

D-R-A-F-T

**DURHAM PLANNING BOARD
WEDNESDAY, OCTOBER 11, 2006
TOWN COUNCIL CHAMBERS
7:00 PM**

MEMBERS PRESENT: Chair Kelley; Arthur Grant; Stephen Roberts; Richard Ozenich; Councilor Needell; Bill McGowan; Kevin Webb (arrived late)

ALTERNATES PRESENT: Councilor Carroll; Susan Fuller; Lorne Parnell

MEMBERS ABSENT: Steve Roberts

I. Call to Order

Chair Kelley appointed alternate Lorne Parnell to be a voting member in place of Kevin Webb.

II. Approval of Agenda

III. Approval of Minutes

June 14, 2006

June 23, 2006

Chair Kelley MOVED to do the approval of the June 14, 2006 and June 23, 2006 Minutes at the end of the meeting. The motion was SECONDED by Bill McGowan, and PASSED unanimously 6-0.

IV. Report of the Planner

Mr. Campbell noted that an email had been received from Attorney Mitchell. He updated the Board on other materials that had recently been received regarding various projects. He also noted he had recently met with University planner Doug Bencks

Mr. Campbell said the design review for the elderly project proposed by Stonemark Management off Madbury Road would be heard at the October 25th Board meeting.

He updated the Board on a recent Seacoast Technical Advisory Committee meeting. He noted that the northwest southeast linkage study had been on the NHDOT's long-range plan, but had been taken off. He said it had now been put back in the plan, and was mentioned as a vision element. He said until the Town came up with the cost for the project, it wouldn't be able to get the actual work on the project programmed into the plan.

He said there was a meeting that day to discuss the possible redevelopment of Mill Plaza, and said he would update the Board on this.

He said the Town had hired a consultant to help with updating the sign, parking and excavation regulations.

Mr. Webb arrived at the meeting.

Chair Kelley appointed Mr. Parnell as a voting member in place of absent member Steve Roberts.

Mr. Campbell provided details on an upcoming public hearing to get comments concerning the Main Street enhancement project from Pettee Brook Road to the railroad bridge.

- V. **Continued Public Hearing on a Site Plan Application** submitted by Joseph Caldarola, Portsmouth, New Hampshire for the building of 21 multi-family units of elderly housing. 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.

Arthur Grant MOVED to continue the public hearing on a Site Plan Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for the building of 21 multi-family units of elderly housing at the corner of Bagdad Road and Canney Road, in the Residential B Zoning District. Kevin Webb SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell said since the last meeting, an item had come up that the Planning Board needed to discuss. He explained that as a result of another application the Town was receiving, for a multi-unit elderly project that would involve a condominium conveyance, the applicant and attorney felt they had to go through both subdivision and site plan review. He said this interpretation was based on the Town's definition of subdivision in the Zoning Ordinance, which did not include condominium conveyance,

He said the site plan review regulations had always stated that multi units went to site plan review, and historically that was what had been done. But it was pointed out that the subdivision regulations had a different definition of subdivision, and it matched the state definition, which included condominium conveyance.

He said this had prompted him to contact the Town Attorney, who had determined that in light of the fact that the subdivision regulations had the same definition of subdivision as the state definition, that Mr. Cladarola would have to go through both the subdivision and site plan review process.

He said Mr. Caldarola's attorney had a different opinion, and said he wanted to give Mr. Caldarola a chance to express these views to the Planning Board. He noted the email from the Town Attorney on this, and said the Board might want to get a formal opinion, in writing. He

noted Attorney Mitchell had discussed the matter with the applicant's attorney, and said he didn't believe Attorney Mitchell had changed his mind.

Mr. Campbell suggested that the Board hear brief comments from the applicant, and then could decide how it wanted to proceed. He recommended that if the Board agreed with the Town Attorney, it should do an acceptance of the subdivision application at the Oct 25th meeting.

Mr. Caldarola said he and his attorney were at a loss as to why this was being discussed. He said there were two questions, the first being whether the site plan was in some way a subdivision. He said a second question was whether, if it was determined it did involve a subdivision, the project met the criteria for exemption from the conservation subdivision process. He said he and his attorney thought the project would be exempt, under D 2 (regarding "...minimum lot area of 400,000 sf., with no potential for future subdivision of the parcel.....")

He said there was no subdivision of land involved, explaining that there was one lot now, and when the project was approved, there would still be one lot. He said there was no division of land inherent in this project. He said one possible common misunderstanding with condominiums was that none of the land was owned by any one owner, even the land under a unit, and all of the land was owned in common by the owners, so there was no division of land involved.

He also said the condominium conveyance language that had been referred to was old language, which had survived many edits, and said the condominium statute had been developed subsequent to that. He said the language in this said that condominium conveyance could not be the basis of planning board decisions, and that there should be no decision that treated the condominium aspect of a project differently than if there were to be apartments.

