

**This set of minutes was approved at the Planning Board meeting on April 25, 2007**

**DURHAM PLANNING BOARD  
WEDNESDAY, MARCH 14, 2007  
DURHAM TOWN HALL – COUNCIL CHAMBERS  
7:00 PM**

**MEMBERS PRESENT:** Chair Kelley; Steve Roberts; Richard Ozenich; Lorne Parnell

**ALTERNATES PRESENT:** Susan Fuller; Annmarie Harris; Doug Greene; Councilor Diana Carroll

**MEMBERS ABSENT:** Bill McGowan; Arthur Grant; Councilor Gerald Needell

**I. Call to Order**

Chair Kelley said that alternate Susan Fuller would fill in for Bill McGowan, and that alternate Doug Greene would fill in for Arthur Grant.

**II. Approval of Agenda**

*Richard Ozenich MOVED to approve the Agenda as submitted. The motion was SECONDED by Steve Roberts, and PASSED unanimously 7-0.*

**III. Report of the Planner**

Mr. Campbell provided the following updates for the Board:

- He said he had met with University Planner Doug Bencks on March 6, 2007, and said a separate memo on the meeting would be provided to Board members.
- He said the Mill Plaza Study Committee had met on Wednesday, March 7, 2007 at 4 pm in the Council chambers, and said they would meet at that same time and place on the first and third Wednesdays of the month. He said the Committee had discussed the proposed timetable for its work; the involvement of professional assistance; the history of the Plaza; zoning in and around it; and the Community Development Plan and the Master Plan. He also said the Committee had begun brainstorming ideas with the help of a facilitator from UNH.
- He said he had attended a GIS class on March 5 through UNH Cooperative Extension, and said the class was useful in terms of helping him to be able to keep up with continued GIS development in Durham.
- He said the Town Council had approved Douglas Greene as an alternate member of the Planning Board at its March 5, 2007 meeting.
- He said at that same meeting, the Council discussed the recommendation of the Economic Development Committee to move forward with Chinburg Builders, Inc. on the purchase and

development of the Durham Business Park. He said the Council had asked Administrator Selig to negotiate and draft a Purchase and Sale Agreement to bring back to the Council for its March 19, 2007 meeting.

- He said that at the March 5, 2007 Council meeting, the Council continued the public hearing on the adoption of enabling legislation for Tax Increment Financing (TIF) Districts. He said that after closing the hearing, the Council then deliberated on this matter. He noted that the Council had to wait 15 days following this hearing before making a decision. He said the tentative schedule was for the Council to continue these discussions at its April 2<sup>nd</sup> meeting.
- Mr. Campbell said the Traffic Safety Committee held a meeting on March 13<sup>th</sup> to discuss the Elderly Housing project off Madbury Road.
- He said he had received the draft report from Norway Plains on their review of the various transportation related materials that was available from the Town and the University. He said he was currently reviewing this report, and would keep the Board up to date on this. He said he would provide Don Rhodes of Norway Plains with his comments, corrections, additions, etc., and said copies of the revised report would then be provided to Board members.
- He said two new applications had been received, looking ahead to the March 28, 2007 Board meeting. He said one was for a subdivision of the Fogg parcel off Mill Road and Packers Falls Road, and he noted that this idea was discussed as part of the process of putting a conservation easement on the Fogg property. He said the subdivision would be exempt from the conservation subdivision regulations, but still needed subdivision approval. He said a design review application had also been received for a student housing project off Old Concord Road.

**IV. 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.

It was noted that Mr. Hills had submitted a letter requesting that this Agenda item be postponed, and that the public hearing be rescheduled for April 25<sup>th</sup>. There was discussion that the applicant would need an extension for the application.

*Susan Fuller MOVED to postpone until April 25, 2007 the 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, and that the Town Planner Jim Campbell request a 60 day extension from the applicant to permit that. Richard Ozenich SECONDED the motion and it PASSED unanimously 7-0.*

**V. Public Hearing on an Application for Conditional Use Permit** submitted by Nick Isaak, Durham, New Hampshire on behalf of SAE Services Inc., Evanston, Illinois, for the re-instating of a building into a fraternity house. The property involved is shown on Tax Map 2, Lot 11-2, is located at 28 Madbury Road and is in the Professional Office Zoning District.

Mr. Isaak provided background on the project, as he done at the previous Board meeting. He noted that the applicant had hired an engineer, and also noted that the Planning Board had

recently conducted a site walk of the property. He said that according to the applicant's timeline, the project should hopefully be completed in time for the fall semester.

There was detailed discussion about the fact that the posting process had not been done correctly, and that this meant there could be grounds for appeal of a decision on the application at a later date. Mr. Isaak said the applicant understood this.

