

## **D-R-A-F-T**

**DURHAM PLANNING BOARD  
WEDNESDAY, MAY 10, 2006  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 PM**

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

**ALTERNATES PRESENT:** Councilor Carroll; Lorne Parnell

**MEMBERS ABSENT:** Susan Fuller; Bill McGowan

### **I. Call to Order**

### **I. Approval of Agenda**

Chair Kelley said Mr. Parnell would be filling in for Mr. McGowan.

*Arthur Grant MOVED to approve the Agenda as submitted. The motion was SECONDED By Kevin Webb, and PASSED unanimously 7-0.*

### **III. Report of the Planner**

Mr. Campbell said that on April 28, 2006, the Technical Review Committee held the public hearing for the Wings Your Way application. He noted that he had provided the Board with a copy of the Findings of Fact and Conditions of Approval.

He said he had attended a TAC Committee meeting on May 4, 2006, and said that among other things, the 10 Year Plan and CMAQ/TE project selection were discussed. He said the 10 Year Plan needed to be reduced by \$500 million in order to fit the current funding, and said this meant that not only was Durham not adding any additional projects to the plan, but some projects already in the plan would see cuts in their funding or delays in the project.

He said projects had been ranked for Round 8 of the CMAQ/TE process, and also noted that Round 9 of the TE grant program would not be accepting any new projects, and instead would cover cost overruns on existing projects.

Mr. Webb asked what percentage of the total budget \$500 million represented.

Mr. Campbell said it was a third of the total budget. He noted that Durham had several projects in the 10 Year Plan, and provided details on them.

Mr. Campbell said the Economic Development Committee had presented a report to the Town Council at the Council's May 1<sup>st</sup> meeting, and had asked the Council to endorse an action plan for 2006. He noted that the Design Guidelines for the Durham Business Park and the ORLI District were also discussed at the meeting. He said the Business Park Design Guidelines would be discussed in more detail at the May 15<sup>th</sup> Town Council meeting. He suggested that Board members with an interest in this issue should attend that meeting.

Mr. Campbell said the Planning Board would start its discussion on the timber harvesting issue at its May 24<sup>th</sup> meeting, with the goal of making a decision on how to handle the issue by June.

## **II. Election of Officers**

*Arthur Grant MOVED to nominate Richard Kelley, the incumbent, as Chair of the Planning Board. Councilor Needell SECONDED the motion.*

*Richard Kelley MOVED to nominate Kevin Webb as Vice Chair of the Planning Board. The motion was SECONDED by Richard Ozenich.*

*Kevin Webb MOVED to nominate Arthur Grant as Secretary of the Planning Board. The motion was SECONDED by Richard Ozenich.*

*Arthur Grant MOVED to close the nominations. Richard Ozenich SECONDED the motion and it PASSED unanimously 7-0.*

*The motion to nominate Richard Kelley as Chair of the Planning Board; to nominate Kevin Webb as Vice Chair of the Planning Board; and to nominate Arthur Grant as Secretary of the Planning Board PASSED unanimously 7-0.*

## **III. Election of Representatives for the Historic District Commission and Conservation Commission**

*Richard Kelley MOVED to nominate Richard Ozenich as the Planning Board representative to the Conservation Commission. The motion was SECONDED by Steve Roberts.*

*Kevin Webb MOVED to nominate Lorne Parnell as the Planning Board representative to the Historic District Commission. The motion was SECONDED by Richard Kelley.*

*Arthur Grant MOVED to close the nominations. The motion was SECONDED by Steve Roberts, and PASSED unanimously 7-0.*

*The motion to nominate Richard Ozenich as the Planning Board representative to the Conservation Commission, and to nominate Lorne Parnell as the Planning Board representative to the Historic District Commission PASSED unanimously 7-0.*

#### IV. **Public Hearing** on School Impact Fee Methodologies and Fee Schedule.

Chair Kelley provided some background on this issue, and said that consultant Bruce Mayberry, who had authored the study done to develop the Town's impact fee schedule, was present that evening to provide information on the study, and the fee schedule. He said in this instance, the affected abutters were all of the landowners in Durham.

***Kevin Webb MOVED to open the public hearing. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Bayberry provided a Powerpoint presentation.

He provided details on the following key Impact Fee principles:

- Authorized by NH RSA 674:21, V
- Assessment to new development
- Applied to capital facilities only
- Proportionate to demand
- Reasonable benefit to development
- Recoupment allowed
- Impact fee ordinance required in order to enable
- Cannot use to fund "upgrades"
- Time limit on usage

Mr. Mayberry next went through the two major parts of the impact fee process:

##### Impact Fee Ordinance

- Enables the process and principles
- Defines "new development"
- Establishes waivers and criteria for them
- Administrative procedures, appeals, refund of fees

##### Development of Basis of Assessment:

- Cost basis for fee
- Proportionality
- Schedule of fees to be assessed
- Adopted by board under general authority of the Impact Fee ordinance
- Provides advance notice of fees in a published schedule

Mr. Mayberry next presented school enrollment data in Durham from 1980-2000. He then provided details on the proportionate basis of assessing school impact fees.

