

**DURHAM PLANNING BOARD
WEDNESDAY, MARCH 28, 2007
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Richard Kelley; Steve Roberts; Richard Ozenich; Bill McGowan; Lorne Parnell; Councilor Needell

ALTERNATES PRESENT: Susan Fuller; Councilor Carroll; Doug Greene

MEMBERS ABSENT: Arthur Grant; Annmarie Harris; Wayne Lewis

I. Call to Order

II. Approval of Agenda

Chair Kelley said the Board needed to select a new Secretary under New Business, noting that Art Grant's resignation had recently been received. He also said Councilor Needell wished to discuss the Citizen Planner program under New Business.

Mr. Campbell said that Julian Smith was present to discuss the history of Mill Plaza. He also said there was a request from Jane Sparks, owner of the Hickory Pond Inn, for technical review of her application. In addition, he said the Minutes would be approved under Agenda Item XI.

Chair Kelley said Susan Fuller would be a voting member in place of Art Grant.

Bill McGowan MOVED to approve the Agenda as amended. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 7-0.

III. Approval of Minutes

January 24, 2007

(moved to Agenda Item XI)

IV. Report of Planner

- Mr. Campbell said the Main Street Enhancement Committee had met recently regarding further revisions to the master plan for the project that NHDOT had requested. He said the key item was that that Town was told that the design of the turning land at the intersection of Main Street and College Road had to be changed, and he provided details on this.

- Mr. Campbell said there would be a forum on March 29th regarding possible changes to the intersection of Bennett Road and Route 108.
- Mr. Campbell said the Mill Plaza Committee had met on March 21st, and said April 4th was set as the date for the first public hearing. He said the Committee also discussed the American Institute of Architects grant application that had been submitted, as well as the visit from AIA representatives on March 27th. He said the site visit had gone well, and said Durham was on a short list of three communities that had a chance of getting the grant.

He said the grant, if received, would result in a significant amount of design and engineering assistance for the project, to take it beyond the charrette phase. He said the AIA's intent was to make the winner of the grant a national model, and to take the project all the way through to the permitting stage. He said if Durham was picked, this would mean the assistance would be available to the end of the project, and he said this would be a really good thing for the Town.

- Mr. Campbell noted that Durham was also chosen to receive \$1,000 from the Northern New England Chapter of the American Planning Association, to help with the cost of the design of the Mill Plaza redevelopment
- Mr. Campbell said that given the length of the meeting, he would not go through the other items detailed in the Planners Report provided to Board members.

Mr. Roberts asked what the role of the Planning Board was on the Mill Plaza Committee.

Mr. Campbell said Board member Lorne Parnell was a representative to the committee, and also noted that other Board members were welcome to attend the meetings. He said there was no formal role for the Planning Board regarding the Committee.

Mr. Roberts asked if the Planning Board should be involved in some way in relating the Master Plan to what was proposed for the site. He said the project was a major planning element in the community.

Mr. Campbell said the facilitator for the project would be meeting with the Planning Board, and said there would be plenty of other opportunities for the Board to be involved.

- V. **Continued 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.

Bill McGowan MOVED to continue 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. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

Greg Summers, Associate Director of SAE Services, noted there were some questions raised by members of the Planning Board at the last meeting, and said he would try to answer them.

Chair Kelley said a concern he had was the job description for the housemother, and he asked Mr. Summers if this had been addressed.

Mr. Summers said the national SAE organization had a boilerplate description for house director/house parent. He said the main role of the housemother was to educate the residents on the house rules, and to serve as a liaison to the University, parents, Town officials. He said the job also involved coordinating with contractors when repairs were needed, and meal planning and preparation.

Mr. Roberts said the SAE site looked like there had been demolition by neglect, and he noted that even some of the recent site enhancements had been vandalized. He said he was looking for reassurance that what was planned would not be quick fix that would not really stabilize the site.

Mr. Summers said he was working with a general contractor to get quotes on various aspects of the project, and said the loan had been obtained. He said the national SAE organization would work with Mr. Johnson to be sure the zoning conditions were met. He said the vandalism was unfortunate, but had been fixed, and said once construction began, it was hoped that it would no longer be a problem. But he noted it was hard to control everything that went on at night.

Councilor Carroll said it was good that the housemother would enforce the house rules, and would not just be someone who called 911 when there were problems.

Mr. Summers said the house parent would have the phone numbers of parents of the residents of the fraternity house, and would also inform the national SAE if residents didn't abide by the rules. He also said it would be in the lease that residents who didn't abide by the rules could be evicted.

Chair Kelley asked if there were any members of the public who wished to speak.

Maryanne Lustgraaf, UNH MUB Director, explained that she supervised the coordinator of Greek Affairs at the University, also noting that there would soon be a new person in the coordinator position. She said she was speaking on behalf of the University in stating that it approved SAE coming back as a fraternity.

She said the national SAE chapter had assured the University that its concerns about the fraternity would be addressed. She noted that the local SAE chapter had been removed from campus by the national chapter, not UNH, and said they were now taking the necessary steps needed to bring it back.

She said the University saw that this turnaround could serve as a model for the turn around of some other UNH fraternity chapters, in terms of not having large common areas where drinking could occur, using third party vendors for events, having the national organization involved as the owner of the fraternity building, and having a house parent who among other things would

serve as a liaison with the University. She said she had every confidence that if the national SAE chapter followed through with its plan, it would be very successful.

Councilor Needell asked for clarification as to what it took for a fraternity to get kicked out by UNH.

Ms. Lustgraaf provided details on this, and she noted that the fraternities that got into trouble like this often didn't have involvement from their national fraternity chapters.

Councilor Needell noted that if it turned out that the renewed SAE chapter lost its recognition in the future, this would mean the national SAE chapter would lose the use of the building as a fraternity. He said the Town would like some assurances that if the behavior at the fraternity was not appropriate, it would in fact lose its recognition. He asked whether having the national chapter involved would perhaps make this loss of recognition less likely.

Ms. Lustgraaf said the involvement of a national chapter would not make loss of recognition less likely in that instance, and she provided details on how the University would deal with the national chapter in such a situation. She also said that having a national chapter involved made it easier to improve things.

There was discussion that UNH required that its fraternities have national recognition.

Chair Kelley asked if the national SAE chapter had demonstrated to University that it had done this kind of turnaround successfully at other Universities.

Ms. Lustgraaf said that SAE was one of the top tier national chapters, and also noted that the University had talked with SAE's financial people as to whether there would really be follow through concerning the project.

