

*These minutes were approved at the July 28, 2004 meeting.*

**DURHAM PLANNING BOARD MINUTES  
WEDNESDAY, JUNE 23, 2004  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 PM**

**MEMBERS PRESENT:** Stephen Roberts; Arthur Grant; Amanda Merrill; Nick Isaak; Richard Ozenich; Richard Kelley; Karen Bishop

**MEMBERS ABSENT:** Annmarie Harris; Kevin Webb

**OTHERS PRESENT:** Jim Campbell, Planner; Victoria Parmele, Minute Taker; Interested members of the public

**I. Call to Order**

Chair Roberts introduced Karen Bishop, a new alternate Planning Board member, and said she would be substituting for Kevin Webb as a voting member in his absence.

**II. Approval of Agenda**

*Amanda Merrill MOVED to approve the Agenda as submitted. The motion was SECONDED by Richard Kelley, and PASSED unanimously.*

**III. Report of the Planner**

- Jim Campbell noted that he had provided the Board with his notes from a recent meeting with Doug Bencks, UNH Campus Planner and Architect.
- Mr. Campbell said he had given a presentation to NH Department of Transportation on the State Planning and Research Grant he had submitted in April. He reminded the Board that the grant was for the Northwest & Southeast Transportation Linkage and Improvement Study.
- Mr. Campbell said he and Bob Levesque had reviewed Request For Qualifications (RFQ) for the Professional Landscape Architecture/Civil and Traffic Engineering Design Services for the Main Street enhancement and reconstruction project from Pettee Brook Lane to the RR tracks. He said the RFQ had been sent out, and that a solicitation committee would pick the firm that would be doing the work.
- Mr. Campbell said the Zoning Rewrite Committee would meet the following week, and would be finishing up its initial review of the definitions, the table of dimensional requirements, and the Zoning map for the nonresidential districts, and also would do an initial review of the Wetlands Conservation Overlay as well as the Historic District Overlay.
- Mr. Campbell informed Board members that the findings of the recently completed water supply study had been presented to the Town Council on Monday, and said he would get copies of the report to Board members.

Chair Roberts stated that Nick Isaak would serve as Chair at the next meeting Board meeting, since he would be on vacation.

Amanda Merrill noted that someone had recently asked her about the Mill Pond dredging project. She noted Mr. Campbell's description of his meeting with Doug Bencks, and asked what the implications of UNH's apparent decision not to use the dredging material would be on the project. Mr. Campbell said the engineering group that was supposed to do the work was still deployed, so the Town was waiting for them to return. But he said UNH's decision had put a kink into the project, in terms of where the dredged material would go. There was discussion as to whether any other alternative sites had previously been talked about.

**IV. Public Hearing on a Site Plan Application** submitted by Omnipoint Holdings Inc., East Providence, Rhode Island. The application is for a driveway to service a Personal Service Wireless Facility in the Town of Newmarket. The property is shown on Tax Map 18, Lot 11-6, located at 25 Simon's Lane, and is within the Rural Zoning District.

Chair Roberts said it was hoped there could be a dialogue between the Board, members of the public and Omnipoint as part of the public hearing process. He said Omnipoint had been receptive to this process at a previous cell tower application.

***Councilor Grant MOVED to open the Public Hearing. The motion was SECONDED by Nick Isaak, and PASSED unanimously.***

Chair Roberts asked if there was anyone who wished to speak in favor of the application. There was no response. He then asked if there was anyone who wished to speak against the application.

**Joe Pagnotta, 2 Simons Lane** said he had a prepared statement, and provided copies of it to Board members. He then read from the statement. Key points of the document included the following:

Mr. Pagnotta said the Durham Zoning Ordinance had been smartly crafted to protect its residents with regard to free-standing cell towers. He quoted from Article 18, Section 175-179, which spoke about ensuring compatibility with the visual and environmental features of the Town.

