

**DURHAM PLANNING BOARD
WEDNESDAY, MARCH 9, 2005
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Stephen Roberts; Councilor Arthur Grant; Richard Kelley; Bill McGowan; Richard Ozenich; Kevin Webb; Annmarie Harris

MEMBERS ABSENT: Nick Isaak; Amanda Merrill

OTHERS PRESENT: Jim Campbell

I. Call to Order

II. Approval of Agenda

Councilor Grant MOVED to approve the Agenda as submitted. The motion was SECONDED by Richard Ozenich.

Kevin Webb MOVED that under Item XI, the word Amendment should be stricken.

Mr. Kelley said the public hearings were advertised as dealing with an amendment to a conditional use permit, and when the hearing was held, the Board switched back to calling it an amendment. He noted that the Board had gotten a legal opinion on this.

There was discussion on this.

Mr. Webb said in his own opinion, the Attorney had stated no opinion. He said there was no regulation that allowed this to be an amendment. But he said he would withdraw his motion, given that it had been advertised as such.

Mr. Kelley said the Board should deliberate on whether the application should be viewed as an amendment, or as a whole new conditional use permit.

Mr. Webb said he would not support the application if it went forward as an amendment to a conditional use permit.

The Agenda as presented PASSED unanimously.

Chair Roberts noted that Bill McGowan would be a voting member that evening, replacing Nick Isaak.

III. Approval of Minutes

January 5th, 2005

Councilor Grant MOVED to approve the January 5th, 2005 minutes as amended by the incorporated amendments from Amanda Merrill. Richard Kelley SECONDED the motion, and it PASSED unanimously,

GET AMANDA'S COMMENTS FROM JIM.

IV. Report of Planner

- Mr. Campbell said that Dale Abbott of the Strafford Regional Planning Commission had made a build-out analysis presentation to the Town Council, which had gone well, and was well received.
- He said he would not be at the March 23rd, 2005 meeting because he would be attending an American Planning Association conference. He said the quarterly planning meeting would be held on that date, and would involve discussion with Mark Eyerman about how to do revisions to the Master Plan and Zoning Ordinance in the future. He said there was money in the budget to start revising the Master Plan so it was good to have a path to get there.
- Mr. Campbell said the Economic Development Committee had met the previous Friday, and discussed the Beech Hill Road issue. He said he had updated the Committee on the public comments received on this issue at the Zoning Rewrite public hearings. He also said he had discussed with the Committee the possibility of rezoning the northern side of the road to Rural, while the rest of the area would stay within the ORLI district.

Mr. Campbell also said the Committee briefly discussed a memo from Councilor Karl Van Asselt to the Town Council regarding economic development issues he would like to see addressed. He said the next Committee meeting was March 17th, and said it would be discussing design guidelines for the Business Park.

- Mr. Campbell said that Town department heads had met on March 4th to review and discuss the application for the Irving Station. He noted that Chair Roberts and the applicant's engineer were also present, and said he would provide the Board with a memo on the meeting at a later date.
- He said there would be a meeting the following day of MPO TAC, and said the discussion would include air quality conformity, as well as the 2005-2007 State Transportation plan amendments and the project solicitation process.
- Mr. Campbell said the Traffic Safety Committee would be meeting the following day, and would be addressing the following:
 - parking on Coe Drive;

- progress of the Main St. Enhancement project;
- guard rails on Durham Point Road;
- an update on the Packers Falls Bridge;
- crosswalk and lighting issues;
- an overview of the 2005 road program;
- the Madbury Road crossover;
- highway safety grants;
- parking on Dennison Road.

V. **Acceptance Consideration of an Application for Site Plan Review** submitted by Courthouse Ventures, LLC. Hampton Falls, New Hampshire to demolish the current motor vehicle service facility and replace it with a retail motor fuel outlet which includes a 2,992 square foot convenience store with an attached 1,100 square foot coffee/donut shop. The property involved is shown on Tax Map 5, Lot 4-2, is located at 2 Dover Road, and is in the Limited Business Zoning District.

Mr. Campbell said this application would be tabled until the April 13th meeting. He noted that the applicant would also need to obtain a conditional use permit, explaining that the site, under the new Zoning Ordinance, would be in the Courthouse District, where an auto service station was a permitted use, but under the previous Limited Business district, it was allowed as a conditional use. He said the more restrictive of the two applied.

He said the applicant had not met the deadline for applying for the conditional use permit, and said both the application for site plan review and the application for a conditional use permit would be addressed concurrently at the April 13th meeting.

Councilor Grant MOVED to table this application until the April 13th, 2005 meeting, at the request of the applicant. Richard Ozenich SECONDED the motion, and it PASSED unanimously.

Chair Roberts said the site was not a part of the current Historic District, and asked whether the Board, out of courtesy, should forward a copy of the application package to the Historic District Commission for comment.

