

D-R-A-F-T

DURHAM PLANNING BOARD WEDNESDAY, AUGUST 24, 2005 DURHAM TOWN HALL – COUNCIL CHAMBERS

PRESENT MEMBERS: Chair Kelley; Arthur Grant; Stephen Roberts; Kevin Webb; Richard Ozenich; Councilor Gerald Needell

PRESENT ALTERNATE MEMBERS: Councilor Carroll; Susan Fuller; Bill McGowan; Lorne Parnell

MEMBERS ABSENT: Nick Isaak; Annmarie Harris (Alternate Councilor)

I. Call to Order

II. Approval of Agenda

Councilor Needell MOVED to reverse the order of Items VII and VIII. The motion was SECONDED by Arthur Grant.

Chair Kelley explained that the conditional use permit should be addressed first, because if it were denied, there would be no reason to consider the site plan review application.

The motion PASSED unanimously 6-0.

III. Report of Planner

- Mr. Campbell said the Town Council has concluded public hearings on the Nonresidential Zoning district provisions and the questions with prior Zoning amendments. He said that, hopefully, deliberation on these sections would begin September 12th. He said the public hearings on the overlay district provisions had also been opened and continued at that Council meeting. He thanked Board members for attending the meetings, and asked them to continue to attend upcoming Council meetings on the proposed Zoning amendments.
- Mr. Campbell said Administrator Selig would bring a draft of the CIP forward for Planning Board discussion at meetings in September. He will forward the draft to Board members when it is ready.
- Mr. Campbell said he had received a letter from Paul Berton concerning some proposed changes to the site plan for the hotel that came to light as the project was built. He also said he had received a letter regarding the Spaulding Turnpike project, and the idea of having a park and ride site in Durham. He said the Planning Board should weigh in on this idea.

IV. Boundary Line Adjustment

Public Hearing on an Application for Boundary Line Adjustment submitted by Doucet Survey, Inc., Newmarket, New Hampshire, on behalf of Barry T. & Sky M. Ryan, Durham, New Hampshire, and R. Gregory & Nicole I. Moore, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 16, Lots 26-1 and 23-3, are located at 321 & 343 Dame Road respectively and are in the Rural Zoning District.

Councilor Needell MOVED to open the public hearing on this Application for Boundary Line Adjustment submitted by Doucet Survey, Inc. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

Chris Daine of Doucet Survey said the plan was to do a lot line adjustment between the Ryans and the Moores to provide a small area to the Moores so they could open it up somewhat to improve their lawn. He noted that a site walk had been conducted with the Planning Board the previous Saturday.

He said that as requested, the correct tax map number had been included in the site plan, along with the names of abutters to the south. He noted that the plan submitted the previous Friday did not have this information, but the plan submitted at this meeting did include this information.

Chair Kelley asked if Board members had questions concerning the proposed boundary line adjustment. There were no questions from Board members. He then asked if any members of the public wished to speak for or against the application, and there was no response.

Kevin Webb MOVED to close the public hearing. The motion was SECONDED by Arthur Grant, and PASSED unanimously 6-0.

V. Public Hearing on an Application for Subdivision submitted by Doucet Survey, Inc., Newmarket, New Hampshire, on behalf of Barry T. & Sky M. Ryan, Durham, New Hampshire, and R. Gregory & Nicole I. Moore, Durham, New Hampshire to create two new lots from one lot. The properties involved are shown on Tax Map 16, Lots 26-1 and 23-3, are located at 321 & 343 Dame Road respectively and are in the Rural Zoning District.

Arthur Grant MOVED to open the public hearing on an Application for Subdivision submitted by Doucet Survey, Inc. The motion was SECONDED by Councilor Needell, and PASSED unanimously 6-0.

Mr. Doucet explained, as he had at the previous Board meeting, that the proposal was to divide Lot 26-1 evenly, leaving 22 acres with the existing farmhouse, and providing 21.8 acres to be acquired by the Nature Conservancy.

Chair Kelley asked if any members of the public wished to speak for or against the application. There was no response.

Councilor Needell MOVED to close the public hearing. The motion was SECONDED by Richard Ozenich and PASSED unanimously 6-0.

Chair Kelley asked Mr. Doucet to get the final site plan to Mr. Campbell with re revisions he had spoken about.

Mr. Campbell noted he had provided a draft Findings of Fact and the Conditions of Approval.

Chair Kelley noted that the site walk was conducted on Friday, not Saturday, and that Board members had been able to see the revised metes and bounds Mr. Daine had discussed at this meeting. He said the plans appeared to be straightforward.

Mr. Campbell received clarification that the date of the last revision to the site plan was August 19th.

Mr. Webb said the Findings of Fact should include the fact that the public hearing was held that evening, and there were no comments from abutters or members of the public.

Arthur Grant MOVED to approve the amended Findings of Fact and Conditions of Approval for the Application for Boundary Line Adjustment submitted by Doucet Survey, Inc., Newmarket, New Hampshire, on behalf of Barry T. & Sky M. Ryan, Durham, New Hampshire, and R. Gregory & Nicole I. Moore, Durham, New Hampshire to change the boundary line between two lots, and to include the condition that Chair Kelley and Mr. Campbell would take a final look at the plan. Councilor Needell SECONDED the motion.

Chair Kelley said he would like to look at the August 19th version of the plan before signing off on it, and said it would therefore be good if Mr. Daine could provide this version of the plan for Board members to look at quickly. He said this should be a condition of approval

Mr. Daine provided copies of the revised plan, and Board members reviewed it.

