

These minutes were approved at the April 12, 2006, meeting.

**DURHAM PLANNING BOARD  
WEDNESDAY, FEBRUARY 8, 2006  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 PM**

**MEMBERS PRESENT:** Kevin Webb; Arthur Grant; Richard Ozenich; Nick Isaak;  
Councilor Needell

**ALTERNATES PRESENT:** Councilor Carroll; Lorne Parnell; Bill McGowan (arrived at  
8:10 pm)

**MEMBERS ABSENT:** Richard Kelley; Stephen Roberts Susan Fuller; Annmarie  
Harris

**I. Call to Order**

Mr. Webb explained that he was Vice Chair of the Planning Board, and was filling in as Chair for Richard Kelley, who was unable to attend the meeting that evening.

**II. Approval of Agenda**

*Arthur Grant MOVED to approve the Agenda as submitted. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 5-0.*

(This was the vote because there were only 5 regular Board members present, and Lorne Parnell, and later Bill McGowan, hadn't been appointed as alternates yet. There was discussion on how this should be handled at the meeting, under Approval of Minutes – see below)

**III. Approval of Minutes**

Councilor Carroll asked some procedural questions concerning alternates, - when they were to be appointed, and also, what happened when an alternate was appointed and a regular member later arrived at the meeting. She said she had noted some confusion concerning this in the December 14, 2005 Minutes as well as the January 11, 2006 Minutes.

There was discussion about this, and it was agreed alternates should be appointed as one of the first things on the agenda.

**Mr. Webb said at the present meeting, Mr. Parnell, would be filling in for one of the regular members who were absent.**

Concerning the issue of what happened when a regular member arrived late at a meeting, Mr. Webb said the Chair should de-appoint the alternate, and that this should be noted in the Minutes.

Mr. Campbell noted that this depended on where they were in the process.

It was noted that the motions on the first few pages of the December 14, 2005 Minutes said the vote was 6-0 because an alternate had not been appointed yet at that meeting.

#### December 14, 2005

Page 3, 3<sup>rd</sup> paragraph, should read “Councilor Carroll asked if the fraternity TKE was still...”

Page 6, 1<sup>st</sup> paragraph, insert the following sentence after “There was discussion about this with Councilor Needell.” “Councilor Needell stated that the Zoning Ordinance required that certain criteria be met in order for a Conditional use permit to be granted.”

Same page, 7<sup>th</sup> paragraph from the bottom, should read “The engineer for the project, from Appledore Engineering, said the purpose of...”

Page 10, 6<sup>th</sup> paragraph, should read “...concern was that aggressive applicants would try to...”

Page 14, should read “Mr. Webb said the downtown area had had no active development, noting there were...”

Page 18, Signature Line needed at end of Minutes

***Arthur Grant MOVED to approve the December 14, 2005 Minutes as amended. The motion was SECONDED by Councilor Needell, and PASSED unanimously 6 -0.***

#### **IV. Report of the Planner**

- Mr. Campbell said he had met with University Planner Doug Bencks on Monday, and said he would put the notes on this meeting in members’ packets for the next Board meeting. He said they had talked about reactions to the University’s presentation, and about the Zoning Ordinance, moving forward.

Mr. Ozenich asked if there had been discussion on water issues with Mr. Bencks, noting this had been a topic of discussion when Mr. Bencks had made his presentation before the Board. He also noted that the Board had previously discussed the idea of getting authorization for water and sewer before seeing finalized plans for projects.

There was discussion about this by the Board.

- Mr. Campbell said he had received the application for Spruce Woods, and he noted that Board members would need to be able to access material they had previously received on the proposed development as part of the conceptual consultation and design review phases.

There was discussion that some Board members would need to obtain some of this previous material.

Mr. Webb asked if the final submission for the development was generally in line with what the Board had last seen of the conceptual design.

Mr. Campbell said they were largely the same, including the plans to hook up to Town water and sewer. He said a few more units were proposed, and said these details would be worked out with the Board. He noted that Mr. Cedarholm, the new Town Engineer, would prefer to have septic systems for the development instead of the planned sewer connection, in order to allow groundwater recharge, assuming the water could be treated before the recharge occurred.