Elements of assessment:

- Pupils per unit
- Square feet per pupil
- Cost of schools per square foot
- Less State building aid
- Adjust for tax payments

Uniform assessment schedule

Fee by structure type

He next presented two possible models for impact fee schedules:

<b>Structure Type</b>	<b>Model A</b>	<b>Model B</b>
Singe Detached	\$3,699	\$4,090
Townhouse & Attached	\$2,318	\$2,559
Two Unit Structure	\$2,907	\$3,175
Multifamily (3+ units)	\$1,812	\$1,971
Manufactured Housing	\$2,611	\$2,840

Mr. Mayberry provided some comparable impact fees for some other New Hampshire communities. He noted that the basis of school impact fee was not necessarily comparable between communities.

Dover	\$2,944
Barrington	\$3,211
Hampton	\$3,641
Exeter	\$4,012
Danville	\$4,502
Sandown	\$4,511
Bedford	\$5,684
Londonderry	\$6,134

Mr. McGowan arrived at the meeting at 7:20 pm.

Chair Kelley thanked Mr. Mayberry for his time and effort in putting together the report, and for coming to the meeting that evening. He then asked if any members of the public wished to speak. There was no response.

Chair Kelley noted that the Planning Board was charged with reviewing the impact fee schedule and revising it on an annual basis. He said the only area of this that looked very challenging was credit allowances, and the adjustments that needed to be made. He said the Board might need help with this.

Mr. Mayberry said he thought the Board could wait on this, to see if there was a reason to update this or other elements used in the calculation. He noted that the update process itself was quite simple, and could all be done with a spreadsheet.

Councilor Needell noted that one of the reasons for putting in the credit allowances was because of court challenges of impact fees in the past. He asked if these challenges had been successful.

Mr. Mayberry said there had been some successful challenges over the years, and said as a cautionary note, he recommended credit allowances in order to survive challenges concerning the double payment aspect of impact fees. He provided details on this, and said credit allowances were a fair approach.

Chair Kelley asked if the establishment of the multipliers for the different types of units was based on the 2000 census, and the houses in Durham at that time.

Mr. Mayberry provided details on how the multipliers were developed. He said there was an assumption that they were consistent with State averages. He said what was used in Table 3 was a best estimate.

Chair Kelley asked if the impact fees or the credit allowances would change if the multipliers were adjusted, and Mr. Mayberry said yes.

There was discussion about this.

Chair Kelley asked if it was found that the ratio was much lower, given Durham demographics, how that would affect the single family detached and the single family attached housing.

Mr. Mayberry said it might go up, because it would have to produce the total number of school children, using this particular model. He said the only other way to do it would be to take the actual enrollment and compare it to known characteristics of the housing stock using the assessment data base, and come up with a literal multiplier that was known to be absolutely correct for the different housing types.

There was additional detailed discussion on this.

Chair Kelley asked whether, given the recent escalation in materials and transportation costs, the \$145/s.f. for the Middle School and Elementary School, and the \$185/s.f. for the High School were still accurate.

Mr. Mayberry said they were reasonable as a basis for an initial impact fee, noting that schools were still being built at or below those levels, and also stating that a lot depended on how big the school was. He noted that the State's cost reimbursement limits might also have an impact on what the school districts did.

He said that even if perhaps the cost figures were a bit outdated, he liked to be a bit on the conservative side when first developing impact fees for a town. He recommended that over time, those costs per square foot could be increased in order to keep pace with the rise in construction costs. He provided details on this.

Councilor Needell pointed out that in order to change the numbers, there would have to be something in the CIP to indicate a future change that was planned for the schools. He said the current impact fees were based on past construction.

Mr. Mayberry said part of the theory of impact fees was that a town wanted the payer to pay what the comparable cost of construction would be in today's dollars. He said in order to keep the fee fair, one theory said to adjust those costs over time so they always reflected the current comparable cost of development. He noted there was no requirement that this be done. He said the key thing was that it was proportionate.

Chair Kelley asked why Mr. Mayberry had chosen to use maximum capacity per square foot, per pupil, in terms of square footage now.

Mr. Mayberry said this variable said that this was the most pupils the Town would want to accommodate at that school based on State standards. He said using functional capacity would be saying those schools were already full, and had no capacity left whatsoever, which meant the fee might be questionable. He said it was a question of balance, and also said it was a conservative assumption.

Mr. Grant asked Mr. Mayberry to explain how credit allowances worked, and also asked if they were applied at the time the impact fee was assessed on each property.

Mr. Mayberry said the final number was a net amount, which already included the adjustments. He said the Town didn't need to do any additional things to come up with it. He explained that the credit allowances were based on past and programmed debt service, which changed over time. He said the basis was a recognition that vacant land that new development was going to sit on had paid something toward the existing school capacity.

