

**This set of minutes was approved at the Planning Board meeting on May 9, 2007**

**DURHAM PLANNING BOARD  
WEDNESDAY, APRIL 11, 2007  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.**

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

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

**MEMBERS ABSENT:** Richard Ozenich; Arthur Grant; Wayne Lewis

**I. Call to Order**

**II. Approval of Agenda**

Chair Kelley said Annmarie Harris would substitute for Arthur Grant, and Doug Greene would substitute for Richard Ozenich.

Councilor Needell said Agenda Item X A, Julian Smith's presentation on the history of Mill Plaza, would take place at an additional Planning Board meeting scheduled for April 18<sup>th</sup>.

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

**I. Report of the Planner**

- Mr. Campbell said the Town Council, at its April 9<sup>th</sup> meeting, had authorized the acceptance of a \$1,000 grant from the Northern New England Chapter of the American Planners Association, regarding the re-design of Mill Plaza. He noted that these funds had helped pay for the taping of the recent public hearing on this project.
- He said the Council had adopted enabling legislation for Tax Incremental Financing (TIF) at this same meeting. He said that at some point, the Economic Development Committee would bring forward a proposal for a TIF district.
- Mr. Campbell said that at the April 10<sup>th</sup> ZBA meeting, the Board had postponed action on the Paine/Taylor variance application, and had scheduled a site walk of the property. He said the ZBA would take up the application again at its May 8<sup>th</sup> meeting. Mr. Campbell noted that as a result of this, the applicants had requested that Agenda Item VII of the Planning Board meeting, Acceptance Consideration of their proposed porkchop subdivision, should be postponed until the May 9<sup>th</sup> Planning Board meeting.
- He said the ZBA did not address the Patsy Collins variance request regarding somewhat poorly drained soils and moderate depth to ledge soils at its April 10<sup>th</sup> meeting, and said he

believed they would do so at their continued meeting on April 17<sup>th</sup>. He said he would update the Board on the results of this hearing.

- Mr. Campbell said the planned Economic Development Committee meeting had been cancelled due to the pending storm, and had not been rescheduled yet.
- He said that pending his final review, there would be two new applications presented to the Planning Board at the April 25<sup>th</sup> meeting, the Caldarola subdivision application, and the Kimball mixed use site plan application and conditional use permit application for 20 Strafford Ave.
- Mr. Campbell said the public hearing on David Hills' site application concerning a proposed expansion of Emery Farms would take place on April 25<sup>th</sup>.
- He said the public hearing on Chuck Cressy's site plan application for a proposed ice cream stand would take place on April 18<sup>th</sup>.

**IV. Public Hearing on changes in the Zoning District Map to incorporate Tax Map 9, Lots 1-1, 1-2, 2-1, 3-0 and 4-0 into the Office Research/Light Industry District.**

Mr. Campbell provided a brief summary on the subject of this hearing. (See February 21, 2007 Planning Board Minutes for details on this issue)

***Annmarie Harris MOVED to open the public hearing on proposed changes in the Zoning District Map to incorporate Tax Map 9, Lots 1-1, 1-2, 2-1, 3-0 and 4-0 into the Office Research/Light Industry District. Steve Roberts SECONDED the motion, and it PASSED unanimously 7-0.***

Attorney Charles Tucker represented the Goss family. He said that as a result of the recent site walk with his clients, they might have some other ideas for their property. He said it made sense to plan for the 230 plus acres, - which covered land in Durham, Lee and Mad bury, as one entity, and said they would therefore like to defer action on the proposed Zoning change.

Lane Goss spoke before the Board about the request that some of his land be returned to the ORLI District. He explained the reasons why he and his family had missed the meeting where it was decided that this land would be rezoned to Rural. He said that when it was discovered that the Zoning change had been made, they had sent letters of protest.