He said there would be a meeting the following Monday with the applicant and various department heads, and said Mr. Cedarholm would be providing a memo on his ideas. Mr. Campbell said the Board would be getting into these details.

- Mr. Campbell said the Board needed to decide when to hold its quarterly planning meeting, on March 8<sup>th</sup> or March 22<sup>nd</sup>.

Mr. Webb said the Board could take this up under New Business. He asked if the Spruce Woods application would be taken up for acceptance at the next Board meeting, and Mr. Campbell said that was correct.

- Mr. Campbell said he would be attending a course on economic development on Thursday and Friday of the following week.
- Mr. Campbell said the Council had met on Monday, and had passed on to public hearing on February 20, 2006 the Nonresidential Zoning District provisions, the Shoreland Overlay District provisions, the Wetland Overlay District provisions, and the Personal Wireless Overlay provisions.

He said the Council had continued discussion on the Historic District Overlay Ordinance to March 6<sup>th</sup>, to allow time for additional work to be done on the Ordinance. He said if the changes made were considered to be substantial, the Ordinance would have to come back to the Planning Board for another public hearing.

Mr. Isaak said he was at the HDC meeting where Councilor Peter Smith had spoken, and said that most likely, the Ordinance wouldn't come back to the Planning Board. He provided details on this, noting that most of the changes being made were grammatical, and were concerned with legal terminology.

## **V. Discussion on Master Plan Implementation Strategy**

Mr. Campbell noted that at a previous quarterly planning meeting in 2005, planning consultant Mark Eyerman had discussed the idea of developing a Master Plan Implementation Strategy.

Mr. Campbell said it was important for the Board to start planning to develop such a strategy, given the absence of one in the Master Plan, and also given the fact that the Zoning amendment process was winding down.

He said there were a number of possible ways to proceed. He said one approach was to go through the Master Plan chapter by chapter, looking at the recommendations in each chapter, seeing what had and had not been accomplished, and then developing a strategy for implementing things that had not yet been accomplished. Mr. Campbell said he had created a framework for going through this process, and he provided some of examples of how it might work, in practice.

He said that while the overall responsibility for the process lay with the Planning Board, the tasks could be shared with various entities. He said the Board could come up with the strategy, and then could assign various duties and completion dates. He said it was important to keep in mind whether or not the work being done would fit with the Council's priorities, in order to get support for it.

He said a second possible way to go about the Master Plan implementation process was to go through the Plan and determine which aspects of it the Planning Board needed to follow through on, and to list immediate, short term and long term strategies for following through. He said in this way, the other boards and committees in Town would know what the Planning Board needed from them over the next 10 years or so.

Councilor Needell said it made sense to him that the Board should identify items in the Master Plan that had, and had not, been implemented, and then should develop time frames for implementing them, and should parcel out the work to various boards and committees.

Mr. Isaak noted that this information could be organized relatively easily if the Master Plan was available in digital format.

Mr. Webb said he was not sure that going through the Master Plan chapter by chapter made a lot of sense, and said it seemed to him that the Board needed to first address the main issues facing the Town, such as water and how much growth it could support, and then should determine where the Board could go on these issues with the current Master Plan. He said once they had a good handle on what the land could do and what the carrying capacity was, all the other issues would fall out of this. He said this approach made more sense to him than a more general approach.

Mr. Campbell said important issues like transportation, utilities, and tax stabilization could be looked at in this way.

Councilor Needell said what Mr. Webb had said made a lot of sense, but he suggested that they should first go through the process of going through the chapters and pulling out information on what had been implemented and what had not, and then should have a real discussion on what the priority issues were.

Councilor Carroll said she agreed with what others had said, and also said the Planning Board should be looking out for issues that needed to be addressed now, such as protecting the rich farmland in Durham before the Town lost it.

Councilor Needell said one thing it should be clear the Planning Board was not doing was rewriting the Master Plan. There was discussion about this.