He said the portion they were trying to credit was the existing capacity that was already utilized, and were saying that one shouldn't have to pay for existing capacity used to date as well as future improvements. He said it was somewhat hard to reflect this in a mathematical model, which could be updated periodically. He said the credit allowances should be going down over time, and the impact fee basis should be going up. He said in theory, over time the full cost of new development could be recovered with impact fees as opposed to property taxes.

Chair Kelley asked if other communities Mr. Mayberry had listed in his presentation used credit allowances, and Mr. Mayberry said some of them did.

Chair Kelley thanked Mr. Mayberry for the presentation and discussion.

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

***Councilor Needell MOVED to accept the report issued by Bruce Mayberry dated December 19, 2005 and that the Board implement the fee schedule denoted as Model A. Steve Roberts SECONDED the motion.***

Councilor Needell said that one of the statutory requirements concerning impact fees was that there had to be a Master Plan and a CIP. He said in this case, the CIP that applied was the school CIP. He asked how often this CIP was updated.

Mr. Campbell said the most recent CIP had been updated in 2001.

Councilor Needell asked if this presented a problem for the Planning Board, and Mr. Campbell said he didn't think so. He said while there had to be a CIP in order to have an impact fee ordinance, the data came from the school system, with the exception of the bonding amount, which was included in the Town's CIP.

Mr. Ozenich said there was a typing error on page 5, and said it should read "...enrollment per household in 2000 in Durham was lower than it was in 1980, but higher than in 1990. He also said he thought that 1980 should be used as the basis, and then should go up to 2000.

Councilor Needell said this was a complicated report, but he said he thought Mr. Mayberry was saying that it was less important to be concerned with the details, and that the key was that the impact fee system that was proposed was reasonable and proportionate.

Mr. Roberts said if the Board decided the system was reasonable, enacting it and tracking it would then be the best way to judge it. He said the system could be corrected honestly over time.

Councilor Carroll asked if there was information on the administrative costs of running the program.

Chair Kelley said the Board had spoken about this before, and the Town's Financial Office had said the administrative costs wouldn't be that much, and that the money would be put in a separate escrow account. He noted that there was outstanding school debt, so the system would be used.

Mr. Grant said he didn't want the audience to get the impression that the Board had rushed into adopting the impact fee schedule. He noted he was serving on the Town Council 12 years ago when impact fees for Durham were first proposed. He said it had taken 6 years of prodding the Council, and 4 years of prodding the Planning Board, and said he hoped the Board was now at the point where it would adopt the system.

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

***Arthur Grant MOVED that the Planning Board recommend the adoption of the fee schedule, Model A from Bruce Mayberry's report – Public School Impact Fees: Basis of Assessment 2005-2006, dated December 19, 2005 and accepted this date, for adoption by the Town Council. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.***

- V. **Design Review on a Site Plan Application** submitted by Joseph Caldarola, Portsmouth, New Hampshire for the building of 21 multi-family units on a piece of property. The property involved is

shown on Tax Map 10, Lot 7-0, is located at the corner of Bagdad Road and Canney Road and is in the Residential B Zoning District.

Mr. Ozenich said he would recuse himself for this Item.

Chair Kelley noted that Mr. McGowan was now present, and said Mr. Parnell would therefore fill in for Mr. Ozenich on this Item.

Chair Kelley said the design review had been requested by Mr. Caldarola, and said there was no formal application at this time. He said the discussion that evening would therefore be nonbinding. He also said there would not be a public hearing on the proposal that evening, and explained that if a formal application came forth, the Board would then decide whether to accept it. He said at that time, a public hearing would be scheduled, and the Board would then receive public testimony at that hearing.

Joe Caldarola spoke before the Board. He said Fitts Farm, which he had developed, was doing well, and said he had been looking for additional land to develop. He noted he had waited for the Zoning Ordinance update process to be completed before moving forward concerning another development. He said he would like the Board's input concerning a proposed site plan, which was why he had requested design review.

He then outlined the proposed site plan:

- Multifamily use
- Elderly housing condos; seven buildings, with 3 units per building; each building has two 2-3 bedroom units and one smaller one bedroom unit; middle unit in most of the buildings was the smaller unit; one building would need two smaller units. Works out to 13 2-3 bedrooms units, and 8 one bedroom units.
- Fits with the market; he said there was a need for smaller units at a lower price that he hadn't previously been able to meet
- The buildings are grouped mostly along Bagdad Road, along a loop road, except for one of the units; somewhat poorly drained and poorly drained soils are located for the most part to the back of the site. The loop road would run from an entrance with a good sight distance point to the east and come out at a location with a good sight distance further west. He noted that between these two locations, there were issues concerning sight distance.
- Water is available at the intersection to the west.
- The development would require town sewer; limited septic capability on the land. Sewer is available near Peterson Woods, or where Sumac Lane comes out. He said he was not yet sure which was the better route to run it.
- No need for wetlands buffers, because the buildings would lie nicely in the upland portion of the site.
- Has met with neighbors who currently suffer from flow of water across their yards; he said he would be conscious of this, and would focus on reducing the flow toward that direction so the situation would improve.