Chair Kelley noted that Board member Nick Isaak was not present, so Alternate Bill McGowan would take his place this evening.

The motion PASSED unanimously 7-0.

Councilor Grant MOVED to approve the Findings of Fact and Conditions of Approval on an Application for Subdivision submitted by Doucet Survey, Inc., Newmarket, New Hampshire, on behalf of Barry T. & Sky M. Ryan, Durham, New Hampshire, and R. Gregory & Nicole I. Moore, Durham, New Hampshire to create two new lots from one lot. The motion was SECONDED by Councilor Needell.

Councilor Needell said the record should show that the Planning Board understood that, as the Code Enforcement Officer had noted, no test pits and septic design had been developed for the proposed lot, and that this was considered not to be necessary. There

was discussion about this, and whether a waiver was needed for this.

The motion PASSED unanimously 7-0.

Councilor Carroll said that this was an absolutely beautiful property, and the Town of Durham was richer to have this land preserved. She said it was wonderful to have residents of the Town step forward to do this.

- VI. **Continued Public Hearing on an Application for Site Plan Review submitted by the Town of Durham Public Works Department to re-surface the existing parking areas, add new parking areas where buildings used to be, re-use current storm water structures, install parking lot pavement markings to include numbers for leased parking spaces and re-landscape the island that previously existed. The property involved is shown on Tax Map 5. Lot 4-10, is located at 13-15 Newmarket Road and is in the Limited Business Zoning District.**

Public Works Director Mike Lynch said he was present to ask the Board to approve the site plan for the parking area. He explained that a four-phase plan was proposed for the property.

He said Phase I would apply a topcoat of asphalt to the parking lot.

He said Phase II would involve landscaping at the far end of the parking lot. He noted that another option, besides the idea of placing arborvitae hedges at that location (as previously suggested), would be to construct a stockade fence, and to plant 4 or 5 maple trees in front of it. He said this would create a different look but would still provide screening. He said this landscaping work would have to take place in the spring of 2006, for funding reasons, and said the planting would be done as early in spring as possible.

Mr. Lynch said Phase III would be to implement the lighting plan, and he noted the plan was still a work in progress. He said Public Service of NH would first install different types of lighting for the Town to try out, and Town staff would then pick one of them. He said once this was determined, the rest of the plan could be finalized.

He said Phase IV would involve a complete set of plans with appropriate signatures. He noted it had been determined that the plan did not actually need to be recorded. He said the Public Works Department was ready to move forward, and to start generating some revenue for the Town.

Chair Kelley asked how soon after the installation of the top coat the striping would be added, and Mr. Lynch said this would happen a few days after, and would be done in house.

Mr. Lynch noted the Town was in discussions with Durham Village Garage about the idea of their leasing a block of parking spaces in the parking lot, and said this looked very promising. He said the idea of the Town having to deal with only one entity for the block of spaces was attractive, and would provide several benefits. He provided details, including the fact that Durham Village Garage would take care of snow removal from the

spaces it leased.

Mr. Grant asked if this meant the snow would be removal from the parking lot, or just from the parking spaces Durham Village Garage leased, so would be pushed somewhere else on the lot.

Mr. Lynch said the snow would be removed from the parking lot, and said these kinds of details would be in the lease agreement. He said the lease or would require that the cars there would be neatly parked, with the intention that they would only be there during the day. He noted that Durham Village Garage was anticipating its business would increase when Smitty's closed, and would need this extra day parking for vehicles that were to be worked on.

Councilor Needell said it was his understanding that this arrangement wouldn't include overnight parking, and overnight access to the spaces. He asked if lighting would be in place for this.

Mr. Lynch said the Town would not lease the spaces until the lighting was in place.

Chair Kelley asked if it was correct that the cars using these spaces would not be "clunkers", and Mr. Lynch said that was correct. He said the cars would be registered, and would be in and out on a regular basis.

Mr. Lynch noted another advantage of the proposed arrangement with Durham Village Garage was that customers could be directed to exit from the site onto Schoolhouse Lane, which should ease some of the congestion on Dover Road.

Chair Kelley received clarification concerning striping of the parking spaces.

Mr. Lynch noted that the Public Works Department would try to make the layout as efficient as possible in terms of snow removal, noting this would not be the only new parking lot opening up in Town, all of which would have to be maintained with existing staff.

Chair Kelley said it looked like having eight parking spaces abutting Smitty's would make it very tight for vehicles to back out in that area.

Mr. Lynch said the plan re-created the existing number of spaces there, and said this design could be considered a traffic calming component. He also noted that the Town would be having discussions with officials of the Courthouse about the fact that the building needed to have handicapped parking that was closer than what is presently available. He provided details on where this could possibly be provided.

Councilor Needell asked if there would be any other leased spaces in addition to those possibly leased to Durham Village Garage.

Mr. Lynch said there was a third row with seven spaces that could be leased for overnight parking.

In answer to a question from Mr. McGowan concerning the lighting plan, Mr. Lynch said he had hoped Public Service would have been represented at the meeting this evening so the Board could have done a site walk and discussed lighting issues. He provided details on the plans to try out lights on the three existing poles, and other options. He noted they were trying to do this economically, and in a way that kept the Town's options open concerning future possible use of the site.

Mr. Parnell asked if any revenue would come from the spaces other than the 21 spaces that would be leased and whether there would be any time restrictions on these spaces.

Mr. Lynch said this had not been defined in detail yet, but he said the spaces would be free, and there would not be overnight parking.

