanted to divide his property into two lots, one of which was to be given or sold to a qualified conservation agency. He said the exemption wording should be included in such a way where 7 years previous experience did not count, or did not in any way restrict the property for 7 years if the owner had a reason to make another single lot subdivision in the future. He said the Town's track record indicated that the best land conservation came from organizations like the Nature Conservancy, so if the Town made it difficult for landowners and the Town, it was passing up a good bet. He said if there was a gift of land to a qualified conservation agency, the Town should not put shackles on it before or afterward.

Chair Watt summarized that Mr. McNitt wanted to exempt 2 lot subdivisions undertaken for the express purpose of land conservation. Mr. McNitt said he couldn't imagine any other purpose for the Town to make such an exemption.

Mr. McNitt spoke about language on p. 132, which said that in no case would the Town want to consider a minimum conservation subdivision lot of less than 10,000 sq. feet. He said he was not a great one for increasing minimum lot sizes, but in some cases someone would be trying to put a well, a septic system, a house, and a backup septic location on a lot 100 ft by 100 ft. He said he knew Durham soils reasonably well, and the Town would do well to make the minimum lot size larger.

Mr. McNitt said he would like to go clearly on record that although he very much favored the principle of conservation subdivision because it offered benefits noted in the ordinance as well as other benefits, he questioned the wisdom of expanding the area for a minimum lot from 120,000 to 150,000 sq. ft., which was a 25% increase. He said he flew over Durham and other communities often, and the Town's zoning had provided an open community, a wooded community, which was ahead of 95% of the Towns in the United States. He said he recognized there could be a hidden agenda here – fewer houses, fewer school children, lower taxes. He said the 120,000 sq. ft. minimum lot size had worked remarkably well for 40 years, and decreasing density by increasing the lot size was somewhat questionable.

Concerning soil based density requirements, Mr. McNitt said that in the process of what the Board was doing, it had probably reduced the number of potential lots on some properties to half, or less than half of what they had been before, based on the combination of soil based lots and conservation subdivision. He said he thought the

soils basis was important, in terms of setting land aside for agriculture, and was doubly important on the actual reduced size conservation lots themselves, but using it as a tool to cut down density on the great mass of lots in the subdivision was expensive, and was a burden on the landowner and the town.

Steve Roberts said that because the houses could be put on smaller pieces of land, the developer could more evenly maximize dividing the minimum acreage into the total acreage, and would get many more houses per lot than what had been in the previous zoning ordinance.

Mr. McNitt said he understood the reasons this was what was done. He said the conservation subdivision was great, and also said that in its place, soil based lot densities were great, especially on small lots, although much less so on big areas, when they were expensive, and didn't give any benefit. He said he hoped a high intensity soil survey wouldn't have to be done in gross on a land parcel before it was decided where to put a conservation subdivision.

Jim Campbell clarified the comment on 10,000 sq. foot lots in a conservation subdivision. He said that the septic systems didn't necessarily have to be on that 10,000 sq. feet lot, and could be put within the common open space.

Mr. McNitt again thanked the Board for the great job it had done.

Jim Campbell thanked Mr. McNitt as well, noting he had been on the Zoning Rewrite Committee.

Jay Gooze referred to p. 56, concerning non-conforming lots, and asked if there was anything that restricted the minimum size of a vacant non-conforming lot. He said the way it now read, the owner would only have to meet the setback and height requirements. He asked if there was not a minimum lot size, whether there perhaps should be.

There was discussion about this, and it was agreed that there could turn out to be a very small lot with very small house that met all of the requirements.

Mark Eyerman said this observation was correct, and that the only limitation of putting a single-family home on any single nonconforming lot of record was the ability to meet setback requirements, and provide appropriate sewage disposal. He said he was aware of communities that had absolute minimum lot sizes or other dimensional requirements for these kinds of lots. Mr. Eyerman said it was a judgment call as to whether there were a significant number of vacant nonconforming lots in Durham, and what an appropriate or inappropriate use was for them. He said the one question that could raise its head was when someone had a 10,000 sq. foot vacant lot created in good faith 40 years ago and the Town said they couldn't build on it.

