

These minutes were approved at the April 4, 2007 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, JANUARY 24, 2007
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Kelley; Arthur Grant; Steve Roberts; Bill McGowan; Lorne Parnell; Councilor Needell

ALTERNATES PRESENT: Susan Fuller; Annmarie Harris

MEMBERS ABSENT: Richard Ozenich; Councilor Carroll; Wayne Lewis

I. Call to Order

II. Approval of Agenda

Chair Kelley said Susan Fuller would fill in for Richard Ozenich, and Annmarie Harris would fill in for Steve Roberts.

Councilor Needell MOVED to approve the Agenda as submitted. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

III. Discussion on Article XIV, Section 175-71(B)(10) of the Zoning Ordinance with regard to the request of Doug MacLennan, 21 Newmarket Rd., for removal of Japanese Knotweed on his property.

Chair Kelley said he had received a memo from Jim Campbell regarding this request, which outlined the discussion with Dori Wiggin of NHDES.

Mr. MacLennan spoke before the Board, and noted that NHDES had 30 days to object to what he was proposing. He said he had talked to Dori, and NHDES was thrilled that someone was willing to do battle with the Japanese Knotwood, and was willing to support the effort if he wanted to try it.

Arthur Grant MOVED that the Planning Board approve the request of Doug MacLennan to take action to remove Japanese Knotweed from his property, subject to approval from NHDES. Councilor Harris SECONDED the motion.

Chair Kelley read from Section 175-71 B of the Zoning Ordinance concerning the Shoreland Protection district, regarding appropriate erosion control measures, restoration of disturbed areas, etc. He noted that Mr. Campbell's memo had said such measures would be taken.

The motion PASSED unanimously 7-0.

Mr. Roberts arrived at 7:10 pm

Councilor Needell explained to Mr. MacLennan that there had been a big packet of information to look through concerning this project, which had made it impossible for him to react to the project at the last Board meeting. He said after reading this information, he was very comfortable with it.

- IV. **Public Hearing on a Subdivision Application** submitted by Joseph Caldarola, Portsmouth, New Hampshire for the building of 21 condominium 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. . **(The applicant requested that this application be postponed until February 14, 2007.)**
- 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. **(The applicant requested that this application be postponed until February 14, 2007.)**
- (A motion was made by the Planning Board later in the meeting to postpone Agenda Items IV and V until the February 14, 2007 meeting.)
- VI. **Public Hearing on a Site Plan Application** submitted by David E. Hills, Hills Family Trust, Durham, New Hampshire to rebuild and enlarge a farm stand building. The property involved is shown on Tax Map 11, Lot 22-3, is located at 35 Piscataqua Road and is in the Residential C Zoning District. **(The applicant requested that this application be postponed until March 14, 2007.)**
- VII. **Continued Public Hearing on a Site Plan Application and a Subdivision Application** submitted by Catharses Private Investments, Boston, Massachusetts, on behalf of Stone mark Management Co. Inc., Stratham, New Hampshire to build a 78-unit, age-restricted condominium development. The property involved is shown on Tax Map 1, Lot 6-8, is located at 97-99 Madbury Road and is in the Residential A Zoning District.

Chair Kelley noted a number of issues were raised by members of the Board and the public at the previous Planning Board meeting. He said these included:

- Whether both lots could be figured into the density calculation
- Whether the density bonus extended to the 20% of non-age restricted housing in the development
- Whether further age restrictions (20% could be age 30+) could be put on the development

Chair Kelley noted that he had asked at the last hearing whether members of the public wished to speak on these issues, and that several people had raised their hands, and the Planning Board had

then continued the hearing because there were several other items on the Agenda. He proposed that the Board open the public hearing again to allow members of the public to speak on these matters, and then continue the hearing and discuss and perhaps vote on these issues.

Councilor Needell said he hoped that when the Board discussed these issues, it would treat these issues as general policy issues, and not as they pertained to this project.

Mr. Roberts said he didn't feel the Board had any business voting on this at present, and said he thought it should hear from the public, and get some legal input.

Chair Kelley said there was legal information in Board members' packets, and also noted that Attorney Mitchell was present if the Board felt it needed to go into nonpublic session.

Mr. Roberts said the issues being raised were of utmost gravity, and said these issues needed to be resolved before voting.

Ms. Harris said it was appropriate for members of the Board as a whole to determine this, rather than having the process outlined by Chair Kelley.

Chair Kelley asked if Board members agreed on the issues that needed to be resolved.

Mr. Roberts said it was premature to determine this, and said the public had to have the chance to speak. He said there were any number of issues that might get added to the list.