Mr. Goss said they were concerned about the zone change that had been made because their land in Durham was the keystone area of all their land, so that what happened there affected the rest of the land. He noted that they owned a large amount of acreage, over 230 acres, located in three towns, and said the recent zone change had caused the family to have to scramble to do some planning concerning this land. He said the site walk had been quite useful, in that a number of people who attended it asked the family to be more specific about what its plans might be in regard to land conservation. He said the family had asked to be able to get back to the Town at a later date concerning its plans for the entire property.

**Charles Goss, 6 Cherry Lane**, said he was the son of Lane Goss. He explained that the recent zone change had moved up the timetable for thinking about the entire 230 parcel. He said the family wanted to come back later because it hadn't done enough research yet on the various

conservation options that were available. He noted that he was a relatively new member of the Madbury Conservation Commission, and said the family wanted to continue to be good stewards of their land in Durham, Lee, and Madbury.

He explained that the family had thought it would be able to plan for the future based on the value of the 9-acre parcel of land in Durham, as previously zoned as ORLI, and he noted that the family had not seen the notice regarding the rezoning to Rural. He said he thought that in general, they could come up with a balanced plan, and said it would be beneficial to everyone if the family was given the time to continue to look at this.

Attorney Charles Griffin said he represented Joe and Maggie Moore, and Patricia Craig and Dan Valena, who opposed the proposal to rezone the 5 parcels to ORLI. He noted letters sent to Mr. Campbell that outlined their reasons for opposing this change. He first noted that the Master Plan had identified that this area of Town should remain rural, with low-density development. Attorney Griffin then provided a series of Exhibits on behalf of his clients.

He spoke about letters written by the Goss's that indicated when they became aware of the proposed zone change, and also that they were not contemplating commercial development on the property. He said it was evident from these letters that the Goss's were aware of the zoning changes being contemplated, and said they indicated that the family had no plans to develop the land, and intended to preserve it with their other land.

Attorney Griffin then cited some Supreme Court cases that supported the Zoning change to Rural. He also explained that the decision to put the area in question into the Rural District had been made carefully by the Planning Board and the Zoning Rewrite committee, based on the Master Plan.

He described the properties surrounding the lots in question, which indicated that they were clearly located in a rural area. He also said the permitted uses in the Rural District were not as restrictive as the Goss's might believe, and he provided details on this.

He then provided details on his client's interactions with the Town concerning the zoning of their area. He explained that in 2006, the Moores asked the Planning Board to reconsider its decision to rezone the area to ORLI, based on the Master Plan and also the impact of that rezoning on existing neighbors. He said that as part of this, they spoke about the possibilities for an expanded greenway in this part of Town. Attorney Griffin noted that the Town of Lee had expressed concerns to Administrator Selig about the importance of protecting this area, for a variety of reasons.

He said that the Master Plan had a series of land use and Zoning recommendations concerning this area, and he provided details on this. He urged the Planning Board to respect the integrity of the Master Plan and the Zoning Ordinance, and to keep the properties in question as they were currently zoned.

Attorney Tucker said he had not wanted to get into details at this hearing, but said this was now necessary.

He said the land was the Goss's investment, and said they had anticipated that this 9 acre front parcel could be developed as low intensity office type use, to finance their retirement, and that selling that land for that use meant they wouldn't have to develop the rest of the land, or not nearly as soon. But he said that zoned as rural residential, this land would only work well as part of a subdivision, noting that 230 acres could result in more than 100 houses.

He said no court would overturn the Zoning change to Rural, but he noted that this land had been zoned as OR for many years and was switched, and the Board could switch it back.

He said economic factors were not necessarily material in a court case on the validity of a Zoning amendment, but he said they were very material to a Town that needed more tax base, and to the property owners, who needed cash eventually from one source or the other.

Attorney Tucker said that at the site walk, several people had approached the family that there were other alternatives, and that conservation easements might be a solution to the economic problem without the rezoning. But he said this discussion had just happened, and asked that the rezoning issue be put off, and if the alternatives bore fruit, it wouldn't be needed. He said the Goss's needed to look at a plan for their entire property, involving the land in all three towns.