Chair Kelley asked if there were additional elements that the University would like to see in the business model for the local SAE chapter

Ms. Lustgraaf said no, and said not allowing alcohol in the commons area, and having a live-in support person were the two most important things the University saw as ensuring the success of the fraternity. She said the University was pleased with the conversations with the national SAE chapter, and said it wanted to be sure they could recruit a good bunch of guys.

Mr. Roberts said he didn't understand the policy of having social functions off campus, noting that in his era, this approach was considered dangerous.

Ms. Lustgraaf provided details on how the social policies at UNH and the national fraternity chapters had developed over the last several years. She noted that third party vendors for social events had to include transportation as part of the services they provided. In answer to a question from Mr. Roberts, she said she could send the Planning Board a copy of the social policy.

Ms. Fuller said the national SAE chapter had indicated that some of its houses didn't allow alcohol, but noted that this was not proposed for the local chapter in Durham. She asked how many UNH fraternities and sororities were dry.

Ms. Lustgraaf said UNH sororities were dry, and said this was also the trend for the fraternities.

Councilor Needell asked if the University had a preference concerning this.

Ms. Lustgraaf said that realistically, the University wouldn't push for this although it would prefer this. She explained that unlike the residence halls, the University didn't own the chapter houses. She also said not allowing alcohol might put a fraternity at a disadvantage in terms of recruiting. She said she was looking at the local SAE chapter to be a leader in terms of turning things around for UNH fraternities.

Chair Kelley thanked Ms. Lustgraaf for speaking regarding this application.

Renee Kelley, Deputy Police Chief, spoke in favor of the application. He said that SAE at one point was one of the worst UNH fraternities, and he provided details on various behavior problems there. He said the important thing now was the involvement of the national SAE organization, and said that some of the design changes to the house would help alleviate problems. He also said that having an onsite housemother/resident manager was key.

Deputy Chief Kelley said he was in favor of having a fraternity in the building, stating that if it instead was an apartment, it would be harder to control the situation. He also said that Ms. Lustgraaf kept a tight reign on the fraternities, and said the national chapter and the University had come up with a plan to address former behavior problems.

Councilor Needell asked Deputy Chief Kelley what he thought about the job description for the housemother, and whether he wanted to see someone who would call the police when there were problems, or who would maintain a stronger position.

Deputy Chief Kelley said a person was needed who would take enough responsibility to talk with people about rethinking their actions. He said a mature presence was needed at the house in order to prevent the need to call the police.

There was discussion as to how enforcement would actually occur. There was also discussion on how the local SAE chapter had at one time been a very respectable fraternity.

Chair Kelley note that as part of a conditional use application, a projects fiscal impact had to be taken into consideration. He asked Deputy Chief Kelley if there would be any significant fiscal impact to the Town as a result of this project.

Deputy Chief Kelley said it was difficult to project this, but said he didn't think there would be a significant fiscal impact, given what was planned by the national SAE chapter.

Chair Kelley asked if any other members of the public wished to speak, and there was no response.

Steve Roberts MOVED to close the public hearing. The motion was SECONDED by Richard Ozenich, and PASSED unanimously 7-0.

Chair Kelley thanked Mr. Summers for coming that evening. He proposed that the Board deliberate on this application at its next meeting. He noted he and Mr. Campbell had talked about the Planning Board possibly meeting the following week, on April 4th. It was determined that there would be a quorum for that meeting, and that the this application would be deliberated on at that meeting.

Recess from 7:43 – 8:45 pm

- 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

Chair Kelley said they would like to keep Board questions and public comments on the application to a minimum that evening, recognizing that the public hearing would be continued to the April 11th meeting. He also said the public would still have ample opportunity to comment on the application.

Steve Roberts reopened the 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 at the request of the applicant. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Farrell said the applicants had gone back to the drawing board on the design of the development, and were proposing changes to the building, the site plan and the landscaping. He said these changes were in response to concerns expressed by the neighborhood that the building was too close, too big, and too visible. He said the applicants had hoped to review the re-design with the neighbors before presenting them, but said they didn't have that opportunity. He said an invitation was still extended to the neighbors, and he noted that this was a voluntary redesign to address their concerns.

Mr. Farrell showed the revised plan, and said he would provide a general description of the design changes. He said the building now has 66 units (reduced by 12 from previous design), which was accomplished through a number of devices. He said the building had been shrunk in two directions, and said two floors were also eliminated in the center section. He said the building had also been moved as far as possible to the west.

Mr. Farrell said the residential character of the building was enhanced by breaking up the façade, so that it now looked like a number of smaller buildings, and one could see through to the open space beyond. He said there would be 42 two bedroom units, and 24 one bedroom units, and said this came to 13 units per acre. He said there were also some landscaping enhancements, including natural landscaping. He said by shrinking the building, this had expanded the distance from it to abutting properties, and he provided details on this.

He said the design far exceeded the dimensional requirements in the Zoning Ordinance. He provided details on the resultant decrease in impervious cover, and on the changes in the parking design. He said there would still be 11.87 acres of open space on the site, which was 207% of what the Ordinance required.

David White, the architect for the project, spoke next, providing further details about the re-design of the building. He said the design involved the creation of two buildings connected by a lower middle section. He noted that there would be a lower roof on the common area located in the middle section, and also said this area had been enlarged. He said there would still be a lower level garage connecting both sides of the building, so that the basic footprint below grade was similar to what it had been in the previous design.

Robbie Woodburn, the landscape architect for the project, noted that she had lived in Durham for 13 years, and among other work she had done on local Town committees, had been on the steering committee for the 2000 Master Plan. She said it was important to her that the projects she was involved in were good looking, good for the community, sustainable, and didn't negatively impact abutters.

She said she had started the design process by taking a fresh view of the property. She went through the existing conditions of the site, noting existing openings in the canopy, and the presence of deciduous and evergreen trees. She said evergreens were very important on the site, and provided more buffering than the deciduous trees. She said that to the north and west on the site, there were ample buffers, and she said that to the east, some additional buffering was needed. She said there were quite a few evergreens along the southerly property line, but said more buffering was needed there.

Ms. Woodburn outlined in detail the key features of the re-designed landscape plan, which included the creation of an entry garden, and further into the site, another stonewall with granite posts, to create a secondary entrance. She also provided details on how evergreens of various sizes would be added under the existing canopy, to block any openings there might be. She also noted that with a smaller building, they could be more careful about removal of trees.

Ms. Woodburn described the design for a retaining wall on the property, on top of which evergreens would be planted, to give them extra height to block views of the development. She showed a picture of the Doty house in relation to this retaining wall, and how the view would be blocked significantly within a few years, as the trees on top of the retaining wall grew taller. She provided details on this.