Chair Kelley read from the Durham Subdivision Regulations, and said he was as confused as Mr. Caldarola on this. He read the definition of subdivision, in the subdivision regulations, and described his interpretation of it. He said he was very reluctant to go against the Town Attorney's opinion, but said he didn't understand where he was coming from on this.

Mr. Caldarola said the fact that a project that didn't have any subdivision, and that would convey condominiums, was somehow a subdivision, would be illegal in his opinion.

There was discussion on this, and on the difficulty of reviewing this project through the subdivision review process.

Mr. Campbell said his thoughts were the same, and said it was hard to grasp why a condominium development that doesn't divide land could become a subdivision. He said the way the State statute was written was fairly confusing, noting the wording "other divisions of land".

Councilor Needell said he thought the Board needed more information from the Town Attorney, and agreed that a formal opinion developed. He also said if subdivision was involved, the Board would need guidance on how to treat the project, because it didn't seem to fit under the subdivision process.

Mr. Campbell noted that this issue had originally been brought up by an attorney other than Attorney Mitchell, for a potential multi-unit development involving 78 units on one lot, with a condominium conveyance.

There was discussion about what subdivision review could possibly add to the process, and also about the difficulty of interpreting the subdivision provisions in regard to this property, including the exemption language.

Mr. Webb read the definition of condominium in the Zoning Ordinance, which said “condominium shall be considered a subdivision, and reviewed accordingly.”

Chair said there was a hole in the Zoning Ordinance because the subdivision review criteria didn’t fit.

Mr. Grant asked if the Board could accept the premise, but then grant an exemption on this.

Mr. Webb said exemption could be granted from conservation subdivision, but said the applicant would then still have to go through the subdivision process.

Mr. Campbell said if the project was found exempt, there was nothing more Mr. Caldarola could give the Board that would add to the process of reviewing the proposed project. But he said if it was determined that he was not exempt, there was a lot more at stake.

There was detailed discussion on this, and on the larger issue of whether subdivision review was required.

Councilor Needell requested that the lawyers continue the discussion on this issue, stating that he didn’t see how the Board could move forward without resolving this.

Chair Kelley said he didn’t think the subdivision issue would be resolved that night, but said he would still like to continue with the site plan review process.

Bill Johns, Bagdad Road, said he lived across the street. He asked if there was a timeline for the construction.

Chair Kelley said it was a phased project, with Mr. Caldarola looking to do one building first, before doing the road and adjacent buildings. He said there were no dates provided yet.

Mr. Johns asked how much blasting would be involved. He also asked for more specifics on how much of the area between the houses and Bagdad road would be cleared.

Mr. Johns noted language in the condominium document that referred to an additional unit that could be built, and that said if a transport vehicle were purchased, it would be parked on the site.

Mr. Johns received clarification on the density allowed for each of the units, and each building.

He also asked noted the 55 or older limitation, but that if the 55 or older person moved out, family that was under that age could stay in the unit until it was sold. He asked who enforced the condominium rules like this. There was discussion that the association was the first level of enforcements, and that the Town would get involved if the issue was brought to its attention

Mr. Johns noted that for one-bedroom units, there would be a single car garage, with parking on the driveway in front of the garage. He questioned how practical this was, and asked if other parking areas would be available for parking.

Mr. Johns noted Section 175-39, regarding the purpose of the Residential B Zoning district. He said he realized the Town had made an exception for elderly people, but noted that if someone moved out, the remaining people, who were younger, could stay in the house. He said this was a pretty tight area, and asked if the Board had considered this.

Mr. Caldarola said there was no binding timetable from start to finish, and he provided details on this.

He said there would be minimal blasting, stating that there was only a small area of ledge.

He said regarding tree removal, no trees would be removed in the buffer, except in the area of the two entrances and the driveway. He said there had been discussion about trees that might be affected by clearing that would take place on the site for construction. He said he had met with a forester on this, and said specific trees would be taken out if necessary, and that the trees would be replaced.

He said the wording in the condominium document on a common room and a transport vehicle was a mistake, having come from a previous document.

Regarding parking of a second car for a one-bedroom unit, he noted that parking on the street was not prohibited. He said one of the reasons one-bedroom units were less expensive was because of the one car garage, and said people simply had to deal with this. He noted that as a practical matter, there hadn't been congestion issues along Fitts Farm Drive.

Councilor Needell asked if there were timelines imposed by the Planning Board's process, and Mr. Campbell provided details on this.

Mr. Johns said Oyster River High School had been constructed over several years, and Fitts Farm had also been constructed over several years. He noted that sometimes, towns approved which section of Town a dump truck could be used. He said the High School had used Bagdad Road for the last three years. He said Fitts Farm was supposed to come in from Madbury Road, but he said quite often they came by his house, noting he had called the Town several times on this.

He said now the neighbors would have to listen to trucks going by for another 4 years, this time right across the street. He said he would appreciate it if the Town could set some time limit on the construction, and if the work wasn't completed during this time, the Town should take a

serious look as to whether to extend this. He noted that Bagdad Road was torn up already, and this project would make it worse.