Councilor Carroll noted that some people might want to park in the parking lot, and then walk down to the river, or over to Mill Pond. She said this would allow that kind of flexibility.

Mr. Lynch said that was true, and also noted that parking was needed for the Courthouse as well the Three Chimneys Restaurant.

Chair Kelley asked if there was much in the way of large truck traffic using the parking lot.

Administrator Selig noted his office faced on the parking lot. He said he had seen paving trucks use the lot as a stopping point before beginning paving, and said he had also occasionally seen horse trucks, RV's, and some flat bed trucks in the lot. He said that for the most part, the lot was used by people coming to the Town Office or the Courthouse during the day, and to the Three Chimneys Restaurant in the evening. He said there was good turnover, and did not appear to be a problem with people parking there during the day for long periods of time, noting among other things that the lot was located too far away from campus to make it worthwhile for students to park there and walk to class.

There was additional detailed discussion about the actual parking spaces that would exist on the lot, for various uses.

Councilor Carroll suggested that solar energy could possibly be used for lighting of this and other parking lots in Town. She noted the Town's good relationship with Public Service Company, and said that perhaps they could start to experiment with some solar panels.

Mr. Lynch said the Public Works Department would make a point of looking into this. He said that because of the amount of power needed, he wasn't sure solar energy could be used for streetlights, but said perhaps it could be used for other lighting.

Councilor Carroll noted the rising oil prices, and the fact that Governor Lynch had called for a 10% reduction in energy use by State agencies. She said she saw the idea of using solar panels as a real opportunity for the Town.

Councilor Needell said he assumed the lighting would be done in a way that conformed with the lighting ordinance, in terms of impacts to surrounding properties.

Mr. Lynch said the lighting would conform to the lighting ordinance, and noted the lighting fixtures could be tilted to avoid problems. He also said the lenses could be changed in various ways so that the lighting was acceptable to everybody. He said there were a lot of options concerning this.

Chair Kelley asked if it turned out that PSNH's 250-watt fixtures were too much, whether they would consider using 150-watt fixtures.

Mr. Lynch said “absolutely”.

Chair Kelley asked if there were any members of the public who wished to speak for or against the application. There was no response.

Arthur Grant MOVED to close the public hearing. Kevin Webb SECONDED the motion, and it PASSED unanimously 7-0.

Chair Kelley noted the Board was being asked to deliberate on the application that evening. He noted that Phase III was a work in progress. He said the Board could deliberate on Phase I, as shown on sheet 3 of 7, that evening.

Mr. Webb asked if it was appropriate for the Board to approve construction details, instead of either approving a site plan or not approving it.

Chair Kelley said he was reluctant to approve a landscaping plan that was still in flux.

Mr. Campbell said he thought the Board could ask that the four phases be put on the site plan. He said he also thought the Board needed to determine what the landscape plan was going to involve, so this could be included in the plan, and the Board would know what would be done in the spring of 2006.

Mr. Grant said he would prefer that there be trees for screening.

Mr. Kelley asked if there had been any discussion with the abutters about the screening options, and was told there had not been, although they had received a letter.

Ms. Fuller said the problem with a fence and maple trees was that they had to be maintained. She said arborvitaes were low maintenance, and asked Mr. Grant what his previous objection to using them was based on.

Mr. Grant said it was the height issue. He said arborvitae were great as long as they were tall, in which case they completely hid a property. He said he would like to see that.

There was discussion about the spacing and maintenance of whatever vegetation was planted.

Mr. Lynch said the Town was committed to maintaining whatever vegetation was planted there.

Chair Kelley asked Mr. Lynch if he was looking for the Board to choose a landscaping alternative that evening, and there was discussion about this.

Councilor Needell said he had no problem with the original landscape plan, including the use of arborvitae.

Richard Ozenich MOVED that the Planning Board approve the planting of 10 ft. high arborvitae, as shown on the plan. The motion was SECONDED by Arthur Grant, and PASSED unanimously 7-0.

It was clarified that this information was already on the existing plan, so the Board was simply confirming this, and an additional condition was therefore not needed.

Mr. Grant suggested that the Findings of Fact should indicate that a public hearing was held on the application at this meeting, and also on July 27th, 2005.

Councilor Needell asked if the lighting plan would be approved by the Planning Board as well as by the Town Planner, and it was agreed the Board should be involved with this.

Arthur Grant MOVED to approve the Findings of Fact and Conditions of Approval for an Application for Site Plan Review submitted by the Town of Durham Public Works Department, Durham, New Hampshire to re-surface the existing parking areas, add new parking areas where buildings used to be, re-use current storm water structures, install parking lot pavement markings to include numbers for leased parking spaces and re-landscape the island that previously existed. Kevin Webb SECONDED the motion, and it PASSED 6-1, with Chair Kelley voting against the motion.

VII. Deliberation on Application for Conditional Use Permit submitted by Courthouse Venture, LLC, Hampton Falls, New Hampshire to demolish the current motor vehicle service facility and replace it with a retail 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.

Chair Kelley said Administrator Selig had called him to say the applicant had called him to note that following the last Board meeting, Mr. Scott Mitchell had been approached by a member of the Planning Board and engaged in discussion on the merits of the design for the Irving site. Chair Kelley said he wanted to make sure that Board members understood they could not do this, and that any discussion with an applicant about a project had to occur in public session. He said that after speaking with Administrator Selig, he felt it was important to call the applicant on behalf of the Planning Board and to apologize for any discomfort that may have occurred.