Councilor Needell agreed there were a number of issues concerning this project that needed to be resolved, and the sooner the better. But he said the three issues that had been raised had nothing to do with this project, and said they had to be resolved in general. He said the decisions on them would then have implications for this project.

Mr. McGowan agreed, and suggested that the Board first decide what made sense, for zoning and planning purposes, and then see what came of that.

There was further discussion as to what the Board was entertaining with the public hearing.

Chair Kelley said that currently, there was an application in front of the Board that had made some assumptions. He said the Board needed to respond concerning this, and noted that if it kept pushing this off, this would result in additional costs for the applicants.

Mr. Parnell said there were the Board's discussions on these issues, and then there were the hearings. He said it was not efficient to continue hearing the application without getting these issues resolved and said sooner rather than later, the Board would have to decide on them. He also said these issues should be discussed outside of the current application.

Arthur Grant MOVED to open the public hearing.

He said the public hearing had been continued two times, and the public had had little opportunity to participate so far. He said it was important that the Board hear from members of the public.

Chair Kelley said everything was on the table for discussion.

Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

The public hearing was opened.

Janet Doty, 12 Adams Circle, submitted a letter, dated Jan 9th, 2007 on behalf of herself, her husband, and several other neighbors to the proposed project, on Adams Circle, Madbury Road, and Rocky Lane. She said she would like to summarize key points from the letter.

She asked who would regulate the resident age-restriction if the project went through, noting that in Rochester, when residents complained that younger residents were moving in, no one knew who was to enforce the 55+ rule --- the city, state or federal government.

She asked if the proposed \$340,000 condos met the standards of affordable senior housing, as referred to in the Master Plan. She also said this development was proposed to have a positive economic impact, and asked if this was a reality, noting that Fitts Farm had also been built with a promise of this, and questioned whether this had in fact occurred.

Ms. Doty said the project was not consistent with the surrounding neighborhood. She asked that the letters from residents be included in the Board's deliberations.

Councilor Needell noted, in reference to a comment made by Mrs. Doty, that the application had to be judged on its applicability to the Zoning Ordinance. He said the Zoning Ordinance should be based on the Master Plan, but it was the Zoning Ordinance that was the controlling document. He said he didn't think one would find affordable senior housing mentioned in the Zoning Ordinance.

Sue Milovina, 10 Adams Circle, provided a scaled down model of the proposed building. She said when she had developed this, she was shocked at how big it really was, in between two really small neighborhoods. She noted that all of the direct abutters' houses would fit into the courtyard of the building. She questioned the policy of transferring density as a policy for Durham if this was what it allowed.

Duke Little, 3 Adams Circle, said he appreciated what Stonemark had done to get input on the project. But he said they had continued to change the scope of the project, which made it difficult to grasp what the current proposal actually was, and to make observations and voice concerns. He said what they were proposing was "way over the top", and said the neighborhood stood united in opposition to the project.

He said he was sympathetic with the Planning Board's need to address the tax base. But he encouraged the Board to look at the issue of two lots vs. one, and said the accumulated density for 17 acres should never be allowed to take place on a five-acre parcel, especially one so close

to existing, established neighborhoods. He encouraged the Board to make a decision on this project alone, and not in fear of the pending Fairchild Drive lawsuit, if the 99 Madbury Road project should be denied. He noted that Spruce Wood was struggling to reach capacity, and questioned what the situation was with other elderly housing developments in Durham, especially given the ever-rising tax rate.

Mr. Little said his main point, on behalf of fellow abutters and neighbors, was to address the potential assault on the character of the neighborhood. He noted he had lived in numerous college towns across the country, each of them different. He said Durham was more rural in nature, and said if he had wanted to live next to a 78-unit condo complex, he could have chosen any number of other locations, and could have paid a lot less in taxes. He said he had chosen to live in Durham and take on the tax burden, knowing that he was paying for the neighborhood and Town as it existed.

He also said that neighbors who had lived in Town longer than him said the existing elderly housing in Town had not brought down taxes or stopped them from rising. He provided details on his concerns about the re-sale value of his property as the result of this proposed development, and said the longing for what the neighborhood used to be would be a tremendous burden to carry while still living on Adams Circle. He said for these and many other reasons, he was not in favor of the project. He said he had made an investment in a single-family neighborhood, and was looking to the Planning Board to protect his investment in the Town, the community, and the neighborhood.

Sally Heuchling, 5 Adams Circle, said she had been a resident of Durham for over 20 years, and said she is opposed to the proposed development in its current form. She said she was a gerontologist by profession, and said she wished to correct the statement made by Stonemark that elderly people preferred mixed age housing. She said research had shown that with condominium elderly housing living, when conditions were close and residents had to share common grounds, they preferred age-segregated housing.