Mr. Pagnotta said he was vehemently opposed to this cell tower project, on many levels. He said the community needed to know that the scope of the project could not be underestimated. He said that contrary to what Omnipoint had said, the application was still in the preliminary stage in Newmarket, yet they were making it sound to the Town of Durham as if the approval was a forgone conclusion. He said he would not be surprised if Omnipoint was using the same tactics in Newmarket.

Mr. Pagnotta said the residents of the community needed to know that the project would include, but not be limited to, a 180 foot metal tower, barbed wire fencing, bricks and concrete, the use of power generators, and tunneled trenches for wiring. He said the project would also include a service road for use by utility trucks, emergency, police and fire vehicles, all planned within a residential neighborhood in Durham.

Mr. Pagnotta quoted from the Zoning Ordinance, Article 18, Section 175, 104, which stated that "personal wireless facilities shall not be located within open space areas that

are visible from public roads, recreation areas or abutting properties.” He said he believed the Town had the opportunity to take the lead on this issue, by rejecting construction of the access road, and staying true to its principles and its residents, in order to give the residents the protection the Town’s ordinances provided.

**Marc Bernier, 22 Simons Lane**, said he would like to bring to light some discrepancies between the discussion at the Newmarket meetings on this project and the previous Durham Planning Board meeting on this application. He said he was a biology teacher, and had done research on the possible impacts of this kind of construction on wetland habitat. He said the access road would cut the entire wetland in half, and said he was concerned about the habitat fragmentation that resulted from this kind of construction, noting that studies worldwide indicated that while some species could pass over roadways, they would not do so. He provided a detailed description of the various negative impacts resulting from habitat fragmentation.

Mr. Bernier said that although creating edge habitat had once been considered to be beneficial for various species, it was now considered one of the most harmful aspects of habitat fragmentation. He said the edge effect was a zone that ranged from 50-500 feet, depending on the species, and essentially was new habitat that was not suited to the present inhabitants of the ecosystem. He noted species presently in the area where the proposed access road would go, including Great Blue Herons flying over at the height of the proposed cell tower.

He also described how construction of the access road could change the hydrology of the area in various ways, noting that the culvert would not abate these changes, and also said there were indications that the wetland could be filled in over time as a result of these changes. He quoted from additional web sites that discussed these kinds of negative impacts.

Mr. Bernier also noted that the applicant had suggested that the website, Towerkill.org, had indicated that towers under 200 ft. were not considered to be harmful. He said he had gone to that site, and what the site actually indicated was that no long-term studies of towers 200-500 ft had been done, but short-term studies had indicated high levels of bird migration kills, and no studies had been done of towers below 200 ft. He noted that the Fish and Wildlife site indicated that 230 different bird species had been killed by cell towers.

Mr. Bernier said that Attorney Springer had indicated at the Newmarket meeting that this access road was not necessary for this project, and if not approved by Durham, the tower would go up anyway, but then had said at the Durham meeting that they needed the access. He said Attorney Springer had also said in Newmarket that an alternative access would have a greater impact on wetlands, but also said no studies had been done on this.

Mr. Bernier also said the width of the roadway was still in question, and that he had concerns that a roadway like this would need to be maintained during the winter if an emergency generator was needed at the site because of a power outage, so that plowing, and salting or chemicals would be needed to keep it open. He also said ATV’s would probably make use of this roadway, which would increase the number of accidents in

the area as well as the intrusion on the wetland, and said if the road wasn't well maintained, emergency vehicles wouldn't be able to respond properly to accidents there. He said if the road were maintained, traffic would be likely to increase.

Mr. Bernier stated that the federal Fish and Wildlife Service website indicated that if at all possible, new cell towers should be sited at existing antenna farms, and should not be sited in or near wetlands or other known bird concentration areas, or in known flyways, or in habitat of threatened or endangered species, or in areas having frequent incidence of fog. He stated that the points he had made should be strongly considered by the community.

**Chris Mueller, 6 Simons Lane**, asked Omnipoint if they had applied for a wetlands permit, and also asked what the status was with the State Historical Preservation Office (SHPO).