Zoning and Code Enforcement Officer Tom Johnson noted an example in Town where there were several vacant lots, which were individual lots of record and were owned by one person, and where duplexes could be put on each vacant lot.

Mr. Eyerman explained that Section 175-29 A of the Zoning Ordinance only applied to freestanding lots of record, so this situation was not covered because one person owned all of the vacant lots.

Neil Wylie asked if it was known or could be determined how many vacant, nonconforming lots there were in Town.

Mr. Gooze said perhaps a minimum lot size for a vacant lot should be included in the Zoning Ordinance.

Mr. Eyerman said this was a legitimate concern, and said that with increases in land prices, there was pressure to develop odd kinds of lots. He noted that some communities did therefore have minimum lot size requirements.

Councilor Harris noted Durham had quite a bit of water frontage, and that the ZBA had sometimes had to compromise water frontage setbacks to accommodate a house with a very small building envelope.

Jim Campbell noted that even if a lot size limit or other limit were put on a property, a property owner could still apply for a variance, and it might even be granted. He said this provision would simply prevent Mr. Johnson from issuing a permit.

Councilor Grant noted that the development of wells should be included under Section 175-29 A-3.

Beth Olshansky noted that Durham was rapidly losing land, and had gone to conservation subdivisions in an effort to conserve land, which had the result of doubling density in the R and RC, and also making RA and RB tighter (houses closer together, not more houses). She said one could also justify increasing the minimum lot size in the R and RC to give a little more breadth to what was now going to be dense, tight neighborhoods. She also noted that the Master Plan called for a minimum of 3-acre lot sizes in the R and RC zones. She also said it called for soils based zoning, and reminded the public and Planning Board that the chair of the Land Development Committee of the Master Plan had worked on devising the soil based density calculations. She said the useable area requirements were developed with the full advice and support of this person, who was a prominent developer in the area.

Hillary Scott, 20 Davis Avenue. Chair Watt read a letter from Ms. Scott indicating that she strongly supported resource based density regulations for determining useable area of a lot for a conservation subdivision. She suggested changing the minimum useable area in the RA or from 20-25,000 sq. feet and in the RB zone from 45-50,000 sq. feet, noting that these changes would be in line with changes proposed in the R and RC zone, and would preserve Durham's overall character. She also asked the Planning Board to reconsider the proposal that conditional use permits would be approved only by the

Planning Board, and not also by the Town Council. She said it was important that the more controversial proposals would be reviewed by both boards. Ms. Scott proposed that the Town Council have the authority to review the entire application for a conditional use permit, and not just the fiscal impact. She also urged the Board to require that 2/3 of the entire planning board would be required for approval of a conditional use permit, or specially require 5 votes to approve a conditional use permit, instead of requiring that 2/3 of members present approve the permit. She said this recommendation was especially crucial for some of the more controversial proposals. Concerning streetscape buffers, she asked the Planning Board to require a 200-foot vegetative buffer between any existing road and any new subdivision.

There was discussion about the Table of Land Uses. Mr. Eyerman noted that revisions made by the Planning Board as of November 7, 2003 had mistakenly not been included in the final version. He went over land uses that were incorrect in the Table, and it was agreed that an updated, corrected version would replace this incorrect Table. Chair Watt went through the Table of Land Uses and indicated the correct information that should be in the Table.

Rachel Rouillard said it was great to hear Mr. McNitt's comment about temporary sawmills. She noted that although forested acreage in New Hampshire was not necessarily shrinking, the greatest threat to forestry was fragmentation. She said this meant that smaller lots would be depended on more and more to produce timber, and noted forestry was an important part of the State's history and economy. She said it was important to be thinking ahead for property owners, so they could have working forests. Ms. Rouillard said comments on both side were very sensitive to the issues involved, and also said this was a subject they all would be hearing a lot more about.