She provided details on this, and said while she believed in caring for elders, this current project was not about providing elderly housing, it was about putting the maximum number of units on a property under the guise of elderly housing. She said a 78-unit, three story condominium project with its accompanying traffic, exhaust smoke, lights, horns, delivery trucks, dumpsters, ambulances, etc, only 100 ft. from her lot line was an immense intrusion. She said such a complex didn't fit with a residential neighborhood, and said there was no way the project could be construed to be "consistent with and maintain the established character of the neighborhoods".

Ms. Heuchling said a broader concern was that the project would set a precedent in Durham for the RA district. She said it was more profitable in any RA zone to replace single family homes with a higher density over age-55 multi-unit. She said they were not anti-business or anti-development, but felt this project in its present form was "way over the top" in terms of common sense and sound judgment. She said it would pose a serious negative effect on their quality of life and detract from the value and livability of their neighborhood.

Attorney Scott Hogan said he was representing the direct abutters and other neighbors. He said this group of people had approached him reluctantly, because they had confidence in the Planning Board's ability to represent their interests. But he said when they had seen the scale of the proposed development, they had sought legal advice. He said whether they were new or old residents of the area, none of them could have expected -- looking at the Zoning Ordinance and the community -- to see a proposal like this one in their neighborhood. He noted that in general, a large building proposed to be put in a neighborhood tended to be a contentious type of project.

Attorney Hogan said when he looked at the Ordinance, he saw that the purpose of the RA District was to ensure that new development, redevelopment or expansion was consistent with and maintained the established character of existing neighborhoods. He noted his experience in representing abutters of Fitts Farm, but said this current project was the kind of development that would immediately change the dynamics of the neighborhood.

He said multi-unit elderly was a permitted use in this district, but multi-unit elderly housing with excessive scale and height was not. He said the Board would have to exercise discretion in applying the regulations, and said the highest and best use did not always meet the regulations. Attorney Hogan said it had been stated at the last meeting that the Board had the ability to combine the two lots, and that this was a classic transfer of development rights situation, as authorized under RSA 674:21, Innovative Land Use Controls. He said according to the NH Office of Energy and Planning files, only three towns -- Dover, Lee and Bedford -- had used this innovative land use technique, and in each case, the concept was that there were certain parcels of land with high resource values that shouldn't be developed, and other parcels that should be developed.

He said none of these situations involved having two parcels where square footage was used purely to leverage density. He said that was not the idea of transfer of development rights, and he also said the Town of Durham didn't have regulations authorizing the transfer of development rights approach.

Attorney Hogan said that a 30 ft building height was permitted in the RA District, and that 35 ft in height was permitted with the permission of the Planning Board, according to the Table of Uses. He said he had then gone to the Ordinance to see the standard of review concerning this, and couldn't find one. He said he didn't think there was one.

He said the more he looked at the Ordinance and the uses permitted and not permitted, the only standard of review that made sense for this kind of project was laid out in the conditional use provisions. He said that language was written exactly for something such as this kind of development, in that it spoke about analyzing the consistency of a proposed development with the character of the neighborhood, looking at scale, etc. He noted that Board had asked for a legal opinion on this, so it was another issue the Board would have to consider.

Attorney Hogan said the fundamental elements of the project, like density and height, if not allowed, would require the redesign of the proposal. He said these were the issues his clients wanted to get resolved first.

He noted that the January 9th 2007 letter from his clients calculated useable area, referencing section 175-55 F 7 and 9 of the Zoning Ordinance. He said item #7 of the Ordinance deducted “areas within rights of way or easements that impose restrictions on the use of the area such as to make it unavailable for building purposes”. He said #9 deducted “any otherwise usable area that is fragmented or isolated by unsuitable areas such that the contiguous areas of usable land is less than five thousand sf or is narrower than 50 ft.” He said that applying these provisions to this application, he didn’t think the applicants could amass the density that was proposed.

Attorney Hogan said concerning the elderly housing issues, the original age ratio was different than what was on the table now. He said these issues were secondary to the more fundamental ones involved with this project. But he said they would be enormously important to his clients if the project went forward in some iteration in the future. He said that traffic and other impacts depended to a large extent on who was living in the residences. But he suggested that the density issue was the first issue that should be addressed.

Chair Kelley asked Attorney Hogan if he had contributed to the January 9th letter from the Dotys, and Attorney Hogan said “yes”. Chair Kelley noted the court cases that were cited in this letter, regarding gravel pits, signs, etc. and asked Attorney Hogan if the ruling in those cases was applicable in the present situation.