Attorney Springer said the applicant had not yet applied for a wetlands permit, and agreed that would be a condition of approval. Concerning SHPO, he said they would be dealing with this, but would be doing so with the Town of Newmarket, since this issue had nothing to do with the access road. Attorney Springer said many of Mr. Bernier's comments had to do with tower issues, which with all due respect, were not on the table in Durham, and were being addressed with the Town of Newmarket.

Attorney Springer noted that Mr. Bernier had accused the applicant of duplicity, and said he did not say the tower would go up anyway, but said something like this was said by someone at a public hearing in Newmarket. He provided clarification of what he had actually said.

Attorney Springer said the applicant stood by what had been said about the effect of the cell tower on birds, but noted again that this was an issue that was not relevant to the application for the access road. He said Mr. Pagnotta had said the applicant would have everyone believe the approval was a foregone conclusion, but said that Omnipoint did not assume anything about one of these projects until the Board took its vote.

There was discussion about the fact that historical impacts needed to be considered as part of the NEPA (National Environmental Policy Act) process. There was also discussion about a letter that had been received from this office concerning the project. Omnipoint representatives said they had not received a copy of this letter, and would like one.

**Nancy Pagnotta, 2 Simons Lane**, said she had a question about two conditions in RSA 674:21. She said the first was that no alternative location outside wetlands, or which had less detrimental effect on the wetlands, was feasible. She said Omnipoint had said there were 20-40 other locations, and that they had not shared those locations.

Mrs. Pagnotta said the second condition she had a question about was that economic advantage should not be the sole reason for the proposed location, and said she believed that if Durham was looking at granting this access way, it was doing so for economic reasons. She said that if the Board did not grant this access road, the applicant would not build this tower.

**Laura Ritchie, 16 Simons Lane**, said she had spoken with an environmental lawyer, and had learned that residents in the immediate area, as members of the public, had the right to know about other sites under consideration for the cell tower facility, and why they were rejected. She said the lawyer said the burden of proof was on the applicant.

Attorney Springer said the cell tower in that location was a permitted use on that site in Newmarket, and also noted again with all due respect that this was not the purview of the Durham Planning Board. He also said the proposed site worked from an RF perspective, filling a significant gap in cell coverage, which was their mandate. He said the applicant had looked at other sites, and said these other sites, and how the applicant chose the present site, would be discussed in Newmarket again. He said the applicant believed it met all the criteria in RSA 674:21, and said it believed it met all the criteria. He said this was the most direct access way, and would have the least impact on the wetlands.

Chair Roberts asked if the answer was yes, that Omnipoint had explored other sites in Newmarket and Durham. Attorney Springer said they had explored alternative sites at some length in Newmarket, but had not explored alternative sites in Durham.

Mrs. Pagnotta said she was at the meeting in Newmarket, and said they had not been told where the other sites that had been considered were located.

Attorney Springer said there had been discussion about alternative sites at some of the previous Newmarket meetings, and said they would also deal with this at the next meeting.

Chair Roberts asked Attorney Springer if his position was that Omnipoint didn't see it was in the interest of the public to provide a summary of alternative sites that were considered. Attorney Springer said this was being dealt with in Newmarket.

Chair Roberts noted that at the hearings for Omnipoint's previous cell tower application in Durham, the applicant had showed a series of coverage radiuses, and said he would think that documentation would be helpful. Attorney Springer said that was what they were providing in Newmarket, which was the appropriate place to do so.

Chair Roberts asked whether, given the fact that the neighbors would be impacted by the tower, Omnipoint was prepared to provide this information to them. Attorney Springer said it was his understanding they had been noticed for the hearings in Newmarket. He said he was not trying to be adversarial, but said the focus in Durham should be on the access issue.

Chair Roberts asked if members of the public wished to bring up any additional issues.

