

**This set of minutes was approved at the January 25, 2006 meeting.**

**DURHAM PLANNING BOARD  
WEDNESDAY, FEBRUARY 1, 2006  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:05 PM**

**MEMBERS PRESENT:** Chair Kelley; Stephen Roberts; Arthur Grant; Richard Ozenich; Councilor Needell; Nick Isaak (arrived late)

**ALTERNATES PRESENT:** Bill McGowan Susan Fuller; Lorne Parnell

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

**I. Call to Order**

Chair Kelley said Susan Fuller would be substituting for Kevin Webb, and Bill McGowan would be substituting for Nick Isaak. (Mr. Isaak arrived at the meeting at 7:30 pm, but was not a voting member that evening.)

**II. Approval of Agenda**

***Arthur Grant MOVED to approve the Agenda with the exception of Item VI B. Richard Ozenich SECONDED the motion.***

Mr. Grant said that Item VI was a request for technical review (of an outdoor storage unit and an ice machine at the Gibbs Service Station). He asked that this Item be continued, because the materials for the application had been received late. He also noted there was at least one Board member who had asked that the application be continued so he could be present.

Councilor Needell said there were members of the public who would like to make comments regarding the presentations by the University, and on long range planning issues. He asked if the Agenda could be amended so they would have an opportunity to do this.

After discussion, the Board agreed this could occur under VI. Other Business.

***The motion as amended PASSED unanimously 7-0.***

**III. Report of the Planner**

- Mr. Campbell said one application had been received for the February 22<sup>nd</sup> Board meeting, - Phase III of the Spruce Woods development. He said there could be possible acceptance of the application that evening. He said the Scorpions's application would also come back before the Board at that meeting.
- Mr. Campbell said that at the February 8<sup>th</sup> Board meeting, the Board would consider the issue of whether the Gibb's application should be handled by the Technical Review Committee or

the full Planning Board. He also said changes to the Hotel New Hampshire site plans would be addressed at that same meeting, and provided details on this.

Chair Kelley suggested that these changes/revisions should be conveyed to Board members in narrative and plan form, and that a site walk be scheduled.

Mr. Ozenich suggested the site walk could be conducted directly prior to the Planning Board meeting on February 8<sup>th</sup>.

There was discussion by the Board and Mr. Campbell on what was involved in the changes to the Hotel New Hampshire site plans. He said the key issue was that behind the duplexes, there would not be a chain link fence. It was agreed that a site walk would be done at 6:00 pm on February 8<sup>th</sup>.

- Mr. Campbell asked if the Board wanted to put the Master Plan implementation strategy discussion on the agenda for the next meeting, and Chair Kelley said that sounded like a good idea.

#### IV.

##### A. **Public Hearing** on Town Council changes to the proposed Zoning Ordinance related to the Non-Residential Zoning Districts (Part B of the Town Council changes).

Chair Kelley explained that the Planning Board had originally proposed amendments to the Ordinance as outlined in Section B, and then had held public hearings on this. He said the Council had then held its own hearings on Section B, and had then recommended some changes of its own, and then remanded these recommendations back to the Board. He said the Board had then made some revisions to Section B based on the Council's recommendations, and now wanted to hear from the public concerning these additional changes.

***Councilor Needell MOVED to open the public hearing. The motion was SECONDED by Richard Ozenich and PASSED unanimously 7-0.***

**Bill Hall, Smith Park Lane**, said that according to page 47 of Section B, there was to be no front yard setback for the Church Hill District. He said this was the only District besides the Central Business District that didn't have a front yard setback, also noting that when he had previously provided public comment on this issue, some people had thought the Hotel New Hampshire was a zero setback building, but he said that in fact, it was set back 15-20 ft.

He said that a house on Main Street with no front yard setback wound up with a car in its living room, also noting that if any of the buildings in this district were demolished, it would be very difficult to construct something, given that there was no setback. He said the Board should revisit this issue, and should provide at least a 10 ft. setback.

There were no additional comments from members of the public.

***Arthur Grant MOVED to close the public hearing. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.***

**B. Public Hearing on proposed changes to the Planning Board Rules of Procedure.**

***Arthur Grant MOVED to open the public hearing on proposed changes to the Planning Board Rules of Procedure. The motion was SECONDED by Councilor Needell, and PASSED unanimously 7-0.***

**Jim Jalmberg, Park Court**, read from his wife's letter, which spoke in detail about the importance of allowing alternates on the Planning Board to participate in deliberations on applications. He said he agreed completely with this, and said a collaborative process on the Board was imperative, in order to have the widest variety of opinions possible to represent the feelings of the community, and to build consensus. He also said alternates should enter into discussions in case it turned out they had to vote on an application.