Ms. Woodburn noted that the previous fall, there had been discussions with the abutters about potentially adding evergreens on their properties. She said these trees were shown on the revised design, but said if the abutters didn't want this, they wouldn't be included.

She said the important things to think about with the landscape design were that a lot had been done to augment the existing buffers; that the view of parked cars was adequately screened; that the number of trees to be removed was minimized; and that amenities like the entry garden had been created for residents of the site but also for members of the public to enjoy.

Keith Weston, the engineer for the project, explained that comments had been received from department heads on the engineering plans submitted in October, 2006, and said these idea from them had been incorporated into the project. He noted especially that Town Engineer Dave Cedarholm was committed to the idea of groundwater recharge on the site, in order to lessen impacts on Little Hale Creek.

Mr. Weston said he had been working with Rob Roseen of the UNH Stormwater project to bring porous pavement onto the site, in order to be able to handle the full volume of a 100-year storm, and allow infiltration of the stormwater into the soils over time. He said this design approach was a significant aspect of the project, also noting that the approach was considerably more expensive than a more traditional stormwater management design.

He provided further details on the design of the system, and said the State Alteration of Terrain bureau had approved it. He said the system would be installed 10 ft. out from the perimeter of the building, and 4 ft. down, and would lessen the impact on downstream residents and the Little Hale River. He said the system would not only allow gradual infiltration of water on the site, but would also filter the water.

Mr. Weston explained how, with the recently revised site plan, they were able to put more parking under the building, thus eliminating some more impervious surface on the site. He also discussed the fact that the buildings had been shrunk in two directions in part to get the pavement edge as far away from abutters as possible.

He said a major aspect of the design was to maintain the streetscape on Mad bury Road, noting this was one of his own key concerns, as a resident of Durham. He said every tree on the site had been surveyed, and he also provided details on how the site would be stabilized during construction activities.

Chair Kelley asked Mr. Weston if the contractor would clearly understand that excavation support would be required in order to minimize impacts from construction on the site.

Mr. Weston said the contractor had assured the applicants that these impacts would be minimized. He noted that with the development of an underground parking area, this area could then be used as a staging ground during further construction of the development. He also said chain link fence would be put up all around the site.

Mr. Ozenich asked if this would be a two-phased project, and Mr. Weston said the intent was that there be one phase. He said anything to be completed in phases would be interior work.

Mr. Roberts asked if there would be a reduction of flow to Madbury Road, as compared to the current conditions on the site, and Mr. Weston said yes.

Rob Roseen, UNH Stormwater Center Director, said he did not represent the Center in this instance, but was present to provide his professional opinion concerning the stormwater management design. He said the design was the kind that the Center and other leading stormwater management groups in the country were looking for.

He provided details on what the system was comprised of, and described how the porous asphalt pavement system worked, using photos of the UNH demonstration site. He said the system functioned much like an excellent soil media, and said it was designed to mimic natural systems. He said that in terms of water quantity, the infiltration rate was 10 inches per hour, which was much greater than average soil infiltration rates. He noted that they had found that in winter, infiltration rates were the highest. He said the system would work for a long time.

Mr. Roseen said that concerning water quality, porous pavement had a significant capacity to remove contaminants, with an almost 99% removal efficiency. He said most standard stormwater treatment systems reached nowhere near 80% efficiency, which was what the EPA required. He said removal of hydrocarbons was greater than 90%, and said metals removal was also good.

He said porous asphalt was not a new concept, but said the goal was to get more developers to consider using it. He noted that it was more expensive to install, and involved higher maintenance costs, but said it worked for developers because it provided a longer lifespan than standard asphalt pavement. He said while there were still some unknowns, what was known was that conventional stormwater management systems weren't working. He said it was exciting that there were now some local examples of porous asphalt systems, which helped build momentum for using more of them.

Mr. Roseen said there were two issues the Board needed to be thinking about concerning these systems for a proposed development. He said the porous asphalt product itself needed to be made correctly at the production plant, so it would work as designed. He also said the Board needed to make sure that there was a site that would be paid attention to in terms of maintenance. He said maintenance involved vacuuming the pavement 2-4 times per year.

Chair Kelley asked if there were limits in terms of the gradient at which the pavement wouldn't work as well.

Mr. Roseen said yes, but he noted that gradient in general was an issue concerning infiltration. He said the gradient issue didn't impact whether or not porous pavement could be used, and he provided details on how the engineering design could address this.

There was discussion about this with Chair Kelley. There was also discussion about load bearing components of the pavement system, and the usefulness of the material on high volume as well as low volume roads..

Councilor Carroll asked whether, if this project were to move forward, Mr. Roseen would be involved with it.

Mr. Roseen said he would stay involved in the project, noting that he had provided the specs for it, which included the requirement that a qualified engineer needed to oversee the project. He said that person would be himself or someone else. In response to a question from Councilor Needell, Mr. Roseen said the property owners could hire a company to do the vacuum sweeping needed to maintain the porous pavement.

Mr. Roberts asked if studies had been done on the relative runoff from single-family applications and more densely developed applications.

Mr. Roseen provided details on an EPA study that had looked at this, and said it had been found that predevelopment hydrology could be maintained, thus avoiding negative impacts from a development.

Chair Kelley said the work of the UNH Stormwater Center was invaluable, and he thanked Mr. Roseen for his presentation.

Mr. Farrell summarized the proposed design changes, stating that there were a great number of benefits from them. He said the design was consistent with the Master Plan; it was a high value project; it reflected a reduction in size and scope from the previous design; it provided a housing option that was not otherwise available in Town; it was an example of smart growth, involving protection of open space and redevelopment of an existing nonconforming use; it was within walking distance of the University and the downtown; it included innovative construction techniques; it maintained the viewscape on Madbury Road; it exceeded Town standards by a wide margin; it represented economic development in Town; and it broadened the tax base.

Mr. Farrell also spoke about some of the details of the application process. He said it was the applicants' understanding that it was not necessary to have a preliminary conceptual consultation with the Planning Board, but this had not officially been voted on. He asked that the Board vote on the waiver request.

Chair Kelley opened up the discussion to members of the public. He said that people shouldn't feel compelled to speak on this new information that evening, noting again that the public hearing would be continued to April 11th. But he said this was a good opportunity to ask the various professionals some questions.

Jack Quinn, 10 Adams Circle, noted a comment made that cars were the concern of residents, but he said it was the building that was the real concern to abutters. He noted that there had been previous discussion about the use of a berm to block the view of the building, but he said that was not included in the proposed design. He said he hoped they could discuss this.

Bill Hall, Durham, noted Ms. Woodburn's comments on the landscaping design for the Riverview project. He said the landscaping that had actually occurred there was inexcusable, and said that apparently, the members of the ZBA had thought something different than this would occur on the site.