**Alyson Mueller, 6 Simons Lane**, said the crux of the issue was that they were in a gray area, where Durham was providing access to a site located in another town that would impact their neighborhood. She said she would respectfully request that the Board consider this. She noted she had a document which bulleted 24 areas of concern, from environmental, aesthetic, historic, height and safety, property value, and health

perspectives. She presented copies of this document to Board members, and spoke about several of the concerns listed there.

Mrs. Mueller said the proposed tower was inconsistent with Durham's preservation of cultural, wetlands, historic and scenic resources. She said Omnipoint had yet to apply and receive a wetland permit, so it was too soon to approve their application in Durham. She said the poles for the cell facility were not in scale with neighborhood, and said it was the duty of the Town to maintain the visual character of its neighborhoods. She said that Durham residents deserved the protection provided in the Town's ordinances, and asked that the Board consider those ordinances that related to the neighborhood.

Mrs. Mueller said the balloon test photos had not been taken from the Durham side to determine the possible impact on historic sites. She said the letter from SHPO said there were historic sites that would be impacted, in both Durham and Newmarket, and also said an historic preservation consultant had identified additional properties in Durham that might be eligible for the National Register.

Mrs. Mueller spoke about concerns about the height and safety of the tower, noting that the fall zone for the tower crossed over onto land in Durham. She said she was concerned that the cell tower structure would be inviting to kids, and also said she was concerned about the safety of the structure on windy days, noting it got quite windy in that area.

**Mr. Pagnotta** said he wanted to be sure that the communication between Durham and Newmarket was at the highest level.

Mr. Campbell said he had had 2-3 discussions with Newmarket's Planner, Clay Mitchell, but had not talked with the Planning Board concerning the project. Chair Roberts asked Mr. Campbell if he was periodically updated on the status of the neighborhood concerning the project. Mr. Campbell said he was, and the most recent correspondence had to do with the mishap about the abutters list. He said this was straightened out, and also said he and Mr. Mitchell had recently discussed an affidavit from Omnipoint to Newmarket concerning noise issues.

**Mr. Bernier** said he had not meant to imply that Omnipoint was being duplicitous, and said the misunderstanding could have arisen in part because abutters were not at earlier meetings. He said it would have been better if they had been notified up front.

**Mrs. Mueller** said she had signatures from 47 Durham residents concerning the proposed project, and also said that if there had been more time, there probably would have been more.

**Ruth Abelman, 15 Simons Lane**, said she had some questions as to whether there were any restrictions in the deed for the Durham property, concerning land uses.

Attorney Springer said he didn't have a copy of the deed with him, but said that if the deed had had any problems, the project, with this property as part of it, would not have

gone any further. He said the last deed had been a tax deed, and said he would be shocked if anything in it precluded the driveway from being built.

Attorney Springer also said he stood by the notice that had been sent out for the Newmarket hearings, and said that everyone entitled to get a notice had received one. But he said he agreed with Mr. Bernier that there wouldn't have been as many problems if everyone had been at the meetings from day one. He said Newmarket had now re-noticed everyone, not just the legal abutters. He said that next month, Omnipoint would be doing their whole presentation again, in a slightly abbreviated form, including discussion of alternative sites.

Regarding Ms. Mueller's points concerning the SHPO letter, Attorney Springer said that under RSA 674:53, IV, the Durham Planning Board's sole concern was the access road issue, and not the tower issue.

In response to a question from Mrs. Pagnotta, Attorney Springer explained that the Newmarket and Durham lots had previously been one lot owned by Mr. Cheney, who sold it to someone else. He said that because the taxes had then not been paid on the property, each Town had taken back its portion of the parcel. He said the fact that it had been a Cheney property indicated to him that it was a parcel that could be developed.

Mrs. Pagnotta said it was her belief that Mr. Cheney gave up the property since it couldn't be built on because of the wetlands there. She said if it couldn't be built on by Mr. Cheney, it shouldn't be built on by Durham.

***Councilor Grant MOVED to close the public hearing. The motion was SECONDED by Nick Isaak, and PASSED unanimously.***

Councilor Grant said he had questions he would like to ask Omnipoint, and said he could do so that evening or at the next meeting.