Attorney Hogan said there were a line of cases that said towns could rule on aesthetics. He discussed these cases, and then said the specific purpose of the RA district was to protect the existing character of the neighborhood. He said that in the entire line of cases, the Board had the authority, and given the scale of this project, aesthetics could be the basis for the Board’s decision.

Chair Kelley asked if Attorney Hogan had cited these cases in the past, and if it bothered him and other attorneys that they were utilized broadly.

Attorney Hogan said no, and said each member of the Planning Board would exercise authority however each believed was reasonable, in reading the Town’s ordinances and regulations. He said the law also would say that this Board could decide one way, and another board could decide another way, and if there were a reasonable basis for the decision, this would be upheld.

Councilor Needell said that Attorney Hogan had made reference to the sole purpose of the RA District, and he noted that the purpose statement for the RB district and others sounded similar. But he said there was a lot more to that chapter of the Ordinance, and said it laid out permitted uses, conditional uses, development standards, etc. He asked how one reconciled the fact that the purpose statements were broad, but the chapter then said certain things were allowed. He reflected on whether, if one followed the rules and something didn’t fit, this meant one was violating the definitions, or misinterpreting what fit.

Attorney Hogan said one of the reasons he felt that starting with the purpose statement was important was that the ZBA would look at that purpose statement of a provision of the Ordinance, and whether what was proposed was consistent with it. He said when one went to specific site plan regulations or subdivision regulations, there were areas where Board members

had discretion to make certain choices regarding possible impacts of a project. He said understanding that in the RA district, the purpose was to maintain the character of the neighborhood, this informed those choices.

Councilor Needell agreed that where there were areas of discretion, that applied, but he said when there were things that were permitted by right but seemed incongruous, that was a flaw, and he said he was struggling with this.

Attorney Hogan said multi-unit development was clearly permitted by right, but amassing so much density on one lot was not, and having a 35 ft high building was not permitted by right. He said to him, the analysis therefore didn't need to go further than that.

Chair Kelley said he had struggled with the mass of the proposed building, while looking at the purpose definition, the land uses in the neighborhood, and also the definition of the neighborhood. He said he could see there would be impacts to immediate abutters and their neighbors, and asked what the impact would be for residents further down the road.

Attorney Hogan said that given the institutional nature of these buildings, which required service vehicles, etc, there would be secondary impacts to the surrounding neighborhood.

Chris Cairns, 8 Rocky Lane, said he shared the same concerns as his neighbors. He said he lived at the end of Rocky Lane, and said if this development were built, he would squarely face a 200 ft side of the building. He said he had written a letter to the Board two weeks ago that he would like to be included in the record. He highlighted the concerns expressed in his letter.

He said the building was much too big, and out of scale with the surrounding neighborhood. He said it would result in a dramatic change to the neighborhood. He said there were 15 houses on Rocky Lane and Adams Circle, and said many of them would be affected by the development.

He said the traffic from the development would affect them. He provided details on how this would make an existing bad traffic situation worse. He also said there were problems with low water pressure in the neighborhood, and said this also related to fire safety.

He said he was concerned about monitoring of the housing in terms of age makeup, and provided details on this. He also said that it seemed that squeezing the density into five acres was inconsistent with the Master Plan and the Zoning Ordinance.

Antoinette Hills, 108 Madbury Road, noted that she had worked in the building that was presently on the property. She said when she first heard of the project, she was excited about it, and had thought the idea of putting the parking underground was a "classy" idea. She said as a person who did not live right near the property, she was still excited about it. She said it was not a "tacky" project, and said the Town needed it to help the tax base.

Jerry Gottsacker, 107 Madbury Road, noted there had been petitions about traffic on Madbury Road, and said this was a complicated picture. He also said the Planning Board was supposed to represent the interests of all citizens, to think about the intent of the Master Plan and the Zoning

Ordinance as it embodied and enacted the Master Plan, and to represent the interests of all citizens. He said the 12 acres of conserved land that would be part of this project was important to him, noting that he almost abutted this land. He said he wanted to see this land conserved. He also said he thought the issue of one lot vs. two lots should be considered in the abstract because it had a lot of implications down the road for the Zoning Ordinance and the Master Plan.

Karl Van Asselt, 17 Fairchild Drive, said the Planning Board was assuring that the development conformed to Town requirements. He said he had four points to make. He said he thought it was important to keep in mind that another component of this development was that the Town would obtain -- at no cost -- an additional 12 acres of open space on an in-town parcel of land. He said this transaction was consistent with the Master Plan, and said he believed it was considered highly desirable by most Durham residents.