Councilor Needell asked whether, if the hearing was closed, and the Board didn't make a motion to do anything, this would be the same thing as voting no on the proposed Zoning change.

There was discussion on this. There was also discussion on whether the Goss's could perhaps get a use variance from the ZBA, to allow them to develop the 9-acre parcel commercially.

Councilor Needell said they were discussing one landowner's desire to use the land in a particular way, and asked why this wasn't in fact spot zoning that the Board would be doing in approving this proposed change.

Attorney Tucker said these properties had been zoned OR for 30 years.

Councilor Needell said the Zoning Ordinance had to be based on the Master Plan, and he said the Master Plan had explicitly said that these properties were rural.

Attorney Tucker said perhaps the Town should change the Master Plan too.

Councilor Needell said the question at present was how the Board should deal with the zoning request before it, in light of the Ordinance. He said the Master Plan had been written in 2000, and implemented in 2004 as a result of the Master Plan process. He said the Zoning Ordinance had in fact changed, but said it was changed because of that process.

Mr. Roberts said the land in question had not been zoned to allow light industrial uses since 1968, and said the OR designation was quite different than ORLI.

There was discussion about this with Attorney Tucker. He said the Goss's request was that some kind of commercial use be allowed, and said that ORLI fit best with this.

Mr. Roberts said he didn't see why the Goss's would be in bad shape if they had to go before the ZBA concerning this issue.

Attorney Tucker said use variances generally weren't granted if one of the uses that were permitted was feasible. He noted that residential lots were perfectly feasible.

Charles Goss provided details on his perspective concerning the 9-acre parcel and the other land owned by the family in the towns of Durham, Lee and Madbury. He said the family had not developed a plan for all of this property, but was now forced to do this. He noted that the Durham Master Plan did not look at the other two towns involved, in recommending zoning changes to this area.

He said the family was one of the best assets the three communities had, and said it was vital to understand that. He said they hadn't planned to build a building on the 9-acre parcel, but he said if there was the option to develop it commercially, the family could be paid not to do this. He said they could also help the Town, but said what this current situation did was further infuriate the family. He said they would like to accommodate everyone, but needed some time.

**Patricia Craig, \_\_\_\_\_**, read from a letter she had written. She said that changing the zoning of the property north of Route 155 would provide the opportunity for commercial development that would greatly change the character of this area. She said her property would be most impacted, and said that with a change in zoning, her house would become nonconforming. She noted that the Goss's home wouldn't be so impacted by this change in zoning. She asked that the Board not approve this zoning change.

**Robin Mower, Faculty Road**, asked if there was some way that both parties could be served, to create value for the property, which then could be converted to conservation land, to prevent impacts on neighbors, and prevent the development of a huge piece of land. She said she valued that stretch of road, but also said she understood how land could be affected by future development.

**Jim Pollard, 22 Bagdad Rd**, said the area under discussion was unquestionably rural in character, stating that it wasn't really until Dover that there were any land uses other than rural residential. He also said he believed strongly in the Master Plan process. He said some good points had been made that there needed to be consistency as to how to consider issues like this, balancing the needs of both the community and private property. He said he therefore thought the Goss's request for more time was a good one.

He suggested that the appropriate context for considering this kind of zoning change was during the Master Plan update process, to avoid the idea of spot zoning. He said the idea of a large residential development was a concern, and asked if there was a way to reach a compromise that would work for everyone. He said this required time and thought, and more of this than was available at the meeting that night.

**Dan Valenza, 30 Mill Road**, noted a letter he had written to the Board. He reviewed the zoning changes over time in the area where he lived, and said this area had retained its rural residential

character during that time. He said he believed his property would be adversely impacted by this proposed zoning change, perhaps not immediately, but in the future. He said the historic and rural character of the area and land would be destroyed, and he urged that the Board not let this happen.

**Joe Moore, 138 Lee Road,** said this was an historic area, and said it should remain rural. He said the Master Plan reflected the fact that Durham liked rural character, and cherished its natural resources, including the Oyster River, whose headwaters ran through his property. He said the ORLI district didn't exist before the 2004 Master Plan, and he provided details on the fact that the previous OR district had been a relatively confined zone. He also said Rural zoning was not restrictive in terms of value, and opportunities. He said it would never be without a battle that something like ORLI would come into this area.