***Richard Ozenich MOVED to open the public hearing on an Application for Conditional Use Permit submitted by Nick Isaak, Durham, New Hampshire on behalf of SAE Services Inc., Evanston, Illinois, for the re-instating of a building into a fraternity house. Susan Fuller SECONDED the motion and it PASSED unanimously 7-0.***

**Marty Gooze, 9 Meadow Road,** said she was not a direct abutter, but walked often in that area of Town. She said the property had gone through good and bad phases over the years, but said she would like to see the fraternity use stay there, as an historical use. She said she would prefer this rather than seeing commercial development of the property before the Town had addressed development on Main Street.

Ms. Gooze said that as part of the conditional use process, there should be a condition that the property would have a mature resident manager, in order to maintain adherence to Town and University rules, in this very visible area of Town. She noted that such oversight had been very poor in recent years, and said it was very important that behavior at the fraternity be monitored and supervised.

Mr. Isaak said the written intent of the owner was that there would be a resident manager, and that no alcohol would be allowed in common areas of the building. He said the owner was trying to bring back the fraternity in a way that reflected that it had once been a prestigious organization. He said the owner intended to build the house membership slowly, to make sure they got the right people.

There was further detailed discussion on the idea of having a competent resident manager on the site, with Chair Kelley recommending that the Planning Board would need to see a job description of this position.

Mr. Isaak agreed that this was a good idea.

There were no other members of the public who wished to speak at the public hearing.

***Susan Fuller MOVED to close the public hearing. Richard Ozenich SECONDED the motion.***

Ms. Harris said that since the public hearing had not been noticed for the general neighborhood, she didn't think the Board should close the public hearing.

Councilor Carroll agreed, stating that it would be a good idea to keep the public hearing open.

Ms. Fuller and Mr. Ozenich agreed to a friendly amendment to the motion, to say that the public hearing should be continued to March 28, 2007

***Susan Fuller MOVED to continue the public hearing to March 28, 2007. Richard Ozenich SECONDED the motion.***

Ms. Fuller asked if a representative from UNH would be interested in attending the continued public hearing. There was discussion about this by the Board.

Mr. Campbell said he had spoken with a representative from UNH concerning this property, and was told that the University hadn't made the decision regarding the status of the local SAE fraternity, and that instead, the national SAE organization had pulled out because it didn't like what was going on, management wise, at the house. He said UNH was confident that the larger SAE organization would do a good job, and that the local fraternity would be back in the system in the fall. He said the University felt the fraternity would succeed if the national SAE organization followed through with its plans.

Councilor Carroll said this situation was a good example of an excellent opportunity for the Town and the University to work together. She said the Town wanted there to be an on-site property manager, and said the job description for this position needed to be clear, so there would be no room for confusion between the Town and the University, and so everyone would have the same expectation.

Mr. Roberts said he questioned the financial viability of this project. He said he would like the applicant to make a presentation to the Board concerning the business plan for the property, and said this was necessary so the Town wouldn't be back with the same problems with this property in the future.

Mr. Isaak said he couldn't speak for the applicants concerning this, but said he would ask them to respond to Mr. Roberts' concerns.

There was further discussion by the Board on the possible risks involved with bringing this property back as a fraternity.

Councilor Carroll said the plan for expected behavior at the fraternity needed to be clear, along with what the plan was if this behavior should deteriorate. She said the Town should know this ahead of time.

Chair Kelley asked Mr. Campbell to let the University know how important the Planning Board felt it was for the University to provide a representative as part of this application process. There was discussion that the Board had requested this previously.

Councilor Carroll pointed out that the compliance checklist for a conditional use permit including an item concerning whether a proposed use would impact the Town fiscally. She noted the costs the Town had incurred when the Police Department had to respond because of problems at this property.

Chair Kelley noted that he had asked Mr. Campbell to have a Police Department representative available to speak about the ramifications of those costs.

Councilor Carroll said the Town should go into this situation with its eyes wide open.

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

- VI. Continued Public Hearing on a Site Plan Application and a Subdivision Application** submitted by Cuthartes Private Investments, Boston, Massachusetts, on behalf of Stonemark 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.

Jack Farrell spoke before the Board, and said that for this meeting, the focus would be on the traffic study that had been done for the proposed development.

He said that he first would go through some housekeeping items.

He said the Title Abstract had now been provided. He also said an extension on the 60 day clock would be needed, and said he would provide this the following day.

Mr. Farrell said the high intensity soils mapping had been completed for the remaining railroad parcel, and said the impact on the usable area would be calculated, and would be provided at the next Board meeting. He noted that this impact was not expected to be great.

He said there had been a meeting with the Traffic Safety Committee, and said that as part of this, the Police Chief had provided some recommendations.

Mr. Farrell said a number of concepts had been developed to potentially revise the site plan, regarding the scale and the siting of the development. He said this information would be shared at the March 28<sup>th</sup> Board meeting, explaining that the concepts had been developed in response to Planning Board and neighborhood concerns. He said landscape architect Robbie Woodburn had been hired to take a fresh look at the landscaping of the site, in part to provide better screening and mitigate impacts on the neighbors. Mr. Farrell said he would like to invite the neighbors to have a conversation with the applicants concerning this.

