

D-R-A-F-T

**DURHAM PLANNING BOARD
WEDNESDAY, MARCH 30, 2005
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Stephen Roberts; Richard Kelley; Bill McGowan; Kevin Webb; Councilor Diana Carroll; Councilor Gerry Needell

MEMBERS ABSENT: Amanda Merrill; Richard Ozenich; Nick Isaak ??????
NOT CERTAIN OF MEMBERSHIP

OTHERS PRESENT: Victoria Parmele, Minutes Taker

I. Public Hearing on Flood Hazard Overlay District

Mr. Campbell explained that there had been some language changes to the overlay provisions, based on discussions with the State. He also noted that there were new Flood Maps, updated as of May 17, 2005. He said the flood hazard overlay provision amendments had to be adopted by that date, and said this was why they were moved ahead of the other proposed Zoning amendments.

Mr. Kelley asked if these changes were required in order to keep current with the National Flood Insurance Regulations, and Mr. Campbell said that was correct.

Councilor Needell MOVED to open the Public Hearing on the proposed amendments to Chapter 175 Zoning relative to the Flood Hazard Overlay District. The motion as SECONDED by Richard Kelley, and PASSED unanimously.

Chair Roberts said there appeared to be no members of the public who wished to speak about the proposed amendments.

Councilor Needell MOVED to close the Public Hearing on the proposed amendments to Chapter 175 Zoning relative to the Flood Hazard Overlay District. The motion was SECONDED by Richard Kelley, and PASSED unanimously.

New Business

Chair Roberts said that the Item "New Business" was not on the meeting Agenda, but noted that it was a normal part of Planning Board agendas.

Mr. Campbell said the Board needed to make a recommendation to the Town Council that the flood hazard overlay provision amendments should pass.

Mr. Kelley noted that the Flood Insurance Rate Maps (FIRM) maps that were referred to in the provisions were dated May 17, 2005, and asked if the Town actually had those maps.

Mr. Campbell said they were in the Planning Office.

Mr. Kelley asked when it was hoped the Council would act on this.

Mr. Campbell said the first reading would be on April 18th, and the public hearing would be held the first meeting in May.

Councilor Needell asked about the language concerning “substantial improvement...”

Chair Robert said he believed this pertained to people rushing in and making substantial improvements before anyone had the chance to notice. Mr. Campbell provided additional details on the meaning of this language.

Richard Kelley MOVED that the Durham Planning Board recommends to the Town Council the proposed amendments to Chapter 175 Zoning Relative to the Flood Hazard Overlay District, revised date of Feb 14th, 2005. Bill McGowan SECONDED the motion, and it PASSED _____, with Councilor Needell abstaining.

WHAT WAS MEMBERSHIP AT MEETING???

Discussion on the University/Northern Connector

Richard Kelley MOVED, regarding the presentation by Douglas Bencks, University of NH Planning, on March 9th 2005 relative to the modifications for the Gables and the southern underpass, that the Chair write a letter to the University, stating that we demand a University draft of the routes of the northern and southern connector on all proposals given to the Durham Planning Board, and after that drafting, that it return Mr. Bencks to the Durham Planning Board for a second public hearing, given that it is in violation of Section 674:54, Local Land use Planning and Regulatory Powers and the Governmental Use of Property, in that it presented a substantial change in use, and a substantial new use, and it was not provided 60 days before the beginning of construction. The motion was SECONDED by Kevin Webb.

Chair Roberts said this issue arose from public discussion during the Public Hearing, when citizens of the Town asked Mr. Bencks questions he was unable to answer. He said Mr. Bencks had presented a construction project that the University planned to start within 4-6 weeks of this presentation.

He said there were further questions from the public concerning the northern and southern connectors, and how they related to this construction project, noting these connectors could not be defined in any way from materials Mr. Bencks had presented. He said the Durham 200 Master Plan was provided to the University, and clearly stated that the northern connector had appeared consistently in the Master Plan since the late 1960s, Chair Roberts noted that

during his presentation, Mr. Bencks indicated that the University had dismissed the need for that routing, and gave no reasons for this, or any other explanation on record as to why it had been dismissed. He said he could not understand the reason for this.