**Dan Beller McKenna, 8 Beech Hill Road,** explained that he lived at the opposite end of the Rural zoning district, and said he also was opposed to this rezoning. He said that changing this rural area to something that included light industry, which had never been allowed there, was spot zoning. He said it seemed that when the ORLI district was created, the goal had been to clarify some of the Town's zoning options, as recommended by the Master Plan. He said to change the zoning of this small area now defeated the purpose of the Master Plan.

**Maggie Moore, 138 Lee Road,** said that on a personal level, she cared about this proposed change because it affected her and her neighbors. She said on a public level, she wanted to affirm that the determination that the zoning for this area was Rural was arrived at as part of an objective process. She said she had called the Chairs of the Master Plan committees that had dealt with this, and they had permitted her to quote them concerning this. She said the zoning developed out of an orderly process that considered the rational evolution of the land, the gateways, the open space, etc.

**Jack Farrell, 8 Little John Road,** said he had sat on the Master Plan steering committee, so had looked at how the properties in questions fit with the overall plan for the Town. He said it was noted at the time that this area was isolated, didn't have access to water and sewer, and that there was plenty of commercial property elsewhere that had not been developed. He said it had also been observed that the OR district existed, but had only seen scattered development.

Ms. Moore noted that the Madbury properties along Route 155 included town properties, playing fields, etc. so were properties the town had long term plans for. She said this was also true of the properties nearby in Lee. She also said that historically speaking, before the OR district existed, the area it had included was zoned rural.

**Sandra Strauss, Beech Hill Road,** said she had lived adjacent to the property in question since 1980, and said she was not in favor of changing the zoning. She said that zoning was for the public good, and said rezoning properties to suit individuals was detrimental to neighbors and the public interest. She said the area along Route 155 was unsuitable for development, in that it was a rural, peaceful area, where there were recreational trails and fields, and people ran and biked. She said this area had been shown to be unsuitable for large-scale development within the last five years, and she provided details on this. She said the neighbors had opposed this kind of

development, as had various groups. She said these people had spent a lot of time on this over time, including attending various hearings within the past few years. She said she didn't recall seeing the Goss's at these hearings.

Ms. Strauss said this was a sensitive area in terms of water resources, noting that stormwater drained to the Oyster River within 5-6 hrs. She said it was therefore important to be very careful about what kind of development went in there. She also noted that increased development would cause traffic issues. She said the land in this zone could still be developed in many ways, and had value now because of its rural character. But she said her land would lose value if it were rezoned now. Concerning Mr. Goss's comment that they would have to build many homes there to get the value they needed from their property, she said she would prefer residential development to light industrial development. She spoke about options for conservation subdivision.

She said she understood that the Goss's wanted to make the best use of their property, and cared about their land and the community. She said the purpose of zoning was to protect land for the future and the public good, and she said keeping the land rural would serve all three towns, and the Goss's. She said if they were clear on the parameters, they could make a proposal for conservation purposes.

Attorney Griffin said this had been the Goss's opportunity to make the case for rezoning, and said it was unfair to everyone involved that they were now saying they didn't know what they wanted to do. He agreed that the Board needed to address the issue that evening, and said it would be unfair to continue it any further.

He said the discussion was really focused on one parcel, the 9-acre property. He also said that while Attorney Tucker said the Goss's needed to be able to sell the property, the Goss's said they had no plans to develop it. He said if they had no plans to develop it, and no compelling reason to change the Zoning, and there was the Master Plan on which the present Zoning was based, there was no reason to grant this request, and no reason to give it any further consideration. He said the Goss's had had their opportunity to be heard. He said the decision to keep the zone Rural was still the right decision.