He said there was a need for mixed housing in Durham, and said efforts were needed to make all housing types available. He said while the marketplace played a significant role in development, government actions could help assure a balance. He said many Durham residents had expressed strong support for elder housing, and said the attraction for this kind of housing in a college community was well documented. He said it was important to work to assure there were housing opportunities for all age groups and income levels.

Mr. Van Asselt said the recently adopted Town budget made it clear that Durham must increase the tax base, and said the tax burden had reached the point where many residents questioned whether they could continue to afford living in Durham. He said the proposed project would pay significant taxes, although it was not the answer to Durham's tax base problem. He said if the Town wanted conservation land, recreation programs, a new library and quality municipal services, it must expand the tax base.

He said smart growth policies and practices were desirable, and resulted in greater benefits for the community at large. He said they included land use practices that were compact, transit-oriented, walkable, and bicycle-friendly, and also included mixed-use development with a range of housing choices. He noted that a basic tenant of smart growth was concentrating high density on a portion of the land and providing accompanying green space. He said he hoped the Planning Board would consider this strategy in making its final decision on this and other proposed development.

Peter Ejarque, 109 Madbury Road, said he was the largest abutter to the project. He said it was a very interesting project, with 12 acres of conservation land, and noted that he had a sizeable portion of conservation land as well. He said the project would be a great asset for the Town.

Dave Leach, 14 Fairchild Drive, said that something would be built on this site, and it was within the Board's power to make as many abutters as possible happy. He said he did think the revised proposal had better potential than a previous project, and made an interesting use of an odd shaped property, while preserving 12 acres of undeveloped land. He noted that traffic would not go through the neighborhood, as compared to the previous project.

He said the previous proposal was denied due to traffic, wetlands, engineering, access issues, etc. He noted the lawsuit did not say the development shouldn't be built, but that it should not go through the neighborhood. He said the group he had been part of had spent over \$28,000 on lawyers, and the lawsuit was still pending. He said more should be asked of the builder to minimize impacts and to make the development acceptable.

Mr. Leach said history would repeat itself if the application was denied, and said something would be built on that property, possibly single family sprawl, or duplexes. He said 20 homes would take up all of the acreage, and no one would be happy with that. He asked that the Board work with this proposal, and make it as amenable to the abutters as possible.

Attorney Ari Pollock, representing the applicants, noted that he had made a lengthy presentation at the meeting of January 10th. He said that cases regarding gravel pits, signage, etc. had no relation to what they were talking about here, which was a thoughtfully designed structure that was pleasing to look at.

But he said that discussion was somewhat of an aside, and said what they were really talking about was a project in pursuit of a permitted use. He said a lengthy, thoughtful process had gone into the Ordinance now in place. He said no document was perfect, but the Board had made some decisions about what it wanted to happen in the community. He said the applicants were entitled to use the Ordinance in crafting a project. He said they had made no bones about the two-lot issue, and said they did see this as an issue for the Board to decide as a matter of general policy, or with this project in mind.

He said what did matter to the applicants was that the Board consider that every project had to strike a balance, and he said this project had the balance described in the Master Plan and Zoning Ordinance. He noted a comment from a member of the public that the existing building on the property was "a dump", and said this project moved that property into conformity.

Chair Kelley noted the court cases Attorney Hogan had cited concerning aesthetics, and asked Attorney Pollock if attorneys used this case law broadly, recognizing that it did not fit particular circumstances perfectly.

Attorney Pollock said yes, the law was an evolving, organic process, and said one could make an argument one felt had relevance. He said that some arguments were more compelling than others, and noted that in the current instance, the use involved was permitted, as compared to something like a gravel pit.

Attorney Pollack asked that his letter of Jan 9th be recognized in the record. Chair Kelley said they had it in the file.

Chair Kelley stated that within certain limits, a developer could discriminate based on age. He said the applicants could go with an 80/20 mix, and could set a restriction on the 20%.

Attorney Pollock agreed, stating that the development needed to have a minimum of 80% age restricted housing (55+) according to state and federal mandates, and that threshold was reached,

the age level for the 20% was not restricted by law, but could be restricted by the applicant, who could make a decision based on what would sell.

Chair Kelley noted that several abutters had raised the issue of how there could be certainty that 80% of residents of the development were age 55 or older.

Attorney Pollock said the project was designed as condominiums, and said the board of the condo association would have the authority to bring suits against owners who violated the covenants in the deeds. He said this happened all of the time, noting that people lived in these residences because of the age ratios that were established, and the protections in place, so they were self-policing.

Chair Kelley noted that the Town got a list of the owners on an annual basis. Attorney Pollock said the Town had secondary enforcement powers concerning this, on the authority that the land use documents for the development had been violated, if the age ratio didn't meet the Town regulations.