Mr. Roberts asked if the road within the development would be an approved town road.



Mr. Caldarola said it would be a private road, which would be maintained by the condo association.

Mr. Roberts urged that it be made a Town road, in order to maintain standards, as a service to the residents of the development. He said he thought this was the wrong category of people having to maintain private roads.

Councilor Carroll also encouraged Mr. Caldarola to not make this a private road. She noted that Fitts Farm had private roads, and residents therefore had to take their recyclables to Town. She said this was backwards, for a town that prided itself on its recycling program.

Mr. Caldarola said he would try to work this into the plan.

Mr. Roberts noted that there were no cul-de-sacs or hammerheads, so this shouldn't be a problem.

Mr. Caldarola said that having public roads would result in an impact on the setbacks, and would force one of the buildings further back on the site, which would change the character of the development. He said perhaps there could be an allowance for the setback instead.

Mr. Grant asked if any studies so far had looked at whether there were adequate Town drainage lines to handle the flow.

Mr. Caldarola said the Public Works Department had encouraged him to tie with the existing catch basins, but said no engineering on this had been done yet. It was noted that the flow on the site was from right to left and toward the back of the property.

Mr. Grant asked what kind of soils the buildings would be put on.

The surveyor said the somewhat poorly drained soils had to come out for the overall density calculations, but said they could actually be build upon.

Mr. Grant said he would like to know whether they into rock and ledge on the site, and the surveyor said there were ledge areas here and there, but that they did not comprise that much of the site.

Mr. Grant asked what buffering was required under the new Ordinance for a development like this.

Chair Kelley listed some of the things he would be looking for if Mr. Caldarola went forward with a site plan review application.

He said the 75 ft. buffer was shown for the larger poorly drained soil area in the middle of the site, but not for the smaller poorly drained soil area to the west. The surveyor said no buffer was included because the area was less than 3,000 s.f.. Chair Kelley asked that this be delineated

when the application was submitted. He also that somewhat poorly drained soils be separate from poorly drained soils in the calculations.

He noted on the site plan a line on the far east side of the property that crossed the driveway on the far east side, which appeared to be a high intensity soils line, but also crosses multiple high intensity soil lines. He asked that this be clarified on the next site plan.

He said two abutters that were listed were not shown on the site plan, and said if they were not direct abutters, this should be stated.

He said the address needed to be clarified.

He said the calculation for eight one bedroom units should be 13,333 s.f., so would need to be revised. He noted that it didn't affect the total number of units.

He said he would like to see pre and post flow analysis of stormwater, including peak flow as well as increase in quantity. He said he would also like water quality to be looked at.

He noted that the plan at present indicated that there were two outlets, one to the west near Canney Road, and a second outlet on the site between the Kennedy and Clark parcels, unless this was an isolated low point that did not have an outlet. The surveyor said it was isolated, and Chair Kelley said he would like this to be confirmed. The survey said he was currently working with the Public Works Department regarding water and sewer issues, and Chair Kelley recommended continuing with this.

Chair Kelley said there was currently no parking for the unit adjacent to Canney Road, and noted that this would have to be resolved.

Councilor Needell asked what would be used for parking.

Mr. Caldarola said there would be garages, and were inside the footprint. He said parking would be a combination of driveway and garage.

Chair Kelley asked Mr. Caldarola to describe the site at present. Mr. Caldarola said it was all woods.

Chair Kelley said he would like to see a forested buffer maintained if possible. He also asked Mr. Caldarola to make sure that the architects incorporated a design that fit with the neighborhood, and was sensitive to light pollution issues if additional lighting was required.

Concerning driveways, Chair Kelley noted there wasn't a tremendous amount of traffic in this area, but said Mr. Caldarola should be prepared to discuss traffic impacts on Bagdad and Canney Roads. He also asked that available sight distances be shown, noting that the driveways on the current plan had already been located to optimize sight distance.

Councilor Needell asked if nine single family homes could be placed on this site, and also asked if market analysis had indicated that what Mr. Caldarola was proposing was the higher and better use.

Mr. Caldarola said he thought what he was proposing was the highest and best use, and said the demographics were going in that direction, making it safer to build 55 and over developments. He provided details on this.

There was discussion that it would be difficult to get nine single-family houses on this site because of soils and slope issues. It was noted that a conservation subdivision would be needed for this.

Councilor Needell said if the same density calculation were allowed for non age-restricted housing, Mr. Caldarola would still be building age restricted housing, because that was where the market was.

There was discussion about this with Mr. Caldarola, and he said he thought age restricted housing was where the market was.

Mr. Webb said a developer had proposed 7-8 single family houses on this property a few years back, and one of the main issues at the time was soils and related drainage issues. He noted that Mr. Caldarola had said he would try to improve the drainage issues, and asked him if he had any conceptual ideas on this.

Mr. Caldarola said that in doing a site plan, drainage could be designed so it would be clear what would happen in terms of runoff, as compared to the uncertainties involved with subdividing lots. He said most of the construction would occur near the street, and said the front yards of properties would slope up to the houses, so water would want to flow toward Bagdad Road. He said that as part of making this an attractive project, the proposed grading would take flow out of the area it was occurring in now.