Mr. Webb said he had asked the Town Engineer to provide the Board with a copy of the report Mr. Hall had brought to the last regular Planning Board meeting, and said he would be looking at it to see if Mr. Hall's comments had merit.

Chair Roberts said Mr. Campbell and staff had done a lot of work digging up files that showed details even Mr. Hall didn't know were available. He also said Mr. Campbell had met with the Town Engineer Bob Levesque, and Mr. Levesque planned to go to District 6 Office, in order to be able to plot clearly on aerial drawings the northern connector and southern connector. He said this would then be a visual that could be provided to the University.

He said this situation was an unfortunate consequence of the fact that the University had its own planning needs, and he said that if the University could put all the facts on the table, the Board might agree with them. But he said at present, the Board didn't have those facts, and the facts it had indicated otherwise.

Councilor Needell asked if the proposed route of the northern connector as described and the right of ways in place were a matter of contention.

Mr. Campbell said the right of way in place was located at Route 4 with the interchange. He said the State had bought that, and said some plans showed that the State had purchased a right of way heading north into Madbury. But he said this was not clear, and also said no evidence had been found of any right of ways going south. He noted there was a site plan with a projected roadway there, but said there was no evidence that the right of way for the road was ever purchased. He said Bob Levesque would dig up everything on this at District 6, to see if there was anything solid about a right of way heading south toward Main Street.

Mr. Webb said Mr. Hall had a partial copy of a drawing that very clearly showed a NHDOT ROW (right of way) on it, and he asked what the date was of that drawing,

Chair Roberts said the date was 1972. There was discussion about this drawing.

Chair Roberts said Chair Sandberg had asked that the Planning Board take some leadership in pulling together what was needed in order to determine what the will of the Town was on the northern connector issue, and based on this, to put together a plan for what needed to happen, moving forward.

Councilor Needell asked if it was also the case that what the Board was asking the University to do was to recognize plans that existed on where the northern connector was intended to go, and to demonstrate that its construction would not interfere with that.

Chair Roberts explained that having drafted roadway plans himself, his concern at present was that a right way on a plan could show some clearance for buildings, but buildings often

had slopes, drainage pathways, etc. He said none of that information was on any plans the Town had.

Councilor Needell asked if it was possible that if the University complied with the demand for this kind of information, that the northern connector would not impact their plans at all.

Chair Roberts said that was possible. He said the tentative agreement was that the Town would demand that all future proposals have the northern and southern connector clearly shown on them, so the Board could understand what the relationships were to the Town's planning. He said once the Town got the University to provide this more detailed information, the Planning Board would then have the task of moving forward to consider whether it endorsed the northern and/or southern connector, and if so, how to get this information into the University's master planning.

Chair Roberts said the Town was exploring further the right to ask that the University stop all construction on the Gables extension and the new transport network until it redrafted its proposal.

Mr. Webb said he recalled that the conceptual campus layout in the recently approved campus Master Plan showed 7 buildings in the area of the Gables. There was discussion as to whether what was now being proposed would fit within the existing envelope, and would not impinge on riding trails, etc.

Chair Roberts said the problem in trying to determine this was that every time one put a building down on a plan, the plan just showed the top view of the building, and things like drainage, etc, were not shown.

Mr. Webb said his question, assuming this was something the Town wanted to pursue, was how far it could go with this issue. He said it was one thing to say the University couldn't impinge on a right of way. But he said it was another thing to find money to build the highway, and to find the political will in Concord, with the University lobbying against it, to go for federal highway funds.

Mr. Campbell said the Board had to decide if it really wanted the northern connector. He said if it did, it needed to make a recommendation on this to the Town Council. He said the Council in turn would have to determine the same thing, and then the Town would have to use every power it had to make this happen.