Councilor Needell noted Mr. Johns' comments on the purpose of the Residence B district. He said there would be discussion on this, but he said regarding this application, the Planning Board was bound by the Ordinance before it, so had to judge it based on the current Zoning Ordinance.

Councilor Carroll said the Zoning Ordinance was carrying through what was in the Master Plan. But she said it had come before the Town Council and the Planning Board that the Master Plan was too enthusiastic about elderly housing. She said this current project had already started, but said there were a lot of other elderly housing projects that could start in the RB and R districts. She said perhaps the community needed to look at whether it wanted to continue with this approach.

Denise Day, 89 Bagdad Road, noted previous discussion by the Planning Board regarding further testing required regarding wetlands, based on the close boundary. She asked what the status was on this.

Mr. Caldarola said they had determined who had done the original wetlands delineation, and had arranged for him to go back out to the site. He said nothing different had been found, but said the results of the survey were not on paper yet.

He also said Underwood Engineering had not yet completed the water pressure study, and had not yet completed the design for the drainage structures. He said the design should be ready for the next Planning Board meeting.

Mr. Grant said the Board had conducted a second site walk two weeks ago, to look at the Canney Road side of the project. He said during this site walk, two points had come up, one being that the neighbor had recommended that sidewalks be located inside of the stone wall, away from street side. He said Mr. Caldarola was comfortable with that. He noted that when a Cheney development was done previously, it was proposed that sidewalks go along the pavement of the road, but the neighbors had objected, because it was thought this would open things up too much, and that sidewalks would be safer for people to use if they were further from the street itself.

Mr. Grant said another issue that had come up during the site walk was a culvert running across Canney Road, between two of the residential properties there. He said the culvert currently drained onto one of the properties, and said although it was not a problem yet, it didn't seem that this should be the case. He said this issue needed the attention of the Town Engineer.

Mr. Caldarola said in order to move the sidewalk, this would require a waiver from the buffer requirements, and would also put the sidewalk on private property, requiring an easement that would be owned by the Town. He said another concern was lighting for the sidewalk. He said he would like to avoid having to put in lighting, or use less obtrusive lighting.

Councilor Needell asked what the purpose of the sidewalk was for the project.

Mr. Caldarola provided details on the decision to have the sidewalk follow the road, rather than being internal to the site.

Ms. Day said whether or not there was a sidewalk, when high school students got out of school, there was a lot of fast traffic in that area. She said with more cars coming out of this site as a result of the project, safety issues would increase.

There was discussion on whether to close the public hearing.

Councilor Needell noted that the wetland report and some other information had not been received yet, so the hearing should be kept open.

Kevin Webb MOVED to continue the public hearing to the next regular Planning Board meeting, on October 26th, 2006. Arthur Grant SECONDED the motion, and it PASSED unanimously 7-0.

- VI. **Public Hearing on a Site Plan Application** submitted by Norway Plains Associates, Inc., Rochester, New Hampshire on behalf of 12 Mathes Terrace LLC, Durham, New Hampshire, to change the use of a property from residential to mixed-use, residential/professional office. The property involved is shown on Tax Map 4, Lot 10-0, is located at 12 Mathes Terrace and is in the Central Business Zoning District.

Councilor Needell MOVED to open the public hearing. The motion was SECONDED by Bill McGowan, and PASSED unanimously 7-0.

Engineer Rick Lundborn, Norway Plains, represented the applicant. He said there had been a site walk, where there was discussion about many of the issues concerning the project. He said the site plan had been resubmitted and stamped, and also said the phasing plans for the architectural changes had been submitted.

He said calculations on water usage had also been submitted to the Town engineer, and said a response had been received from him. He said surveyor information had been included on the site plan, and said a red line had been placed on the plan representing the floodway boundary.

He provided details on the issue of the ramps being in the right of way, noting that this area had been used for other things than just pavement in the past.

He said there was a note on the site plan that said when the applicant developed the signage for the business, he would have to meet the Zoning Ordinance requirements. He provided details on this, and there was brief discussion on this.

Mr. Lundborn noted that people occasionally cut through the property, so the outdoor lighting that was proposed would be either switch controlled or on a timer, and not motion-controlled. He said the site plan now indicated there would be sprinklers in the building, which would meet the requirements of the NFPA.

He said the site plan had been changed to say there would be 7 parking spaces provided on the property, and a \$750 fee had to be paid for each of the remaining spaces that were not provided. He provided details on snow storage on the site.

Mr. Luncborn explained that water coming off of a section of Mathes Terrace ran into the brook, and said the idea was to put in a berm or a shallow swale to slow the water before it hit the brook. He said the neighbors, the Langs, were ok with this, and said this could be added to the final site plan.

Chair Kelley asked if any members of the public wishing to speak concerning the project.

Don Thompson said he felt this was an ideal location for a business of this nature, in that it was accessible and had adequate parking. He said he saw no reason to turn it down.