Charles Goss said if the Board decided to not continue this hearing, the family would not be able to address the things the three towns wanted, and the option of looking at the property in terms of conservation land for three towns simply wouldn't happen. He said that continuing the hearing would allow them to come back later to the Board with something else to vote on.

Councilor Needell noted an earlier statement, that if the Goss's were to come forward with a conservation easement proposal, what would drive the value of the easement was the determination of the highest and best use of the property. He said Zoning played a part in that, and said the Goss's claimed that the value of the land, if it were in the ORLI district, would be higher than its value in the current Rural district, which would result in a higher price for a conservation easement when it was negotiated.

Councilor Needell encouraged the Goss's to see the value in pursuing a conservation easement. But he said that in terms of whether the Planning Board could do something to help with this, it came back to the fact that the difference between an easement and zoning was that an easement was in perpetuity, while zoning was not. He said he was not sure how zoning played into negotiating the value of an easement, because the zoning could change. He said that in order to understand their options, the Goss's needed the time, and asked what the purpose therefore was of continuing the hearing.

Charles Goss asked what the incentive would be for the family to come back to the Board in the future, if the hearing was not continued. He suggested that if it was continued, they could say they would come back again in two months to show the Board what they had come up with. Mr. Goss said their rights had been taken, and now, they didn't have any specific plans. He said they had not been invited to the tri-town greenway discussion that had been mentioned.

Councilor Needell said the only way to change the rights on a property was for the property owner to make an argument to the appropriate body to change them. He said the Board could decide to put off making a decision on this, but he said he was not convinced as to why the Goss's couldn't simply start their argument over later.

Charles Goss said they would like to be prepared to make a full argument, and said they needed to have the ability to do that. He said this would be something that would benefit people. He said the family was there that evening because of what the Town had done to them, and said they now had to pursue a plan on a three-town basis. He said they were looking at finding a logical use for the 9 acre parcel within that plan.

Mr. Greene asked how other portions of the Goss's property, in the other two towns, were zoned, and Charles Goss said they were zoned residential in Lee and Madbury. There was some discussion on this.

Ms. Harris said conservation easements could be pursued with all three towns, regardless of whether the hearing was continued.

Mr. McGowan asked if it would be worthwhile if the land were zoned so that it was consistent with Lee's zoning.

Charles Goss said that refinement that would be a very practical option.

Chair Kelley said the Board needed to decide how it wanted to proceed. He said if they did decide to close the public hearing that night, they should not deliberate, given the lengthy Agenda they had before them.

***Annmarie Harris MOVED to close the public hearing. Steve Roberts SECONDED the motion.***

Ms. Harris said she was inclined to leave the Zoning Ordinance as it was regarding this proposal, for all the reasons stated by the public, and because the Zoning Ordinance and Master Plan clearly indicated that these properties should be in the Rural district.



Chair Kelley provided clarification that this was not the time for the Board to be deliberating on the merits of the proposed Zoning change

Mr. Greene asked what the difference was between closing and continuing the public hearing, and there was detailed discussion on this.

Mr. Roberts said a lot of work had been done by various parties, including the Goss's, to present the issues at the public hearing. He said he understood what the Goss's issues were, but said he felt what they were suggesting needed to take place at another stage, on another day, with another proposal. He said he favored the motion to close the hearing.

Councilor Carroll said she agreed. She said the Goss's had made it clear that they needed more time, and she said a lot of possible options had become more available to them during the past week. She said in the mean time, the neighbors needed some stability, noting that what would be happening in their area had been up in the air. She said the Goss's would have time to figure out what their plans were for the future.

Councilor Needell said he was in favor of closing the public hearing. He said what was before the Board was a request for a specific change to the Zoning Ordinance, and said it had heard a great deal on this. He said by deciding on this, no one's options were closed for the future. He said there were many options to consider, on many levels.

Mr. Parnell agreed. He said the hearing had been properly posted, and there had been discussion on the idea of changing the Zoning Ordinance. He said the Board now had to move on, and said if other ideas came up in the future, so be it.