There was discussion by Mr. Campbell and Board members as to how to proceed, and it was agreed that it made sense to do some deliberation that evening, and get some of the issues out on the table, while everyone was present.

Chair Roberts asked Mr. Campbell how much fact finding still needed to be done concerning the application. Mr. Campbell said Omnipoint had not yet received the State wetland permit, noting the Board historically had made this a condition of approval, and might or might not do so for this application.

Mr. Campbell noted the letter from the State Division of Historic Resources, and also noted a memorandum from the Town Engineer that would impact the application. He said this included a request for a 12 ft. width for the road instead of 10 ft, and clarification concerning the culverts.

Chair Roberts asked if legal counsel had identified any issues concerning the rights of the neighborhood concerning a tower that impacted it but was in another town. Mr. Campbell said the Town Attorney had referred him to the statute quoted by Attorney

Springer, and his advice was that Durham needed to look at the access road, but not the tower.

Councilor Grant said that having walked the property, he had seen it was a wet area, and said he was wondering if the Town's Wetlands Ordinance applied to the property in this instance, or was the Board strictly bound by the Wireless Facility ordinance. Mr. Campbell said that according to Article 175:61 in the Zoning Ordinance, the Board had to find that 4 conditions existed before granting the access way. He said the applicant would also have to go through NHDES concerning the wetlands, and also possibly the Conservation Commission. He said for the Board's review, it needed to focus on those 4 conditions.

Mr. Campbell said that concerning the condition of no alternative location, this did not refer to an off site use, and only related to the access drive and utilities. He also said that concerning the condition related to the question economic advantage, this only referred to the site for the road, and whether there was an economic reason why the road was proposed in this location and not another on the property.

Councilor Grant said the elevation appeared to be higher on the north side, but said the current access road was drawn dead center of the wetland area. He said he was not advocating putting the road in the upland area, noting it would mean the road would be closer to the abutters. There was discussion about this.

Councilor Grant said the Durham wireless facility ordinance stated that a ground-mounted facility shall not project 10 ft higher than the tree canopy within a 150 ft perimeter of the mount, but said that at the site walk, it looked like the facility would be higher than that. He asked if Newmarket had the same kind of restriction in its ordinance. Mr. Campbell said he didn't think Newmarket had that same provision.

Councilor Grant said abutters in Durham would be impacted by the facility, and that it was unfortunate if the Durham ordinance would prohibit a facility of this height but the Newmarket ordinance wouldn't.

Chair Roberts said he was concerned that the abutters within the radius of the tower wouldn't have any rights concerning this, and said there might need to be further discussion with the Town Attorney concerning this.

Mr. Kelley noted that Attorney Springer had said the Board's review was to be limited to the impact of the proposal in terms of the access road, but said it should be remembered that this was Durham's land, and it could be argued that this was the greatest impact that could occur to this parcel.

A member of the public said it was assumed that this access road was the only way into the site, and asked why that was. Chair Roberts said it was the only available parcel of land that offered a way into the site, noting the other parcels were held by private landowners.

Mr. Isaak said this appeared to be a chicken-egg scenario, and questioned why, until Newmarket made its decision, the Board should decide on the access road. Mr.



Campbell said Newmarket might be waiting on Durham to approve the access road before approving the cell tower project.

Mr. Isaak asked, if the Board put blinders on and simply considered the building of a road through the wetlands, whether that was something it would choose to do.

Mr. Kelley said he was unprepared to support approval of the application based upon conditional approval of a wetland permit. He also noted Attorney Springer had said Omnipoint needed to prove that no alternative location existed outside the wetland, or in an area that was less detrimental to the wetland, and said that had not been demonstrated to the Board. He said the applicant would have to do this as part of the NHDES permit process, and advised the Board to let them go through this process, because as part of this, they would have to look at avoiding wetland impacts, and mitigation, and said that something radically different than what was presently proposed could evolve. He said it was not good practice to grant an approval based on that condition.