Dr. Kevin Dugas said he and Dr. Bragdon recommended that the application should be approved. He said it was a perfect area of Town for this kind of business, noting the area had been good to him and Dr. Bragdon.

Ted Finnegan, 15 Madbury Road, said he was in favor of approval of the application, noting that he had lived in this area since 1958. He asked why one would think a new water pipe was needed, and stated that it was not needed. He also said there was not a flooding problem in that area.

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

Councilor Carroll noted a tree to be cut down as part of the project, and said it was a great tree. She said she realized there was concern about people backing up and hitting the tree, but said perhaps there might be some way to rearrange parking so the tree could stay. She said one suggestion was that angled parking could be provided, and she also noted that there was a lot of other parking in the area. She asked if staff could perhaps park someplace else, which would free up parking space on the property for patients.

There was discussion about metered parking in the area, and whether patients would have to pay to park there. Dr. Dugas said there was a sign at his office that said that anyone who came to his office and used a parking meter could be reimbursed. He also said his office was allowed to purchase 8 parking permits, which cost \$150 a piece. He said his staff parked with those permits, which left parking spaces for the patients near his office.

Councilor Carroll said perhaps other things could be tried first, before deciding to cut down the tree.

Chair Kelley said angled parking would be a challenge. Mr. Lundborn agreed, and provided details on this. He said for safety reasons, he suggested they go with the existing plan. He said the applicant could try to work with the tree for awhile, but said with further work on the site in the future, things would be very tight.

Mr. Campbell noted that there were two waiver requests, one for water and sewer, and the other for underground utilities. He said the Town engineer was satisfied that existing services for water and sewer were adequate.

He said the applicant would be short 6 parking spaces, so would have to pay \$750 for each, for a total of \$4,500.

He said the site plan issues brought out previously had been corrected. He also said a letter had been received that asbestos had been removed from the building, but said the company that had removed it was not on the State's approved list. He said this would have to be taken up with Code Enforcement Officer Johnson, to make sure the issue had been taken care of.

Mr. Grant noted the Town engineer's original comments concerning piping in need of replacement. He asked what this comment had been based on, and if the concerns had now been satisfied.

Mr. Campbell said the concern was based on the fact that the next street up had had problems with the pipe, which was replaced. He said Mr. Cedarholm had also thought the business would produce more water than it actually would, which would have put more pressure on the system than the previous use on the site. He said Mr. Cedarholm was not satisfied there would not be a problem.

Chair Kelley provided additional details on Mr. Cedarholm's original concerns, but said they had been addressed.

Councilor Needell asked how snow dumping on the site could impact a drainage swale if one was put in, and suggested that snow should be put outside the 25 ft. buffer for Pettee Brook.

Findings of Fact:

1. The applicant submitted an Application for Site Plan with supporting documents on August 23, 2006.
2. The applicant submitted a Site Plan entitled "Proposed Site Plan, 12 Mathes Terrace, Durham, New Hampshire for Jason Lenk, DMD" prepared by Norway Plains Associates Inc., Rochester, New Hampshire, dated May 2006.
3. The applicant submitted a letter of intent on August 23, 2006.
4. The applicant submitted a copy of the Deed for the property on August 23, 2006.
5. The applicant submitted a request for waivers from the Site Plan Regulations on September 14, 2006.
6. Architectural plans were submitted on October 2, 2006 prepared by AG Architects, PC, Dover, New Hampshire.
7. An Asbestos Removal statement was submitted on October 2, 2006 prepared by A-Quality Removal Inc.
8. Norway Plains Associates Inc. submitted revised plans and a letter addressing Planning Board concerns on October 2, 2006.

9. The applicant submitted a letter on October 2, 2006, written by Macolm R. McNeill, Jr., of McNeill & Taylor Attorneys at Law, pertaining to the rights of use of Mathes Terrace.
10. Norway Plains Associates Inc. submitted copies of two letters, on October 2, 2006, addressing the concerns of David Cedarholm, Town Engineer.
11. A Site Walk of the property was held on October 11, 2006.
12. A Public Hearing was held on October 11, 2006. Public testimony in favor of the project was received.
13. Don L. Thompson submitted a letter on October 10, 2006, regarding the sewer line replacement.

WAIVERS

The applicant has requested a waiver from Section 9.03 Storm Water Drainage and Section 9.06(B) Underground Utilities of the Site Plan Regulations. After review of the submitted material, the Planning Board hereby approves this request for waivers.

CONDITIONS OF APPROVAL

The following conditions shall be met prior to the Signature of Approval on the Site Plan. These conditions shall be met within six months of the signing of these Findings of Fact and Conditions of Approval by the Chair of the Planning Board. If these conditions are not met within six months, the applicant must come before the Planning Board for review of the conditions:

1. The applicant shall supply one mylar plat and one paper copy for signature by the Planning Board Chair.
2. All final plans must be stamped by appropriate professionals.
3. The applicant is required to pay \$750 for each of the six (6) parking spaces not provided, for a total of \$4,500.
4. The applicant must provide a treatment swale or level spreader adjacent to Pettee Brook.