He also said the applicants were working with UNH to develop a stormwater management system, noting that this project would be a test case to implement some of UNH's most recent, innovative ideas concerning stormwater management.

Mr. Farrell then introduced Steven Pernaw, the traffic consultant who had developed the traffic study for the proposed development.

Mr. Pernaw outlined the process he had gone through in developing the traffic study results:

- Consideration of existing conditions of the local roadways in the vicinity of the development, and existing traffic volumes;
- Consideration of the degree to which the development itself would generate traffic;
- Consideration of future traffic projections, with and without the development;
- Based on the data obtained, development of a technical analysis of roadway capacity, intersection capacity, traffic control devices, safety issues
- Findings and Conclusions

Mr. Pernaw said traffic counts were done of the site driveway and at the Edgewood Road/Madbury Road intersection in March of 2006, to determine average traffic volumes, rates of flow, peak flow, etc. He said the peak hour in the morning was 7:15-8:15 am, with the majority of traffic heading south into Durham, and the peak hour in the afternoon was 4:30-5:30 pm, with the majority of traffic heading out to Route 4.

Mr. Pernaw next spoke about traffic that was expected to be generated by the development itself. He said there was a land use code book that was used to estimate this traffic for an age restricted, 55 + facility, but he said that instead of using this data, he had obtained data from several local sites for such housing. He noted that these rates were higher than the rates the land use code book provided.

He said that based on this data, it was determined that during the morning peak hourly period, there would be approximately 30 trips, most of them outbound. He said in the evening, there would be about 34 trips, most of them entering the site. He said the daily number of trips was 340. Mr. Pernaw then discussed future traffic projections as of 2007 and 2017.

He said the technical analysis of the data indicated that the net change as a result of the proposed development would be a 2% increase in traffic, as compared to a no build situation. He said there would be an additional 14 trips per hour to and from the site, which was quite small. He said although it would be noticed that there would be additional turns into and out of the site, it would not be noticed that there was an increase in traffic flow on Madbury Road.

Mr. Pernaw next spoke about the impact of the proposed development on the unsignalized intersections. He said the site driveway would have a Level of Service of C or higher, through 2017, and also said the Level of Service for the Edgewood Road intersection (where there were stop signs) wouldn't change with the development, and would stay at Level B

He explained that, separately from this development, the Town would need to rethink the operation of the Edgewood Road intersection within 10 years, but stated again that the impact of the development itself on this intersection was negligible.

Mr. Pernaw provided details on the fact that there was ample sight distance for the driveway, looking in both directions. He also said the roadway in the vicinity of the site driveway would not need to be widened, tapered, etc. to accommodate entrances and exits to and from the site.

Ms. Harris asked if the March 2006 traffic count that had been conducted was done during spring break, and there was discussion about this.

Mr. Ozenich spoke about his concern that traffic from the site trying to get onto Madbury Road would back up, and asked how this factored into the traffic analysis. There was discussion about this.

Mr. Pernaw said this meant there would be some on-site delays in getting onto Madbury Road, but he said this would not impact traffic flow on the road much. He said people would have to consider whether they wanted to live there, given this reality. He also noted that the advantage of having 55 + residents living there was that at least some of the residents wouldn't have to leave home early in order to commute.

Mr. Ozenich said he lived in an "active adult" community, and said it was common that residents there had two cars. He also noted that many residents there left home early in the day, and said he therefore questioned the 30 trips number.

Mr. Pernaw said this was the reason he had decided to do local counts, and to rely on these higher numbers. He said the 30 trips number was a result of this, and he noted that they sampled 5 or 6 local 55 + developments in order to get this number.

**Pam Shaw, 101 Madbury Road,** spoke about the change in the driveway location, and how this might impact traffic.

She also noted that the applicants had changed the 20% non-age restricted aspect of the development so that this 20% of residents had to be age 30 or older. She said that based on this, Mr. Pernaw's figures were incorrect. She also noted that only one occupant of the 80% of age-restricted housing had to be 55 or older, which also meant that the conclusions were erroneous.

Ms. Shaw said that the traffic counts done from March 24-30, 2006 were atypical of traffic in Durham, and provided details on this. She also said Mr. Pernaw had indicated that age restricted housing generated less than half of the traffic that a conventional development did, and she asked what the basis was for this. Ms. Shaw also said that based on her calculations, there would be approximately a 6% increase in traffic as a result of the proposed development.

Ms. Shaw next read through Attorney Scott Hogan's comments on the traffic study.

Mr. Pernaw then responded to the comments from Ms. Shaw and Attorney Hogan. He said that regarding the location of the driveway, the existing driveway was the preferred location, safety wise, because there was more sight distance. But he said both locations were adequate in terms of sight distance.