Chair Roberts said he shared Mr. Kelley's concern, and said the Board was still in the information gathering phase. He said the Board had until August 13<sup>th</sup> to take action on this application, and said it needed to develop an action list based on the information presented so far, including comments received from the public. He said he would like to see more comment from legal counsel.

Chair Roberts also noted a letter from Town Engineer Bob Levesque concerning 4 issues: that the drive center line was at a considerable angle, and should be at an angle that was not less than 60 degrees; that the width of the road should be 12 ft; that the culvert information needed to be field verified, or it should be specifically noted that the invert elevation would not be below existing ground elevations; and that the 25 ft. easement should be delineated by meets and bounds.

Chair Roberts said the Board and Mr. Levesque would be trying to strike a middle ground between mitigation of a wetland crossing and provision of emergency access. He noted that the design included a permeable road surface, which showed some sensitivity to the site.

Councilor Grant asked if the Fire Chief had specified an absolute minimum of 10 ft. for the access road width.

Mr. Campbell said the Chief had in fact expressed concern about this, since that was the width of the fire trucks, from mirror to mirror.

Chair Roberts said there appeared to be no design details for the culverts.

**Dan Hamm, Design Consultant for T Mobile**, said after being at the site visit, he agreed the access could be straightened to address concerns by Public Works to minimize cuts into the wetlands. He said the culverts would be set so the hydrology would not change, and also said a width of 12 ft. for the road was acceptable to them. He said they had simply been trying to minimize wetland impacts with the shorter width.

There was additional discussion about the culverts, and about the configuration of the access road.

Chair Roberts noted no negative comments had been received from the Police Chief concerning the road.

Mr. Kelley said that at the last meeting on this application, he had had some concerns about the contributing area to the pipes, and if they were in the correct location. He said the site plan had two-foot contours with no spot elevations, and asked Mr. Hamm if he could provide some input on this. Mr. Hamm said it wasn't typical to provide the spot elevations, and also said this area was fairly flat, but said he could ask the surveyor to show them in the future.

Mr. Kelley asked how Mr. Hamm knew the culverts were placed in the right location, so that water would not be impounded on the north side of the road. He said this was not clear on the plan, and said it appeared that the surveyor had not provided adequate information on this. Mr. Hamm said that based on the contours, it seemed that the water flowed north to south. He provided additional information on this, and said that after looking at the location again, he recommended building the road so as to stay within the current elevation on either side of the roadway.

Mr. Kelley also spoke about details on the site plan regarding the conduit and culverts, and said it was not clear what sort of separation distance would be specified between the bottom of the pipe and the top of the concrete encased duct bank.

Mr. Hamm said it would be about 6 inches, with enough gravel bedding so the pipe would not be resting directly on the concrete.

Mr. Kelley asked if the applicant planned to have the pipe encased in concrete for the whole length of the conduit, or just as shown in the detail, directly under the pipe. Mr. Hamm said it would be just as shown in the detail, and said this would withstand the load of a truck.

Councilor Grant asked how high the road would rise above the ground they were standing on at the site walk. Mr. Hamm said it would rise about 3 ft. at the culvert, and would rise about 2-3 ft above the wetland.

Chair Roberts said the sections shown on the plan did not show a slope. There was discussion about what the slope should be to minimize impacts.

Mr. Isaak asked whether the culvert configuration was sufficient to allow adequate water to pass through, and there was discussion about this.

Chair Roberts asked if the construction standards were in keeping with NHDOT driveway standards. Mr. Hamm said he believed they were.

Mr. Kelley said a lot of the details were not reflective of what was being proposed at the present time. He said the culvert detail did not show twin culverts, and said if they

were installed adjacent to one another, it was unlikely there would be proper compaction between the two pipes. He said there should be a separation between them. He also said it was not clear where the typical section of the access road was, and provide additional comments on the plans, stating that he did not believe they were finalized.