**Beth Olshansky, Packers Falls Road**, said she too was present to speak as to whether alternates should be allowed to participate in deliberations on applications. She read a letter from resident Henry Smith, 28 Woodman Road. Mr. Smith's letter said he had attended a lecture by Attorney Tim Bates, a member of the same law firm as the Town Attorney, whose perspective was that alternates should not participate in deliberations. Mr. Smith said he questioned this, and he quoted from a booklet passed out at this lecture, noting it said nothing about Board members not being allowed to speak during deliberations.

Mr. Smith's letter said he had spoken with Ben Frost of the NH Office of Energy and Planning, who said Attorney Bates' opinion was very conservative, in case a decision by the Board was challenged. He said Mr. Frost's own opinion was that alternates should be able to voice their opinions during deliberations, and also said Mr. Frost had indicated that no cases had come before the courts relating to the role of alternates

Mr. Smith's letter said the ZBA allowed alternates to speak during deliberations, and had found this very useful. He said there had never been any question about this during his five years on the Board.

Ms. Olshansky said the point was well taken that there was no case law on this, so it was not actually a formal, legal position that alternates should not participate, and was just one opinion. She said that towns operated in a variety of ways concerning this, and that many attorneys didn't agree on the issue. She said Durham's process worked well, and said including alternates in deliberations only enriched the conversation.

Ms. Olshansky said she was afraid that if the Board adopted this new way of functioning, where alternates could not participate in deliberations, it would be putting the planning process in more jeopardy than if it didn't. She asked how many Board members would be willing to do their homework, and attend meetings, knowing most of the time they wouldn't be able to provide their comments. She questioned how many people in Town would want to be alternates, knowing this, noting it was hard enough as it was, getting citizens to participate. Ms. Olshansky suggested that while the Board was discussing this issue, it should keep the hearing open, and see how the alternates on the Planning Board felt about it.

**Ted McNitt, Durham Point Road**, said he had participated on the Planning Board for ten years, and more recently, had been on the ZBA for five years. He said he heartily endorsed what previous speakers had said that evening, and said he had two additional points to make. He said the diversity of the Planning Board was one of the things that made it an effective entity. Mr. McNitt also said these were citizen boards, which were quasi-judicial, but were not courts. He said the purpose of the process followed by the respective boards was to arrive at decisions that were fair to citizens, neighbors and the Town, and he said alternates played a big part in this process.

**Peter Smith, Piscataqua Road**, said he was present as an individual, and noted he was there somewhat reluctantly, based on his nine years on the Planning Board, and five additional years on another Town board. He said the issue of whether or not alternates should participate in deliberations was a difficult one, with potentially substantial consequences of going in either direction. He said if he could persuade the Board of one thing, it was to not hastily decide on this issue, and to plumb the depths of it.

Mr. Smith said he had reached the conclusion after a lot of thought that it was proper for the ZBA to adopt and enforce the rule the Board had temporarily adopted and was considering adopting permanently (to not allow alternates to participate in deliberations), but that the Planning Board should not adopt this rule.

He said on the surface, this might seem inconsistent, but he said it was important to understand and contrast the two bodies. He said both were quasi-judicial, but he said in his view, the ZBA was more of a judicial type body than the Planning Board. He provided details on this, and said the ZBA was more of a quasi-judicial body because it usually had before it two entities (the code officer and the applicant) in direct conflict with each other regarding an explicitly decided issue. He said the nature of the appeal process was that there was a specific dispute, and noted the same model existed on the State's District Court.

Mr. Smith said that for the Planning Board, it could sometimes turn out that there were two distinct sides, but he said the process started out, and sometimes ended, in a non-disputative way. He also noted that at least typically, an application before the ZBA was heard in one night, so that members served as judges on an application for that one evening. He said this sometimes happened with the Planning Board, but said more commonly, the process was very different, noting that there had been twenty-six hearing dates involved with the Fitts Farm case. He said the implications of this were that all Board members would not be present for the entire process, so it was important to, as much as possible, have a fully educated Planning Board.