He explained that the traffic report reflected the fact that 20% of the residents had to be 30 or older, and also said it had been determined that there was no difference in traffic, whether all of the residents were 55 +, or only 80% of them were

Mr. Pernaw also spoke regarding the comment that the number of people who would be living at the development didn't match the number of people who would be leaving and entering the site.

He noted that people would be leaving the site before and after the peak morning hour, and also said some residents wouldn't be leaving the site at all.

Mr. Pernaw also responded concerning Ms. Shaw's comment that the traffic counts he had obtained didn't reflect the reality of traffic flow, because they didn't include UNH events, where there were traffic peaks. He said that counts during evening events at the Whittemore Center hadn't been done, but also said that the kind of residential development that was proposed generally did not generate a lot of trips at night.

He said this project did not represent a major traffic generator, based on his years of experience, and was at the low end of a continuum of various land uses. He provided details on the variability of traffic volumes, based on random traffic variables, and said that the traffic volumes that would result from this development were less than what would occur as a result of this random variability.

Mr. Pernaw said the 6% traffic increase figure was incorrect, explaining again that the calculation needed to take into account trip distribution.

In response to comments made by Attorney Hogan in his letter, Mr. Pernaw explained again that the 20% of non-55 +, over age 30 residents wouldn't impact the amount of traffic significantly. He also noted again that data from local 55 + developments was used, rather than using the ITE rates. He said he could provide details on the local sites that were used. He also re-stated that the 2% traffic increase was the correct figure, not the 6% figure.

There was further discussion with Ms. Shaw regarding the 2% and 6% figures.

Ms. Shaw also asked Mr. Pernaw whether the fact that only one member of the 80% of age restricted, 55 + housing had to be 55 or older impacted the traffic figures.

Mr. Pernaw said he assumed that the other local 55 + developments that had been sampled followed the same laws that Durham did concerning this, and said they should therefore be comparing apples and apples.

**Jerry Gottsacker, 107/111 Madbury Road**, said that in the past year, he had gotten involved in looking at traffic issues on Madbury Road, and as part of this, had obtained several sets of traffic data, which had been conducted at various times. He suggested that this information could be useful to the Board as part of this application. He also noted that as the traffic volumes got higher over time on Madbury Road, the percentage increase that would result from the proposed development itself would actually be smaller.

Mr. Gottsacker said there were two key issues that residents of Madbury Road had been discussing, - the speed of cars on that road, and the significant amount of commercial truck traffic on the road, despite the fact that there were no-through truck signs posted on the road. He said they had drafted a petition concerning these issues. He also said he had done his own traffic count in May of 2006, and said the numbers were similar to those in the applicant's traffic study.



Mr. Gottsacker said residents of Madbury Road had met with the Town's Traffic Safety Committee, and had discussed the following issues: revision of speed limit signs; better enforcement of these speeds; and the idea of sending a letter to entities in Town that received truck deliveries.

He said a follow-up traffic study was done by the neighborhood group in November of 2006, and it was found that traffic speeds had actually gotten worse, which meant that the signs had done nothing. He said there was no impact of the signs if police officers weren't around to enforce them. He said it was found that the impact of trucks had decreased for a time, but said it was now still a problem because of inadequate enforcement. He said a crucial step was to post and enforce the rule that there could be no through traffic by trucks. He noted that about 20% of the volume of traffic on Madbury Road was comprised of trucks, and said reducing this would result in a big improvement of the traffic situation on Madbury Road.

Mr. Gottsacker concluded that more speed patrols by the police were needed on Madbury Road, and he noted that the Police Department had recently dedicated one officer for this task. He also said that an ordinance was needed concerning commercial truck traffic, and also said that enforcement would be needed for such an ordinance. He said it would be easy to address traffic volumes on Madbury Road if the focus was on truck traffic.

Chair Kelley said 20% represented a large amount of truck traffic, compared to the 2% increase in traffic that was projected for this development.

Mr. Pernaw said the manual data that had been used for the traffic study included breakouts by vehicle class, and also said he had learned that breakout by vehicle class could be obtained for automated data. He said he would try to get this breakout.

Chair Kelley said the truck deliveries to UNH seemed to be the biggest reason for these trucks, and said these deliveries were probably spread throughout the day.

Mr. Pernaw said that typically in New Hampshire, the highest number of trucks were seen in the a.m. peak hour.

Mr. Gottsacker said that from the data he had collected, UNH deliveries were not the reason for the bulk of the trucks. He provided details on the variety of trucks that had been observed. He also noted that some of the biggest speed violators were School District buses and UNH buses. He said they had been contacted concerning this, and were now controlling their speeds more, but said he was harder to control the speeds of the commercial trucks.

He noted that not much of the truck traffic turned off Madbury Road, so appeared to be through traffic, not local delivery traffic

Councilor Carroll noted that Main Street coming off of Route 4 was supposed to be used by this traffic, not Madbury Road, so it didn't interfere with residential areas.

Mr. Gottsacker pointed out that the UNH website provided directions for trucks coming to the campus, and included Madbury Road in these directions. He also said he was concerned about what the traffic volumes on Madbury Road would be when the Main Street repairs were underway. There was discussion on this.