Chair Roberts asked if the assistance of local Senate and House representatives would be needed in order to create the political will to accomplish this.

Mr. Webb said it would be an uphill battle because the University had a lot of powerful people around the state.

Mr. Needell said the question before the Board at present was how to prevent the University from taking a unilateral act, without proper notice, that would eliminate the possibility of developing the northern connector

Mr. Campbell said the Board should be prepared for an argument from the University that they were meeting the notification requirements. He provided details on this.

Mr. Webb asked where the wetlands application for the Gables project was at, and Mr. Campbell said it had come in, and the Conservation Commission had it. He said the Commission had extended an invitation to the Planning Board to attend the site visit, with the time and date to be worked out. Mr. Campbell also noted he had gotten a call about the project from an abutter, on behalf of a neighborhood association.

Mr. Kelley noted it had been mentioned earlier that the proposal was to work with District 6 on this.

Chair Roberts said that idea was separate from the motion, but he explained that the Town's plan was to get information from District 6, in terms of what was happening north of Route 4. He said he felt those plans had been superseded by the events of the last 20 years.

Mr. Kelley asked if it made more sense to go to Concord's Right of Way Bureau instead.

Chair Roberts said he didn't think so, because this was a matter of the alignment of the existing roadways that had been put in. He said he didn't know if the northern connector drawings even related to these anymore, and he noted that District 6 maintained an active drawing package of roadways in the area.

Mr. Campbell said they could go to the Right of Way Division if needed, but he said District 6 should have the information the Town needed.

Chair Roberts explained that the drawing the Board had showed of the northern connector tying into roadways didn't reflect the reality now on the ground. He said the idea therefore was to try to assemble facts from District 6 concerning what the matrix of the ground was now, north of Route 4, and how the northern connector would relate to those roadways. He said that at present, the proposal started at University property, went up to Route 4 and stopped, and beyond that, there was some conjecture. He also noted it would be good to have something to show to a layman about the northern connector.

Mr. McGowan asked why nothing had been done since the 1960s concerning the northern connector.

Chair Roberts said one thing that had happened was that in 2000, the University had actively campaigned against the northern connector, and he noted that since that time, Durham had suffered from the negative traffic impacts. He said that hopefully, there would be a traffic study accompanying the Smittys application that would have some interesting numbers in it. He said the Town simply couldn't handle the increase in traffic that had occurred, and needed some relief. He said this traffic was unsafe, it stymied economic development, and it hindered getting around in the community.

Mr. Campbell said the northern connector concept had been put into many plans, but kept getting put off. He said the University had in recent years decided it wasn't a good idea, and

he also noted that although it had been in the State's ten year transportation plan, it got taken out at some point in the 1990's, and was never put back. Mr. Campbell noted that he became the Chair of TAC in the fall of 2003, and was able to have the northern connector put back into the long-range plan. He said it was now in the loop, but said the Town needed to do certain things to move it forward on the priority list.

Chair Roberts noted that when the Madbury railroad overpass was built, the State ignored the importance of aligning it with the northern connector, so the overpass no longer lined up with it. He said that was another reason why good drawings were needed.

Councilor Needell said he was concerned with the wording in the motion relating to the notice date. There was detailed discussion about this. Councilor Needell also asked what exactly the Board was trying to accomplish with the letter to the University.

Chair Roberts said the goal was to lay the groundwork for compelling the University to draft the location of the northern connector and southern connector on its plans. He also said Administrator Selig would like to have some leverage to use the Council to extend that leverage, in order to stop the Gables extension and new transport network until the Board had answers to questions raised at the public hearing.

It was clarified that the date on the plans was March 1, 2005, so the University couldn't start construction until May 1st.

Councilor Needell said a question still to be answered was whether the plan was complete. There was discussion about this.

Mr. Webb asked if during the public comment stage of developing the University Master Plan, anyone from the Town had raised these kinds of concerns.