Frank Montiero, the applicant's engineer, noted that the Planning Board had asked that the site plan be embellished to show the proposed landscaping better. He then showed the

Board one of the most recent sketches of the building, with a rendering of the proposed landscaping. He said they were trying to create a streetscape on both Dover Road and Newmarket Road, and said honey locust trees were proposed for this. He also said three purple leaf plum trees were proposed to break up the Town Hall and the proposed development. He said crab apple trees would be put in the vicinity of the Courthouse to provide color in the spring, and said flowering rhododendrons, boxwoods, azaleas, and other shrub species would be placed in specific areas of the site. He noted shrubs would flank the driveways.

He also provided details on the landscaping proposed for the back of the convenience store, in order to screen it as well as the trash enclosure and loading area from abutting properties. He said arborvitae hedges and other evergreen shrubs would provide year-round screening. He also said that adjacent to the loading area, evergreen yews, junipers, and rhododendrons would be planted. He said a white pine tree would be planted in the upper left corner of the site.

Mr. Roberts said he thought there would be a retaining wall in the area where the trucks to be unloaded would park.

Mr. Montiero said there would be a retaining wall, with a solid white picket fence on top of it. He noted that originally a chain link fence was proposed, but this was changed based on comments from the Board. There was discussion about this by Board members.

Mr. Roberts said he liked the standard fence, and Mr. Webb agreed with this. Mr. Roberts asked why the Federal fence line wasn't continued in front of the new building. He said this was a design element in the District, noting the hotel had used this.

Mr. Montiero said this idea had never been presented, but he thought this could be done if it were appropriate. He noted the grade changed in this area, so it might not look right.

Mr. Roberts asked if the applicant had consulted with Town personnel about maintenance of plantings, noting they took good care of a lot of plants in Town.

Mr. Montiero said there had been discussion with the Public Works Department about irrigation and water conservation. He said the applicant also thought this was important, and said it was agreed there could be irrigation, which would include a rain sensor on a timer clock.

Ms. Fuller noted the white pine tree planned for the upper left corner of the site, and said these trees tended to get messy and fall over. Mr. Montiero suggested an Austrian pine could be used at that location.

Councilor Needell asked about the design on the flagpole, and there was discussion about this.

Mr. Grant said he assumed the dumpster would also be screened from the front.

Mr. Montiero said that was correct, and said the material for the fencing--hardiplank--

would be used all the way around the trash enclosure. In answer to a question from Mr. Campbell about the fencing on top of the retaining wall, he said this fencing would match, but would be vinyl instead of hardiplank.

Ms. Carroll noted there were a lot of nice elements in the landscaping plan. She asked if the fence along Dover Road would be the black wrought iron looking fence seen on the other side of Main Street. Told that it would be, she suggested that this fence would also look nice on the Newmarket Road side of the property, noting it would extend that motif already being used in the Courthouse District.

Mr. Montiero said they would be glad to extend the fencing in that way.

Chair Kelley agreed that was a nice detail that Councilor Carroll had picked up on.

Mr. Webb noted that extending the fencing further east along Dover Road would probably look awkward because of the drop in the grade. There was discussion about this.

Councilor Carroll suggested that if the fence only went part way down the slope, in front of the first three trees, and not to the corner of the property, that might work.

Mr. Webb next said that given the concerns about traffic, especially concerning left turns out of the site, he wanted to make sure that the landscaping being installed would not obstruct the sight line of drivers, especially toward Dover Road. He noted that honey locusts did not have dense foliage.

Mr. Montiero said that was a good point, and noted that was why the shrubs would be placed behind the right of way line. He said they wanted to keep a clear zone of vision in that area.

Mr. Webb asked if the Irving sign would be elevated enough so that one could see under it.

Mr. Montiero said yes, noting that the original sign planned for the site had extended solid panels to the ground. He also said the sign would be set back from the street far enough so it should not be a visibility issue.

Chair Kelley said he wanted to be sure there was clear direction for the applicant concerning landscaping. He noted the proposal from Councilor Carroll was to put the fencing down the Newmarket Road side. He asked how Board members felt about extending the fencing on the Dover Road side in front of the three honey locust trees.

Some Board members said they did not want to see the fencing on Dover Road extended further. Councilor Needell said this should be left to the discretion of the applicant.

Chair Kelley said the Board would like to see the Federal fencing put on the Newmarket Road side. He said it would compliment the efforts to date on the design of the project. It was agreed the fencing there should only extend to the driveway.

Chair Kelley said if there were no further questions concerning landscaping, he would like the Board to begin deliberating on the Conditional Use permit.

Mr. Roberts said he would like some clarification on what color yellow the non-brick portion of the buildings would be. He said he had seen a toned down yellow color at other Irving sites, and said it still appeared to be too bright, and seemed to be a franchise color.

Using a photo previously taken by Mr. Roberts, Mr. Montiero demonstrated the color the applicant had chosen in an effort to tone the color of the building down.

Chair Kelley asked Mr. Roberts if he liked this color, and Mr. Roberts said he did not.

Chair Kelley said he personally felt that the applicant had given the Board quite a bit on this, and said the yellow was fine.

Mr. Roberts noted it had been agreed that the Blue Canoe logo was not going to be a plastic emblem. He noted this was a conditional use kind of issue.

Chair Kelley said these kinds of issues could be discussed further as part of going through the Conditional Use checklist.

Mr. Campbell said Board members had a new draft of the Compliance Checklist for Conditional Use Permit, dated 8/23/05, in front of them. He noted that the way the ordinance was written made it difficult to answer some of the questions on the Checklist, and he provided details on this.