There was discussion that the proposed condo documents for the development had been provided.

Mr. Grant said at the last meeting, he had understood that for the 20%, there would be a restriction of age 30+ and no children. He asked if this was also the responsibility of the condo association to enforce. Attorney Pollock said "yes", this would be written in the condominium documents, and would be the obligation of all owners.

Mr. Grant asked if a child were born to someone living in one of the units, would the courts would uphold an eviction of this family based on the contract. Attorney Pollock said although the situation would be emotionally charged, his opinion was that the contract would be upheld.

There was discussion between Chair Kelley and Attorney Pollock as to whether there was any case law concerning this issue. Attorney Pollock said he would be happy to research this if the Board desired this information.

Mr. Roberts noted that the Board had taken testimony regarding changing the elderly housing age from 62+ to 55+ for the Spruce Wood development, and said a survey done at that time in the Seacoast area had found that the percentage of children that lived in these 55+ developments was negligible. He also said he got nervous when he heard talk about policing the development down to the last child, and not talking about thematic problems, and abutters' property values, which he felt were issues of far greater importance.

Councilor Needell noted that this was a different project than Spruce Woods, where the age restriction was 100% age 55 and older. There was discussion on this.

Jack Quinn, Adams Circle, said that in terms of the issue of balance, there was a tension between the purpose statement and the permitted uses in the Zoning Ordinance. He said this was at the heart of this situation. He said the balance the Town desired was written in the Ordinance,

but he said the reason this proposed development looked so funny was that this balance was dramatically violated. He said no one in the neighborhood was saying not to build anything, but was saying to build something that was balanced.

Mr. Grant noted to developer Jack Farrell that Mr. Quinn had submitted a revised analysis regarding the effect of age restricted housing on school taxes, and asked if Mr. Farrell had seen this. Mr. Farrell said he had not seen this information.

Mr. Grant said it was important that the applicant have a chance to see this, noting that there had been several comments at the present meeting regarding tax benefits from the proposed development. He requested details on the results of Mr. Quinn's analysis.

Mr. Quinn said based on the numbers available, in a hypothetical case, for a \$300,000 house, the tax bill would be reduced by \$112 as a result of this development. But he also said school taxes were so heavily dependent on school finding that it was difficult to predict what would happen in future years. He summarized that there was not as big a positive impact on the tax base as Mr. Farrell had shown in his previous presentation.

There was further discussion on how to proceed. It was noted that there were other Agenda items the Board needed to get to that evening.

Mr. Grant said that since the Board's attorney was present, it would be good to have a conference with him.

Councilor Needell suggested continuing the public hearing to the next meeting. He also said he felt the Board's questions for its attorney could be handled in public session.

Mr. Grant MOVED to continue the public hearing to the next Planning Board meeting. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

[Recess from 8:50 to 9:00 pm]

Chair Kelley asked Attorney Mitchell to speak with the Planning Board.

Attorney Mitchell said he recommended that the Board have its discussion with him in private session, just as any other client would. He said one reason was that this was a contentious application, where there might be litigation. He said Attorney Pollock and Attorney Hogan hoped to prevail, but were looking for things they could use if necessary, and most important, they would be looking for things that he might say that could be used against the Town's position. He said this deprived him of the ability to share the strengths and weaknesses of particular points. He noted that under State Law this kind of consultation was not a meeting.

Steve Roberts MOVED to suspend the meeting to meet with the Planning Board's legal counsel. Arthur Grant SECONDED the motion, and it PASSED 7-1, with Councilor Needell voting against it.

At approximately 9:45 pm, the Board ***MOVED to return to public session and the motion and it PASSED unanimously 7-0.***

The Board MOVED to continue the public hearing until Feb 14th, 2007 and the motion passed unanimously.

Chair Kelley said the Board needed to decide whether it was prepared to make a decision on density.

Mr. Parnell said he was not prepared to decide on this that evening, and other Board members agreed.

Chair Kelley agreed there were still some things to think about, but he asked that Board members be prepared to make a determination on this soon, one way or another.

Mr. Roberts noted a 20-page document from a recent planning conference that he had sent to Mr. Campbell which had relevance to this matter, and said it should be distributed to Board members.

Mr. Grant said that input from the Police Department regarding traffic impacts from this project were “very shallow”, although other Town departments had responded in depth. He said Mr. Campbell should be asked to have the Police Chief give the Planning Board more specific input on traffic impacts on Madbury Road, and said that perhaps there should also be input from the Traffic Safety Committee on this.

Attorney Pollock asked if it was the Board’s plan to resolve the density issue at the next meeting, but not to speak further about the project at that time. He noted that the applicants had a detailed project team, and said it would be helpful to know the schedule, and what issues the Board would want to hear about at that next meeting.