Mr. Kelley said he would expect that the twin 15 ft. culverts would be suitable to convey the water that would be received, but said the contribution area had not been shown on the plans and a drainage report had not been submitted, so the Board didn't know if the culverts would be able to handle the flow at peak times.

Chair Roberts asked the applicants if they were planning to submit corrected plans to show the detail Mr. Kelley had asked about. Mr. Hamm said they could do this.

Chair Roberts said the applicant would need to revise their plans to provide this information. He also noted again that the Board would need more information on the legal ramifications of what it was allowed to decide on, given the closeness of the neighborhood to the tower. He also said that a report from the Conservation Commission would be coming in. He noted that members of the Commission were in the audience, and asked if they had anything to add.

Beryl Harper of the Conservation Commission said this application would be on the agenda for its July 9<sup>th</sup> meeting.

Ms. Couch asked if Omnipoint representatives could attend that meeting, and Ms. Harper said that they could. It was agreed that the most recent plans from Omnipoint would be provided to the Commission.

Councilor Grant asked that Mr. Campbell review the current deed to be sure there were no restrictions on it.

Ms. Merrill noted the NH Soils letter dated April 15<sup>th</sup> but was not received in the Planning Office until June 23, 2004, and asked if something additional had been received from them. Mr. Campbell said nothing additional had been received yet.

Chair Roberts said it was not clear how deep the excavation into the wetland would need to be for the culvert, and said the Conservation Commission would most likely like to get information on this. He said it was hard to tell from being in the field.

Ms. Bishop asked what the mechanism was for making sure there was a good working relationship between Durham and Newmarket on this issue. There was discussion about this.

Mr. Kelley said that the Board had heard a lot of assumptions that evening concerning the site plan, and asked that the applicant verify this information.

Chair Roberts said the Board needed supplemental materials, corrected drawings, and additional measurements before they would be ready to deliberate on the application.

***Richard Kelley MOVED to postpone deliberation on the application pending receipt of the additional materials. The motion was SECONDED by Councilor Grant, and PASSED unanimously.***

The Board recessed for 10 minutes.

#### **V. Town Council Feedback on Ordinance Revisions**

Chair Roberts asked Councilor Grant to update the Board on the process by which it was looking at the Council's feedback on the Zoning Ordinance Revisions.

Councilor Grant said what he had put together was based on what he found in the minutes of the Council meetings as well as the two public hearings the Council held. He said a lot of material was covered in those meetings, and said he was not certain he had covered everything in that material. He said he also used the punch list developed by two Council members. He said he would like the Board and possibly Mr. Eyerman and Mr. Campbell to work through the document he had developed.

Chair Roberts noted that the Council hearings had contained some deep agonizing about the Ordinance, and said Councilor Grant's review didn't appear to reflect this.

Councilor Grant said that was correct. He said that 2-3 Council members had seriously questioned the direction in which the whole Ordinance was moving, but said this seemed to dissipate when Councilors went through the detail of the Ordinance. He said he had addressed those things that Councilor had clearly said were issues.

Councilor Grant said his recollection was that both of the hearings were dominated by concerns about soils classifications, and the use of those criteria to restrict development on a piece of property. He said his response to that was addressed in the cover letter to the Council where it was noted that a buildout analysis was planned for the summer-fall of this year.

There was discussion about this. Chair Roberts said the proposed work seemed to be at a reasonable cost for the value that would be provided.

Mr. Kelley asked if the Strafford Regional Planning Commission had described the methodology by which they would do the buildout analysis. Chair Roberts said the proposal described the method. He also said the Commission had noted that the new analysis would be considerably more complex than the previous buildout analysis done in 2000. He said the Commission appeared to understand how rugged this analysis would be to accomplish, because of the soils criteria.

Mr. Kelley asked if anyone had looked at the proposal to see if the results would be open to criticism. Chair Roberts said he felt the Commission was providing value for the cost, and said the Town could not afford the ultimate plan.

Mr. Kelley said he didn't doubt their capability, but said if the Board brought the plan to the Council it should be able to stand on its own. He said he didn't want to see the Council and the public poke holes in it.