Board members agreed this was a good idea.

Councilor Grant noted that Code Officer Tom Johnson had indicated that HDC approval was needed.

Mr. Campbell explained that a portion of the pavement was within the District, and said the applicant was aware he would have to go before the HDC on this.

Chair Roberts noted that for the hotel application, the Commission had been encouraged to comment to the Board on the total application, in addition to just the paved area.

- VI. **Public Hearing on an Application for Boundary Line Adjustment** submitted by Paul D. & Lynn M. Allen, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 17, Lots 48-1 and 48-2, are located at 148 & 144 Packers Falls Road, respectively and are in the Rural Zoning District.
- VII. **Public Hearing on an Application for Subdivision** submitted by Paul D. & Lynn M. Allen, Durham, New Hampshire to create three lots from one lot. The property involved is shown on Tax Map 17, Lot 48-2, is located at 144 Packers Falls Road, and is in the Rural Zoning District.

Duane Hyde, representing the Nature Conservancy, said it would be easier if he could speak to both applications, and Chair Roberts said this could be done.

Richard Ozenich MOVED to open the Public Hearing. The motion was SECONDED by Kevin Webb, and PASSED unanimously.

Mr. Hyde reviewed the details of the application for boundary line adjustment and the application for subdivision. He explained that the Allens had been contacted by the Nature Conservancy after a passing in the family, when they had decided to sell a portion of their property in order to settle the estate. He provided details on the plans concerning the lot line adjustment and subdivision.

He said there was presently a two-lot property, with one lot containing a house that the Allens lived in. He said the remaining acreage was 12.58 acres, and contained a house, which was under contract pending subdivision approval. He said the proposal was to reconfigure the 3.03 acre lot, keeping the same acreage but doing a boundary line adjustment, and to subdivide the 12.58 acreage into three lots, using a porkchop subdivision.

He said a front lot with 300 frontage would contain 2.17 acres, and said the Conservancy would acquire the back lot, containing 8.24 acres. He said this back lot abutted the Conservancy's 225 acre Lamprey River Preserve property, and was desired in order to buffer open field habitat on that property. He said there was a purchase and sales agreement on that back property, pending subdivision approval. He also noted that the main access to the Preserve would remain as it was at present, explaining that the frontage was only shown in order to meet the requirements of the Zoning Ordinance.

Mr. Hyde noted that the third lot from the 12.58 acres was presently used by members of the community as a soccer field, and said the Allens would like to continue this usage. He said the Town had applied for a Land and Water Conservation grant, which would maintain a conservation easement on the property, but said it turned out to be ineligible. He provided details on continuing efforts to make it eligible, and also explained that another possible option was to bring the idea of a conservation easement before the Council, to see if it wanted to leverage the money the Conservancy was spending on the back lot.

Mr. Kelley asked what the usage of the soccer field would be in the future.

Mr. Hyde said it was currently operated as a soccer field, and said this use would continue. He noted that current zoning prohibited a residential house there because of the requirements of the aquifer protection district. He said that at least in the interim, the property would stay in the Allens' ownership, and work would continue on the conservation option. But he said there was no guarantee concerning this.

Mr. Kelley asked why it was that Tom Johnson had said a test pit might need to be done for the lot, if it was located in the aquifer protection zone.

Mr. Campbell said Mr. Johnson had been thinking the lot was in the Rural District, and hadn't realized it was also within the aquifer overlay district.

Mr. Kelley asked for clarification concerning Mr. Johnson's comment about the 25 ft. setback from the cemetery.

Mr. Campbell said this was an all around setback in relation to the cemetery, also noting that the side setback, 50 ft, was greater than this.

Mr. Kelley asked whether, if the 48.3 lot remained in its current use, if language concerning a shared driveway would be needed.

Mr. Campbell said it would be needed because it was part of a pork chop subdivision, and the lots would have to have one access drive. There was discussion about this.

Mr. Hyde noted that the two pork chop lots were the lots that were acquired by the Nature Conservancy, and was told the shared driveway for them would be the existing driveway.

Mr. Webb asked if Mr. Allen intended to keep the soccer field there in perpetuity, and Mr. Allen said that was correct.

Mr. Webb asked Mr. Allen if he used any fertilizers, pesticides or herbicides for the soccer field, and Mr. Allen said there was minimal usage of these materials. Mr. Webb suggested the conditions of approval should say there would be restrictions concerning this.

Chair Roberts asked if any members of the public wished to speak.

Beth Olshansky, Packers Falls Road first thanked Councilor Grant and Councilor Harris for their years of education and service to the Planning Board. She also noted that she was an abutter to the Allen field, and said she and other neighbors appreciated the efforts of the Allens to conserve this parcel of land. She also said she was thrilled about the Nature Conservancy's interest in acquiring some land in this area, but asked why the organization was not interested in acquiring the whole parcel.