Mr. Webb asked if Mr. Caldarola would consider installing catch basins for roof drains, as had been done at Perley Lane.

Mr. Caldarola said if this made sense, and further reduced the flow in a way that made sense, he saw nothing wrong with doing this. But he said he couldn't yet say this for sure.

Mr. Grant said his previous question concerning drainage had been directed less to installation by Mr. Caldarola of a drainage system on the property, and more to the suitability of the Town's lines to handle the increase. He said verification was needed that the capacity was there.

There was discussion about the need to study sewer capacity in relationship to the proposed development. Chair Kelley noting that stormwater capacity should be checked as well.

Mr. Grant noted that there was a lot of exposure on the Bagdad Road side of the property, and suggested a vegetative buffer for this.

There was discussion about this with Mr. Caldarola.

Councilor Carroll said she had studied the plan in detail that week, and had also re-read the definition of the RB District. She noted that its purpose was to maintain the integrity of a medium density area. She said that looking at this proposed development, she began questioning whether what was proposed was medium density development, with 21 units on 13 acres.

She also said a question to be asked was how this development related to the neighborhood, and whether it was consistent with the character of the neighborhood. She also noted that this was just one proposed development, under the Town's relatively new zoning, and said there were other parcels in the area that were not yet developed, and could also be used for elderly housing.

Mr. Caldarola said he would try to do a nice job on this development, and make it look like it had always been there. He noted the work that had been done at Fitts Farm.

There was discussion on what "medium density" meant.

Councilor Carroll noted that the Master Plan had been written as if the whole town was to be for elderly housing, and said the question at this point was whether the community had addressed this land use.

Chair Kelley said he wasn't sure how this could be addressed if Mr. Caldarola made a formal application. But he said the Board was grappling with the fact that there appeared to be a shotgun approach to elderly housing in the community, which created problems.

He also said, concerning the medium density issue, that the current site plan showed that the maximum allowable density had been put on the site. He noted that Mr. Caldarola had discussed a niche market, and asked him to discuss this a bit more.

Mr. Caldarola said the niche market was smaller units, in the \$300,000 range.

Chair Kelley said what the Town was missing was lower income, fixed income elderly housing.

Mr. Caldarola said he would be afraid to build this, even if he had a subsidy, because he didn't know if people would want to pay the taxes in Durham.

Councilor Carroll said perhaps a mixture of elderly housing would work, to include high end as well as more affordable housing.

Mr. Roberts stated that a lot of elderly people preferred more scattered development, and disliked denser developments. He noted that the Zoning Ordinance had been newly updated, and said it would be difficult to find that a developer did meet an intent of the Ordinance when he met the guidelines of the Ordinance. But he asked Mr. Caldarola to try to tailor the development to serve the needs of the greater neighborhood and the community.

Chair Kelley said he appreciated Mr. Caldarola taking the time to come in to hear the Board's concerns before the engineers began working on the plan instead of after.

Mr. Campbell noted that estimated traffic counts for the area would be needed, and said this would help in the long run to determine whether a traffic study was needed. He also said that a basic fiscal impact assessment should be provided to the Board.

Councilor Carroll asked whether the development would have to stay as housing for people 55 and over, or if this could be changed later.

Mr. Caldarola said the 55 and over status would be cemented in the deeds, noting he had done this in the past.

Mr. Grant noted that the Board had talked about amending the regulations to require having sewer and water permits in hand before an application was made. He said he didn't propose that this be required for this development, but said it would be useful if Mr. Caldarola had those permits when he brought his application in, so there would be less guessing.

Mr. Webb agreed, and suggested that Mr. Caldarola move ahead with applications for these permits.

Councilor Needell asked if this proposed development would undergo just site plan review, or would also have to undergo the conditional use process, and it was clarified that only site plan review was required.

Mr. Webb asked if the Town needed to have its own consultant regarding the soils survey, or if this was only needed when septic design was involved.

Mr. Campbell said the Board could certainly do this if it wanted. It was clarified that hiring an independent person to review the soil types was not required.

Mr. Webb said the Board might want to reserve that option, given that the density on the site would be the maximum possible. He noted that if the wetlands delineation were off even by a small amount, this would change the application.

Mr. Campbell said he would like to see a draft of the condominium declarations. He said the last few elderly housing projects in Town had included wording in the declaration that no one under 18 would live in the condo for more than a month. He said although this situation hadn't really been a problem in the area, the wording was worth considering.

Mr. Campbell also asked if Mr. Caldarola had looked at different configurations for the units, and how it had come about as compared to buildings with more units.

Mr. Caldarola said that people preferred to live in the smallest multi-units possible, and said he hadn't looked at developing larger buildings. He said his gut instinct was to stick with building the smallest number of units possible in each building.