He said he agreed that it would be much more difficult to recruit people to the Planning Board if they could not participate in deliberations, but he said what was even more important was to have a Board where everyone was up to speed, and ready to go.

Mr. Smith said he had been trying for some time to find out if the Town Attorney had written anything on this issue. He said that it first came up with regard to ZBA, when the Town Attorney made the statement that once the public hearing phase concluded, alternates shouldn't participate. Mr. Smith noted that the ZBA had not followed that advice, and said he had observed during the 10 Madbury Road case where alternates had vigorously discussed the issues during the deliberation process. He said that if he had to choose between having the right to talk, or the

right to vote, he would rather have the right to talk, because this way he could theoretically affect more than one vote.

Mr. Smith said there was no case law as far as he knew on this matter. He said he would prefer it if the Board had a detailed memo analyzing these issues, and also said he thought a search of case law nationally would be of benefit to the ZBA and the Planning Board.

He said the view of Attorney Bates and the Town Attorney was similar to that of the NH Municipal Association. He said he had attended one of this organization's lectures on ethics of local boards, noting that Durham's ZBA members were present. Mr. Smith said he had asked if the policy for the ZBA should apply to the Planning Board as well, and was told yes, but he said the presenter didn't appear to have thought about the differences.

Mr. Smith said that unlike the court jury process, all of the Planning Board's deliberations were in public, so that in terms of adverse impacts from allowing alternates to participate, it was not like the applicant wasn't there to observe what was taking place.

He said there was also the question of whether having this policy could be attacked in judicial proceedings with any possibility of success, where an applicant could say this policy had an adverse effect on him. He said while having alternates participate during or after the public hearing might result in an alternate persuading regular Board member to vote against an application, this could just as equally result in the opposite effect. Mr. Smith said there was no reason to believe that participation in deliberations by alternates was inherently unfavorable to one side or the other, and said this had caused him to have less concern about this issue.

He said he realized legal action could be brought against the Town for something like this, but said in the end, the Board needed to weigh the various factors. He said it had taken him some time to reach the judgment he had, and said he was pretty confident it was the sounder approach, just as he felt the approach the ZBA should take was just the opposite.

Mr. Roberts said thinking of this in the reverse, he wondered if the case could be made, given that some Planning Board decisions had been overturned when it was held that certain members had not attended sufficient meetings on the case at hand, that if an alternate had not participated in discussions after the public hearing, he might not be sufficiently familiar with the issues to participate in a final finding.

Mr. Smith said there was always the issue of whether participation by a Board member concerning an application was partial enough so being a decision maker was inappropriate. He said it was a substantial issue if a person was fundamentally not familiar with what had been said during the process, and this couldn't be made up for in some way. He said it was a matter of judgment as to when this line was crossed.

Mr. Grant asked if, as a citizen, Mr. Smith was recommending that the Planning Board ignore the advice of the Town Attorney.

Mr. Smith said this was not the first time he had disagreed with the Town Attorney. He also said lay people were much too prone to go along with the words of a lawyer, and he said it was

important to ask why, and what the underlying basis was for doing so. He said he would feel much more comfortable answering that question if there was a document.

Chair Kelley asked if Mr. Smith was disagreeing with the legal opinion given to the Board by the Town Attorney.

Mr. Smith said he was a citizen who was also a lawyer, and who had his own way of thinking about this issue. He said although he was not wearing his lawyer hat with his testimony, he was comfortable with what he had said.

Chair Kelley said if the Board did implement something like this, and down the road, a citizen felt a decision on his application was influenced by an alternate and took the Board to court, he wondered if damages claimed would include legal and engineering fees, financial loss, etc.

Mr. Smith said he couldn't imagine such a thing happening.

Chair Kelley asked if a judge or jury would hear something like this.

Mr. Smith provided details on this, and noted that the trend in dispute resolution was massively away from having juries because this took so much more time. But he said that theoretically, it was a right, in cases for damages, to have a jury.

Councilor Needell said it was his understanding that if an applicant felt the Planning Board was tainted because a member should have recused himself and didn't, the Board would have to go through the process again of making the decision. He said he thought the situation would be the same if there were a question about the alternate.

Mr. Smith said there was almost no chance whatever that such an argument could carry the day, unless it was made in a timely fashion, as soon as the party observed what was going on that was incorrect.

Chair Kelley thanked Mr. Smith for his comments.