Chair Kelley said the design team should probably stay home for the next Planning Board meeting.

Attorney Pollock summarized that the threshold issues were density, the 80/20 mix, regulation of the 20%; that these issues would be addressed at the next Planning Board meeting; and that the Board wouldn’t get into design issues at that meeting.

Arthur Grant MOVED, under Agenda Item IV AND VI, to postpone both of the Caldarola application public hearings until February 14, 2007 at the request of the applicant. Chair Kelley SECONDED the motion, and it PASSED unanimously 7-0.

Arthur Grant MOVED to continue the public hearing on the Hills application until the March 14, 2007 meeting. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Chair Kelley MOVED to extend the meeting to 10:30 pm. Bill McGowan SECONDED the motion, and it PASSED 7-0

VIII. Public Hearing Presentation on a proposal for the construction of the Durham section of pipeline which will run from the Turnkey landfill in Gonic to the University of New Hampshire campus.

University planner Doug Bencks provided a slide presentation on the proposed project, which would take methane, a byproduct of the breakdown of some materials at the Rochester landfill, and pipe it to UNH for use as a fuel source.

Paul Chamberlin, UNH Vice President for Facilities, provided details on the University's existing co-generation plant, which provides a major portion of electricity for the UNH campus, including central chilling for a number of buildings. He said the plan was to use landfill gas as a substitute for natural gas for the co-generation plant. He explained that the gas, which was about 50% methane, first had to be cleaned to remove a variety of contaminants. He noted that commercial natural gas was 96% methane.

He said there are currently pipes at the landfill that capture the gas, and said that Waste Management flared most of this gas in order to control the odors from it. He said they used some of it, but were limited in what they could use, so were unable to take full advantage of it. He said this created an opportunity for the University.

Mr. Chamberlin said there were some challenges in developing this system, explaining that landfill gas contained a number of contaminants that could impact the operation of systems. He provided details on other challenges, including the distance involved in sending the gas from the landfill to Durham. He also said the gas was produced relatively steadily, whereas UNH demand varied, so there was an imbalance. He said this imbalance was a challenge but was also an opportunity.

Mr. Chamberlin said the gas from the landfill could meet 85% of UNH's energy needs, and would reduce the University's exposure to commercial market fluctuations, noting that it was very difficult to predict energy prices these days. He also said using the gas would save money.

He explained that the gas would be run through a processing plant that would be built at the landfill, which would remove contaminants. He also noted that taking out CO₂ would increase the percentage of methane. He said the pipeline would run for 12.7 miles, and said the pipe itself was 12 inches in diameter, made of plastic with heavy walls. He said a directional drilling technique would be used to put the pipe in place under wetlands, roads, etc., also noting that the pipeline would go through lower value wetlands, which would then be restored. He said the use of directional drilling allowed more control, and substantially decreased the extent of wetland disturbance.

Mr. Chamberlin noted there was an imbalance in terms of the seasons when the cogeneration plant was used, due to the fact that it serviced the University. He said a second turbine would

be installed at the cogeneration plant so that excess electricity could be sold into the grid, and said this would maximize the use of the landfill gas energy source. He said the University was also looking at whether energy from the process could be transported to sister campuses. He said the gas that couldn't be used would be flared at the landfill, not in Durham.

He next described the route the pipeline would take, as it made its way to the co-generation plant in Durham.

He said the University Board of Trustees had authorized funds to keep the project moving, but the formal approval was not yet in place. He provided details on where the project was currently at, in terms of permits, etc.

Mr. Bencks provided details concerning construction of the pipeline. He said it conformed with all state regulations for pipes, conformed to wetland regulations, and would comply with NHDOT right of ways where this applied. He said a lot of negotiations had gone into to this, noting as part of this that the Durham Conservation Commission had provided input on the project.

Mr. Bencks said that impacts on roads would be minimized by drilling below them, and said the entire route of the pipe would be on either University land or NHDOT right of ways. He noted that in locations where pipe was to be laid in an open trench, these trenches would be a minimum of three feet deep. He showed a few places where the pipe would be placed on NHDOT property that was located in front of private property in Durham,

Chair Kelley congratulated the University for putting this project together, and said it should be very proud of it. He then noted that under the general construction sequence, regarding off-pavement access points, he had a concern about a large staging area proposed adjacent to Main Street just after the University of New Hampshire sign. He said he didn't see this labeled on the plans. There was discussion about this. Chair Kelley said provisions should be made that Main Street would stay in suitable condition.