Sally Heuchling, 5 Adams Circle, said that in earlier meetings with abutters, there had been discussion about a possible 12 ft. berm, but she said this idea was later rescinded. She also said there had been discussion about the idea of an 8 ft fence, but said what was proposed now was a 6 ft. fence.

She said at the close of the last Planning Board meeting, Mr. Farrell had stated that the company would bring forth modifications that would reflect input from the Board and the abutters. She noted recent communications between the lawyers for the applicant and the abutters, and said she felt Stonemark had misrepresented the idea of contacting abutters concerning possible changes.

She provided details on this, and said Stonemark had been disingenuous regarding responding to abutters' concerns. She said she did not feel Stonemark and its representatives had dealt with the abutters in good faith. She provided details on communications between the applicants and the abutters, which involved contacting individuals and not meeting with them as a group, and said it bordered on harassment.

Chair Kelley said he would like to avoid he said/she said kinds of discussion that evening, and said the Board didn't have time for this.

Attorney Ari Pollack, representing the applicants, said they were interested in having an open dialogue with the abutters regarding the issues pertaining to the project. He said if the abutters generally felt that the project as redesigned could happen, the applicants would be more than willing to have discussions regarding various aspects of it. He said this had been made clear before and after filing the application.

He said they had looked forward to a response from Attorney Hogan, but said this didn't happen in time to develop design changes that could be incorporated into the process of dealing with the Planning Board. He said the applicants were looking for feedback from the Board and the abutters, and were very much interested in meeting with the abutters to see if something had been missed with the revised design.

Chair Kelley said it had been laid out that the way to speak to the abutters was through Attorney Hogan, and Attorney Pollack agreed.

Steve Roberts MOVED to continue the public hearing until April 11, 2007. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Recess from 9:15 to 9:26 pm

VI. **Continued Design Review of a Conservation Subdivision Application submitted by Joseph Caldarola**

Richard Ozenich and Susan Fuller recused themselves from discussion on this application.

Chair Kelley said he appreciated the revised declaration and sample deed that had been developed. He noted that one of the things he had been struggling with concerning this application was how the open space entity would be treated. He asked what other major design issues Board members wanted to discuss with Mr. Caldarola.

Councilor Carroll described the Allen Farm conservation subdivision, and how it was designed, with the buildings clustered together, and the common area being owned in common by the Association. She noted with the Caldarola application, the pieces of the common area were owned by the residents.

Chair Kelley noted that there were restrictions on the open space land that each resident owned.

Mr. Caldarola said that was correct, and said this was similar to the situation where PSNH ran power lines on private property, and although it didn't own the land, it had full control over what went on there.

Councilor Carroll said at Allen Farm, every resident had access to the common open space. She asked if that would be the case with this development.

Mr. Caldarola said he had met with Attorney John Ryan as to how the open space area should be discussed in the legal documents. He said the intention was that everyone would be able to use the open space equally. He said they had struggled with how much to specify concerning how much someone could do with the open space, noting that the Town hadn't been very specific either in its language on this. He said it got tricky if the language got too specific.

He said the language that had been developed was that any use had to be approved by the homeowners association, but that any reasonable use should be permitted that was consistent with the Town's Zoning Ordinance. He said they had followed the language in the Zoning Ordinance. He said the easement conveyed control of the land in every sense, and said there were no special rights that someone had on his own land.

Chair Kelley asked whether, if this was more of a traditional conservation subdivision, there would be fewer lots.

Mr. Caldarola said there wouldn't be fewer lots, but he said the lots themselves would be smaller.

Councilor Needell noted that the whole point of conservation subdivision was that the lot size requirement went away, so that there could be smaller lots that could be clustered. He said what troubled him was that the design for this development almost looked like trying to fit a conventional subdivision onto a conservation subdivision format.

Councilor Needell noted that the proposed design allowed portions of the common space, in the boundary areas separating the lots, to be used for drainage. He said this complicated the issue of how the clustering was being done. He asked how the design of the development would be different if this was a traditional subdivision, noting that the expectation with requiring conservation subdivision was that the design would look different than this present design.

Mr. Caldarola noted that this was a relatively small piece of land, and said a key goal was to stay away from the neighborhood in back of it. He said although the design for a traditional subdivision would be similar to this design, this design was also the best way to do conservation subdivision on the site.

Mr. Campbell stated that the design was developed using the 4 step process outlined for a conservation subdivision. He said he understood the point that this design looked like a conventional subdivision, but he noted that if it were such a subdivision, Mr. Caldarola could move it further to the back of the site, and could do a lot more with the space back there. He said this present design kept the development to the front of the site.

Mr. Roberts said Mr. Caldarola had met the requirements of why the Town had established the conservation subdivision approach to development. He noted the buffers included in the design, and the use of smaller house lots, and said the goal of conservation subdivision wasn't just to have open space, it was to reduce the impacts of development on abutting properties.

Chair Kelley asked why Mr. Caldarola couldn't instead make the lots smaller, and put the rest of the land into the open space easement.

Mr. Caldarola said the approach he was using was simpler, and he spoke about liability issues that were involved.

Mr. Parnell asked if the three middle lots would sell for less than the others, noting that the part of the lot that didn't include open space was really what a person would be buying.

Mr. Caldarola said he didn't think these middle properties would be hard to sell, and he provided details on this. He noted that a big reason was that the development was located in Town, and people were interested in the various benefits that came with this.

Councilor Needell noted the uniqueness of this lot, and the desire to buffer the abutters from the development and to preserve the wildlife corridor. He said the design looked different than a typical conservation subdivision, and said he just wanted to be sure that it didn't involve something that wasn't permitted by the regulations.

He said there were two issues he would still like to address, that seemed to go against what was allowed. He said he was not convinced that the Ordinance provided the authority for having nine owners of the open space, and he provided details on this. He also said although the compensating area approach was a good idea, he didn't see where there was the authority for this in the Zoning Ordinance.

Mr. Caldarola said the Zoning Ordinance treated the open space in terms of square footages, and said the design met the requirements of the Ordinance. He said the issue of ownership came down to an interpretation of what ownership meant.

Mr. Campbell read from Section 9.09 of the Subdivision Regulations, regarding the ownership and stewardship of the common open space. He said it came down to what was meant when this wording was included, and said it would be important for the Planning Board to come to grips with this.

Mr. Roberts said again that it looked to him that Mr. Caldarola had tried to address all the purposes of conservation subdivision, as outlined in the Ordinance, although noting as an aside that he personally had a problem with the idea of a private road for the development. He said the Board perhaps needed to make sure there weren't any conflicts between the design and the Ordinance, but said he was troubled that the Board was picking on the design too much.