Mr. Hyde explained that the Nature Conservancy was primarily interested in providing a buffer to its preserve, and also provided details on the fact that the Allens needed to maximize the return on their property.

Regarding the future of the soccer field, Ms. Olshansky said the community appreciated that the Allens had opened this land up to the Town. She noted that as one of the few remaining open fields, it served as an important part of Packers Falls Road, which was categorized as a scenic road. She said she supported the application, and would also support the issue when it came before the Town Council. Ms. Olshansky noted, and received clarification, that the land was not technically a house lot, and then thanked the Allens again for making this happen for the entire community.

Mr. Webb noted that parking for the soccer players was presently off the driveway, and asked where parking would be under the new configuration.

Mr. Allen said that parking had been eliminated on the road in the past, and provided details on where his present permit allowed parking. He said he didn't yet know how the new configuration would impact this, and said he hadn't discussed this with Mr. Campbell.

Mr. Webb noted that people drove pretty fast along this road, and said he just wanted to be sure that they thought through this issue.

Mr. Kelley received clarification that the lot with the house, where the current parking was, was for sale, and that it was not clear where parking would be available in the future.

Mr. Allen said there was a verbal agreement with the buyers that they would allow this parking.

Chair Roberts noted Mr. Allen would need to show on the final site plan that there was a shared driveway, and there was discussion on this.

Councilor Grant asked if there was a reason why there could not be an entrance for a parking area down toward the cemetery.

Mr. Campbell said this was a question for Code Enforcement Officer Johnson to consider.

Mr. Allen said the sight distance for traffic in and out was better at the other end of the field, near the cemetery, than it was for the existing driveway.

Mr. Kelley asked if the field was large enough so that the shared drive could exist where it presently was, and parking for the soccer field could occur on the soccer field, just across the property line.

Mr. Allen said this would make the field less useful for soccer, noting it was already a minimal size for a soccer field at present.

Chair Roberts said that future site development might or might not allow a separate driveway.

Mr. Campbell said there was no guidance in the pork chop subdivision regulations concerning this, and there was additional discussion.

Councilor Grant MOVED that it should be included in the Conditions of Approval that the Planning Board endorses an access way or small drive to a parking area at the south end of lot 48.3, for the purpose of parking for soccer uses. Kevin Webb SECONDED the motion.

There was discussion on the sight distance at this location.

In answer to a question from Mr. Kelley, Mr. Allen said there was vegetation growing along the wall at the southern end near the cemetery, but said this could easily be trimmed back.

Chair Roberts noted that there was a 20 ft offset of the cemetery and trees from the road, before the sight triangle, so that when one approached the road there, there was plenty of visibility.

Mr. Kelley said this to be a good motion because although the current owners of lot 48.2 seemed to be in agreement about allowing the continued parking, there was no guarantee of this in the future.

Mr. Campbell noted that any trimming within of vegetation within the scenic right of way would have to come before the Board.

Mr. Webb asked if there were any traffic signs in this area, in regard to the fact that children played on the soccer field.

Mr. Kelley noted the Board had discussed that issue previously, and it was noted at the time that if there were problems concerning the traffic and the children, the Public Works Department would do something about it.

The motion PASSED 4-0-1, with Bill McGowan abstaining because he was an abutter to the property.

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

Mr. Campbell recommended that the Board could possibly deliberate on this application at the end of the meeting, but currently should continue on with the Agenda.

VII. **Public Hearing Presentation** on a proposal for two new projects on the campus of the University of New Hampshire. The first project is the construction of a 400-bed expansion of the Gables Apartments. The second project is the creation of a new pedestrian/vehicular railroad underpass between Gregg Hall and Forest Park.

Doug Bencks, University of NH architect and Director of Campus Planning spoke before the Board. He said he had come to speak about two projects, both of which were key elements of the University's recently updated Master Plan. He provided a copy of the Master Plan to the Board, and said copies had also been provided to Mr. Campbell, Town Administrator Selig and members of the Town Council. He said the document would also be available on the web.

He said the two projects addressed two critical needs - housing and transportation, and noted that both the College and members of the community had talked about these things during the master planning process.

Mr. Bencks said the first project was the Gables II, along with an improved access road to the Gables I and II and into the A lot. He said 400 units would be built at Gables II, and explained that the Woodside development, where undergraduates now were, would become family housing. He explained that these 400 beds of undergraduate housing would become 100 units of family housing, and said this would mean that in a future project, the University would be able to demolish approximately 56 units of Forest Park housing. He also noted the University would be coming back to the Board to discuss another project in the Forest Park area.

Mr. Kelley asked who would eventually be housed at the Forest Park location.