**8:40 pm recess to 8:45 pm**

**VI. Discussion of a Class VI driveway request** submitted by Gary Lonsinger for a proposed new single-family home. The property involved is shown on Tax Map 15, Lot 18-5, is located at **93 Newmarket Road and is in the Residential B Zoning District.**

The applicant, Gary Lonsinger, said he was proposing to access his property off of Timberbrook Lane, not Newmarket Road. He said the property consisted of about 50 acres, and said the portion where he wanted to build the house was at a point at the end of a Class V road, and at the start of a Class VI road.

He said late last year, he had worked with Mr. Campbell and the Public Works Department concerning a driveway he had proposed that was further back, at a 90 degree angle coming over the Class VI road. He said it was recommended at that time that the driveway be brought directly onto the Class V road, rather than the Class VI road. He said this was done, and said he thought the issue was resolved last year.

But he said Town Engineer David Cedarholm had reviewed this, and now this was before the Planning Board. He said the proposed driveway exited directly onto to the end of the Class V road, rather than onto the Class VI road, and said the new drawing showed this. He said so that there was no issue in the future, the Public Works Department had recommended that this come before the Planning Board and the Town Council.

He said the Class VI road had been improved, paved, and ditched, and said most of the area was 12-14 feet wide, with a huge cul-de-sac at the end. He said it was designed with the Fire Chief, and said it was not a typical Class VI road. He said that technically, he maintained it, so he was before the Board. He noted that both the Class V and VI portions of the road were paved.

Chair Kelley asked if the Class V portion was wider than the Class VI.

Mr. Lonsinger said Timberbrook Lane was 18 ft. wide, noting that when he first developed the land, he put in Timberbrook Lane. He said this was the maximum allowed at the time. He said that Timberbrook Lane coming into the hammerhead was 18 ft., and from there was narrowed from 18 ft. down to 14 ft, in order to get Town Council approval. But he said where the proposed driveway was, it was the same width as Timberbrook Lane.

Councilor Needell noted that Mr. Lonsinger's letter spoke about the driveway being five feet up the road.

Mr. Lonsinger said the Town had accepted 475 ft. of Timberbrook Road, and 500 ft. was actually paved. He said he was not actually using any of the Class VI road, unless one considered the portion from the stone wall to the Class VI road.

Councilor Needell asked why the Board was having this discussion, if the driveway was going into the Class V road.

Mr. Campbell said his impression was that it went into the Class VI road.

Chair Kelley said the Class VI road had been improved to the same standard as the Class V road, regardless of where the line fell.

There was further discussion on why the Board was hearing this matter.

Mr. Lonsinger said he was directed by the Public Works Department to come before the Planning Board because the frontage of where the driveway crossed the stonewall was not Class V, Town maintained frontage. He said the Town maintained it up to the end of the hammerhead.

There was discussion about this, and about the fact that the Board was now simply being asked to make a recommendation to the Town Council concerning this matter.

Councilor Needell noted the criteria concerning Class VI roads, and recommended that the Board make it as easy as possible for the Council to address these.

Mr. Campbell said there would also be recommendations from the Conservation Commission and the Parks and Recreation Committee.

Chair Kelley went through the various criteria concerning Class VI roads:

- Length of Class VI road - Mr. Lonsinger said he would be using about 5 ft. of it
- Width of travel way – 14-18 ft.
- Width of right-of-way Mr. Lonsinger said it varied from 50-60 ft. Mr. Campbell noted that the tax map showed it going all the way to Route 108.
- Road surface and condition – paved and in good condition
- No roadbed exposed
- Profile – no
- Large rocks or ledge in roadbed when constructed? – Mr. Lonsinger said this was all blasted out.
- Any flooding along roadway – no; mud not a problem, drainage has been adequate
- One culvert, at northern edge of power line easement; also one on Timberbrook Lane. Mr. Lonsinger said the area where the driveway was coming in was one of the highest points in Durham, and was all level.
- Condition of culverts is adequate
- Condition of curves and switchbacks –
- No bridges
- Trees are a minimum of 6 ft. from the paved surface
- Mr. Lonsinger said he didn't think there were any other condition of the road that would affect its suitability for development.
- Two cars can safely pass one another.
- Plow truck can pass along the road.
- Fire trucks and emergency vehicles can pass along the road. Mr. Lonsinger provided details on this.
- Closest distance to Class V road is 5 ft.

- # of houses located on the Class VI portion of road – 1
- distance from proposed residence to closest residence – about 250 ft.
- distance to municipal services - No Town services nearby
- distance to downtown, Fire Department – 2.1-2.2 miles; Police Department is about 3 miles away.
- No need for road improvement
- Increased trips resulting from proposed development – Mr. Lonsinger said there would be no increased trips, because members of his family, already living in his existing house, would be living in the new house. Mr. Campbell noted that even if the house were sold, the increase in traffic wouldn't be much.
- Any factors that would affect suitability of the road for use by the proposed development, or the likelihood of further development? Mr. Lonsinger provided details on the fact that economically, this would not be feasible.
- Consistency of proposed development with the Master Plan – It was noted that it was in the RB District.