Chair Kelley asked if the additions to the FOF and COA were acceptable, and the applicant said yes.

Kevin Webb MOVED to approve the FOF and COA as revised, for the site plan application submitted by Norway Plains Associates, Inc., Rochester, New Hampshire on behalf of 12 Mathes Terrace LLC, Durham, New Hampshire, to change the use of a property from residential to mixed-use, residential/professional office. The property involved is shown on Tax Map 4, Lot 10-0, is located at 12 Mathes Terrace and is in the Central Business Zoning District. Councilor Needell SECONDED and PASSED unanimously 7-0.

Recess from 8:45 to 8:55 pm

VII. Continued discussion of the Draft Proposal of the 2007-2016 CIP

Roads Program - Public Works Director Mike Lynch discussed the multiple year pavement program that his department followed, and provided details on what was proposed for 2007. He said it was the most important, highest priority project the Public Works Department put together, in that roads were key to a good transportation program, and related to safety, economic development and other issues.

He said the program was based on need, and the moneys that were available. He explained that if the Department could consistently stay with the program's schedule to do the various Town roads over a period of time, costs went down, since the program was working.

Chair Kelley asked when Bagdad Road would be repaved, and was told this would be done in 2010.

Mr. Campbell noted that there had been discussion that there would be offsite improvements involved in Mr. Caldarola's project, and said this could be made a condition of approval.

There was discussion about the Durham Point Road reclamation project. Mr. Lynch noted that the first half of Durham Point Road, heading out from Durham, had been severely damaged in the May floods. He said they hadn't washed out, but provided details on the problems that had resulted from the fact that NHDOT had used the road as a detour because of the problems with Route 108.

Mr. Lynch said the problems with the road had been brought forward as a project when he had met with FEMA, and said FEMA had passed the project off to the Federal Highway Administration, which reimbursed local municipalities in the event of detours that were necessary off of state roads. He said about \$26,000 would be provided by the FHA, in about a year. He said the first mile and half of Durham Point Road, to Langley Road, would be reclaimed. He noted that the Public Works Department was proposing to pull it out as a special project, because the road would otherwise not be done until 2013.

Councilor Needell received clarification that the remainder of the work on Durham Point Road was in tact, for 2013, in the CIP.

Mr. Grant asked if something could be done to the entrance to the Durham landfill, to enhance visibility as one was coming into Durham on Durham Point Road. He suggested that perhaps the hill could be smoothed off somewhat. There was discussion about this.

Councilor Carroll noted that Mr. Johns had said he thought the Oyster River High School had put some money aside to address road damage on Bagdad Road.

Mr. Lynch said bonding was for this kind of thing. He said that repairs had been made to Bagdad Road several times, but said the road was now breaking up even worse than before. He noted that the plan was to have Mr. Caldarola rebuild Bagdad Road as part of the proposed project. He said he was reluctant to do more to Bagdad Road right now than was absolutely necessary, given that.

Mr. Parnell said there had been a lot of heavy traffic on Deer Meadow Road, where a house had been built, and asked if there had been discussion with the contractor concerning this.

Mr. Lynch said bonding wasn't required for building permits, but said he could look into the situation.

Snow Removal Truck Replacement - Mr. Lynch provided details on proposed replacement of one of the Town's trucks, which was used for snow removal on Packers Falls Road. He said there was a 12-year program concerning replacement of these trucks.

Chair Kelley provided details on how a staggered system for replacing these trucks might make more sense.

Wiswall Bridge Replacement - Mr. Lynch provided details on this project in the CIP. There was discussion that perhaps a design charrette could be held to give the engineering firm good ideas up front concerning the design of the Bridge.

Mr. Lynch said the project was fairly straightforward. He said the single lane would probably stay, noting that it had a traffic calming effect. He described the earthen center column of the bridge, which impacted some of the hydraulics of the river, and said he thought it would be beneficial if this were removed.

Mr. Grant asked if the decision had been made that the bridge should be replaced.

Administrator Selig said he had raised the issue with the Council when there was discussion on the bailey bridge, and said this was a fair question.

Mr. Grant said the Wiswall Bridge was located in a vulnerable location, and noted there had been behavior issues, etc. in this area. He provided details on how the bridge provided a crossover from Lee Hook Road to Packers Falls Road, and described increasing traffic in the area. He said he hoped the Town didn't automatically replace the bridge just because it was there, and said it should be determined that this was a good decision.

Mr. Lynch said the School had issues with it, as did the Fire Department, which was one of the reasons why public input was important.

Mr. Webb asked how many houses were out in that area, and there was discussion on this.