Councilor Carroll said this was another area where there was need for cooperation between the Town and the University.

Chair Kelley suggested that the Board needed to put its focus back on the specifics of the application.

**Sarah Heuchling, 5 Adams Circle**, asked if as part of the traffic study, the consultant had requested data on accidents that had occurred at the Edgewood Road/Madbury Road intersection since the 4 way stop had been put in place. She said she had observed that during peak hours, drivers were often not courteous to each other, and said that because of their impatience with the 4 way stop, they sometimes piggy backed behind other cars coming out of the stop.

She also noted that elderly drivers tended to be more cautious, which meant they would be more hesitant to come out of the site driveway onto Madbury Road. She said this meant that traffic would be tied up further in either direction. She also said older drivers would be more cautious, turning into the site driveway, which would really impact the pace and flow of traffic on Madbury Road. She also noted that every year, there would be new students driving on Madbury Road who were not familiar with the area.

There was discussion that the 4 way stop sign was put in place to slow down vehicles going through the intersection. There was also discussion on how this had impacted the Level of Service at the intersection.

Mr. Pernaw noted that the Manual of Uniform Traffic Control Devices recommended that stop signs should not be used to control speed.

Ms. Harris said there had been discussion about using speed tables to slow traffic.

Mr. Pernaw said that as part of his research for this study, he had gotten crash data from NHDOT for 2000-2002, for the site driveway and the Edgewood Road intersection, and anything within 300 ft. of them. He said he had found that there had been 2 crashes reported during that 3-year period. He also said the Durham Traffic Safety Committee had data from 2002-2007 which indicated that there were 1.66 crashes per year on Madbury Road, between Edgewood Road and Route 4.

Chair Kelley noted that these were only the crashes that were reported.

Mr. Pernaw said the Durham data was what the Police Department responded to, acknowledging there might be crashes they didn't get to, and that the data also did not reflect near misses.

There was discussion with Ms. Heuchling regarding this data. She said she was still concerned about the reality of piggyback drivers at the intersection, and about cautious older drivers.

Mr. Campbell provided clarification that, the data the Police Chief had provided to the Traffic Safety Committee was for Edgewood Road and Madbury Road, and did not cover the area going all the way out to Route 4. He noted the number of crashes that included that area was higher.

**Janet Doty, 12 Adams Circle**, said she was concerned about potential accidents that would occur coming in and out of the site driveway. She said the higher the volume of traffic coming by on Madbury road over time, the greater the risk there was that there would be accidents, for those coming in and out of that driveway.

**King W. Pfeiffer 6 Adams Circle**, said he didn't think the Edgewood Road intersection stop signs were put in just to slow things down. He said it was difficult to get onto Madbury Road, unless the traffic stopped at the stop signs.

**Hillary Scott, 20 Davis Ave.**, first noted that the Traffic Safety Committee had met the previous day. She asked what the policy was concerning notifying the public about these meetings, and suggested that it would be helpful if the public did get noticed so they could be more informed and prepared for a presentation like this on a traffic study.

There was discussion about this. Mr. Campbell said the purpose of the Traffic Safety Committee was to advise the Town Administrator on traffic issues, but said that lately, there had been an effort to expand that role.

Chair Kelley suggested that it might be more efficient if the Traffic Safety Committee held regular meetings.

Ms. Scott requested that Chair Kelley and Mr. Campbell consider noticing the public for committee meetings related to specific applications. She said she had found it difficult to follow the presentation on the traffic study that evening, and to be able to formulate questions directly related to this material.

Ms. Scott noted that she had sent a letter to the Planning Board dated February 12, 2007, and she went through this issues addressed in this letter. She said she was opposed to the application, because of the quality of life issues for abutters, and stated that the scale of the proposed development would greatly impact their quality of life. She noted that the Master Plan spoke about the importance of not impacting the quality of life of residents, and she said at the minimum, the Board should deny any request for a height variance.

She said that concerning traffic issues, high traffic volumes already existed on Madbury Road, and said the development would create more traffic near the Edgewood Road/Madbury Road intersection.

She said that concerning the fact that this was an age restricted development, the composition of the remaining 20% kept changing. She said if the application was approved, the Board needed to

confirm that the Town had the authority to evict residents of the 20% of non-55 + housing, if they didn't abide by the age 30 + requirement. She said the Town needed a process to enforce the age restrictions, and shouldn't rely on the condominium association.

Ms. Scott said it was her understanding that the Planning Board had some discretion concerning the 2 parcel/1 parcel issue. She said she didn't feel such a decision should have been made while an application was before the Board, and asked why this issue was not resolved prior to the application.

She noted the current lawsuit Stonemark had against the Town, and asked the Planning Board to remain objective about the present application, despite this lawsuit.

Chair Kelley asked Ms. Scott how she had learned that the Planning Board had discretionary authority regarding the 1 lot/2 lot issue.