Chair Kelley agreed that the public hearing should be closed. He noted that there had already been a number of hearings held by the Planning Board and the Zoning Rewrite committee concerning this issue. He said that he was intrigued by Charles Goss's statement that if the public hearing were continued, there might be a proposal to excite the Board in the future. But he said he agreed with Councilor Needell, and said if there really was an exciting proposal that would benefit everyone, the Planning Board and the Zoning Rewrite Committee would have their ears open to that.

Mr. Greene said he also agreed with the motion.

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

Chair Kelley again recommended that the Board not deliberate on this matter that evening, given the length of the meeting.

***Steve Roberts MOVED to schedule for April 18, 2007 the deliberation phase on the proposed changes in the Zoning District Map to incorporate Tax Map 9, Lots 1-1, 1-2, 2-1, 3-0 and 4-0 into the Office Research/Light Industry District. Doug Greene SECONDED the motion.***

It was clarified that no public testimony would be taken at the time of these deliberations.

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

**Recess from 9:00 -9:10**

- V. **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 that before continuing the public hearing, he had another matter to address. He said that he was one of the original people to vote in favor of not making public ....the legal opinion. He said it was therefore within his rights to ask for reconsideration of that vote, given the Town Attorney's recent correspondence to the Board on this, as well as on the public outcry concerning that original motion.

***Chair Kelley MOVED to reconsider sending out two pieces of information from the Town, a letter dated 1/5/07 and an email dated 2/20/07. Lorne Parnell SECONDED the motion.***

Chair Kelley explained that the Board had received a lot of requests that this information be made public. He said he was very reluctant to do so, and said it was only because of other information that had been provided by the Town Attorney that he was satisfied that this should be done.

Councilor Carroll said she applauded Chair Kelley for bringing this forth for reconsideration. She said perception was sometimes reality, and she said that making this information available to all parties who were interested was important.

Mr. Parnell said he also supported this motion, but he said this should not be seen as a precedent, and should be seen as something being done in this case only, based on the information the Board had available.

Councilor Needell said he would like to see that vote reconsidered, so supported this motion.

Mr. McGowan agreed with Mr. Parnell that this should not be seen as a precedent that was being set.

Ms. Harris noted that historically, the Planning Board and the Town Council had revealed most of its correspondence with its attorney, so this was not particularly precedent setting.

Mr. Roberts said he was opposed to motion to reconsider, and he provided details on this.

Councilor Needell provided clarification that the original motion to release the two documents was now on the table, and didn't need to be moved by the Board again.

Ms. Harris said she recalled that the Board had discussed the possibility of getting another opinion from a separate law firm.

Chair Kelley said that was a separate issue. He said he personally was very reluctant to release the information. He said he took it very seriously that attorney client privilege was there to protect the Planning Board. But he said that given the advice the Board's attorney had recently provided on this matter, he didn't see any issues with releasing it.

Mr. Campbell said he had spoken with the Board's attorney, and there was discussion that Durham was different than most towns in terms of releasing attorney client information. He said Attorney Mitchell didn't generally like to see the information he provided to planning boards released to the public, because he felt this put decisions in jeopardy, hurt the board in court, etc. But he said Attorney Mitchell realized that he was the attorney for Durham, and that is what Durham did. He said Attorney Mitchell had looked at the two documents in question again, and didn't feel there was anything in them that would necessarily hurt the Town.

Councilor Needell said that while attorney client privilege existed, it did so strictly for the benefit of the client. He said it was true that historically in Durham, the Town had favored open government. He said he believed that the things that should be kept confidential should be extremely rare. He also noted that one of the Board's discussions with Attorney Mitchell on the one lot/two lot issue was not a public session, and instead was a meeting with the Attorney. He said he had voted against having that meeting, and felt it should take place in a public session.

Councilor Needell said it was the Board's prerogative to release the information, and said he felt it should do so unless there was compelling information to do otherwise.

Chair Kelley said he supported the motion in this case, while he might disagree with the idea in a broader sense.

Mr. Roberts said Councilor Needell had misstated the law, and also noted Attorney Mitchell's expertise with the right to know law. He said the Board had been given good counsel by a highly qualified attorney.