Mr. Campbell said that Council Chair Sandberg, himself, Administrator Selig, Annmarie Harris, etc. had raised this issue several times during the process. He also said that he and Chair Sandberg had met with a transportation planner for District 6 during the University's Master Plan process, who said the northern connector was not necessary. He noted that he and Chair Sandberg had disagreed strongly with him. He also said a former transportation planner with District 6 had supported the idea of creating the interchange, with the possibility of including the northern connector.

Councilor Needell asked that the motion be re-read, for clarification purposes.

Richard Kelley MOVED, regarding the presentation by Douglas Bencks, University of NH Planning, on March 9th 2005, relative to the modifications for the Gables and the southern underpass, to direct the Chairman to write a letter to the University of New Hampshire asking that they include in the plans for the Gables and the southern underpass plans for a northern and southern connector, and that they meet with the Durham Planning Board to present these plans, and to complete answers to the questions that were not answered at their first public hearing, as justification that we did not receive notice and a complete set

of plans, 60 days prior to the beginning of construction. The motion was SECONDED By Kevin Webb.

Chair Roberts explained that the Planning Board was required to comment on how the applicable land use regulations related to their proposal, within 30 days of the hearing. He said this meant that this had to be accomplished before April 9th, and he said the Board's intent was that it would like the University to cease any construction on the Gables extension until those explanations were made.

There was discussion about this. Councilor Needell said the question was under what authority the Board could do anything. He said according to the motion, The University couldn't start construction in mid April without violating it.

Chair Roberts said the Board's only recourse was to appeal to elected officials showing that the University had not dealt with the Town in good faith, had presented a proposal at a public hearing within a month of planning to start construction, and had dismissed any mention of the northern connector in its presentation.

Councilor Needell asked what would happen if the University came back with a new set of drawings that showed the northern connector.

Chair Roberts said what was planned was to create a multifunction committee comprised of some Planning Board and Town Council members, representatives from the Public Works Department and a District 6 engineer. He said Mr. Campbell would chair the committee. He said the committee would ask the University for a proper exchange of ideas on the northern and southern connector, and said this would give both entities ample opportunity to explain what their needs were.

Councilor Needell asked if the immediate goal was to stop the construction of the Gables.

Mr. Kelley said the University couldn't build within the right of way, and said his fear was that if they did encroach upon it and this wasn't found out until years afterwards, the State was not likely to tell them to tear down the building, or to move it.

Councilor Needell said he simply wanted to clarify what the Board wanted to accomplish within the next month, as opposed to the long-term issue of how to deal with the northern connector.

Chair Roberts said that in the last year and a half since he had been Chair of the Planning Board, he had mentioned the northern connector at several meetings, and there was still no response. He said perhaps there was a really good transportation idea that the Town hadn't thought of, but he said what the Board was objecting to was the dismissal of its ideas by the University.

The motion PASSED unanimously.

Chair Roberts welcomed Councilor Carroll to the Board, and said he was sorry to say that current member Amanda Merrill would not be reapplying to the Board.

Mr. Kelley said he had noticed, in looking through the University Master Plan, that there was a lack of substantial information in the appendix. He noted that some broad statements were made in the report, and said he couldn't see any backup for this. He asked if the Board should request that information, noting that if the Board was about to decide whether it was going to push/endorse the northern connector, the justification had to be traffic based. He said he would like to see what the University had done in terms of traffic studies, as well as what the Town planner had done in this area, and said he would be happy to review this information.

Chair Roberts noted that the Town had given them a plan that was much more comprehensive than the one they had given the Town, and he also said it had paid more attention to their needs than they paid to the Towns.

There was discussion about whether backup information to the University Master Plan was available. Mr. Campbell said Mr. Bencks had said there was more information available than what was in the Master Plan itself, and suggested that it perhaps could be found on the University's web page. He noted that he was still working on having Mr. Bencks make a presentation before the Board on the University's Master Plan.

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

Meeting adjourned at _____

Victoria Parmele, minutes taker