Chair Kelley asked that non-voting members of the Board not participate in the deliberation process. He noted that Mr. McGowan was a voting member for the evening, and therefore could participate. Mr. Kelley then began to read through the Checklist.

The answers to the first five questions on the Checklist were answered “yes” by Mr. Campbell.

175-23 (C) (1) Site Suitability

Chair Kelley asked if Board members agreed that the utility services available out on the street--water, sewer, stormwater, electric--were adequate.

Mr. Webb noted that the applicant would be upgrading the drainage system on the site to connect in with the existing drainage system in the area. He said he had no objection to this.

Councilor Needell said he assumed that water and sewer permits would be obtained after the Board approved the conditional use permit.

Mr. Campbell said that was true. He noted they were looking to reverse this process in the future.

Councilor Needell asked if there were any problems concerning this at that point, and Mr. Campbell said there were not.

Concerning absence of environmental constraints on the site, Chair Kelley noted there were no regulated resource areas within the bounds of the property. He said there was however concern that during construction activities, contaminated soils on the site could be exposed. He said the applicant had been instructed to come up with a soil handling and monitoring program for this. There was discussion about this.

Chair Kelley asked what direction Mr. Montiero had been given concerning this.

Mr. Montiero said Mr. Mitchell was hiring a company to look at the existing situation and to deal with NHDES, which was already aware of the contamination issues on the site. He said it would be decided which wells were appropriated for testing groundwater, and said some of the wells would have to be reinstalled. He said potential contamination would be disposed of off site in conjunction with NHDES regulations.

Mr. Grant suggested this should be a condition of approval.

Board members said they were in agreement that there was an absence of environmental constraints on the site, and that appropriate utilities for the site were available.

There was discussion on the adequacy of public services for the site.

Councilor Needell said that the comments from the Fire Department and Police Department indicated there were no outstanding concerns. He noted that both departments had been concerned about the possibility of making left hand turns on Newmarket Road. He asked if there had been any concerns about right hand turns.

Mr. Campbell said the traffic design was pretty much what they wanted, although noting they would have preferred that there only be right turns into the site from Newmarket Road, and not right turns out. But he said they were not objecting to this plan.

Chair Kelley asked if Board members were in agreement that there were adequate public services for the site, and they said yes. He said he agreed.

Chair Kelley next asked the Board to consider whether there was adequate access to the site for vehicles and pedestrians. He noted the applicant's traffic plan removed one access driveway from the site, but said this was seen as a benefit.

Mr. McGowan noted that one access currently existing at the site was blocked by vehicles, so was not really being used.

There was discussion about pedestrian access. Chair Kelley said the site allowed pedestrians in and out just fine, and said it was important to make sure that handicap accessible ramps would be installed that complied with ADA requirements. He also said the proposed fencing on the site was a benefit in terms of pedestrian access, so drivers would know where to expect pedestrians. He said that might be an advantage of also

having fencing on the other side.

Concerning vehicular access, Mr. Roberts said the applicant had done an excellent job of engineering on a difficult site. He said the site was what it was, this was the best use of the site, and that there were other uses that could be so much worse at that location.

Chair Kelley noted that the results different traffic engineers came up with, looking at the same site, often differed by a magnitude that was greater than what the Board had seen with the present application. He said the results of the two analyses were within a few percentage points, and said this gave him faith in the results.

Councilor Needell said the argument made about this being the best use for the site was not relevant. He said what the Board was required to determine was whether access to the site was adequate. He said he agreed the presentation by Mr. Pernaw, which was substantiated by Mr. Rhodes, made him comfortable that the access requirements had been met.

Chair Kelley noted that the interior of the site offered a lot more room than was available at other nearby businesses.

Mr. Grant said he would like the Board to have further discussion on this matter. He said he had been impressed and convinced by Mr. Pernaw's presentation, including the fact that Mr. Rhodes' results did not differ to a large degree. But he asked if perhaps a condition was needed that specified that the Traffic Safety Committee would study the impacts from the development six months after the opening, to assure there were no significant safety hazards as a result of cars crossing two lanes of traffic to turn left out of the site.

He also asked whether, if the Town had the opportunity on its own to monitor the whole area at some future date, if it could take action on its own if necessary. He suggested the following possible actions: requesting that the State change the traffic signal; adopting an ordinance to restrict or limit left hand turns across two lanes; or paying for a barrier, if left hand turns proved to be a problem.

Mr. Grant said he did not want this issue to inhibit moving forward with approval of the application, but said he thought the public would be reassured if they knew that if the Town did discover some disturbing impacts, it could do something about them. He asked if granting approval of the application would mean that nothing like this could be done in the future.

Chair Kelley noted that tweaking of traffic signals occurred all the time, and could happen with or without this development. He said he was reluctant to put the burden suggested by Mr. Grant on the applicant, although agreeing with him that it was important for the Town and the Traffic Safety Committee to monitor the situation. He suggested that perhaps Chief Kurz should be made aware that the Planning Board would want to see accident diagrams of accidents, which described their nature and location. He said this would be very valuable information.

Mr. Grant said he did not disagree with this, and said his concern was more about how the process got implemented. He said he assumed the Town had the privilege and responsibility of ascertaining the safety of roads, whether they were State or local roads, at any time, and in cooperation with the State, could take appropriate actions to remedy problems. But he asked whether, if the Board approved the application with the left hand turns included, this would preclude the Town or the State from placing future restrictions on that traffic movement.

There was discussion on this by Board members. Chair Kelley asked for an opinion from the Town Attorney.