Chair Kelley said he felt comfortable now about making a decision concerning the ownership issue.

Councilor Needell said he agreed with Mr. Roberts that if the application met the requirements of the Zoning Ordinance, it was what the Town was looking for. But he said the Board needed to be clear on what the Subdivision Regulations said concerning this application.

There was discussion about the need to determine which regulations applied.

Mr. Caldarola said that regarding the compensating areas, it hadn't been realized that the design wasn't following the Subdivision Regulations. He noted that the Zoning Ordinance and the Subdivision Regulations were different concerning how the open space was looked at. He said he didn't think a variance might be needed, as Chair Kelley had suggested, because the design was not going against the Zoning Ordinance.

There was discussion about Section 175-64 of the Zoning Ordinance - Use of Wetlands in Calculating Lot Area and Density. Mr. Campbell said Section 175-64 was used for calculation purposes, not for location and usage. He said it was the Subdivision Regulations that actually got into how the open space was laid out. He said Mr. Caldarola was requesting that he be allowed to use some of the somewhat poorly soils drained in exchange for areas to the back of the site that he could use for usable area but was choosing not to use.

Mr. Campbell said he didn't see there was an issue with possible precedence that would be set with this application, and said each application was considered separately.

Chair Kelley said he didn't think this was a Zoning issue, and said the way the red area was being used was addressed with the Subdivision Regulations, which could be waived concerning this.

Mr. Campbell said that in terms of prioritizing the secondary open space, it was agreed that the back area was more important to conserve than the front area. But he said the primary open space

requirement in the Subdivision Regulations would have to be waived in order to allow the application to move forward. He noted that waivers were allowed in order to ensure that the Master Plan and the Zoning Ordinance were met.

Chair Kelley said the Board should solicit input from the Conservation Commission concerning this.

Mr. Greene asked what the purpose of the common open space was, and there was discussion about this.

Councilor Needell noted that the rights concerning the open space were defined by the homeowners association, and did imply there was a public component to the open space.

Chair Kelley said he thought they could find a way around the ownership issue. He also said that regarding the compensating areas, and granting a waiver concerning them, Mr. Campbell had convinced him that the Board had the authority to do this. He said he agreed that the proposed layout in the application met the intent of the Master Plan and the Zoning Ordinance. He said that to him, the key thing was in the details of the language that had been provided.

Mr. Greene said he thought the applicant had made a good effort to meet the guidelines, and said he didn't see there was an issue concerning the ownership of the open space.

Mr. McGowan said given that this was in a residential district, he saw that this design created open space while preserving and enhancing the character of the area.

Councilor Carroll said she would be more comfortable if the residents owned just their house lots, and there was truly a common space, and not one that was divided up. She said people had a strong sense of private property, and she spoke about possible uses of this common land by residents of the development who felt it was really their land, and could do with it what they wanted.

Chair Kelley noted that the deeds and condominium documents laid out what owners could do concerning this land. There was further discussion on this issue.

Councilor Carroll said that unhappy homeowners didn't make happy members of the community. She noted as an example, Durham residents who lived on private roads and therefore did not receive certain Town services, and had brought these concerns before local boards. There was discussion on this.

Councilor Needell said he agreed that it would be preferable if the condominium association owned the common open space. But he said he also agreed with Chair Kelley that the ownership issue could be worked out, and that what was proposed was not a violation of the regulations. He said that regarding the compensating area, this issue still needed to be worked out.

There was further discussion regarding the existing language concerning common open space.

Mr. Parnell said he agreed with Councilor Carroll, and said he was not sure why the ownership of the open space was being done in this way, and that there were nine large lots rather than nine smaller lots. He said with this present design, it was inevitable that there would be issues with the residents and the open space they owned. He also said he thought Mr. Caldarola and the Board had talked about the idea of common driveways instead of private driveways.

Mr. Caldarola explained that in keeping everything to the front of the site, he had limited the building areas of some of the lots. He said if there was a property line separating the open space as a separate lot, that given the rear setbacks requirements, this would cause some problems. He said he hadn't been able to figure a way around this.

Chair Kelley asked if Board members had any other design issues to discuss with Mr. Caldarola.

Mr. Roberts noted the green areas on the site plan, and said that when he had walked the site some months back, there was a lot of water on some of these areas. He asked if the idea of changing some of this drainage had been addressed.

Mt. Hull said there was a fair amount of water that came from Canney Road, followed the wetland, and wound up in the Bradley back yard. He provided details on how the flow would be handled.

Chair Kelley noted that Article 7.1 of the Condominium documents stated that no lot or parcel shall be further subdivided without the consent of the declarant. He asked Mr. Caldarola if it was envision that lots might be combined, or lot lines would otherwise be revised down the road.

Mr. Caldarola said this wording should be removed.

Concerning Article 3.1 of the Condominium documents. Chair Kelley said that in the first paragraph, he would like to see "written consent of the Planning Board" He also said the word "reasonably" should be pulled out. Concerning Article 3.3, he said he didn't see anything regarding a management plan for the common space. He provided additional comments on the wording of the Condominium documents.

There was detailed discussion about how enforcement of the proper management of the open space would take place. It was stated that perhaps some language was needed concerning repercussions to a homeowners who took it upon themselves to do something with the open space. There was discussion that the enforcement issue would continue to be worked on as this part of the application process.

Chair Kelley asked Board members if they felt the design review should continue at another meeting, or if instead the application could move on to the next step.

There was discussion that the nitty-gritty of the language of the condominium documents would be addressed in the next stage of the process. It was also stated that the specifics of the subdivision plan would be looked at in terms of addressing some of the Board's concerns

regarding the lot owners' understanding of what they could do with the open space on their properties.

Mr. McGowan asked what the Board could dictate concerning the maintenance of the open space.

Chair Kelley said the stewardship plan that the applicant put together would answer that question. He said he would like to see the site plan show the tree lines, both existing and proposed, and to clearly delineate what area of each lot was part of the common open space, in the written instrument as well as on the plan.

There was further discussion as to whether more design review was needed for this application.

Councilor Needell asked Mr. Caldarola if he had gotten the input he needed in order to come back with a plan that would be built.

Mr. Caldarola said yes. Mr. Hull noted that most of the formal plans for the site plan application had already been developed.

It was agreed that the Board could move onto the formal application stage.

Chair Kelley thanked Mr. Caldarola for coming in for the design review.