Mr. Bencks said undergraduates would live there, and noted that all of the Forest Park units were gradually being demolished because they were in poor shape. He said the Gables II units would allow an increase of undergraduates on campus, noting that this would not be in anticipation of having a greater undergraduate population in general, but only would allow a greater percentage of undergraduate students to be housed on campus.

Chair Roberts asked how many undergraduates were planned for in the future project at this location, and Mr. Bencks said there would be approximately 400 beds.

Councilor Harris said she recollected that there was to have been some family housing as well at the location of the Old Lee Wood Orchards.

Mr. Bencks said this was also a component of the Master Plan.

Mr. Bencks described the Gables II project in detail. He said there would be two new buildings, each of which would house about 200 students. He said the project included additional parking for students who were residents, and said this parking would be relocated from the present parking area, and would add something less than 200 spaces that would stretch out along the railroad tracks. He provided details on the ways in which

the design for the project tried to preserve the natural landscape, and also explained that the area where there was currently parking at the Gables would become an outdoor recreational space for students.

He said the project would result in some impact to wetlands, noting there were 1900 sq. ft. of low quality wetlands in the area. He said the University was working with NHDES and the Conservation Commission in terms of developing a mitigation strategy and getting permit.

He said the new parking would be located about 10 feet away from the railroad right of way, which was consistent with University development along these tracks in the past. He provided additional details on the new parking, and noted that some clearing of the woods in the area would be necessary.

Mr. Bencks showed the Board the architectural design for the Gables II. He said it would look similar to what was out there at present, and noted a goal was to make the area feel like a community to the students.

Mr. Webb said he lived across the railroad tracks from the Gables, and said the area seemed to be very quiet. He said his concern for himself and his neighbors was whether there would be a change in the character of the student population being moved to these new buildings.

Mr. Bencks said the new units would mostly contain 4 persons, but said there would also be 3 person and 5 person units, and said freshmen would not be put there. He said that people who would have been applying to Woodside would now be applying here.

Mr. Webb asked the Geigers, who were in the audience, if they could hear Woodside residents, and Mr. Geiger said no.

Mr. Kelley asked what the net effect on parking would be.

Mr. Bencks said there would be approximately 190 additional permitted spaces, approximately one space for every two students.

Mr. Kelley asked how this project fit worked with the northern connector concept.

Mr. Bencks said there was nothing in the design he had presented to the Board that changes the constraints, or added to the ability to do the northern connector. He said there would be a neutral impact.

Mr. Kelley said Board members had a photo in their packets that showed a building orientation that was different than the graphic they now had.

Mr. Bencks provided details on this, and explained that the revised orientation tried to avoid impacting equestrian trails. He said it was also felt that having the buildings closer

in toward campus was a better way to go, noting it had been decided that it was worth moving the parking in order to accomplish this because it created more of a sense of community.

Mr. Kelley noted that this first application since the University Master Plan had been completed had deviated from it.

Mr. Bencks said the Master Plan provided a general idea of building form and location, at the campus wide level. He said the University felt it was being absolutely consistent with the Plan in what it was doing here.

Mr. Webb noted that the drawing showed 6 buildings, while another showed 5, and asked if this meant that a 6th building would be added.

Mr. Bencks said there would be 7 buildings, explaining that the long-term plan was to continue to expand this area to provide apartment style units for students. He said the exact location of all these buildings was not known at present. There was discussion about this with the Board.

Mr. Kelley asked how much more impervious area was anticipated.

Mr. Bencks said he did not have square footage numbers on this.

Mr. Kelley noted a proposed detention pond in the site plan, behind building E, and asked if stormwater drainage would be going to that location.

Mr. Bencks said it would not. He explained that stormwater would be treated on site, and would flow toward the wetland area, which would be used as part of the treatment.

Mr. Kelley asked if there would be any pre-treatment of runoff from the impervious surfaces on the site before it flowed into the wetlands.

Mr. Bencks said the runoff would be treated in accordance with state and federal regulations.

Mr. Kelley asked if the University had to go through the same site-specific process as any other development, and Mr. Bencks said yes.

Councilor Grant asked if the University had any water quality tests of the old reservoir, and Mr. Bencks said he didn't know. There was discussion about the fact that this water was no longer used.

There was also discussion about a proposed building on one of the diagrams, and Mr. Bencks said this represented a potential campus police station.

Councilor Grant asked what Mr. Bencks' perception was of where the northern connector would run, and there was discussion about this.

Mr. Campbell said it came down somewhere between the reservoir and the first Gables building.

Mr. Kelley said the University Master Plan showed 4 buildings in addition to the 3 that were already there. He asked if the fact that the Board was being shown 2 of these buildings meant that only 2 more building would be built there in the future.

Mr. Bencks said yes, in terms of the horizon of the present Master Plan, which was about 20 years. He said the current plan represented everything that could be seen in the present that was reasonable, but said he expected that Plan would be updated before 20 years passed.