Oyster River Dam - Mr. Lynch said the Oyster River Dam on Newmarket Road was in need of repair, explaining that some of the concrete abutments for the dam had started to deteriorate. He provided details on what was proposed, noting that the dam hadn't been worked on for 30 years, and said that as part of the project, a breach analysis would be done. He said the work on the dam would be scheduled according to tidal conditions.

Mr. Grant asked if this project could be bonded, and Administrator Selig said it could.

Councilor Needell asked if this project would require dewatering of Mill Pond.

Mr. Lynch said it would, in order to do the initial inspection of the dam.

Councilor Needell noted the plan to dredge Mill Pond, and asked if this could be coordinated with the work on the dam.

Mr. Lynch said that could be done. He also said the Army Corps of Engineers was back on track to dredge Mill Pond in 2008.

Mr. Campbell asked if the dam had sustained damage during the floods.

Mr. Lynch said the gates had remained operable during the flood. He described some problems with the fish ladder at the dam, and said the State would repair this at around the same time the dam was repaired. There was discussion about the operation of the fish ladder, and it was noted that NH Fish and Game monitored and stocked the area. Mr. Webb said the fish ran right up to the UNH dam.

Sidewalk reconstruction, decorative lighting, concrete walks, etc. planned for the Pettee Brook Road area - Mr. Lynch provided details on this.

Chair Kelley asked if this project would conflict with any major traffic realignment in Town.

Mr. Lynch said this was work that needed to be done now, noting that there had been over 20 accidents from cars jumping the pavement.

There was discussion about the idea of possible traffic calming effects for Pettee Brook Road, such as speed bumps, etc, and that there needed to be more landscaping in that area.

Mr. Campbell said that in 2002, SRPC had received a grant to look at towns and cities in the region with one-way loops, in order to see if it made sense to keep them. He said the conclusion was that one-way loops worked better than anything else, for downtowns.

It was noted that sidewalks were missing from the stretch in front of the UNH police station. Chair Kelley said UNH had more trucks by far than any other business in Durham. He said he would like consideration to be given as to whether it would be feasible for the University to contribute money for the road pavement program.

Mr. Lynch said this could be looked into. He also noted the benefits the Town got from the Main Street reconstruction project, which involved cost sharing with the University.

Snow blower replacement - Mr. Lynch said the snow blower was 22 years old, and needed to be replaced

Incinerator decommissioning - Mr. Lynch said decommissioning of the incinerator was the last component of the work on the old landfill. He said the structure would be torn down and sold off, noting there was a lot of steel involved. He said initial engineering inspection of the asbestos

brick lining of the fire box indicated very low asbestos levels, and said the asbestos had probably been burned up over time. He said the work was a partnership with UNH, which had used the landfill along with the Town for many years.

Skid steer replacement – Mr. Lynch explained that this equipment was used to move material into the bailer at the transfer station and to load trucks, and was on a 9-year schedule for replacement. He said the equipment was run 8-10 hours a day, so took a beating. He noted that the same person had run it over several years, and said this had provided incredible value to the Town, in terms of the quality of the work done, and prolonging the life of the equipment.

Madbury Road water line - Mr. Lynch said this would start at the Post Office, and would go out Madbury Road. He said the work would be done mostly at night to minimize traffic impacts, especially in the area of Pettee Brook Road. He said this project had been in the CIP for many years. He provided details on the analysis the Public Works Department was doing of the Town's water system over time, including water audits. There was discussion about this.

Water supply – There was discussion about the cost sharing with UNH on the auditing work, and the work on the Spruce Hole aquifer study.

Chair Kelley asked when there would be further discussion on the Spruce Hole aquifer with UNH.

Administrator Selig explained that the plan had been to hash this out with UNH some time ago, but the University's key negotiator on this had left her position, so he was in the process of establishing new relationships with her successors.

Mr. Lynch provided details on the bedrock well study UNH had had done, and said this had also delayed further discussion with the Town on the Spruce Hole aquifer.

Replacement of Jet vac truck for sewer system - Mr. Grant asked about the jet vac truck listed under the Wastewater Fund, and said he wondered if replacing this could be postponed, in a year where the Town was facing a lot of financial pressures. He suggested that perhaps this equipment could be rented when it was needed, stating that it represented a large amount of money, even if UNH paid for 2/3 of it.

Chair Kelley said it would be a tough year for water and sewer users, because there were a lot of big ticket items. He said that hopefully these residents would participate in the Budget process.

Administrator Selig said comments from the Planning Board should be received within the next week. He said his Budget/CIP proposal would go to the Town Council by November 1st, at which time the Council would begin to meet weekly.

Councilor Carroll asked if the jet vac truck still worked.

Mr. Lynch said no, and noted that it's replacement had been pushed out into the future before. He said it was in tough shape, and was a vital piece of equipment, when there was a sewer backup.