VI. **Acceptance Consideration on an Application for Subdivision** submitted by Adam, Troy and Jade Fogg, Durham, New Hampshire, to subdivide a property into 3 lots. The property involved is shown on Tax Map 14, Lot 7-2, is located on Packers Falls Road and is in the Rural Zoning District

Chair Kelley noted that this was the parcel the Council had voted on and approved for purchase as a conservation easement in 2006. He asked Mr. Campbell if the application was complete.

Mr. Campbell said yes, although noting a few items were still needed. He said the Board should do a site visit. He suggested that the public hearing should be set for the next Board meeting on April 4th, noting that the hearing had already been advertised, for the April 11th meeting, and that a notice could be sent to abutters explaining that the meeting had been moved up to April 4th.

Councilor Needell said he didn't want there to be the perception that the application was being rushed, and said he didn't see why the application couldn't be discussed at the regular Board meeting on April 11th.

There was further discussion on whether the public hearing and deliberation on this application should take place on April 4th.

Susan Fuller MOVED to accept the application for Subdivision submitted by Adam, Troy and Jade Fogg, Durham, New Hampshire, to subdivide a property into 3 lots, and that the Planning Board hold a public hearing on April 4th, 2007, and do a site walk on April 4th, 2007 at 4 pm as well. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

VII. Design Review on a Site Plan submitted by Northern Builders

Doug LaRosa, the engineer representing the applicant, described the location of the property in question, approximately 400 ft. west of Technology Drive. He noted that a portion of the lot was located in Lee. He said the parcel contained 15.93 acres, was located in the ORLI District, and also was overlaid by segments of wetland, shoreland and flood hazard overlay districts.

He said that even though this was a large parcel, it had some challenges to it. He said there were 4.6 acres of usable land on the property, for density calculations, and said of that acreage, there was only a 1.6 acre envelope that was outside of any of the setbacks.

He said what was proposed was a 48 unit development, and said the units would all be 600 sf, or less, and would house 2 residents per dwelling unit. He said a goal of the project was to minimize impervious area. He said he had been working with Mr. Campbell, the Town Engineer, Wildcat Transit, and other members of the Technical Review committee, and said positive feedback had been received concerning the project.

Mr. LaRosa went through the density calculations. He said of 693,000 sf, about 49,000 sf was very poorly drained soils; 300,000 sf was poorly drained soils; and 24,000 sf was floodplain zone A, along the Oyster River. He said an additional 34,000 sf of area along the Oyster River, and within the Town of Lee had also been excluded from the buildable area. He said this left 202,000 sf., and said given the requirement that there be 4,200 sf per unit in the ORLI district, 48 units were allowed.

He said the building would be up to 50 ft in height. He said the applicant would like a waiver from the site plan requirements to allow relief from the 2 parking space requirement. He also said the applicant would like relief from the requirement that there be 1200 sf separating the two driveways.

Mr. LaRosa said the drainage was from old Concord Turnpike back toward the Oyster River. He said the plan was to put in a drainage detention pond in an area of the site outside the wetland conservation overlay district. He said the pond would be 150 ft away from the Oyster River, so would meet the shoreland overlay district setback requirements. He said the plan was to also put in a small detention pond area adjacent to the parking area. He provided additional details on the drainage plan.

He noted that the UNH bus stopped at the end of Technology Drive, and said it was hoped the bus could also stop at this development. He said among other things, this would reduce the number of parking spaces needed.

Chair Kelley said his primary concern at this point was the treatment of stormwater prior to its release to the Oyster River. He said this water was a public water supply, so stormwater treatment was a critical issue here. He said he had heard from Mr. LaRosa that there would be detention ponds, but also treatment swales, and level spreaders. He asked for further details on the drainage design.

Mr. LaRosa said there were two potential drainage collection points. He said water would sheet across the parking lot, into the treatment swale, and would go into the detention pond where sediment would fall out. He said there would then be a large, flat berm, and he provided further details on how the design would work from there. He noted that the State of Maine used this kind of system.

Chair Kelley said in other words, this was a retention structure, and Mr. LaRosa provided details on this. Chair Kelley asked what storm event was used to establish the level of the spreader, and Mr. LaRosa said a typical design was for a 25 year storm. He provided addition details on the detention pond, and there was further discussion on it. Chair Kelley said because of the proximity to the Oyster River, treatment of the stormwater flow was critical, so he would be looking for 24 hours or more for detention. He said this should be considered in the design of the system.

Councilor Carroll noted the idea of using pervious pavement, as discussed by UNH Stormwater Center Director, Rob Roseen that evening.

Mr. LaRosa said he had recently attended a seminar on this approach, and said he had discussed the idea with the applicant. He noted that the permeability of the soil on the site was slower, so he personally was more hesitant to use porous pavement. But he said he was willing to think about this idea.

There was discussion on the HISS mapping that had been done for the site by NH Soils Consultants.

Mr. LaRosa said that conventional stormwater treatment methods were not producing the degree of success that was desired. He said sheet flow did provide good removal, but eventually would reach the river. He also noted that with the storms that had been occurring in recent years, there were more sediments to deal with.

Chair Kelley said the area of the site the applicant was proposing for the stormwater treatment system was the flat part of the hill, but he noted that some other portions of the site got pretty steep. There was discussion about this.

Mr. LaRosa said there were 13% slopes, but said they were still usable. He noted that the slope would flatten out before the sheet flow would hit the river, and said it would go a good 400 ft overland.

Chair Kelley asked if the current proposal was to collect runoff from the parking lot in a closed conduit system, or have sheet flow off the swales before it got to the detention structure.

Mr. LaRosa said after considering using the close system, they had decided to use the open system. He provided details on this.

There was discussion as to whether the site was on public sewer. Mr. LaRosa said the project proposed to hook up to the sewer line located at the end of Technology Drive. He said he had talked with the Town Engineer about this, and noted that Mr. Cedarholm was doing some sewer capacity analysis for this area.

There was discussion that there were some problems with the sewer line further east, where the interceptor decreased in size.

Mr. LaRosa said if there was a capacity problem, the development could include a structure to take 24-hour flow and pump it off site in thirds, during off peak times.

Chair Kelley said it would be important to know where the seasonal high water table was, in the area where the detention pond was proposed.

Mr. LaRosa agreed, and said test pits could be performed there. He noted that the HISS data did provide an estimated range of the seasonal high water table. He noted that there was no restrictive layer within 40 inches.

Chair Kelley said his main concern about this project was that there needed to be treatment of stormwater before it got to the Oyster River. He also said if the applicant could get bus service to the apartment complex, this would give credence to the waiver request concerning parking.

There was discussion about this waiver request. Mr. Campbell said that normally, a variance would be required for this, but he noted that this was a Conditional Use application, so the Planning Board had the authority to require more or less parking than what was required by the Ordinance. He said the Board would need to discuss this issue during the process of reviewing the application.