Councilor Grant MOVED to close the Public Hearing. The motion was SECONDED by Neil Wylie.

Councilor Grant asked whether the Board was closing discussion on the zoning map that evening, and asked if any changes could be made to it.

Chair Watt said he believed they should get a legal opinion on this.

Mr. Eyerman said that notwithstanding the Master Plan conformance issue, the zoning map was part of the ordinance. He said a hearing had been held on the ordinance which included the map, the Board had heard public comments, and could decide in its deliberations to change the ordinance. He said that proposals to change the map must be considered along with other comments in terms of looking at the ordinance in the context of the Master Plan.

Mr. Eyerman said he recalled that the Planning Board had made an adjustment to the map from the Master Plan concerning the Park Court property, based on public comment, where it was noted that the revised map still met the intent of the Master Plan.

The motion to close the Public Hearing FAILED.

Bill Skinner, 6 Bucks Hill Road, said he was late to the process and asked for clarification on whether the map had been finalized. He said his neighbors would be interested in what he had learned at the meeting that evening concerning the zoning map as it related to the Canney Farms area.

Chair Watt said the map was not finalized, and that based on public comments, the Board may or may not revise the Zoning Ordinance, including the map. He said it was not clear whether the Board would hold another public hearing, but said the Town Council would hold a hearing on it.

Steve Roberts said the Board would have the opportunity to modify the draft based on comments, so the Canney Farms group should write to the Planning Board and outline what their issues were.

Mr. Wylie asked Mr. Skinner if he had an opinion about the map.

Mr. Skinner said there was an easement that went into the OR area, and that he and others were concerned there would no longer be a cul-de-sac there, because water and sewer lines would come in to supply a future office park.

Jess Gangwer gave some background information on this situation. Chair Watt said there was not a simple answer to the question, and asked Mr. Skinner to put his concerns in writing.

Stewart Smith, President of the Canney Farms Homeowners Association, explained that people in the neighborhood were divided about the zoning map and the change to the OR District. He said there was concern about possible impacts to the neighborhood, and they didn't fully understand the rationale for the change, since the surrounding area was residential. He noted that there were houses that abutted the Gangwer property, and most of those owners were against the redistricting. He said it was true that any water and sewer access to the land would have to go across Canney Farm open land and would need approval from their Board and association, and said that they had been hesitant to allow this in the past because they had never gotten complete answers as to what the impacts would be.

Mr. Smith said he would ask the abutters to write letters to the Board, and also said he would canvas his Board and write a letter expressing their views. He said he hoped the Planning Board would reconsider the re-zoning.

Jay Gooze noted that wording on page 66 should say that Areas within the various districts "may be located", instead of "are" located

Jim Campbell said Janet Sandborn had contacted him expressing concern about the zoning map involving a change from RB to OR off Mast Road. He said she was opposed to the change, and also said he discussed the Master Plan with her. Mr. Campbell said the zoning map issue was a policy decision that the Board would have to make when it passed the final version of the Zoning Ordinance on to the Town Council.

Amanda Merrill asked if there had been a Master Plan subcommittee that had focused specifically on the map. Jim Campbell said the Land Development Regulations subcommittee, as well as the Tax Stabilization subcommittee, had worked on it.

Mr. Wylie noted that many other people reviewed the recommendations of the subcommittees before the zoning map was adopted.

Councilor Grant asked Mr. Wylie if he recalled whether there had been specific discussion of the Gangwer area, and other areas now in the OR zone that also seemed suspect. Councilor Grant pointed out these additional areas on the zoning map, and said it was not clear what the basis was for extending the OR district in such a way that it abutted a residential district in Madbury.

Mr. Wylie said he did not remember specific discussion on this area.

Councilor Grant MOVED to close the Public Hearing. The motion was SECONDED by Neil Wylie, and PASSED unanimously.

Mr. Wylie said he appreciated the public comments on the Conditional Use Permit and whether the Town Council should be involved. He said that as a practical matter, he was hard pressed to think of a time when the Town Council had overturned a Conditional Use Permit sent to them as approved by the Planning Board, although there had been difficult discussions on some applications.