Mr. Campbell noted that a consultant would be helping to update certain portions of the Master Plan, such as the Historic Resources chapter. He provided details on this.

Councilor Grant asked if Mr. Campbell had developed a list of items concerning the Zoning Ordinance that the Board recognized still needed further attention, and if there was a strategy for addressing these items at the same time the Master Plan implementation strategy was being developed.

Mr. Campbell said he did have a list of these items, and Mr. Grant asked that Board members receive a copy of this list.

There was discussion about this list, including the item on development of an excavation ordinance. Mr. Campbell suggested that they should work with the existing model excavation ordinance, and should tweak it somewhat to fit Durham.

Councilor Carroll asked what the time line was for implementing impact fees for new developments.

Mr. Campbell said the Impact Fee Ordinance had been adopted. He said he had received the methodology for assessing school impact fees from the consultant, and said he would be initiating the process to get this adopted. He said the consultant was still working on the methodology for water, sewer and stormwater impact fees, and said each of these would be implemented individually. There was discussion on impact fees for elderly housing.

Mr. Campbell said that concerning the Master Plan implementation strategy, an important question was who did this, the full Planning Board, a few members, or himself.

Mr. Webb suggested the Board could develop the structure for this at the quarterly planning meeting.

Councilor Needell said he assumed that for each chapter of the Master Plan, a set of Issues, Goals, Objectives, and Recommendations needed to be pulled out. He said the question was who should be doing this.

After some discussion, it was agreed that Councilor Needell, Mr. Isaak and Mr. Campbell would each do some of the chapters.

Mr. Webb asked if perhaps this could be ready for the March quarterly planning meeting, and said after seeing it, the Board would be in a better position to develop the implementation strategy.

**VI. Discussion for Approval of the as-built Site Plans for the Hotel New Hampshire**

Mr. Webb noted there had been a site walk that evening.

Mr. Campbell provided background on the fact that the as built plans for the Hotel New Hampshire were now before the Planning Board for final approval. He said there were a couple of things on the plan that had changed and which he and Mr. Johnson had discussed, including the fact that the applicant had requested that he not have to install a chain link fence behind the duplex, as he had previously said he would. Mr. Campbell said this was considered a significant enough change to the site plan to make it important to bring it back before the Planning Board.

He said the applicant had followed through on everything the Board had discussed at the previous site walk, and noted that these had been gone over at the site walk earlier that evening. He provided details on this, noting among other things that some trees previously located at the front of the site were moved to a different location, the fence was extended beyond the Nick's Brick's apartment building, and a 4 ft. stockade fence with a wood guard rail was installed around the detention pond. He said these things had all been completed.

He noted there had been discussion at the site walk as to whether the chain link fence was needed, and said it would be a good idea to take care of this issue at the present Board meeting.

Mr. Campbell also said there had been discussion about possible relocation of the crosswalk by the entrance to the hotel. He said the Public Works Department was not requiring this, and said this crosswalk would be repainted in the spring.

Mr. Grant noted that there had been a conditional use application for this project in addition to a site plan review application, and asked if the Board could approve changes without a public hearing.

Mr. Webb said the conditional use permit was for the use, but the details of the site plan were addressed through the site plan review process. There was detailed discussion about this.

Engineer Roger Roy spoke for Hotel New Hampshire owner Paul Berton in place of Engineer Michael Sievert, who had been detained, and went through the as built plans. He noted that some trees that had been placed out front had been relocated further back on the site to improve visibility. He also noted that the loading zone that had been established was not really be used much by the hotel, and he said this was being striped, but was still available as a loading zone if needed.

He explained that a dumpster pad would be added adjacent to the rear entrance of the hotel, as described in the site plans. He said the Public Works Department had wanted an enclosure area for the dumpster, and said this was being provided, close to the rear entry to the building. He said some trees would be relocated in order to accommodate this.

Mr. Roy provided details on handicap access parking that had been developed for the site which it had turned out didn't meet the ADA requirements, so were relocated. He said there would be the same number of handicap parking spaces.