Mr. Green said less parking and less impervious surface would be good, but said he didn't think the project could get by with less. He provided details on this.

Mr. Campbell noted the availability of West Edge lot in that area of Town.

Councilor Carroll said students living off campus had access to that lot, and could take the shuttle bus to campus.

Chair Kelley said it didn't make sense for students living at these apartments to have to take the bus to the West Edge lot, then get in their cars and drive to the apartments. He also said he was concerned that their might be cars parked in non parking areas, which might inhibit the Fire Department from answering calls.

Mr. Campbell noted this was a concern of the Fire Department, in Technical Review Committee discussions.

Councilor Needell asked whether the applicant had given any thought to the issue of property management.

Mr. LaRosa said the Technical Review Committee had discussed this, and said he remembered that this was something the applicant had also mentioned.

Chair Kelley noted that Mr. LaRosa was authorized to speak on behalf of the applicant, and but the Board would also like to see something from Ms. Terrio, the owner of the lot, authorizing the applicant and Mr. LaRosa to speak on her behalf.

Chair Kelley said this would be a Conditional Use application, and said he would strongly advise the applicant and owner to have onsite property management. He said this approach had been very successful in Durham. He also noted that that this matter related to the fiscal impact criterion as part of the Conditional Use process, because it tended to result in fewer calls to the Police Department.

Councilor Needell noted that the applicant proposed a 50 ft. high building, to get 4 stories. He said the Board would need to discuss the rules on how it decided on the height of the building. He also said it would be important for the applicant to provide some justification for why the building needed to be that high.

There was discussion about the proposed location for parking on the site.

Mr. Campbell also noted that the applicant would want a waiver from the requirement that there be a 1200 ft separation between the two driveways. There was discussion about the fact that Durham's requirements were stricter than NHDOT's requirements. Mr. Campbell said it was a form of access management.

Mr. LaRosa noted that the site had 1100 ft of frontage, and was only proposing to put two driveways in that.

Councilor Needell asked for more detail on why the two driveways were needed.

Mr. LaRosa said having a circular option is a plus for a development like this, to along turnarounds by buses and other large vehicles. He said they were also needed for better access by the Fire Department.

There was discussion on the residential properties across the street, with Chair Kelley noting that if another high volume use went in there, he would want the driveways to line up.

Mr. LaRosa said he had spoken with the owner of the property and had showed him the proposal. He said the owner had said he felt comfortable with it, and could match the driveways.

Mr. Roberts asked what kind of buffering there would be from abutting properties, noting that the building would be very visible.

Mr. LaRosa said it was understood that this was an important component, but said the landscaping details hadn't been developed yet.

Mr. Campbell said it would be important to pay attention to details, with the architecture and landscaping

Mr. Greene asked what the proposed market was for this development.

Mr. LaRosa said it would be open to anyone, but said there would probably be mostly students.

Mr. LaRosa said he had heard the following concerns expressed by the Planning Board:

- Drainage
- Landscaping
- Height
- Bus
- Property management
- Less parking is probably good

Councilor Needell noted that this would be a Conditional Use application, so the Board had a certain amount of discretion in terms of reviewing the application.

Mr. Green asked if the Board was encouraging less parking if there was access to alternative transportation, and Board members said yes.

Mr. Campbell said bikes would be encouraged as part of this, and suggested that bike shelters could be included in the development. There was discussion about possible locations for this, and whether bike shelters would be popular with students.

There was discussion about the fact that there were no sidewalks in the vicinity of the proposed development. Mr. Campbell described plans further in for bike lanes.

Mr. LaRosa said walkways on the site would be located within the 50 ft. strip, and asked if this would be permitted. Mr. Campbell said yes.

There was discussion about lighting, and the need to balance safety with avoiding excessive lighting. Chair Kelley said there were some draft lighting standards that perhaps should be shared with the applicant.

Mr. LaRosa asked the Board what it felt about the project in general

Chair Kelley noted that the layout options were limited, and said the key would be the details that the applicant came back with. He said he would like the design review to continue, and to have Mr. LaRosa come back with more specific ideas as to how stormwater would be treated.

Chair Kelley said perhaps the applicant could identify some opportunities for recreation on the site. It was noted that this was a requirement in the regulations.

It was agreed that the design review would be continued on April 11th.

Mr. Roberts said in terms of how the building would appear to an observer, the architecture should be as aesthetically pleasing as possible.

Councilor Needell said the density calculations indicated that there could be 90 people at this development, but he said starting with a design that required 50 ft in height to accomplish that was a red flag. He noted that this was a discretionary item for the Board to look at.

Mr. LaRosa said 4 floors could be fit within a 40 ft height, but he said this would be more difficult mechanically.

Mr. Parnell asked if it was expected that the architectural details would be available by April 11th.

Mr. LaRosa said no, and asked if that would be a problem.

Chair Kelley said these details, including what the applicant could do to reduce the scale of the building, would play into the Board's decision in terms of going up higher.

Mr. Parnell said two buildings side by side, and 50 ft high, could easily be something that would be very ugly.

Mr. Roberts said that with the hotel project, it wasn't until the Board made the developer create a view of the building from a distance that it got an idea of what it would look like to someone coming from further down the street.

Mr. LaRosa said that in the past, his company had given Robbie Woodburn, the landscape architect, a panorama view of a property, and she had worked well with this in developing landscape architecture for the site.

Chair Kelley asked if the applicant was wed to the idea of two buildings.

Mr. LaRosa said from a phasing point of view, this seemed to be the appropriate way to go, and said it would be easier to work with.

The applicant said the two buildings would be built at the same time. He also said he thought two building would look better than one large building.

Chair Kelley noted that the applicant might want to explore the approach taken with the proposed Cuthartes development, where there was one big building that had a C shape, and where the middle portion dropped in height, thereby reducing the scale.

The applicant said there was no plan to simply put two boxes up. He said he was aware of good and bad architectural design ideas, and said he appreciated the Board's input on this.

Mr. LaRosa noted that a portion of the road for the development was proposed to go through the Wetlands Protection Overlay district, and asked if that would be possible. There was discussion on this.

Mr. Greene said how this was laid out would make a big difference.

Mr. Campbell told Mr. LaRosa to take a look at Section 175-61, concerning this.

VIII. Other Business

Julian Smith said he was supposed to have given a presentation to the Board on the history of Mill Plaza. He said that given the lateness of the hour it would be better to come back at another time. He said he would provide Board members with materials in advance of the presentation.