**Hillary Scott, Davis Avenue**, said she was in favor of alternates being able to participate in deliberations, and said it would be a big change to remove that capacity. She pointed out, as Mr. Peter Smith had, that there were times when public hearings continued over more than one meeting, and said there would be times when regular members were not available. She said in this situation, alternates could provide substantial input on deliberations. She asked that the Board consider this.

**Bill Hall, Smith Park Lane**, said the Town had a bad record in court, noting there were some cases that should never have gone to court in the first place. He provided details on various cases, and said if the Board didn't do this right, the taxpayers would wind up paying for it. He said the Planning Board should either listen to Attorney Mitchell's advice or get another lawyer to represent it, and should not be playing Monday morning quarterback on this. He said the penalty for doing so would go to the taxpayers, and said he hoped this was decided on the conservative side, and not in terms of what the Board could get away with, so Planning Board actions would be done prudently, and wouldn't be challenged.

Chair Kelley said he had spoken to Mr. Campbell that day about wanting to hear from alternates that evening on this issue, and about what process could be followed to allow this.

There was detailed discussion about this, and it was agreed the Board could suspend the temporary limitation on participation of alternates in deliberations, and allow them to deliberate on this matter following the public hearing.

***Councilor Needell MOVED to suspend the temporary limitation on participation of alternates in deliberations, and to allow them to deliberate on this matter following the public hearing. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 7-0.***

Chair Kelley said the Board would like its alternates to be part of the discussion on this.

***Arthur Grant MOVED to close the public hearing, and to defer action on this matter until the first Planning Board meeting in June. Steve Roberts SECONDED the motion.***

Mr. Grant said the Board had a serious problem concerning this matter. He said he recalled the Town Attorney addressing the Planning Board concerning this issue, and said he made it very clear at that time that there came a point when alternates should not participate in the discussion. He said the Board accepted his advice at this point. He said he had objected to this opinion, but said on the other hand, the Board engaged attorneys and paid them to advise it. He said the Town Attorney was now supposedly telling the Board what should happen.

Mr. Grant noted this Board had an exceptional record of having its decisions upheld in court. He said it needed more time to consider what it would like to do, and what it should do, given the advice it had been given, and said to him there was a difference between these two things.

Councilor Needell said he felt the decision on this shouldn't be put off. He said there had been ample time to discuss this issue, and noted it had been three months since the Board had invoked the temporary limitation at the request of the Town Attorney. He said the Board had not officially amended this section of the Rules of Procedure, so except for the temporary suspension, the Board hadn't made a decision on this issue.

Mr. Campbell reviewed the Board's revision of the Rules of Procedure concerning alternates since 2003. He said those revised rules said that alternates were encouraged to attend and participate in discussions, but "shall not be permitted to introduce motions, second motions, or vote on them". He said this language, when drafted, had been sent to the Town Attorney, who had then recommended in August of 2003, that the language say that alternates shall not participate in the deliberation process. Mr. Campbell read the recommendations from the Town Attorney to revise the draft provisions to reflect this. He said the provisions were adopted in September of 2003, but did not reflect the advice from the Town Attorney concerning alternates participating in deliberations.

Councilor Needell said he would like the Board to continue deliberating on this issue.

Mr. Campbell said there could possibly be 2-3 new members of the Planning Board in a few months, who were not involved in this public hearing, so there might possibly have to be another public hearing.

Chair Kelley said he would speak against the motion, explaining that he didn't want to put deciding on this issue off until June, given that new members wouldn't come on the Board until May. He said that between now and May, the Board should be able to resolve and feel comfortable with this issue.

After some discussion, Mr. Grant agreed to divide the motion he had made, and first address the closing of the public hearing. Mr. Roberts, who had seconded Mr. Grant's original motion, agreed with this.

***The motion to close the public hearing PASSED unanimously 7-0.***

***Arthur Grant MOVED to defer action on this item, Rules of Procedure, until the first meeting in June. The motion was SECONDED by Steve Roberts.***

Mr. McGowan said he thought this matter did need to be investigated, but said he didn't think the Board needed to wait until June to make a decision on it.

Ms. Fuller said she would like the Board to take the Town Attorney's advice for the time being, and to ask him to do more work on this matter. She said that perhaps case law from other states could give the Board more direction on this issue.

Mr. Ozenich said he would feel better about the Town Attorney's position if there were some case law that had been quoted.