He explained that two catch basins in the front parking lot had been relocated to provide better drainage for the parking lot. He noted another catch basin was removed, and said these changes did not change the proposed drainage for the site as depicted in the site plan.

He said a stockade fence had been installed which entirely surrounded the detention pond, and transitioned to a wood guard railing. He also said the fence near the Nicks Bricks apartments had been extended about 5 ft. to help block access through neighboring properties. Mr. Campbell provided details on this.

There was discussion that Mr. Berton was asking that he not have to install the chain link fence along the rear of the duplexes.

Mr. Roy provided details on the fact that as built, there were eight parking spaces that didn't quite meet the size requirements, but said it was felt that the general intent of the site plan had still been met. He noted they couldn't call these spaces compact spaces because this would mean that more than 20% of the spaces on the property would be compact, which was not allowed by the Ordinance.

Mr. Roy also provided details on the crosswalk, handrails, and other items on the site plan.

In answer to Mr. Webb, Mr. Campbell said the applicant had gone through the 18 points in Mr. Johnson's letter.

Mr. Roy went through this list in some detail for Board members.

Mr. Webb said the only outstanding issue appeared to be the idea of a chain link fence along the rear of the three relocated duplexes

Mr. Campbell said the ADA signage had been worked out, to take care of Mr. Johnson's recent concerns on this. He also said the concrete pad for solid waste would be moved, and would have adequate screening if the Public Works Department felt this was needed. He also noted the issue of the granite posts had been addressed. He said everything in Mr. Johnson's response had been addressed.

Mr. Campbell said he didn't think the Board could waive the requirement that there be a loading zone, but said the Town was ok with the striping as long as the owner didn't use it for any other purpose, and as long as it could still be used for loading.

Mr. Webb noted some letters the Board had received from residents, one from John Rouman of 14 Cowell Drive, another from Susan and David Richmond of 16 Cowell Drive, and a third letter from Mark Blackwood of 20 Cowell Drive. He read these letters out loud, all of which indicated

that it was important that the chain link fence be installed, because of trespassing as well as serious safety issues.

**Mr. Webb noted that Bill McGowan had arrived at the meeting at 8:10 PM, and would be a voting member that evening.**

**Jim Jalmberg, Park Court** explained for members of the Planning Board who were not at the site walk that evening that the abutters to the Hotel really needed the chain link fence, because there was a long history of student trespassing in this area. He said it went beyond trespassing to become a safety issue, because drunk students sometimes passed out in the snow in that back wooded area, which was sort of a recreation spot for them.

Hotel owner Paul Berton said he would agree to install the chain link fence, in either green or black. But he said whatever the problems were back there, he wanted the record to show that he didn't think the chain link fence would solve them. He also noted that he had not personally seen litter, passed out students or other indications of activity in this area.

There was detailed discussion about the idea that the chain link fence should be closed up to the end in the corner so students couldn't walk around it.

Councilor Carroll said although it might be questionable as to whether the fence would stop the students from cutting through, it was important to try this. She also suggested that some vegetation such as roses could be planted in front of the fence for deterrence purposes.

Mr. Webb noted that he had not seen any evidence of foot traffic in that area during the site walk.

There was discussion about the cost to Mr. Berton of installing the fence, and he said his main concern was that it would be a maintenance nightmare.

Mr. Isaak noted that the fence would block the stone wall.

Councilor Needell asked if the Planning Board needed to make some kind of determination regarding the somewhat smaller parking spaces, which were in violation of the Ordinance. There was discussion about this, and about the fact that this discrepancy was small.

***Councilor Grant MOVED to approve the parking spaces as currently depicted, which were somewhat contrary to the originally approved plan. Richard Ozenich SECONDED the motion.***

Mr. Roy said the parking spaces generally met the intent of the site plan.

Mr. Webb asked that the Board go through the various items on list, to determine whether for one reason or another there was variation from the original site plan.

It was agreed that Mr. Roy should go through these and indicate the status of each. Mr. Roy then went through each of these items.