He said this had been an educational experience for him, to see how the current Planning Board operated, and said he was impressed by the level of discussion. He said if all went well with the owner of Mill Plaza, there would be a lot of work coming to the Planning Board. He noted that the Mill Plaza Committee would be holding a public hearing the following Wednesday, and said he hoped Mr. Parnell, the Board's representative to the Committee, could attend the hearing. He said the hearing would be recorded, and shown on DCAT.

Mr. Smith said the owner of Mill Plaza, John Pinto was an investment banker, and said the Plaza was the only piece of retail real estate he owned. He said the redevelopment of the Plaza was something that he appeared to be interested in getting involved with.

It was agreed that the presentation would take place on April 11th.

Chair Kelley asked for nominations for Secretary of the Planning Board.

Ms. Fuller said she would be glad to take the position, if she was appointed by the Town Council as a regular member of the Planning Board

Chair Kelley MOVED to appoint Councilor Needell as Secretary of the Planning Board. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Chair Kelley said there had been a written request from Peter Smith that the Planning Board make public the comments from the Board's attorney regarding the one lot/two lot issue. He read the letter, and said he would like the Board to vote on this matter, in order to respond to this request.

There was discussion that the comments were contained in a 1/5/07 letter, and a 2/20/07 email.

Steve Roberts MOVED that the Board invite Attorney Walter Mitchell to visit with the Planning Board, and agree to give us a recommendation that he approves for publication. Susan Fuller SECONDED the motion.

Mr. Roberts said he was very concerned about the text of the letter from Peter Smith. He said he wanted openness, but said that Attorney Mitchell had written about the Right to Know law, and also said the Board needed to respect the agreement it had made with Attorney Mitchell at the time. He said if the Board wanted to undo this, it would need to go back to the scene, and then make public the product of that undoing.

Chair Kelley said he would speak against this motion, because he didn't think the information itself should be released. He said he saw attorneys in the audience on both sides, and said because of that, he was reluctant to release advice the Board's counsel had given it.

Mr. Roberts said he didn't think the Board had any right to release this advice, and he provided details on this.

Councilor Needell said he would vote against this motion, stating that he didn't think the Board needed to invite Attorney Mitchell to comment. He also said he felt the Board should release these two communications.

The motion FAILED 2-5, with Steve Roberts and Lorne Parnell voting in favor of it.

Councilor Needell MOVED to release the January 5, 2007 letter and the February 20, 2007 email from the Planning Board's attorney, as requested. Bill McGowan SECONDED the motion.

Councilor Needell said the notion of attorney client privilege was for the protection of the client, not the attorney. He said relationship with the attorney could be an issue, but he said it was the one the Board chose. He said this was a public process, and said it would make the process look a lot better if this information were released. He noted that there had not been a public meeting with the attorney, and had been no minutes taken.

He said he didn't see the harm be done in disclosing the information. He said the concern was that in doing this, the Board would be feeding a potential litigant some information that could be used against it. He said that might be the case, but said he was not convinced that the issues involved were such a problem that the Board needed to cloak the decision-making process in secrecy. He said doing that was a far bigger issue, causing concern in the community, and making the Planning Board look bad. He said while the concern about the Board was unfounded, it nevertheless was there.

Councilor Carroll noted that at a recent Town Council meeting, a resident of the neighborhood came to the podium and spoke about her concern about a decision made by the Planning Board on the contiguous lot issue. Councilor Carroll said she realized that this person and other neighbors had a certain amount of information, but that the Planning Board had this information

as well as other information. She said because the neighbors didn't have that information, they didn't know why the Planning Board had made the decision it had made.

Councilor Carroll said she didn't understand why the Board's attorney had asked the Board not to share the information with the public, but she said it should be shared because it wasn't good that people didn't know why the Board had voted the way it did.

Mr. McGowan noted that the Board's attorney didn't really give the Board advice, but had clarified something.

Ms. Fuller spoke against the motion. She said attorney client privilege was a bilateral agreement, and said for that reason, she would want to go back and seek the Attorney's advice as to whether he thought releasing the information was appropriate. She said she had seen the Town Council meeting on TV, and understood that it might have appeared to make the Planning Board look bad. But she said the relationship the Board had with the Attorney was larger than the perception that came out at that particular moment.

Mr. Ozenich said he could vote either way on this motion, and provided details on this.

Chair Kelley said he would speak against this. He said the risk of something bad coming out of the disclosure concerned him more than the public perception of the Planning Board. He also stated that the votes that were cast were based on the Ordinance, and how the application fit with this.

Mr. Roberts said he wouldn't support the motion, stating that it was an easy way out to get the public off the Board's back. He spoke about the relationship with the Board's attorney, and said that because of the nature of the communication, it would be unseemly to release it.

Mr. Parnell said he would have no objection to releasing the information if the Board's attorney agreed that it could be done, but said he didn't think it was proper without that. He said he agreed with Councilor Needell that there were some misconceptions, and releasing the information might clear them up. But he said the Board had made its decision on the contiguous lot issue based on information from the Attorney as well as other information.

There was discussion on how to proceed.

Councilor Needell said he wasn't questioning why people had voted the way they did. But he said that some of this decision was based on the recommendation the Attorney had provided. He said given the fact that the public didn't know what this recommendation was, it made it hard for them to understand why the votes were cast as they were.

He said he fundamentally disagreed that the attorney client privilege was bilateral. He said it was the Board's privilege, and said it was not the attorney who had rights in this case. He said the Town paid for his advice, and it was the Board's to do with it as it saw fit. He said it was very dangerous for a public entity to engage in secrecy under all but very limited circumstances, especially the Planning Board, where there were very few reasons when that board could go into

nonpublic session. He said the Board should be very careful when it invoked that, and said he didn't think the issues involved here were sufficiently important to protect.

Mr. Ozenich said the decision concerning the issue the Board had gotten advice on has already been made, and said in releasing the information, the public would now know how the decision was arrived at.

There was further discussion.

The motion FAILED 2-5, with Councilor Needell and Richard Ozenich voting in favor of the motion.

There was discussion that the Hickory Pond Inn had requested that it be allowed to put up a tent for an upcoming, last minute wedding. He said the owner would like to go through the Technical Review Committee concerning the temporary tent, and parked cars.

Mr. Campbell said the owner had gone through a similar process last year, and the application was approved with conditions. He said there were no known complaints as a result of that event. He also noted to the Board that this kind of request would most likely to continue to occur, and said the Board should try to address it in the Zoning Ordinance and possibly also in the Site Plan regulations. He provided details on this.

Susan Fuller MOVED to send this matter to the Technical Review Committee. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.

IX. Approval of Minutes

Postponed

X. Adjournment

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

Adjournment at 12:15 am

Victoria Parmele, Minutes taker