West end capacity investigation - Administrator Selig note that there was a new project in the Wastewater fund, - the west end capacity investigation. He said this represented a major change from past practice, as part of promoting some development in the west end of Town. He said there were some sewer capacity concerns in that area, and said that historically, the Town had said in a situation like this that the developer should do the engineering analysis, tell the Town what the problems were, and fund the improvements if he wanted to develop it. He provided details on what was proposed, and said he would like feedback as to whether this was an appropriate approach or not.

There was discussion on this by the Board, including whether the cost for this should be born by the wastewater users, or the whole Town if the tax base could be enhanced in part as a result of this project.

Mr. Webb noted that this area of Town had been rezoned, with the promise that the sewer and water capacity would be there.

Mill Pond Center - Administrator Selig asked if the Board had any guidance for him on Mill Pond Center issue.

Chair Kelley asked if there was potential for Planning Board members to be part of the discussion on this with the Council.

Councilor Needell noted the work session scheduled for Oct 23rd on the downtown, and said discussion on the Mill Pond Center might be part of this. He said the idea of a possible Mill Plaza redevelopment would also be discussed.

Mr. Grant said he shared Administrator Selig's concerns about getting a new "old" building. He said he had grave concerns about the deal that was proposed, and provided details on this.

Administrator Selig asked Board members if it perhaps would make sense to try to enter into a shorter term relationship, to essentially tie the Mill Pond property up so it would not be sold, in order to allow the Town to focus on what it envisioned for the property over the long term. He suggested that as part of this, various entities could come up with their vision of what the Mill Pond Center could be.

Chair Kelley said he would entertain that approach.

There was discussion of an assessment report on the Mill Pond Center that had been done in 2005. Administrator Selig said this report didn't get into all the issues that needed to be considered, including handicap accessibility and water and sewer capacity. He noted there was no potential for the property to connect to the intercept.

Mr. McGowan asked what would really change concerning the viability of the property within a year, noting that the roadway issues would still be there.

Administrator Selig said more data on issues like sight distance concerns could be obtained.

Mr. Grant said the Town already had a lot of land on its hands, and needed to sell some of it, not buy more land.

Mr. Webb asked if perhaps there could be an easement to limit future use of the property, which would provide the Mill Pond Center with cash to help with its budget. He said the deal that was currently proposed did not please him as a taxpayer.

Councilor Carroll said it might be good to have more time to think about the Mill Pond Center. She noted there were all kinds of possibilities for the property, as well as restrictive aspects, like the road issue. She said the Jackson's Landing study and subsequent plan was a good model to follow, and said it was important to have something detailed to look at.

Chair Kelley said that might have to come from the Planning Board or the Town Council, or the current owner, or a developer as part of a public/private partnership.

Mr. McGowan noted that the Town already owned Jackson's Landing, which changed the dynamics of the situation.

There was discussion that Planning Board members were certainly invited to attend the upcoming Council work session, and that the table would be set up for them to be part of the discussion.

VIII. **Design Review on a Site Plan Application** submitted by Manage Plus, LLC, Amesbury, Massachusetts, for the change of use of a former gas station/convenience store to a package/shipping store and cyber café. The property involved is shown on Tax Map 4, Lot 49-0, is located at 3 Dover Road and is in the Courthouse Zoning District.

Keith Ferris of Manage Plus, LLC, provided a brief description of what was proposed. He said there would be no structural changes to the building, and said the exterior would not be changed other than to clean it up cosmetically. He said the interior would be partitioned into two separate uses, with the first use being packaging and shipping, along with office supplies for sale, and graphic design services. He said the second use would be a cyber café allowing free use of the Internet.

He said his company had two other stores in New Hampshire, located in Plaistow and Epping. He said he wanted to make a contribution to the Town, and was looking to the Board to give him ideas, including beyond what was required.

Chair Kelley said it was important to make the property look good, with things like landscaping, etc.

Mr. Campbell noted the company had a variance application before the ZBA because it wanted to have parking out front, which was prohibited in that district.

Mr. Ferris explained that if the parking were located behind the building, this would not be convenient for customers, especially handicapped customers. He also said the idea was to use the available parking at the back for people using the cyber café, who would generally stay longer, while the parking in the front would be for short term parking. He said the 15-minute limit would be posted and monitored.

Chair Kelley asked Mr. Ferris if his experience with his other business was driving the parking he was asking for, and Mr. Ferris said it was.

Mr. Webb said he thought the idea for this kind of business was fantastic, and that it was a business that was needed in Town. But he said his concerns related to the location of the business. He said he didn't know if there were traffic issues in this area, which was a busy intersection.

He suggested that Mr. Ferris get in touch with traffic consultant Steve Pernaw, who had some good background data on traffic in this area, and had come up with a good traffic management plan for the Irving station. Mr. Webb said he suspected that Mr. Ferris's business might come into conflict with the hotel concerning parking issues. He said he could see this business being successful in the Central Business District, noting there was a lot of wasted space downtown.

Chair Kelley said he would assume that the traffic projections for the gas station were larger than they would be for this business. There was discussion about this.