Chair Roberts noted that the Lee Plan was also done by the Planning Commission, and that the plan had been impressive.

Councilor Grant said, regarding Mr. Kelley's concerns, that the Board would have an opportunity to look at the buildout analysis, in order to decide if it should bring it forward.

The Board next went through Councilor Grant's summary document and made the following decisions concerning the various Zoning Ordinance provisions in it.

#### ARTICLE I. GENERAL PROVISIONS

***Applicability to Government Uses, including the University of New Hampshire*** – It was agreed to go back to the Council for further guidance on this provision.

#### ARTICLE II. DEFINITIONS

***Somewhat Poorly drained*** – Board members agreed that Mr. Campbell would develop language for the definition.

***Community Centers*** - Councilor Grant said the Council was concerned that this language was too restrictive, and there might be several types of community centers: public - operated by town or school board, etc.; operated by nonprofit agency, for ex. Mill Pond Center; and facilities like elder care centers that have community facilities within the development. It was agreed that Mr. Isaak would work on this section.

***Government facility*** – There was discussion about the fact that the current definition described a use and not a facility. Board members agreed that Ms. Merrill would work on the language for this section.

***Passive/Active Recreation*** – Councilor Grant noted the Council's punch list called for a definition of this. Board members discussed how to handle this, and it was agreed that the distinction served a purpose, but it needed to be determined what this was. Ms. Merrill would check with Rachel Rouillard, former Board member, who had developed this language.

#### ARTICLE IV

***Protest Process*** - Councilor Grant said the Council raised concerns about the requirements for protest petitions, and suggested sending this back to the Council to get clarification of their specific concern about this provision. Councilor Grant said this request was in the response he had developed.

***Conditional Use permit*** – Board members agreed that the language concerning this in Councilor's Grant's summary document was what the Board had previously agreed to, and was acceptable to recommend back to the Board.

***Condition of Approval*** – Board members agreed that the wording to recommend back to the Council should say “the conditions shall, if applicable, include, but are not limited to, the following....”

***Table of Uses - Religious Uses*** – The Board, after much discussion, agreed to the wording provided in the recommendation by Councilor Grant, which through the conditional use process allowed religious uses in all residential districts. Board members also agreed, as Councilor Grant’s document indicated, that future amendments to the Ordinance for nonresidential zones would not allow religious uses in all of these zones.

***Excavation and Mining*** – Councilor Grant recommended that Mr. Campbell give some thought to this, and prepare a recommendation for the Board as to where this land use should be permitted, as a conditional use. Chair Roberts said they should at least default to where it was allowed in the old Ordinance

***Art Galleries*** - Councilor Grant said the concern expressed by the Council was that the Ordinance did not specifically permit in house art galleries, and also that galleries were not allowed in the RA and RB zones. There was detailed discussion by the Board about this.

***Richard Ozenich MOVED to allow art galleries as a principal use in the RA and RB districts as a conditional use. The motion was SECONDED by Nick Isaak, and PASSED unanimously.***

Ms. Merrill said it should also be understood that smaller art galleries could also be allowed under home occupation.

***Calculation of useable area*** – Board members discussed the Council’s request that there be inclusion of some kind of mathematical formula “to the effect that the perimeter of a lot shall not be more than a certain percent of its area.” Chair Roberts said he would develop a response for the Council concerning this.

Councilor Grant asked Board members to send him back their recommended changes, and he would redo the document in time for the next Board meeting, on July 14<sup>th</sup>.

## **VII. Approval of Minutes**

May 12, 2004

May 26, 2004

***Councilor Grant MOVED to approve as submitted the minutes of May 12<sup>th</sup>, 2004 and May 26<sup>th</sup>, 2004. The motion was SECONDED by Nick Isaak, and PASSED unanimously.***

***Richard Ozenich MOVED to adjourn the meeting. The motion was SECONDED by Councilor Grant, and PASSED unanimously.***

Adjournment at 10:10 pm