Other Board members and Mr. Campbell agreed with this.

Mr. Roberts said the State allowed conditional uses as a way to give the Planning Board the authority to protect landowners from abutting uses that could be corrosive.

Councilor Grant noted that Conditional Use Permits granted uses which were not allowed without that permit, and therefore was an exceptional action, and didn't just happen by asking for one. He said there were therefore those who said there should be a super majority of the Board in making the decision as to whether to grant a permit. Councilor Grant said he supported Ms. Olshansky's recommendation that a specific number of Planning Board members must approve the conditional use permit.

V. Draft Revisions to the Subdivision Regulations to Implement Conservation Subdivisions - continued from Dec 17th

Neil Wylie MOVED to open the Public Hearing. The motion was SECONDED by Amanda Merrill, and PASSED unanimously.

Chair Watt noted that no one wished to speak on the draft revisions to the Subdivision Regulations.

Councilor Grant Moved to close the Public Hearing. The motion was SECONDED by Stephen Roberts to close hear PASSED unanimously

There was discussion on a handout summarizing legislation tracking of bills from the last legislative session, which was done by the Energy and Planning Office.

Mark Eyerman noted that the Board had closed the Public Hearings on both the Revised Zoning Ordinance and Subdivision Regulations, and asked Board members how they wished to proceed. He noted comments had been received that evening, some of which were substantive.

Jim Campbell noted that the Board was supposed to start discussing the next section of the Zoning Ordinance at the next Zoning Rewrite meeting.

There was discussion on whether another public hearing would be needed if the Zoning Ordinance needed to be further amended. Mr. Wylie said a hearing could be held on strictly the changes that were made.

Mr. Eyerman said proposed language responding to several comments that evening could be ready by January 21st, but emphasized that the Zoning Map issue needed to be resolved one way or the other. He said the Town Attorney should be involved in that discussion.

Councilor Grant said besides the map, the Board was not looking at significant additional changes to the Ordinance.

Kevin Webb noted the importance of making the corrections to the Table of Land Uses.

It was agreed that the final public hearing, on just the additional changes to the Zoning Ordinance, would be held at a special Planning Board meeting on February 4th, and the Board could then make a motion to pass it on to the Town Council.

Mr. Wylie noted that the Board might not pass that motion on Feb. 4th, but at least could potentially do so.

It was clarified that there were a few administrative recommendations that still needed to be incorporated into the Subdivision Regulations. Mr. Campbell said he was not as concerned about these because they would not be adopted until after the Revised Zoning Ordinance was adopted.

It was agreed that both documents to be adopted at the same time, and there was discussion as to how best to make this happen.

Chair Watt noted that there were a few policy issues that still needed to be decided such as could the Board still change the map, and if so, did it want to modify the Gangwer property.

There was discussion on whether the Board could still change the map. It was agreed that the biggest concern was that allowing any changes could be a “slippery slope”. Kevin Webb noted that a potential outlet for property owners negatively affected by the

map was that 20 citizens could file a protest of proposed zoning ordinance changes, and the Town Council could then make the decision. Chair Watt said the ordinance could also be modified by petition.

Mr. Eyerman asked when the Board wanted to finalize changes based on comments to both documents.

Mr. Wylie said that at this point the meshing of the documents also had to be finalized, and recommended that at the next Zoning Rewrite meeting, the final changes to each, the way they fit together, and final questions regarding the map, should all be addressed.

Councilor Grant said he agreed with Mr. Wylie but suggested that in anticipation of the January 21st meeting, the changes should be made by Mr. Eyerman and Mr. Campbell, and the Board could decide on them at the meeting.

Board members agreed that this was the way to proceed.

Councilor Grant moved to adjourn the meeting. The motion was SECONDED by Stephen Roberts and PASSED unanimously.

VI. Adjournment

The meeting **ADJOURNED** at 9:15 pm

Amanda Merrill, Secretary