Ms. Scott said she couldn't say, specifically, and said she thought it was information she had picked up along the way.

She said she had attended the February 22, 2007 Board meeting, where there was a 4-3 vote that the 2 lots would be considered to be 1 lot. She noted a question by Councilor Needell at that meeting regarding the fact that there had been no conceptual review for the proposed project, and she asked what the absence of this step meant regarding the application process. She said Councilor Needell had also noted that there had been a waiver request to not do the 4 step design process, and that this request was never voted on by the Planning Board. She said if this were true, she would like to know what this meant for the application.

Ms. Scott said that Board member Arthur Grant had pointed out during the deliberations on February 22<sup>nd</sup> that three attorneys had agreed that the property consisted of 2 non-contiguous lots. She also said he had referenced earlier material related to this, and also said he had said that he could not find provisions of State law or the Zoning Ordinance for combining non-contiguous lots. She said he had also said the Board's decision that night should be based on the most careful interpretation of fact and the Zoning Ordinance.

She reviewed comments made by Chair Kelley during this same deliberation process. She asked whether, if he had thought the land in question was not 2 lots, this concern wasn't raised when the motion was framed (she noted that the motion specifically said 2 lots).

Ms. Scott said she agreed with the precedence issue raised by some Board members, and the need to apply the Zoning Ordinance, and objectivity, to the motion. She said that in terms of the protocol for a motion, she questioned why there wasn't a motion to deny, based on these various concerns. She said there were enough questions to warrant waiting to vote until another Board meeting. She noted that she had brought up these concerns at a recent Town Council meeting, and had urged the Council to view the Planning Board meeting she had referred to.

**Armida Geiger, 13 Davis Ave.,** asked for clarification regarding Mr. Pernaw's statement that the proposed development wouldn't require road widening, turning lanes, etc.

Mr. Pernaw provided details on this, and said the existing intersection was appropriate for a development of this size and type.

Ms. Geiger noted other residential developments where road improvements were made to allow better turns to be made. She said for something of the magnitude of this development, she thought this was something the Planning Board should look at.

Ms. Geiger also said that she knew from experience that at times, when residents had issues with their land which involved the presentation of data to the Planning Board, the Board sometimes said it would like to hire an independent consultant to look at the issues. She said this would be an appropriate thing for the Board to do for this application, and she suggested that a private traffic consultant should be hired by the Board, at the expense of the applicant.

Chair Kelley said this was something that the Board, in fact, could request. He then said he had some questions for Mr. Pernaw. He noted the issue of a possible auxiliary lane, and asked if there would be an advantage of having this at the site driveway.

Mr. Pernaw said that as part of the traffic study, this had been looked at. He said it was found that there was not enough left turning traffic to warrant it, and said it would be counterproductive to put it in if it wasn't needed. He explained that there were guidelines for putting one in, and this development didn't meet them. He said putting in such a lane would also change the character of Madbury Road, and he provided details on this, noting that the roadwork involved would have to be several hundred feet long.

There was discussion about this.

Mr. Parnell asked if there would be enough room for cars to go by on the right when cars were turning left into the site driveway.

Mr. Pernaw said no, noting that the shoulder was narrow there, but he said this didn't mean that people wouldn't try to do it anyway. He said there wouldn't be a lot of left turns, but he said that like any of the intersections on Madbury Road, when they did happen, traffic speeds would be held down. He said the peak pm hour would be the worst case scenario, when there would be about 13 left turns into the site, but he said one didn't build a bypass lane for these kinds of numbers. He said if one did, there would be bypass lanes everywhere.

Ms. Fuller asked if there were sidewalks on the east side, and was told there were not.

Chair Kelley asked Mr. Pernaw if he thought Madbury Road was seen as not just a road to Durham, but as a through road for traffic going to other places.

Mr. Pernaw said he didn't have enough information to provide a good answer to this question. He said Madbury Road provided a straight shot for traffic, which made it attractive, but also noted that vehicles had other options. He said he didn't think there was a lot of external-to-external traffic.

Chair Kelley asked if there were any options for the Madbury Road/Edgewood Road intersection to make it run more efficiently.

Mr. Pernaw said that off the record, and not representing his client, the 10 year traffic numbers caused him to say there would be a time when a signalized intersection or a roundabout would need to be considered.

Ms. Harris said she had sat for six years on the University's traffic safety committee. She said they had encouraged traffic from Portsmouth and Newmarket to enter the campus from the west side, but she said it was a tough situation. She noted there were signs concerning this now.

She said another idea, which had not been implemented, was the possibility of prohibiting through traffic from Dover and Madbury across Route 4, and instead requiring traffic to make a right turn and come into the campus on the west side. She also said there was the idea of not allowing traffic coming from the east on Route 4 to turn left onto Madbury Road, and forcing it to come in from the west side of the campus.

There was discussion about this, and about the idea of dead-ending Madbury Road.