***The motion FAILED 1-6, with Mr. Grant voting in favor of the motion.***

***Councilor Needell MOVED to amend the Rules of Procedure to strike the words "participate in deliberations" and the preceding comma, from section II E. The motion was SECONDED by Richard Ozenich.***

Councilor Needell said he was making this motion because the proposed rule change was a very significant change in policy, that he was not convinced the Board needed to make. He said the Town Attorney had presented a well-reasoned argument as far as it went, but he said this didn't constitute a legal opinion because there was no reference to case law that supported it. He said the only positive side to the proposed wording was that it was a conservative approach, and eliminated some risk. But he asked what the Town got for this, and what it lost as a result of the change.

Councilor Needell said it was a big change that had been proposed, and he said significantly diminishing the role of alternates would impact the ability of the Town to recruit them. He also said it would only partially achieve the legal goal it was trying to accomplish, because it didn't address any other participation by alternates during the process. He said if alternates could taint the process, he questioned why they should be allowed to participate in any part of that process.



Councilor Needell said what worked in the Board's favor was that it had Rules of Procedure, and as long as the Board followed them, it protected itself to the degree it needed to. He said there was no inherent bias in alternates participating in deliberations, and said in order to make the change, the Board would need a lot more information. He said he saw no reason to make a hasty change to a long-standing policy.

Mr. Ozenich said Councilor Needell had said this quite well, and said he agreed with him. He also said if the Board wanted to pursue this issue, it should get a second legal opinion.

Mr. McGowan said there were different degrees of participation, and asked if the Board should get more specific as to what alternates could do.

Mr. Parnell said the public comments that evening had been interesting, said it was easy to agree with what everyone had said. He said when he had joined the Board, he had joined in order to be a member, not an alternate. He said if alternates then found that role was limited, it affected the desire to be on the Board.

Mr. Parnell said although the Board had the opinion on this issue from the Town Attorney, the likelihood of problems were minute. He said his view was that people decided to join the Board because they felt they had something they wanted to contribute. He said if members were precluded from making points on issues, the Board would be losing something.

Ms. Fuller noted the position of the NH Municipal Association and the Town Attorney on this issue, and said she called his opinion a legal opinion because it was coming from the Town's attorney. She said she personally felt comfortable with the idea of not deliberating, and she noted that with the Irving application, she had had the opportunity to ask questions of the applicant during the hearing process.

Mr. Isaak said he looked at alternates as members who could fill in for a regular Board member. He said that was why it was important that they keep up with the process in case they did have to step into vote because of the absence of a regular member. He said there was a big learning curve, so the alternate position was a good opportunity to not have the pressure to vote, and to learn the process, so when the time came when they had to vote, they would be more prepared to do so. He said he didn't think not participating in deliberations was a huge loss to the alternates, since they could participate in the process leading up to that, as part of the public hearing.

Mr. Roberts said when he had been Chair of the Planning Board, he had encouraged alternates to talk all they wanted to.

Chair Kelley said the Board had deliberated on this issue when it put the temporary rule in. He said the last thing he wanted to do was not hear the opinion of someone who sat on the Board, but he said he was concerned about the Board's liabilities. He said despite the lack of case law on this issue, the only opinion from lawyers had been to revise this. He said alternates appeared to have the opportunity to speak their minds and get questions answered as part of the process, before the public hearing closed.

Mr. Grant said if this were challenged, the first thing that would be brought up was that the Board didn't go along with the opinion of its Attorney.

In answer to a question from Mr. McGowan, it was clarified that alternates appointed as voting members that evening would continue in this capacity, even though Mr. Isaak had arrived late at the meeting.

In answer to a question from Mr. McGowan, there was discussion as to what an alternate's role, and the role of the person he replaced was, if an application the alternate was a voting member on was continued to the next meeting.

Councilor Needell said he thought that issue, and the possibility of a tainted decision because a member of the Board had not participated throughout the process and therefore was not well informed, was far more critical than the issue of whether alternates should be allowed to participate in deliberations.

Mr. Grant said again that the Board needed more information on this. He said he would vote not to approve this rule on the basis that the Board didn't have this yet. He said there were some issues that needed to be discussed before revising the rule as recommended by the motion.

Councilor Needell said he would prefer that the Board not make the change to not allow alternates to deliberate, until it was convinced this was the right thing to do.