***Councilor Grant MOVED that the Planning Board recommend to the Town Council approval of the request for a building permit off of a Class VI road. Kevin Webb SECONDED the motion, and it PASSED unanimously 7-0.***

## **VII. Discussion of Changes to Article XVII, Historic Overlay District, of the Zoning Ordinance**

Mr. Campbell provided background on the work that had recently been done to update the Ordinance by members of the Historic District Commission and Town Council. He said the Board could discuss some of the changes that evening, and could then schedule a public hearing on the proposed changes for the May 24<sup>th</sup> Board meeting.

Crawford Mills of the Historic District commission said three major changes had been made to the Ordinance; removal of inconsistencies; higher standards that had somehow been taken out had been put back in; and the approval process was clarified.

Councilor Van Asselt provided details on the inconsistencies that had been found, and said that no substantive changes were made as part of this. He said they represented about 80% of the effort to fix the ordinance.

Councilor Van Asselt said another 10% of the change to the ordinance involved putting back some sections that had been lost over a few years for some reason. He noted that the language was no stronger now than the original ordinance was before the Planning Board had amended it.

He said the remaining 10% of the changes involved the approval process, and said the hierarchy was now spelled out carefully.

Mr. Campbell noted that the language that had been struck through concerning demolition and removal had been put back in, and made it a better paragraph. He also said that the appeals language that had been taken out had now been put back in. He said the demolition by neglect



was not in the old version, but was in the version that was sent by the Planning Board to the Town Council.

***Arthur Grant MOVED to schedule a public hearing on May 24<sup>th</sup>, 2006 on the proposed amendments to Chapter 175 of the Zoning Ordinance relative to the Durham Historic District. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Campbell noted that several different HDC's, Planning Boards and Town Councils had looked at the Ordinance over the past several years.

There was discussion on the Highland House, which was historic but was not in the Historic District..

Mr. Campbell noted that the letter to the University on the Highland House would include wording concerning the role of the HDC.

There was discussion that the Heritage Commission, although still advisory, could be much more involved in trying to protect properties like the Highland House.

## **VIII. Other Business**

### **A. Old Business: Interpretation of Section 175-72(A)(4 & 5) of the Zoning Ordinance.**

Mr. Campbell explained that this came up as part of a variance process recently. He said the application was approved, with the condition that under 175-72 concerning conditional uses in the Shoreland Protection District, if appropriate, the Planning Board would have to review the proposed development.

He said this had never happened in the past, but said the language here under 4 "The construction or expansion of a principal building or structure" meant that someone wanting to put on a porch on their home would now have to come before the Planning Board. He noted that the Wetlands protection overlay ordinance talked about commercial and nonresidential multiunit development, which was historically what the Planning Board had reviewed.

Mr. Campbell said the way this was now written, anything that happened in the Shoreland zone would have to be approved by the Planning Board.

Mr. Roberts said that in its previous discussions on this topic, the Planning Board had noted that the draft it was presented with excluded the ability to have a porch in that district. He said in order to remove that exclusion, the Board had added this language under conditional use.

There was detailed discussion on this.

Mr. Roberts said this may have been rewritten incorrectly. But he said the idea was not to exclude people from a reasonable course of action. He said this certainly wasn't the intention,

and wasn't the reason the Board had given for why it should be rewritten. He asked if there was a proposal for how it could now be adjusted.

Mr. Campbell suggested that Planning Board approval should only be required for commercial and multiunit development, as with the Wetland Protection overlay district.

Mr. Roberts asked if that excluded the ability of someone to add a porch, and Mr. Campbell said absolutely not. Mr. Roberts said he was fine with getting the language technically correct so the Board didn't prohibit a reasonable expansion within the zone, and didn't get caught up with architectural elements that had nothing to do with issues.

Mr. Grant said it appeared from watching ZBA meetings over the last couple of months, that that Board had been receiving a number of applications for variances for decks, porches, etc. in the Shoreland Protection District.

Mr. Campbell said the page 52 of the Ordinance contained provisions under nonconforming structures and building, as to what was possible. He said they allowed property owners to do certain things, including up to a 15% increase in the footprint, and an increase of no more than 30% of the volume of the building.

Mr. Grant said the issues before the ZBA had largely been decks located within the 125 ft. setback.

Mr. Grant asked if the word "principal" could be replaced with the word "commercial".

There was discussion that perhaps the language should be the same as was in the Wetland overlay district provisions.

Chair Kelley asked if there were in fact any non-residential structures in the shoreland area, and was told there were.

Councilor Needell asked what the options were if someone wanted to build a new house on a vacant lot within the 250 ft. shoreland overlay zone.

Mr. Campbell said if they could build outside the 125 ft. shoreland setback, they went to Tom Johnson for a building permit.

Councilor Needell said according to this, they would have to come to the Planning Board for a conditional use permit in order to build anything or modify anything within the 125 ft. setback., and that they would also have to go to the ZBA for a variance.