Ms. Harris said there were ways to accomplish this kind of thing, and said it was a traffic safety issue. She said the impetus would have to come from the neighborhood.

**Peter Flynn, 103 Madbury Road**, said that dead-ending the road might work, if there was no access from Route 4 to Madbury Road. He also said he was surprised about the question from Chair Kelley regarding whether Madbury Road was a through road, given other comments that had been made.

He also said that the population of Durham more than doubled when the University was in session, so should be a factor that was considered in the traffic report. He said Madbury Road was bumper to bumper after UNH events, and said that any access into the proposed development would have a lot to deal with in terms of traffic.

***Steve Roberts MOVED to continue the public hearing to March 28, 2007. Councilor Carroll SECONDED the motion, and it PASSED unanimously 7-0.***

[10 minute recess, from 9:35-9:47 pm]

**VII. Design Review of a Conservation Subdivision Application** submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots. The property involved is shown on Tax Map 10, Lot 7-0, is located at the corner of Bagdad Road and Canney Road and is in the Residential B Zoning District

Mr. Ozenich and Ms. Fuller recused themselves for this application, and Ms. Fuller left the meeting. Ms. Harris became a voting member.

Mr. Caldarola reviewed the 4-step process involved in design review. He also said it was not clear whether a waiver would be needed concerning the calculation of open space. He provided details concerning this.

Ruben Hull, the engineer for the project, explained that the areas of the site that were deducted from the usable area consisted of areas of poorly drained soils, somewhat poorly drained soils, and steep slopes. He said there was some inconsistency between the Zoning Ordinance and the Subdivision regulations as to what these areas were called, but said they seemed to be equivalent to primary open space areas.

He showed portions of the somewhat poorly drained soils that fell within the building/roadway envelope, which were pieces of land that the applicant did not want to be part of the common open space for the subdivision. He said the total area of these pieces of land was 34,942 sf. He said that instead of using these pieces of land as part of the common open space, the applicant would like to use an area to the rear of the property that was not considered to be primary open space (was not poorly drained or somewhat poorly drained soils, steep slopes, etc.)

Mr. Hull also noted that the area of secondary open space had been calculated, and said approximately an acre more than what was required had been provided.

There was discussion by the Board on the configuration of the open space for the development.

Chair Kelley said a concern he had was how the open space would be managed.

Mr. Hull said there were various aspects of the project that would be held in common, in addition to the open space, including the drainage, easements, etc.

Mr. Caldarola provided details on this. In response to a question regarding the amount of buildable land for each lot, he said the smallest amount of buildable land was a ¼ acre on one of the lots.

Chair Kelley said he didn't see how one would expect areas of land alongside property lines to be maintained as open space by property owners.

Mr. Caldarola said this seemed logical to him, because the drainage infiltration structures were located along the lot lines, so the condominium association would need to have the right to maintain that anyway. He said it therefore made sense that this be part of the open space. He also said some of this area would have to remain open anyway, as part of the setback area.

Chair Kelley said what the applicant had proposed was interesting, and was a new approach. He said it was clear to him that a meets and bounds description of the interface of the white and green areas of the map would define the area of the easement for the open space. He asked if Mr. Caldarola's attorney had formulated language concerning this.

There was discussion about this. Mr. Hull said there had been discussion about providing something physical to show that there was an area beyond which the common open space was located. But he said it wasn't clear yet how this delineation would be made.

Mr. Parnell said there were 9 lots in the subdivision, and asked if the owner of each would own the complete lot.

Mr. Caldarola said yes, but said there would be an easement on the restricted area.

There was discussion that if one of the owners wanted to put in a garden, etc. on the open space on his own lot, or on another lot, he would have to get approval from the Association for this. It was also noted that this use would also have to be consistent with the Zoning Ordinance.

There was discussion about the Zoning Ordinance language regarding open space in a conservation subdivision having to be accessible to residents of the subdivisions. Chair Kelley said this was the standard subdivision approach in Durham.

Chair Kelley summarized that what Mr. Caldarola proposed to do was swap out some land for some other land, and said doing so would provide a greater buffer for surrounding properties. He said this was a different, but perhaps desirable approach. But he said it was important to determine how this would be handled in terms of easements, covenants, etc., and said he would like to see language concerning this before saying that what was proposed was a good idea.

Ms. Harris said she thought the design was clever.

Mr. Parnell noted that the somewhat poorly drained soils were considered buildable area, but could not count toward the density calculation.

There was further discussion on site issues, including drainage issues. Chair Kelley asked if the applicant was concerned about subsurface drainage issues, including possible problems because of ledge.

Mr. Hull said they were being very conscientious about where the drainage chambers were placed, and he provided some detail on this. He said there was some ledge, but said this was being taken into consideration. He said some of the drainage chambers would be put in native soil, and some would be placed in built up areas. He said the worst-case scenario would be that there would be detention, although not infiltration of water, which would still be no worse than the current situation on the site. But he said the goal was to make drainage on the site better than it presently was.