Ms. Fuller said that as a relatively new Board member, the only message she had gotten so far was that she shouldn't participate in deliberations. She agreed the Board needed more information on this issue, but said it was difficult to listen to several lawyers, and then say the proposed language should be taken out.

Mr. Isaak said a lot of deliberation went into adding this clause, and said it therefore didn't make sense to now take it out.

Mr. Ozenich said he didn't want to disregard the public input on this issue, and said that in deliberating now on it, the Board now knew what the public wanted. He also said he didn't think there had been much debate on this issue the first time.

Mr. Campbell said he would get additional information for the Board, and said most likely he would find a variety of perspectives. He said it would still come down to the Board making a decision about this.

There was discussion on what kind of information might be available.

Mr. Parnell said there was an opinion from the Town Attorney that this was the way to reduce risk to an extremely low number. He said one could spend a great deal of money getting other legal opinions, but said this wouldn't change the views of Board members having to vote.

Mr. Roberts said his concern was that the primary issue was not whether alternates participated in deliberations, but whether they did so in a coercive way. He said the Chair of the Planning Board needed to exercise proper judgment to control the meeting. He said in his experience, alternates' behavior had been moderate, so the Board had fortunately been denied this experience. He said the issue was how the meetings were run, not whether the alternates should speak.

***The motion PASSED 4-3, with Chair Kelley, Arthur Grant and Susan Fuller voting against it.***

***Arthur Grant MOVED that the Planning Board request its legislative delegation to introduce into the RSAs pertaining to alternates on Planning Boards language that would allow them to participate fully in all deliberations of the Board. Steve Roberts SECONDED the motion.***

Mr. Grant said the RSA pertaining to the role of alternates was pathetic, providing no guidance whatsoever for local boards. He said the Board should ask for its legislative delegation to introduce legislation to make the role of alternates in deliberations clear, and legal.

Councilor Needell said the silence of the RSA indicated there was nothing illegal about what the Board was doing. He said developing rules of procedure was entirely within the purview of the Board, and said the RSAs allowed it to do this. He said it wasn't a problem to him that the rules differed from community to community, so he was not sure that legislation was necessary. He said he was ambivalent on this.

Mr. Ozenich asked why the State was not introducing legislation on this, given that it was spreading the word on this issue.

Chair Kelley said he would support language that the actions of alternates were up to the rules of the local board, so that this just had to be laid out in the rules.

Mr. Roberts said he supported either approach, and said it was still a matter of the effectiveness of the alternates.

Councilor Needell asked if this was perhaps something the Board should consider more before recommending. He said he would like the Board to do this, but said he wanted it to be clear on what it was asking for.

Mr. Grant said he didn't think legislation could be introduced in the present session anyway, so this gave the Board plenty of time to consider this. He said he would just like that the legislators be asked about this, noting they could always say no. He said this was the only thing he could think of, - for the Board to take some measure to protect itself.

He said the letter to the legislative delegation should point out the scarcity of guidance in existing legislation on the role of alternates, and should also indicate that the Board recommended that the legislation in particular specify the ability of alternates to participate in deliberations, but not the decision.

***The motion PASSED 4-3 with Councilor Needell, Mr. McGowan, and Mr. Ozenich voting against it.***

***Arthur Grant MOVED that the Board recommend to the Town Council Proposed Amendments to Chapter 175 Zoning to Implement the Master Plan Recommendations Dealing with the Non-Residential Zones, as revised Jan 19<sup>th</sup>, 2006. Steve Roberts SECONDED the motion.***

Councilor Needell said there was a minor non-substantive change, and provided details on this, concerning abbreviations of zoning districts.

Mr. Grant asked whether the front yard setback issue that had been raised that evening was substantive.

Chair Kelley said he had directed Mr. Campbell to put this on a laundry list to look at in the future.

Councilor Needell noted this issue had been brought up before, and was not changed. He asked if a counterargument had been made, and if the setback wasn't changed because people thought it was all right as written.

Chair Kelley said this issue had come up at the Council's public hearings. He said the Planning Board's policy was to not introduce anything new, and the Council hadn't said anything on this.

Mr. Grant said the counterargument was that Master Plan recommended that buildings on Main Street in the Central Business District not have setbacks. He said it had been contemplated that that Church Hill District would be an extension of the Central Business District over time, so therefore should have the same kind of setback. But he said he didn't recall spending much time debating this.