He also said if there were a commercial use within 125 ft. it would come to the Planning Board, as a conditional use (and would also go to the ZBA.) He said he had read previous drafts of the document, and said at some point the language changed from "commercial building". He said the intent of this wording was now clear, and said it would be hard to say the intent was anything other than what the words said.

There was continued detailed discussion on how this had happened, and how it should now be handled.

Mr. Webb said he recalled that part of the concern was that when dealing with sensitive conservation areas like the shoreland protection zone, one didn't want to leave decisions solely to the ZBA, which was really looking at things in a formulaic, legal rights way rather than from a resource protection point of view. He said that was why there was a leaning to have those special cases come before the Planning Board, so the more global view could be taken.

Chair Kelley questioned why this wasn't included in the wetlands overlay provisions as well. There was discussion about this, and Mr. Webb said he recalled there was particular sensitivity given to the tidal portion of the Oyster River and Great Bay, and the importance of preserving those views from the shoreline. He said he could see leaving out expansion.

Mr. Campbell said a person couldn't build within the 125 ft. if they could do so outside of that. But he said the issue arose when there were existing structures within the 125 ft., which owners wanted to expand.

Mr. Roberts said there had been proposals that the Board make the setback 250 ft. which was how they got into the situation they were now discussing. He said the Board decided to go with a 125 ft. shoreland setback, along with some control over what happened between 125 ft. and 250 ft.

There was discussion that 175-72 A. 4 and 5 was in reference to the 250 ft. shoreland protection zone.

Councilor Needell asked what in the conditional use process would be of value if the language remained as it currently was. There was detailed discussion about this.

Chair Kelley said this was a very messy situation. Mr. Campbell agreed, and said between some of the dimension controls, and what had been done on page 52 under 175-30, D – Nonconforming Structures and Buildings, he believed there were sufficient requirements.

Mr. Campbell read from 175-30, D.

Board members agreed that the wording under 4 should say "The construction or expansion of nonresidential building or structure." It was agreed that 5 should stay as it was.

***Kevin Webb MOVED that the Planning Board direct the Director of Planning to make an amendment to section 175-72. Conditional Uses in the SPO District, subsection A 4. to read "The construction or expansion of a nonresidential building or structure." Arthur Grant SECONDED the motion.***

There was discussion that this would go to public hearing.

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

***Arthur Grant MOVED to have a public hearing on the modification to 175-72. Conditional Uses in the SPO District, subsection A.4, on May 24<sup>th</sup>, 2006. The motion was SECONDED by Kevin Webb.***

Councilor Needell said he would research the records to reconstruct the arguments made for changing the wording to "...", and there was discussion that doing this would be difficult.

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

**B. New Business: Set date for Public Hearing on Article XVII, Historic Overlay District.**

Chair Kelley said the letter regarding Highland House had been drafted, and noted that Nick Isaak had provided some revisions. Chair Kelley said he supported most of them but said he wanted it to be clear that members of the public spoke to the HDC, and there were also members of the public who spoke before the Planning Board.

Chair Kelley said if there were any additional comments Board members would like to be included in the letter, they should send them soon, because the letter would be going to UNH the following week.

Councilor Carroll said this was a good, professionally done letter, and said she appreciated the fact that the tone was not overbearing.

Mr. Webb said he would be sending some comments, and said he would recommend that the RFP conditions be recorded with the deed. He also noted that Nick Isaak had asked that these conditions be amended, and that when the purchaser of the property notified the University of any modifications, the HDC and Director of Planning also be notified. He noted there was a narrow, 30 day window for this.

**C. Next meeting of the Board: May 24, 2006**

**II. Approval of Minutes**

April 12, 2006 Minutes

***Arthur Grant MOVED to approve the April 12, 2006 Minutes. OZ SECONDED.***

Page 1, under **Report of the Planner** section, note at the bottom of this section that Mr. Webb arrived at the meeting.

At the suggestion of Chair Kelley, the Board agreed that if a discussion on an Item started, and then the regular member arrived, the alternate that had been appointed would continue as a regular member until that discussion ended.

Page 2, 4<sup>th</sup> paragraph from bottom, "Building Department" should say "Building Inspector/Code Enforcement Officer."

Page 3, 2<sup>nd</sup> paragraph from bottom, the sentence starting with “Mr. Webb noted that the roadwork...” should be a separate paragraph.

Page 9, 3<sup>rd</sup> paragraph, should read “Councilor Needell said this was a major area of conflict, as..”  
8<sup>th</sup> paragraph, remove “He” at end of paragraph. 10<sup>th</sup> paragraph, include period at end.

Page 10, 4<sup>th</sup> paragraph, should read “..at the Town’s Depot Road Parking lot, but said...”

Page 13, 4<sup>th</sup> paragraph from bottom, the sentence starting with “Councilor Carroll said the Board...” should be a separate paragraph.

***The motion to approve the April 12, 2006 Minutes as amended PASSED 7-0.***

### **III. Adjournment**

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

Adjournment at 10:00 pm

Victoria Parmele, Minutes taker