Mr. Campbell asked Mr. Bencks to describe the water/wastewater permits that would be needed.

Mr. Bencks provided details on the permit process used by the University, and said this would be developed within the next 12 months, prior to construction.

Mr. Kelley asked if University land abutted the wetlands, and Mr. Bencks said that was correct.

Chair Roberts noted the Board had received a presentation about a new kind of road surfacing material the University was using, and asked if it would be part of this project.

Mr. Bencks said no. He said the new pavement seemed to be working out well, and the University was very interested in its potential applicability for other uses. But he said it was not yet ready to be used widely. He also said there were limitations with this material, noting there needed to be well drained material under it.

Chair Roberts asked what the timeframe was for construction of Gables II.

Mr. Bencks said the University had a design build contract for the project, and expected to begin construction in April and complete it by June-July of the following year.

Councilor Grant asked about the access road in connection with A lot, and Mr. Bencks said it was a continuation of the Loop Road

Councilor Grant asked if the current driveway was sufficient to accommodate additional traffic.

Mr. Bencks said they were satisfied that it was, noting the additional piece of road would help with access. He said the quantity of traffic was sporadic, noting that parking would to a large extent be used for storage of students' vehicles. He also noted that buses would

run to the residence halls, and said this service would be augmented as the population increased.

Mr. Kelley said he appreciated this presentation, and asked if Mr. Bencks could come back and speak to the Board more about the University's Master Plan.

Mr. Bencks said he would be glad to do so.

Mr. Kelley noted the concerns about the northern connector issue, and asked whether the University had no desire to develop it.

Mr. Bencks said the University was always interested in working with the Town to find solutions to shared transportation problems. He said from previous studies of the idea, the northern connector was always presented as part of a larger scheme with the southern connector, and said as an integrated system, it could have merit. But he said as a stand-alone concept, he saw it as something whose end result could be achieved more effectively by other means.

Mr. Kelley said that traffic now used Madbury Road, and the northern connector and interchange would allow the closing off of a portion of Madbury Road, or could go underneath it. There was discussion about this.

Mr. Bencks said he was not sure the northern connector was required in order to do this, and provided details on this, using the map. He said that discussions with NHDOT indicated that a significant number of pieces would be needed in order to put this in place, so it was not simply about creating a cloverleaf. He said the concept was possibly worth pursuing, but said he believed there were other ways to achieve the goal for less money. He noted that others might disagree with that.

Mr. Bencks next spoke about the Southern Underpass project, describing it as a small but important transportation piece of the Master Plan. He said it was not a tunnel, and was basically a crossing that went under the railroad tracks, noting that the tracks in this location were high above the natural grade to the west. He said that on the east side, a cut would be required to connect up. He discussed a diagram representing the design for the project, and said that in the future, the plan was to continue out to the athletic fields and to Main Street. He said there would be a full road width, with sidewalks on both side, and said it would be safe and inviting for pedestrians at any hour of day.

Mr. Kelley asked what utilities would have to go under the railroad tracks.

Mr. Bencks said the goal was to put multiple conduit lengths under the tracks, so as many utilities as possible could go through there.

Councilor Grant asked if when McDaniel Drive was realigned, the remaining portion to Main Street would be in service.

Mr. Bencks said it would be. He said one change would be that the small underpass at Clovis Road would be closed to vehicles, and would only be open to pedestrians.

Chair Roberts asked if Mr. Bencks saw little to no Town traffic in that network.

Mr. Bencks said that was correct, for this piece, but said as the project continued out to Main Street, townspeople would certainly potentially use it. He said the long-term goal was to have a way to get from the west side of campus to downtown without having to go onto Main Street and College Road.

Mr. Campbell asked if any traffic modeling had been done for the project, noting that the concern was that it would eventually result in an increase in traffic on Mill Road.

Chair Roberts noted that the Town had 100 units going in on at the other end of Mill Road, and asked if any expansion of dormitory capacity would generate traffic that would further encumber Mill Road.

There was discussion on this.

Mr. Kelley asked if had been decided that left hand turning lanes were not needed for this project.

Mr. Bencks said in terms of the amount of traffic that was expected, this wouldn't be needed. He said when the connection was made to Main Street, he saw the intersection changing, and provided details on this.

Mr. Webb asked what the Forest Park area would be, when the present buildings there were torn out.

Mr. Bencks said there would be undergraduate residence halls there, and said they would be developed in the next stage of housing. He noted that the rest of Forest Park would not be demolished until more family housing was created.

Chair Roberts asked if members of the public wished to speak concerning these projects, and asked Mr. Bencks to be available to answer questions.

Ted McNitt, Durham Pt Rd, said he was one of the people who was concerned about the possible demise of the northern connector. He also said he was quite surprised that this public hearing was occurring at the present time, when construction would be starting within a month. He said to him this was an embarrassment to the University.