Attorney Mitchell said once an application was approved, the Board did not have the right to pull approval back at a later date. He said there was the possibility that the applicant could come back to the Planning Board if there was a change to the property in terms of access, but he said this would have to come about as a result of a decision by the owner, or the State. He said by granting approval of the application, the Board still had the right to provide input on this issue, but that was all. He said the Town could request that the State change the access, but it was only the State that could make the decision on this.

Chair Kelley said these kinds of changes were initiated all over the State, and said he assumed it was “locals” that brought the issues involved to the attention of the State.

Mr. Grant said he simply needed assurances that a mechanism existed if there was a problem. He said he did not believe there would be a problem, but said if there were, he wouldn't want to think the Town or the State's hands were tied.

Attorney Mitchell said the mechanism existed, although it was not as effective as would be the case if the property were located on a Town road.

Mr. Grant said he could accept this, as long as the Town was not precluded from raising the issue.

Councilor Needell said if the Board put a condition in concerning this, it was not clear this would have any meaning.

Chair Kelley said he had previously noted this burden couldn't be put on the applicant, because there was no guarantee he could deliver this.

Mr. Campbell said the Board could put in a condition that every year it would review the intersection, and look at the traffic and other issues. But he said the Board needed to be careful that if it did this, it wouldn't be creating a burden. He gave an example of a situation in Town concerning trash pickup where this had been the case.

Chair Kelley noted the Town Attorney had said that if things changed with the property, this would come back to the Board. He asked whether, if a traffic analysis a year from now indicated that the original traffic analysis was wrong, if this would be sufficient reason to make a request to NHDOT.

Attorney Mitchell said if the situation changed out there, the Town could ask the State to address that, without saying this was in the context of this present application. He noted it often was not clear that just one property was contributing to the change in the traffic situation.

Mr. Webb noted that two big changes were happening in succession in the area, the hotel and the gas station/convenience store/coffee shop.

Chair Kelley said in order to address the concerns expressed by Mr. Grant, it was important that the Town monitor the situation.

There was discussion about the role of the Traffic Safety Committee in regard to this.

Chair Kelley said if the application was approved, the Traffic Safety Committee would understand that the situation would need to be monitored, including developing accident data and re-creations in order to determine the nature of the problems.

There was agreement among Board members that the answer to 6 a., concerning the adequacy of access, was “yes”.

175-23 (C) (2) External Impacts

Mr. McGowan asked if this referred to impacts resulting from the proposed use itself, or in conjunction with nearby uses. There was discussion about this.

Concerning impacts from traffic, Chair Kelley said Mr. Pernaw had indicated there would be a 2% increase in traffic, using the figures from the Town's traffic consultant, which were more conservative. He said the Board should understand the degree of magnitude of this proposed impact.

Councilor Needell said it was clear the proposed use would have some impact, but he noted that the traffic light was at 90% of capacity already. He said he was reluctant to blame the next business coming along for traffic problems, also noting that a compelling argument had been made that this use would actually alleviate some of the left turn traffic currently taking place into the gas stations across the street.

Chair Kelley said that if he were driving to Dover, he would turn right into the site, which would be easier than turning left into Cumberland Farms or Gibbs.

He stated the Board appeared to be in agreement that traffic would increase as a result of the proposed use.

There was discussion as to whether noise would be greater as a result of the proposed use of the site. It was agreed this was somewhat subjective, but that the noise would be no greater than at present.

It was agreed that odors and vibrations coming from the proposed use on the site would be no greater than at present. Councilor Needell noted there had been no testimony

concerning these issues to indicate there were possible problems, and also said the Town had regulations to address these things if there were problems.

There was discussion of the issue of possible dust and fumes from the site, including gasoline vapors. Mr. Kelley said there would be more gas fumes because there would be more gas pumps, but said this would probably not extend more than a couple of feet beyond the pumps. There was agreement that dust and fumes from the site would be no greater than at present.

Concerning hours of operation, Chair Kelley said hours of operation would be greater. There was discussion about this.

Attorney Mitchell noted the regulations did not say the hours of operation couldn't be greater, they said there could not be an adverse impact on the surrounding area as a result of this increase in hours.

Mr. Webb said one could argue that expanded hours and expanded lighting of the property would actually make that intersection safer, so even though there was an impact, it was a positive one.

Chair Kelley said he was not hearing from Board members that they felt there would be an increased impact as a result of an increase in hours.

Concerning the impact of exterior lighting on the surrounding area, Chair Kelley noted that the Board had heard testimony concerning this from the public and from the Town's lighting consultant. He asked Mr. Montiero if he and the consultant had worked out the details on this issue.

Mr. Montiero said they had reached agreement on the big issues, but were still fine-tuning some of the details.

Chair Kelley said perhaps the Board could make approval conditional upon the applicant reaching an agreement with the Town's lighting consultant. He said the question for the Board was whether the lighting for the development would result in a greater impact to the surrounding community.

Councilor Needell said he did not see that there would be a greater impact than what was happening at other sites in the neighborhood. Other Board members agreed.

Mr. Campbell said the Town's lighting consultant had considered all the important issues.

175-23 (C) (3) Character of the Site Development

Board members agreed the proposed layout and design of the site was compatible with the street. They also agreed the proposed off street parking was compatible.

There was discussion of treatment of yards/setbacks. Councilor Needell noted some comments made by the Code enforcement officer concerning parking in the vicinity of

the vacuum equipment on the site, as this related to the setback requirements. It was agreed that what was proposed did not violate either the existing or proposed Zoning Ordinance.