Councilor Carroll said the scenario that had played out was that the Planning Board had gotten information from its attorney, had then made a decision based on this, but when asked how the Board had made its decision, had said it couldn't tell the public. She said she understood there were situations where the Board's attorney would give it advice, regarding property or personnel issues, and a time delay would be needed in terms of providing this information to the public. But she said she thought that having a situation where the Board said it couldn't tell the public why it had made a particular decision was not the kind of government they wanted.

***The motion PASSED 4-3, with Steve Roberts, Bill McGowan and Doug Greene voting against it.***

Chair Kelley said the Board needed to decide on the waiver request issue, concerning conceptual design consultation. He noted that the applicant had requested that this issue be addressed in order to keep the record clear and unambiguous.

Mr. Campbell provided details on this issue. He said the applicant had requested a waiver of the conceptual design review phase, but had gone through the design review phase. He said the Board had never voted on that waiver, and he noted that many times, the Board voted on waivers at the end of the application process.

***Bill McGowan MOVED to waive the conceptual design consultation phase for the Cuthartes Site Plan Application and Subdivision Application. Mr. Parnell SECONDED the motion.***

Councilor Needell said it had been pointed out by the applicant that by accepting the application, the Board should have dealt with this then, and didn't, so had essentially waived this by going ahead with the application. He said he didn't disagree with this, but said the concern was that if the Board had voted on this before accepting the application, this would not have allowed the public the opportunity to comment on this. He noted that when waivers were discussed during the application process, the public did have the chance to comment on them.

He said the Board had to be careful here in terms of precedent setting, and said he would be very reluctant to waive this again. He said in this instance, the Board had gone too far with the application, and unless it was planning to reconsider the motion to accept the application, there was nothing to be gained by not granting this waiver.

Ms. Harris asked what was to be gained by voting for this waiver.

Chair Kelley said it cleared ambiguity from the record.

Mr. Campbell noted that it wasn't likely that there would ever be an application where a conceptual review was done, and the design then didn't change later on in the process.

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

Chair Kelley said he was prepared to decide on the height issue as well, if that was the will of the Board.

Mr. Roberts said for the Board to make a decision on this issue without public comment was not appropriate. He said he didn't think the Board had even considered the part of the application that had to do with height, or had really even gotten into the height issue, so he didn't want to make this decision now.

Councilor Needell said the Board needed to make this decision prior to closing the public hearing, and should indicate to the public whether it planned to deliberate on this soon. He said if the proposed building height was denied, the applicant would have to make some changes, and if this happened, the public would need to have the chance to comment on these changes.

Chair Kelley said he felt comments had been received from the public on the size of the building, and said he was prepared to render a decision on that issue.

Mr. Roberts said the applicant was making design changes at present that affected the perception from abutting properties. He said he didn't know that the Board had the final plan on the berm, buffers, etc, and felt it therefore didn't have the right to talk about the height issue.

Councilor Needell noted that when the new plans were proposed at the previous meeting, the Board did not receive public comments in response to them.

Chair Kelley said it sounded like the Board wanted to reopen the public hearing.

***Bill McGowan MOVED to reopen the public hearing. Doug Greene SECONDED the motion.***

Mr. Roberts noted that there were other items on the Agenda that needed to be addressed, and yet no major business was supposed to be started after 10 pm. There was discussion on this. It was agreed that the public hearing could go for about 40 minutes, when it would be continued so the Board could move on to other Agenda items.

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

**Jack Quinn, 10 Adams Circle** said the concern of many of the residents in this area was the neighborhood character, and said it was still the concept of the plan that was the problem, not the details. He spoke about the purpose of the RA zone, and noted that the Master Plan talked about infill development in the RA zone, among other things, but did not include any recommendation for an increase in density above that of the surrounding area.

He also said the Master Plan said new development should be compatible with, and in scale with existing land uses in the RA district. Mr. Quinn said that neighborhood character was why people chose to live in Durham. He said the Town had given careful thought to this, and said the concept was codified in the Master Plan and the Zoning Ordinance.