Chair Kelley asked if they were confident that once the water entered the ground, it wouldn't travel to the low, wet area of the site. He also asked if Mr. Caldarola was prepared, if the infiltration chambers wound up directing water to this wet area, to put in place an earthen dam along the back property line. He said the volume of water on the site would have increased because of the increase in impervious surface as a result of the development. He said the concern was what would need to be done if there was a lot of standing water, which consequently impacted abutters.

Mr. Caldarola said the purpose of the drainage system was to slow the rate of water flow. He said if this didn't happen, this would mean the engineering was wrong.

Chair Kelley said that mapping groundwater flow was difficult, but said if it was found that the wetland had more water as a result of the development, a contingency plan would be needed.

There was further discussion about this.

Chair Kelley said he would like to think further about what the applicant was proposing, and how this would be handled in the deeds.

Mr. Parnell asked if there was any precedent for this approach in Durham, and Chair said there was not.

Mr. Roberts said his recommendation was that the Planning Board study the design proposed by the applicant, along with the Zoning Ordinance and Subdivision Regulations. He said the Board needed to consider this common open space approach, and whether the proposed development would achieve what the Town was trying to accomplish with a conservation subdivision.

Chair Kelley said the Board needed more time to consider the idea of the waiver.

Mr. Campbell suggested that the design review discussion should be continued to the next Board meeting.

Chair Kelley suggested that the Planning Board might need to meet weekly in order to keep up with the various applications.

Mr. Caldarola said he was open to whatever process the Board wanted to follow. He also said he would try to get the language that had been requested to the Board in time for the next meeting.

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

This Agenda item was not addressed by the Board.

#### **IX. Other Business**

##### **B. New Business:**

Mr. Ozenich came back to the table.

It was noted that Peter Smith had sent a letter to Mr. Campbell stating that the Planning Board should agree to remove the attorney/client privilege from a letter dated January 5, 2007, and an email dated Feb. 20, 2007 regarding the 97-99 Madbury Road application.

Chair Kelley said he would like the Board to vote on this.

Mr. Campbell explained that the letter was one that the Board had not voted to release to the public. He said the email, which was a synopsis by the Town Attorney of the Planning Board's nonpublic session with him, was also confidential, unless the Board voted to release it.

There was discussion about this. Mr. Campbell said Mr. Smith felt the Board shouldn't keep this correspondence confidential, in the interest of having more open government. He also noted that Mr. Smith felt the Board shouldn't do this for any correspondence with the Town Attorney. He said that Attorney Mitchell, on the other hand, stated that correspondence from him was confidential, and sometimes advised the Board not to release it.

***Steve Roberts MOVED to postpone consideration of this request until the Planning Board meets with some other members of the Planning Board who were party to the discussion, and can have more comprehensive review of the issues involved. Richard Ozenich SECONDED the motion.***

Mr. Roberts said each Board member needed to think about this matter, and he said this late hour was the wrong time to be considering it.

Ms. Harris suggested that a second legal opinion was needed. There was discussion that this could be considered later.

It was agreed that the discussion on this matter should be held early at the next Board meeting.

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

- A. Old Business: Discussion on Zoning Re-write Issues and on Request from MJS Engineering for letters regarding variance requests for Patsy Collins property.

**Roger Roy of MJS Engineering**, representing Patsy Collins, noted that Mr. Sievert of MJS Engineering had spoken before the Board the previous August regarding this property, specifically, the somewhat poorly drained soils and shallow depth to ledge soils there, and how this related to usable area. He noted that the Board had determined that there was a wording error in the Zoning Ordinance concerning the depth to ledge soils, and he asked that the Board provide a letter expressing the same kind of support regarding this that it had provided for the Caldarola application.

Chair said he thought the applicant could expect that the Board would provide such a letter, given that there was an error in the Zoning Ordinance.

**Mr. Roy** also noted that more than half of the site consisted of somewhat poorly drained soils, and said this really did restrict what could be done with the property. He made reference to previous discussions and votes by the Planning Board on this issue.

There was discussion that there had been a number of votes on the somewhat poorly drained soils language in the Zoning Ordinance, but that ultimately, it was still on the books, so the Board had to go with this, and couldn't grant an exception in this instance.

Mr. Campbell explained that unlike the depth to ledge language in the Ordinance, the somewhat poorly drained soils provision was not a mistake. But he noted that there had been a unanimous decision by the Board to take another look at this provision, and said it was on the Zoning rewrite hit list.

It was noted that Ms. Collins could go before the ZBA to request a variance.

C. Next meeting of the Board: March 28, 2007

The Board agreed that there would be a Zoning Rewrite meeting on March 21<sup>st</sup>.

**X. Approval of Minutes** – January 24, 2007  
February 21, 2007

Not done

**XI. Adjournment**

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

Adjournment at 10:45 pm

Victoria Parmele, Minutes taker

Jerry Needell, Secretary