He said one of the primary reasons he had come to the hearing was that he had seen the diagram in the Master Plan indicating that substantial construction was planned near the reservoir. He said he was glad to hear this wouldn't be happening at present, but said he was concerned about the future.

Mr. McNitt noted that in years past, when he served as a representative to the Strafford Regional Planning Commission, there was substantial concern about increased traffic congestion in various parts of Durham. He said the northern connector access to the University was one of the items in the 10-year plan for several years, but said in recent years, it seemed to have disappeared.

He said putting buildings so close to the reservoir would destroy the option for the northern connector. He also said it would seem that at some point, it would be more important to the University than the Town to have this connector. He said he was horrified about the buildup of traffic in the University portion of the Town, and asked what this would be like in 15 years.

Mr. McNitt said he was delighted that the University was planning to increase on campus housing. But he said he was amazed that there were no figures for projected traffic impacts to key locations in Town that had already been impacted by traffic. He said that without these traffic numbers, it was hard to believe construction was starting within a month.

Mr. McNitt said he saw the same concerns on the present Planning Board that he had previously had as a Board member, and said he hoped the University would be seriously concerned about the traffic that took place outside its borders.

Mr. Bencks said the Master Plan contained traffic studies, noting that the document referenced them. But he said this specific project did not contain traffic data. He said he saw the traffic changes from the project as being minor, but said he understood the need to be able to study the impacts of going out to Main Street.

Mr. McNitt noted that traffic increased in small increments, until at a certain point, the bottom fell out.

Bill Hall said it would have been helpful if the sheet the public got on proposed housing had been corrected. He also said there was presently parking for 1500 people in the area near where the northern connector had been planned. He said there had previously been an agreement with the University, when the bypass was put in, that it wouldn't dump traffic on Durham's residential streets, but he said this was happening. He spoke about the proposed route for the northern connector, and how it would effectively keep traffic out of the neighborhoods.

Mr. Hall said it would appear that in the best interest of the Town and the University, the northern connector should be put in, and the intersection at Route 108 should be eliminated. He noted that the Town had not been able to provide input on traffic that would result from the Whittemore Center. He said this had been sprung on the Town, and said it was now hard to move around in that area when events took place. He said the way to address these problems was to have the northern connector, and said it was about time the University took the steps necessary to ensure its development.

Mr. Hall also said that if the University went through with the underpass to Mill Road, there would be traffic backup on Mill Road. He said without a southern connector, there was no way to go.

Chair Robert said a key point was that the proposed housing project transferred units and their cars from Forest Park to the north side of Main St. although the net amount of units was not increased. He asked if there would be a net increase in traffic.

There was discussion about this with Mr. Bencks.

Beth Olshansky, Packers Falls Road, said she was hearing a lot of concern about the northern connector, and asked if the tension concerning this could be eased if the northern connector could be drawn in on the plans for this proposal.

Mr. Bencks said that was a possibility. He said some of his hesitation was that when the northern connector had been discussed as part of the Master Plan process, two different locations were discussed by members of the community. He said he had not done homework on what the right location was, but said a location certainly could be represented on the plans.

Chair Roberts said there was one location of record, developed in the late 1960's, and said it would be appreciated if this could at least be identified on the plans.

Ms. Olshansky asked if this would be possible before the University broke ground on this project.

Mr. Bencks said it would not be possible, but said the proposed northern connector route could be overlaid on their design in the future.

It was agreed that Mr. Bencks should come back to make a presentation on the University Master Plan, including the northern connector.

Mr. Bencks said over the course of the last couple of years, Mr. Campbell had apprised him of the ongoing line item for studying the northern connector, and said they agreed about the need to do the study.

Chair Roberts said the study/design from the 1960s was still valid, but he said it was good to hear that the University understood the concerns that had been expressed. There was discussion about the process by which the Conservation Commission would receive documents on the plans.

Ms. Olshansky noted that Mr. Bencks lived in Durham, and understood the concerns of the citizens.

Mr. McNitt said if Mr. Banks would be good enough to come in and discuss the Master Plan, it would be appreciated if existing traffic information could be made available to the Board.

Bill Hall said he didn't want to see the Board's time wasted by presentations on what could possibly be done in the future.

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

- VIII. **Continued Public Hearing on an Application for Boundary Line Adjustment** submitted by Brian and Armida Geiger, Durham New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 1, Lots 9-35 and 9-36, are located at 6 & 4 Hampshire Avenue respectively and are in the Residence A Zoning District.

Mr. Campbell said that at the previous meeting, the Board had said that a stormwater analysis needed to be completed. He said he had met with the applicants on the analysis that was done, and said that based on it, the Town Engineer had required that a 50-year stormwater analysis should be done. Mr. Campbell said the applicants would also be discussing with Mr. Levesque how to make the stormwater plan better for everyone.