Chair Kelley said treatment of yards/setbacks was compatible with the established character of the neighborhood. Concerning buffering, Board members said the landscape plan provided good buffering. They also said agreed the issue of access to and within the site had already been answered.

175-23 (C) (4) Character of the Buildings and Structures

Mr. Webb noted that there had been extensive discussion with the applicant and his consultants about every detail of the structure, and the final design of the building was very compatible with the established character of the neighborhood.

Chair Kelley said he agreed, but noted that Mr. Roberts might disagree with 9 f., concerning materials and colors.

Mr. Grant asked whether the massing of the building would be within the limits of what was allowed in terms of impervious cover percentage.

Chair Kelley said 80% was the maximum amount of impervious cover allowed, and the application was for 79.9%.

Chair Kelley said it was his understanding that this figure referred to just the site itself, noting if sidewalk improvements off the site were considered, there would be an increase in overall impervious cover.

Chair Kelley asked if Board members were in agreement that the scale, height, massing, roofline, architectural treatment, and material and colors were compatible with the established character of the neighborhood.

Board members said they were in agreement, with the exception of Mr. Roberts, who did not agree with the yellow color chosen by the applicant.

175-23 (C) (5) Preservation of Natural, Cultural, Historic, and Scenic Resources

Chair Kelley noted there had been some concerns about possible impacts on the historic Courthouse building during construction. But he said the applicant had addressed these concerns by moving the detention structures further away from the Courthouse.

Mr. Roberts said there had been concerns about impacts from the proposed use on the historic Courthouse. But he said the applicant had done an excellent job, with the help of the architect, of alleviating those concerns, and had improved the site in terms of its relationship to the Courthouse.

Mr. Campbell noted an issue brought up by the Town engineer, note #19 on sheet 4 of 8, concerning precautions to be taken prior to site work - that there shall be a

preconstruction survey of the Courthouse foundation performed prior to commencement of any site work. He said this would be a condition.

Chair Kelley summarized that the Board agreed that the application preserved natural, cultural, historic and scenic resources.

175-23 (C) (6) Impact on Property Values

Mr. Webb said there was no testimony or evidence presented that the proposed use would create a negative impact on property values of surrounding properties. He said he would therefore have to conclude there was no impact on property values.

Mr. Campbell said the only impact concerning this was that there probably would be an increase in the values of surrounding properties. He noted that once information was available to the Town Assessor on the price of the property, he would be looking at the area.

Board members agreed there would be no decline in the value of surrounding properties as a result of the proposed use.

175-23 (C) (7) Availability of public services and facilities

Chair Kelley said the only issue appeared to be that permits would be required for water and sewer. It was noted that the condition that there be a rain sensor was on the site plan. Chair Kelley said the Board had not seen an irrigation plan, and asked if the Ordinance spelled out the requirements of such a plan. He suggested there were professionals who stamp these kinds of drawings, and said this could be a condition.

Councilor Needell noted the Ordinance required that plants be maintained, but there was no requirement that there be an irrigation plan. He asked if the Board could require that the irrigation plan be stamped.

Mr. Campbell noted that bonding was required concerning the landscaping plan, which would be in effect for one year.

Mr. Grant asked if there would be a condition regarding completion of the landscaping plan, and development and implementation of the maintenance plan.

Chair Kelley said that would appear to be a condition under the site plan review application, and said these details would be worked out when this review was done.

Mr. Campbell read proposed language for this.

Chair Kelley said what was proposed for stormwater drainage would be an improvement far and above what existed at present. He said the stormwater coming off the site should be much cleaner than it presently is, noting the eventual outlet was the Oyster River.

Concerning fire protection, Councilor Needell noted that the proposed use would result in

an increased use of a very flammable substance in the area. He asked if the Fire Department had commented on its ability to deal with this.

Mr. Campbell said there were code requirements to deal with this, so this issue would be addressed.

Board members agreed that fire protection was available.

Concerning the adequacy of police protection, Mr. Campbell said the access issue was the only area of concern.

Councilor Needell asked if the Board had any discretion about potential alcohol sales at this site. Mr. Campbell said the Town couldn't pre-empt the State on this, although it was noted this was a controversial issue. In response to a question from the Board, Mr. Scott Mitchell said beer and wine would be sold at the convenience store.

Board members agreed that streets, utilities, and solid waste services were available. It was noted the applicant had agreed to include adequate space for recycling of materials in the trash enclosure. It was noted that availability of schools was a service that was not applicable to this application.

175-23 (C) (8) Fiscal Impacts

Mr. Webb said he thought the proposed development would have a positive fiscal impact on the Town, resulting in an enhancement of the tax base without decreasing the value of surrounding properties.

Chair Kelley said it could be seen as part of the revitalization of an important area of Town.

Mr. Roberts said it would mean the death of "Gasoline Alley" as the Town knew it.

Additional Comments

Mr. McGowan said he felt the applicant had done what the Board had asked of him, and he said the project would be an improvement to the area.

Mr. Roberts said although he felt the color could be different, the other important things had been included.

Chair Kelley noted there was still the issue of the availability of full service at the gas station, and said he would like the Board to discuss this. He said there had been somewhat conflicting testimony concerning this issue in terms of whether it was required by State law.

Town Attorney Mitchell said this was something required by federal law, but explained that what was required was that help be made available - if there was more than one employee on duty.

There was discussion on who was responsible for enforcing this. Mr. Campbell said he did not think it would be the Board's responsibility.