Mr. Grant asked if it was correct that the route of the pipe would not be touching any of the right of way for future highways. Mr. Bencks showed the location of the northern connector on the plans, and said the pipeline would be located to the west of it.

Mr. McGowan asked when the University planned to start construction of the pipeline, if the funding was available. Mr. Chamberlin said if they got the funding and Board approval, the goal was to complete the project before winter 2007 set in. He said there would be multiple crews, working at four or five locations at the same time.

Mr. Bencks said he would provide the Public Works Department with a work schedule.

Mr. Roberts stated that he didn't understand why such a large, disruptive pipeline would be built, when Rochester had so much demand for the power. There was discussion on this.

Ms. Fuller noted that Mr. Chamberlin had said that once the system was up and running, they expected to have more power than was needed. She asked if they were saying they would then be considering trucking the gas to other campuses.

Mr. Chamberlin said they would look at putting the electricity that was produced into the grid, which would be transmitted to sister campuses.

Ms. Harris asked whether, when the gas came to Durham, the University would make some of it accessible to the Town.

Mr. Chamberlin said the challenge was that the gas was not the commercial equivalent of natural gas. He said the University could manage that difference with its turbines, but said the gas could cause undesirable impacts on stoves, etc. of residential customers.

Chair Kelley said if the University was successful in transmitting some energy to UNH's sister campuses, demand would still be less in the summer. He asked if perhaps in the summer, the University could share the energy with the Town, at the wastewater treatment plant.

Mr. Bencks said Town staff had asked about this. He said it was a technical issue as to how this could be accomplished. He said the University was open to this, but said that in terms of the loads involved, it might not be worthwhile.

Mr. Grant asked if there had been discussion about the relationship between Goss International and the University, concerning using some of this gas. Mr. Chamberlin said that even with the second turbine, the University wouldn't quite be able to use all the gas that was available. He said they had looked at large industrial plants in the area that could handle this excess if there was some, but that would not be hurt if it wasn't available. He said they were still exploring this idea.

Chair Kelley asked if the University would have a construction manager, and Mr. Bencks said "yes". Chair Kelley asked whether the construction manager would be working for the University and not for the contractors. Mr. Bencks said UNH professional staff would manage the project, day to day, in the field.

Chair Kelley asked whether the University had experience with the directional drilling process, noting that drilling fluid was involved in this process. There was discussion about this. Mr. Chamberlin said it was his understanding that bentonite clay would be used, which was not toxic. He also said that University people would be on the site, but would be looking to the engineering company on technical issues. He said they planned to have closer scrutiny on this project than on a typical project.

There was discussion on possible breakouts and surface disturbance as a result of the project.

Chair Kelley said it didn't appear that there were trench excavations going across Town land. Mr. Bencks provided details on this.

Chair Kelley said the contractor had allowed a liberal amount of time to restore pavement areas, with temporary pavement being put in place within five working days, and permanent paving put in place within 30 working days. He noted that a Durham resident would be impacted by this. He said he assumed the schedule for this work would be conveyed to Public Works Director Mike Lynch, and Mr. Chamberlin said absolutely.

Mr. Roberts asked if there were a failure mode at the gas cleaning plant at the Rochester landfill, would there be a pipeline full of unusable material. Mr. Chamberlin said there was a gas chromatograph in two locations as process control, to prevent this.

Mr. Roberts asked if there was redundant protection if the sensor on the chromatograph failed. Mr. Chamberlin said the system would stop putting gas into the pipeline if there was a failure.

Councilor Needell MOVED to open the public hearing on a proposal for the construction of the Durham section of pipeline which will run from the Turnkey landfill in Gonic to the University of New Hampshire campus. Arthur Grant SECONDED the motion, and it PASSED unanimously 7-0.

There were no comments from members of the public.

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

Chair Kelley said no width had been provided concerning the open trenches that would be dug. He also asked how many trucks were expected in the Durham area, bringing in materials and taking them out. Mr. Bencks provided details on the amount of material involved, and said it would be relatively limited.

Chair Kelley asked why concrete encasements would be used, and there was discussion about this. He then summarized the key points he had made: that the work at the access points on Durham roads should be kept clean; and that the driveway of the private residence that would be impacted from the laying of the pipeline would be fixed sooner rather than later.

IX. Discussion on Excavation Regulations and on Change in Table of Uses to make Excavation a Conditional Use in the Rural District.

Due to the lateness of the hour, this matter and action on the remainder of the Agenda was deferred.

X. Other Business

A. Old Business:

B. New Business:

C. Next meeting of the Board: February 14, 2007

XI. **Approval of Minutes** – December 13, 2006

XII. **Adjournment**

Arthur Grant MOVED to adjourn the meeting at 10:55 p.m.. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.