Mr. Ferris said he wouldn't argue with the fact that a location downtown might be good, but he said it would also be more problematic to find parking downtown. He said he wanted customers to be able to find a parking space near the business, so they wouldn't have to carry packages over several blocks.

Councilor Carroll asked what category of customers Mr. Ferris was anticipating serving. Mr. Ferris said his expected customers were students and small businesses. He noted there would be outside sales employees to pick up work when requested.

There was discussion that a traffic study would be required if the application was submitted. Mr. Campbell also noted there were specific development standards in the Courthouse district, all of which would be required unless any variances were received. He provided details on some of these.

There was discussion about landscaping that could enhance the look of the property.

Councilor Carroll noted the fence at the hotel that helped to minimize the look of the parking lot.

There was discussion about architectural elements that would improve the look of the existing building, such as bringing back the brick look, giving the flat roof some pitch or putting in some kind of faux treatment on the roof to hide equipment.

Chair Kelley said the applicants for the hotel and the gas station had made great strides to make the site and buildings look better. He said the Board would like to see a continuation of this, and also said the Board appreciated the constraints of the site.

Mr. Ferris said some of these ideas were well within his reach, and said he would entertain other ideas if there were time to address them.

There was discussion about whether two bathrooms would be needed for the business. There was brief discussion about lighting and signage.

Mr. Ferris said in answer to Councilor Carrol that the business would be open from 8 am to 6-7 pm, and that the business would be open later during the holiday season. He said the cyber café would be open during these same hours, also noting that the cyber café idea had not been done at the other sites for his business.

Mr. Webb said he envisioned the cyber café being open later.

Mr. Ferris said there would be time limits on using the space. He also noted that computers would not be provided there, and said there would be upper scale vending machines at the café.

Councilor Needell asked if free wireless service would be offered, noting that The Bagelry and Breaking New Grounds did offer this service. There was discussion about this.

Mr. Ferris said if there were issues with parking in front, he didn't know what alternatives would be available. He noted that the company owned the right of way next to the hotel, and said while parking wasn't allowed, it might be able to ease some of the traffic.

It was noted that the spaces in the back satisfied the zoning requirements, so the spaces in front weren't actually required. It was suggested that perhaps handicap parking could be in front, and the other parking could be in the back.

There was discussion about traffic access management issues for the site, and the difficulty of making a left turn into the site, for cars coming from the downtown area. Mr. Campbell said right turn in, right turn out would be the best way to get in and out of the site.

Chair noted there had been discussion previously about the idea of installing an island to prevent left turns out of the Irving station.

Mr. Campbell noted that Mr. Pernaw had included traffic counts for Cumberland Farms in his traffic analysis.

There was discussion that there would probably have to be a scoping meeting with NHDOT, and at that time the Board would see what the agency would require be included in the traffic study.

Chair Kelley said there should be some savings for the applicant because of the traffic information that had already been collected for past projects.

Mr. Ferris spoke further on the importance of being able to park in front of the building.

IX. Deliberation on Historic Overlay District Ordinance and Set Public Hearing Date

There was detailed discussion about the Board's recommended change to reference the RSA on Heritage Commissions, instead of putting all the language into the Town's administrative code.

Councilor Needell asked that this recommendation be communicated clearly to the Council, and Mr. Campbell said he would develop a memo for the Council on this.

Arthur Grant MOVED to set a public hearing date of November 8, 2006 for the Historic Overlay District Ordinance. Chair Kelley SECONDED the motion, and it PASSED unanimously 7-0.

X. Deliberation on Changes to Forestry/Timber Harvesting and Set Public Hearing Date

Arthur Grant MOVED to set a public hearing date of November 8, 2006 for changes to Forestry/Timber Harvesting. Chair Kelley SECONDED the motion.

Mr. Parnell said that concerning performance standards for forestry, for shoreland protection, it was not practical to have a professional forester come in, for shoreland properties where only a few trees would be cut.

Chair Kelley said there had been testimony from Rob Keefe that supported this.

There was discussion about this by Board members and Mr. Campbell.

Councilor Needell said in the shoreland area, regulation was being left to the state RSA, and he said having a licensed forester was part of this.

The motion PASSED unanimously 7-0.

XI. Other Business

- A. Old Business:
- B. New Business:
- C. Next meeting of the Board: October 25, 2006

XII. Approval of Minutes

June 14th, 2006 Minutes

Arthur Grant MOVED to approve the June 14, 2006 Minutes, after reviewing them and revising them as requested. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

June 28th, 2006 Minutes

Arthur Grant MOVED to approve the June 28, 2006 Minutes. Chair Kelley SECONDED the motion.

Under **Members Absent**, Annmarie Harris should be listed
Page 5, take out bold lettering there.

The motion PASSED unanimously 7-0.

August 9, 2006

Postponed

August 23, 2006

Postponed

September 13, 2006

Postponed

XIII. Adjournment

Arthur Grant MOVED to adjourn the meeting. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 11:00 pm

Victoria Parmele, Minutes taker