Councilor Needell noted ADA requirements existed, although there was this loophole, and enforceability was a bit murky. He said he did not see how the fact that Smitty's was full service had any bearing on this application, and the fact that because the last full service station in Town would be gone, it was the applicant's responsibility to do something about this. He also said that if there was a problem with enforceability, he did not see how a condition concerning full service could be imposed on the applicant, and not on other gas stations in Town.

Mr. Campbell said he had seen gas stations that had signs that said customers should toot their horn if they needed assistance. He said he thought the Board could request that at the very least.

Mr. Scott Mitchell said he would agree to that, but said he just did not want to be held to a higher standard than other gas stations in the area. He said Irving was very conscientious about its customers, because it wanted them to return.

Chair Kelley said other Irvings he had seen appeared to be very well staffed.

Councilor Needell said if there were two people on staff, the Board and the Town would expect that there would be full service, and also said the ADA requirement should be visible for people to see.

Mr. Webb spoke about the time spent by the applicant in indicating that Irving wanted to be a good neighbor, and said this would be a good opportunity to show that. He noted the increasing amount of elderly housing in town, and also suggested there was a ready pool of kids in Town doing volunteering who could be available for this.

Attorney Mitchell asked how many hours a day a gas station like this was manned with only one person.

Mr. Scott Mitchell said this mostly occurred at night, and said that if only one person was on duty, it might not even make sense to be open. He said Irving would determine what made sense for this particular site.

Councilor Needell said there would not only be a gas station on the site, but also a convenience store and a donut shop.

There was discussion about the ownership of the property, and the different uses that would take place on it.

Mr. Mitchell said he would own the property, and Irving would be the tenant of the gas station and convenience store. He said he would control the coffee shop portion, as a separate business.

Attorney Mitchell suggested a condition could be attached to the approval concerning

signage that was satisfactory to the Planning Director. There was discussion about this, and Chair Kelley and other Board members agreed this should be left to Mr. Campbell's discretion.

Chair Kelley asked if there were any additional comments or questions from the Board concerning the Conditional Use application, and there were none. He said Mr. Campbell would draft the Findings of Fact and Conditions of Approval so they would be ready for the next Planning Board meeting, and the Board would then review them.

It was noted that the Board did not officially meet again until September 14th. After some discussion, it was agreed that the Board would have an extra meeting on August 31st in order to deliberate on the Irving applications.

It was also agreed that there would be discussion on the CIP at the planning meeting scheduled for September 14th.

IX. Other Business

Mr. Campbell said he had recently received a letter from Paul Berton concerning some proposed changes to the site plan for the Hotel New Hampshire. In the letter, Mr. Berton explained that these proposed changes had come to light as the project moved from paper to reality. He listed four issues that needed to be addressed:

- 1) The chain link fence proposed for the detention pond should be replaced with a 4 foot solid fence, which would tie in better with the 6 ft. solid fence leading from the townhouses to the detention pond. He said there would then be a transition from the 4 ft. fence to a wooded guardrail around the utility boxes next to the detention pond.
- 2) The two trees planted near the front entrance to the hotel should be removed/replaced with flowers or shorter shrubs, because the trees blocked the sign from traffic in the intersection. He noted there were already other visibility problems concerning the sign on the site.
- 3) The stockade fence between the townhouses and the vacant, heavily wooded Loomis lot should be done away with. He noted there was a stonewall on the border which became clear when the site was cleared and the townhouses were relocated. He said the stockade fence made no sense there, and would be a maintenance nightmare during the fall. He said foot traffic onto the Loomis property would be discouraged by the stonewall and heavy woods on the Loomis side of it.
- 4) The stockade fence should not be carried to the corner of the brick apartment building next to the retaining wall, because the Fire Department would like to have access to the back of the apartment building, and having access for maintenance was also important.

Mr. Campbell suggested that the Board do a site walk, and could then determine if the Technical Review Committee could handle reviewing these issues. Board members agreed.

Board members agreed to do a site walk on August 31st at 6:00 pm, before the scheduled Planning Board meeting. *(Mr. Grant departed the meeting at this point).*

Mr. Campbell next spoke about the idea of having a Park and Ride in Durham as part of the Newington-Dover Spaulding Turnpike project. He provided background on the project, and said it would be park and ride for cars traveling into Portsmouth.

Mr. Kelley said if the parking area was large enough, UNH students could also park there and could take the shuttle into the campus, which would alleviate Main Street traffic. Councilor Needell noted the west edge lots appeared to be under-utilized. There was discussion about this, and about possible locations for the Park and Ride.

Mr. Campbell said he would like to see a park and ride by Newfields on the other side of Newmarket, to catch people coming in.

Mr. Roberts said one of the problems he saw was that there was no internal traffic network in Portsmouth that could take people anywhere once they got there. He noted the slowness of the current shuttle in Portsmouth.

Mr. Kelley said this whole process might go nowhere, noting it was part of development of an environmental impact statement.

Mr. Campbell said another park and ride was being built off Exit 9.

Councilor Needell said a better location would be at the interchange in the area of the Goss facility in Technology ark which was already on the Wildcat transit route. There was additional discussion about possible locations for a park and ride in Durham, and about regional traffic issues.

Chair Kelley summarized that the Board saw potential for a Park and Ride in Durham, but felt there were a lot of functional problems in Durham and to the east related to this. There was additional discussion, and it was agreed the idea should be explored, perhaps in conjunction with other transportation issues in the area.

Councilor Needell MOVED to adjourn the meeting. The motion was SECONDED by Susan Fuller, and PASSED unanimously 6-0.

The meeting adjourned at 10:40 p.m.

W. Arthur Grant, Secretary