Councilor Needell questioned whether the Planning Board had the authority to approve the somewhat smaller parking spaces. He noted the Zoning Ordinance provisions concerning parking under 175:111.

Mr. Campbell said parking dimensions were also covered under the site plan review regulations.

There was discussion as to whether the spaces, which were only slightly under the size requirement, could be increased in size in some way. Mr. Roy explained that this couldn't be done without having to relocate the islands. He noted that this had not been a purposeful error.

Engineer Michael Sievert said those parking spaces were not compact spaces either, and said the intent had been to make them regular sized spaces.

There was additional discussion by the Board as to whether the motion on the table was appropriate.

Mr. Grant said he recommended that the Planning Board take this action, and if the Code Administrator found to the contrary, the ZBA could then deal with it.

***Arthur Grant MOVED to amend the previous motion, to grant a waiver for the eight parking spaces from section 9.06, Part E of the site plan review regulations to their current as built condition as of February 8, 2006. Richard Ozenich SECONDED the motion.***

There was discussion of other possible options for dealing with the parking space issue.

***The motion PASSED 6-1, with Councilor Needell voting against it.***

***Bill McGowan MOVED to approve the as built plan for the Hotel New Hampshire, with the addition of the chain link fence around the northerly edge of the property. The motion was SECONDED by Nick Isaak, and PASSED unanimously 7-0.***

Mr. Grant expressed his appreciation to Mr. Berton for accommodating the abutters and the Town with the chain link fence. Others Board members agreed, and wished Mr. Berton well with his business.

Mr. Jalmberg also thanked Mr. Berton for agreeing to install the fence.

Mr. Campbell said it was worth noting that he had heard from one of the abutters that he/she didn't have a problem with the parking.

Councilor Carroll stated Mr. Berton did a great job of maintaining his properties, and said he raised the bar for other landlords in Durham. She also noted that he did an incredible job with recycling.

Mr. Berton said it was more profitable to manage his properties the way he did, and said he was not alone among landlords in Durham in doing this.

## **VII. Other Business**

### **A. Old Business:**

None

### **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**

Mr. Campbell said the proposed location for the storage unit was near the current snow removal area, and said it would be 8' x 8' x 20' in size. He said he had told the owner that the storage unit would have to be installed on a pad, and would have to be screened. He also said the owner had wanted to put in an ice machine next to the pumps that were the closest to the street, but was told it needed to be moved further back.

There was discussion about abutting properties, and the need for screening.

Mr. Campbell explained that the reason the storage unit was needed was that there currently was basically no storage area on the property. He also said there was plenty of room to put the snow in the current snow removal area, and in answer to Mr. Webb, he said the regulations simply said they had to provide snow removal.

Councilor Needell noted that the Dunkin Donuts truck unloaded at the site in the morning and blocked one lane of Route 108 while it unloaded, and he asked if unloading of trucks would increase on the site as a result of the installation of the storage unit.

Mr. Grant pointed out that he had spoken about this issue during the Irving application.

Mr. Isaak said it seemed that the development of this gas station hadn't been planned very well.

Mr. Webb asked if this application was something that Board members weren't terribly concerned about, or, if significant planning issues were actually involved.

Councilor Needell asked whether the ice machine was in fact a vending machine, stating that if it was, it violated the Ordinance amendments the Board had recently approved, and which had been sent on to the Council. There was discussion about this.

Mr. Webb said the storage container would make it even more likely that those employees would park in the area where the tire-air machines were. He also noted that an electrical supply would be needed for the ice machines.

He asked Board members if they felt comfortable leaving this application to the Technical Review Committee. He also asked if this was essentially a modification to an approved site plan that the Board should be addressing.

Mr. Isaak said what the applicant was proposing didn't seem to be the proper way to deal with the problem. He also noted that the Technical Review Committee would look at the application narrowly, in terms of health, safety and welfare.

Councilor Needell asked what the parameters were that the Board was supposed to be dealing with concerning the application.

There was discussion about this, including whether the storage trailer would be an accessory structure.