Mr. Campbell noted that the Board had not made a formal motion about getting an independent analysis on the stormwater plan, and said there should be one if possible.

There was discussion among Board members about continuing the public hearing until they received the 50-year stormwater study, and the independent analysis of the whole stormwater plan.

Mr. Campbell said the Board could continue the hearing until April 13th, and if the applicants needed an extension after that, they could request one.

Brian Geiger said his wife would like to make a statement that addressed comments from the public at the hearing at the previous meeting.

Councilor Grant said it was inappropriate for the applicant to address the Board if the public did not also have the opportunity to speak at the public hearing. He said it should be determined if other members of the public had come to speak on this.

Councilor Grant MOVED to continue the Public Hearing until April 13th. Richard Ozenich SECONDED the motion, and it PASSED unanimously.

Richard Kelley MOVED to require the applicant to enlarge the stormwater study to include a 50-year storm, and to hire an independent study of stormwater drainage in the applicants' proposal. Councilor Grant SECONDED the motion.

Mr. Kelley requested a copy of the stormwater plan as it presently stood.

Councilor Grant received clarification that the study was just of water runoff from this property.

The motion PASSED unanimously.

Chair Roberts said the Board did want to receive Mrs. Geiger's comments, but said there was not time available at present to allow this while also allowing the public to speak.

IX. **Continued Public Hearing on an Application for Subdivision** submitted by Brian and Armida Geiger, Durham New Hampshire to create two lots from one lot. The property involved is shown on Tax Map 1, Lot 9-36, is located at 4 Hampshire Avenue and is in the Residence A Zoning District.

X. **Deliberation on an Amendment to a Conditional Use Permit** submitted by Sandy Brook Corporation, Durham, New Hampshire, to change the age restriction on elderly housing from 62 to 55 and older. The property is located at the intersection of Mill Road and Packers Falls Road, is shown on Tax Map 13, Lots 14-14 & 14-15, and is located in the Residence B Zoning District, as a Planned Unit Development.

Councilor Grant said he thought the Board needed to resolve whether this application was an amendment to the original conditional use permit, or was a new application, and said he had mixed feelings on this. He said he thought the materials the Board received from Beth Olshansky were legitimate questions that needed to be answered, and also said he believed Mr. Webb was correct that there was no process for amending a conditional use permit in past or present Town Ordinance provisions.

Mr. Campbell said the first question was whether the change requested was substantial enough to require a new conditional use permit. He said that the application was originally posted and noticed as an amendment, and also was listed that way on agendas. He noted that the Board in the past had amended conditional use permits, site plans, and subdivision plans, even though there was no specific language on this. He said he personally thought it would be unfair to the applicant if the Board said it wouldn't take this approach.

Mr. Webb said he was against this application being considered as an amendment, and said to him, it was an entirely new conditional use permit that was being asked for. He provided details on this, and said if there were any mention of the word amendment in the conditions of approval, he would vote to deny, regardless of the merits of the application.

Chair Roberts asked what Mr. Webb was referencing in order to justify his position.

Mr. Webb said the word amendment didn't appear in the regulations, and there was discussion on this.

Mr. Campbell said there was language on this in both the new and old Ordinance, and he read through this language for Board members.

There was discussion about this. Mr. Webb said the wording spoke of an amendment of a request for conditional use, not an amendment of an application.

Mr. Campbell said the way to go was probably to change the Ordinance provisions to make this clearer, but not to change things mid stream. He said the Board needed to make a decision on this.

Chair Roberts said he looked at what harm or good would be done by this application, and said he hadn't heard any data so far that made the case that there would be harm. He also noted that amendments to conditional use permits had been approved by the Planning Board in the past.

Councilor Grant said he wanted to be sure that the decision on this application was legitimate. He said he didn't think the application decision itself was that big a deal, but was concerned by the process for making it.

Mr. Campbell noted there had previously been an amendment to the conditional use permit for this property.

Mr. Webb said he agreed with Councilor Grant. He said he found Attorney Tanguay's letter rather compelling, but said his concern was the process, and how it would be perceived by the public. He said he did not agree with the prior decision on amending the conditional use permit, and did not think the Board had followed proper procedure. He said he wanted to see an entirely new conditional use permit application, even if it was very similar to the previous application. He noted that he didn't want to trip up the applicant, so the Board should deny without prejudice, and waive any further application fees.

Mr. Kelley said he recalled that some time back, the applicant had submitted a summary of compliance with the criteria required for a conditional use permit. He said that based upon these criteria, the application would result in minor changes at best. He said if it was the process that was of concern, the applicant might already have provided what the Board needed.