***The motion PASSED unanimously 7-0.***

***Councilor Needell MOVED to adopt the Rules of Procedure as amended. Steve Roberts SECONDED the motion, and it PASSED 6-1, with Arthur Grant voting against it.***

## **VI. Other Business**

### **A. Old Business**

- B. New Business: Request for Technical Review of an outdoor storage unit and an ice machine at the Gibbs Service Station, 7 Dover Road, Map 4, Lot 41-2.

POSTPONED

### **Discussion on the University's January 25<sup>th</sup> presentation before the Planning Board**

**Ted McNitt, Durham Point Road** said he felt there were two areas of importance to the Town that were treated very lightly by the University in its meetings with the Board. He said one was the issue of traffic, and said he had been familiar with this issue in Durham for over 50 years, and had watched how traffic had gradually increased, and had then rapidly increased in recent years. He noted that at one time, he had worked on queuing theory, and said in line with this, it got to a point where a road suddenly locked up because of gradual increases in traffic.

He said his feeling was that when the regional planning commission put in the provision that the University was obliged to go before the local Planning Board when a project would affect the community, what it had in mind was projects taking place off the campus proper, but which had

an impact on the surrounding community. He provided details on this, and said the University had increasingly been bringing things before the Board.

Mr. McNitt said that the Town had real concerns regarding the University in relation to the issues of traffic and water. He noted that one of the objections to the Hotel New Hampshire application was the issue of water use. He provided details on possible worst-case scenarios concerning water use.

Mr. McNitt said the total number of people coming into Durham would continue to increase, as had been the case for the past 20 years. He said he would think the Planning Board would, instead of asking what this would do to traffic in Town, have the University give the Board an estimate of the number of people who would be passing through Town at peak periods, up to 10 years into the future.

He said in this way, when the University came before the Board with a new project, the Board could ask how much of the University's growth allocation would be used as a result of the project, and whether it was revising its 10 year figure. He said the Board needed to be asking these kinds of questions now, - about potential traffic increases within the next 10 years.

Regarding the water issue, Mr. McNitt said he didn't think there was any real problem with the water supply, but he said he did think the Planning Board should look at what it could do to make sure there wasn't a legal problem, or a bureaucratic problem.

**Bill Hall, Smith Park Lane**, said some years ago, the University had predicted a maximum buildout of 10,000, but said the population there was now 14,000, with no Northern Connector. He said this issue was never carried forward by the Planning Board because of turnover of Board members and staff, so that the Town never got anywhere on it. He provided details on the increase in traffic over the years he had lived in Durham, noting there was actually a time when he had been able to park right outside of buildings on campus. He noted that besides car traffic now, there all kinds of service vehicles driving in and out of the campus.

Mr. Hall said the Town Council was planning on studying the Northern Connector issue, but he said it was going to take action on the part of the Planning Board to really get this issue moving because no one else really wanted to pick up the ball. He noted there had been concerns about a possible increase in traffic because of the new Irving station, but he said the real problem there was the backup of University traffic at times. He asked that the Planning Board pick up this issue so he didn't have to come back in June, and October, to speak about this to a different group of people on the Board.

Mr. Hall noted that the Town's future Fire Department building should be located in the southeast portion of Town, in connection with a Southern Connector that should be located in this area, and he provided details about this.

Councilor Needell asked how and when the Planning Board could focus on transportation and water issues, stating that the Board didn't seem to be finding the time to do this.

Chair Kelley said he had told Mr. Campbell after the University's recent presentation that the Planning Board would be responding to it in writing. He said a draft of that response would be

sent out to Board members. He also said it was his intention to talk about transportation in general, as part of addressing the specifics of traffic at the Woodside Apartments, and then expanding that to the problems in general.

Councilor Needell noted it was on the Board's agenda to talk about larger planning issues.

There was discussion about this, and about making transportation one of the focuses of the Board's process of developing a Master Plan implementation strategy.

Mr. Roberts asked what had happened to the Board's request to have Irving's traffic consultant take a look at transportation issues facing the Town. There was discussion about this, and it was noted there was money in the 2006 Budget for this.

## **VII. Approval of Minutes – December 14, 2005**

Postponed

## **VIII. Adjournment**

*Arthur Grant MOVED to adjourn the meeting. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 7-0.*

Adjournment at 9:45 pm

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W. Arthur Grant, Secretary