Mr. Isaak said he thought the application should come before the full Board, because this was more of a planning issue.

Other Board members agreed, with Mr. Parnell noting that this was after all a permanent structure that would be installed on the site.

***Arthur Grant MOVED that the Request for Technical Review of an outdoor storage unit and an ice machine at the Gibbs Service be set aside, and that the application to amend the approved site plan would go directly to the Planning Board. The motion was SECONDED by Richard Ozenich.***

Mr. Ozenich asked if there would be a new definition of vending machine in the Zoning Ordinance.

Councilor Needell said there was no definition of vending machine in the Ordinance, but said that in the Ordinance that had been sent back to the Council outdoor vending machines were not allowed in this District.

There was discussion about the idea of putting the ice machine between the gas pumps. There was also discussion about other items that were placed for sale in this area, and whether there were any regulations as to what could be placed in the vicinity of gas pumps.

Mr. Campbell said the various Town departments would still do a technical review of this and other issues as part of the application process.

Councilor Carroll suggested it might be possible to talk with the owner about possible other ways to solve his problems that were more comprehensive, and solved both short term and longer term needs.

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

Mr. Campbell said this was probably the only place the owner could put the storage trailer. He noted the wetland area to the rear of the site, and explained that this was why he was so limited in terms of space on the lot.

Mr. Grant asked if Dunkin Donuts was part of the plan when the gas station was put in.

Mr. Campbell said he had been told this was taken into consideration in creating the parking design because the owner knew something would be moving in.

Mr. Grant said it was an unfortunate situation, given that the Gibbs station was a significant improvement over what had existed on the site before, that the business was now facing its own problems

***Arthur Grant MOVED to have a quarterly planning meeting on March 22, 2006. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.***

There was a brief discussion about the Scorpion's application. Mr. Campbell said the applicant would be sharing a dumpster with Libby's.

Mr. Webb pointed out that Mr. Campbell had forwarded to Board members information on an upcoming meeting on February 24<sup>th</sup> on the various options concerning the regional outfall.

### **C. Next meeting of the Board: February 22, 2006**

## **IX. Approval of Minutes**

January 11, 2006

Page 1, the first and second motions on the page should read “...***PASSED unanimously 5-0.***” And the third motion should read “...***PASSED 4-0-1***”, because the alternates had not been officially appointed yet when these three motions were made.

Councilor Carroll suggested that the Minutes should indicate the appointment of alternates in bold. Mr. Webb agreed this was a good idea.

It was agreed that in the future, the Board should remember to appoint alternates at the start of the meeting.

Page 1, delete “arrived late” after Kevin Webb’s name under **MEMBERS PRESENT**

Page 2, the motion should read “..***PASSED unanimously 5-0.***” (see above for explanation)

Page 6, 2<sup>nd</sup> paragraph, should read “...Masiello Group property at the corner of Main Street and Madbury Road, and the fact that...”

Same page, bottom paragraph, should read “Mr. Webb noted it was rare that this would ever happen anyway because the ordinance prohibited the construction of new towers unless there was no other option. He also said that existing structures that were tall enough to hold the equipment were rare in residential areas, unless.....”

Page 7, 2<sup>nd</sup> paragraph, should read, “..asking for things like noise mitigation, etc.”

Same page, 6<sup>th</sup> paragraph, should read “...noting the list of possible technologies could be long, but that the term “reasonable” effectively limited the range of possibilities.”

Page 8, 2<sup>nd</sup> paragraph from bottom, should read “....trailer park, and so would challenge this limitation.”

Page 10, 7<sup>th</sup> paragraph (which should be separated by a space from the 6<sup>th</sup> paragraph), should read “...public hearing and then vote to approve the amendment at the same meeting.”

***Councilor Grant MOVED to approve the January 11, 2006 Minutes. The motion was SECONDED by Councilor Needell, and PASSED 6-0-1, with Nick Isaak abstaining because of his absence from the meeting.***

**X. Adjournment**

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

9:40 pm

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W. Arthur Grant, Secretary