Mr. Webb said the Board had basically asked the applicant to proceed as a new application, despite the agenda name. He said the information had been provided, so the Board had a complete application for a conditional use permit, as long as the word amendment wasn't on it.

Mr. Ozenich said that other than the legality issue, there was the issue of whether the architectural design for the development included barrier design. He said the applicant appeared not to have adhered to the elderly code.

Mr. Campbell said the Board could address this in the Findings of Fact.

Mr. Ozenich noted that a few of the units had already been built, and there was discussion about this.

Mr. Campbell said this was a valid point.

Kevin Webb MOVED to direct Mr. Campbell to prepare Findings of Fact and Conditions of Approval of the Conditional Use permit for Sandy Brook Corporation, for the application submitted on October 23, 2005. Said conditions of approval should by and large echo those previously issued for the development, and should be modified to incorporate among other things, the 4 suggested items submitted by Attorney Tanguay by letter dated March 4, 2005. Richard Ozenich SECONDED the motion.

Mr. Campbell said that in response to Attorney Tanguay's letter, he wasn't personally convinced that they could do some of the things in it. He said the letter was forwarded to the Town Attorney, and Mr. Bates had agreed with Attorney Tanguay's statements. He said these would be incorporated into the Findings of Fact and Conditions of Approval. He noted he would probably attach part of the language from the declarations to make them part of the Findings of Fact.

Mr. Webb said the point here was that although the Town couldn't impose these things, the applicant could impose them on itself, once it met certain restrictions.

Mr. Kelley asked if the applicant could go beyond the federal standard, and whether this would open up the possibility of lawsuits.

Mr. Campbell said the statute said "at least", so it could be said that 100% of residents would be at least 55. He said the stickier point was not allowing anyone under the age of 18. He provided details on this, and said the Town Attorney had provided clarification on all of this.

Mr. Kelley asked if this would be considered discrimination.

Councilor Grant said if it was, someone wanting to buy a unit could challenge the condo bylaws. He said he appreciated Attorney Tanguay's communication of March 4th, describing it as very helpful. He said it strengthened his satisfaction that the Board was taking a reasonable step.

Mr. Webb said he agreed, and said the wording in Attorney Tanguay's letter defending the move from 62 to 55 was quite compelling.

The motion PASSED unanimously.

- XII. Deliberation on an Application for Subdivision** submitted by Eidos Builders Inc., Durham, New Hampshire, on behalf of Andrea M. Parsons, Durham, New Hampshire, to create two lots from one lot. The property involved is shown on Tax Map 1, Lot 13-4, is located at 114 Madbury Road and is in the Residence A Zoning District.

Councilor Grant said he recalled that the Board didn't have any problems with this application. He asked if other Board members were satisfied with the Findings of Fact, and Conditions of Approval.

Mr. Campbell noted he had added that if the well didn't pan out, the applicant would have to come back and show new plans to hook up to Town water. He noted that hopefully, the Board would have the amendment process straightened out by then.

Councilor Grant suggested it could be made a part of the Conditions of Approval that the applicant would automatically come back to the Board if Town water were needed, so the need for an amendment could be avoided.

Councilor Grant MOVED the approval and addition of Findings of Fact and Conditions of Approval on an Application for Subdivision submitted by Eidos Builders Inc., Durham, New Hampshire, on behalf of Andrea M. Parsons, Durham, New Hampshire, to create two lots from one lot. Richard Ozenich SECONDED the motion and it PASSED unanimously.

XIII. Other Business

Mr. Kelley asked if the Allen subdivision could be deliberated on, and the Board agreed to do this.

Mr. Campbell went through the Findings of Fact and Conditions of Approval. He said he would include that prior to signatures, access to lot 48.3 must be by common driveway on lot 48.2, with an easement to be shown on the plan, and easement language to be provided in the deed. He also noted that certification of monumentation would be required prior to signing.

He said he had added, under subsequent to signature, that any maintenance of the soccer field must adhere to aquifer overlay district regulations.

Councilor Grant asked where access at the south end of the field should be addressed. There was discussion about this.

Mr. Campbell said he could include in the Findings of Fact that the Board endorsed an access way (pullout) to a parking area at the south end of lot 48.3.

Mr. Webb noted, regarding adherence to the aquifer overlay district regulations, that this should be spelled out with respect to the use of fertilizers, pesticides, and herbicides.

Councilor Grant MOVED to approve the Findings of Fact and Conditions of Approval for the proposed subdivision and boundary line adjustment applications submitted by Paul D. & Lynn M. Allen, Durham, New Hampshire. The motion was SECONDED by Richard Ozenich, and PASSED 4-0-1 with Bill McGowen abstaining because he was an abutter to the property in question.

**XIV. Approval of Minutes – January 19, 2005
February 9, 2005**

Postponed

XV. Adjournment

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

Adjournment at _____ pm

Victoria Parmele, minutes taker