Mr. Quinn provided details on the neighborhood he lived in, stating that the residents all knew each other, and interacted on a daily basis as they gardened, walked, etc. He said it was a safe and peaceful neighborhood, and he said at night, it was dark and quiet. He said all the existing houses were relatively small, and said only a handful of neighboring houses were visible from each house.

He said the proposed project, a single multi-unit complex, would approximately double the number of housing units in the area, and said these new units would be a completely different type of dwelling unit than what was there now. He said this huge building in the neighborhood would create a physical and social barrier to interaction between existing neighbors, and said this would not be a design that would tend to assimilate new neighbors into the neighborhood. He also said that lights and other visual impacts would be right next door to the existing houses in the neighborhood. Mr. Quinn summarized that this project did not fit with the existing character of the neighborhood, and instead would completely redefine it.

He said that within reason, mixing housing types could positively enhance the diversity of the neighborhood. But he said pushing housing of this size on the neighborhood would simply divide it. He said one only had to look at cities that were growing, to see the really negative impacts on established neighborhoods where inappropriately sized developments were plunked down in the midst of them. He said a structure of this size was so out of context that it violated Durham's vision for the RA zone expressed in the Master Plan, and violated the spirit and intent of the Zoning Ordinance.

**Bruce Campbell, 7 Rocky Lane**, said he lived quite close to the proposed development, and noted that he had sent an email to the Board concerning this project in January. He said he had left town for a few months, and now would like to make some more comments. He read from a letter he had written, and said his primary concern was the size of the building, which was where the focus should be, not on landscaping, drainage, etc. He said the proposed building was larger than a football field, and similar in size to Walmart and the UNH Whittemore Center. He provided details on this.

Mr. Campbell said it was his understanding that the purpose of the RA district was that new development should be consistent with the established character of the neighborhood. He said while 66 units instead of 78 unit was an improvement, a building of this size still did not meet this Zoning requirements, so should not be approved.

**Sue Millevena, Adams Circle**, provided a model of the proposed development, which incorporated many of the changes that had recently been proposed for the site plan by the applicants. She said this had not changed the character or size of the proposed structure.

**Attorney Scott Hogan, representing 11 abutters to the proposed project**, noted that he had submitted an April 10, 2007 letter to the Board, where he had listed the 11 individuals he was formally representing, and had also referenced prior written submissions to the Board. He said he would like to speak regarding the presentation the applicants had made to the Board at the April 4<sup>th</sup> meeting.

Attorney Hogan said they were now looking at a 66-unit development, but the legal issues hadn't changed at all. He said the fundamental premise of the proposal was two noncontiguous lots added together to get a density figure, and then adding the structure on one of them. He said there was simply no authority in the Ordinance to allow this, and said it was a transfer of development rights, which was not authorized by the Zoning Ordinance. He said it also violated the purpose of the RA district, stating that even if it was one lot, there had been discussion that any area isolated by a strip of less than 50 ft in width was to be excluded from usable area calculations.

He said what had been really difficult, in interacting with this process, was the moving target. He said the concept of using 2 noncontiguous lots to amass density on one lot, whether for 78 or 66 units, would have been specifically discussed and vetted during the conceptual design review process. He said the issue of height would have been discussed and resolved at that time as well. He said if after hearing from the public, the Board had decided it wouldn't have allowed a building more than 30 ft. in height, the applicant would have either agreed to design it at 30 ft, or

would have appealed. He said they wouldn't have had to go through all of the extra discussion, if the conceptual design procedure had been followed. Attorney Hogan said there wasn't a way to waive conceptual review after the fact, since it was the procedure that defined the rest of the Board's review of the project.

He said the applicant had chosen to revise this project, which now put his clients into the unenviable position of having to come back and say they were not opposed to the development of the site, but were opposed to allowing a building of this scale and size. He said they would have preferred it if the applicant had not developed the revised plan, because they would have said 66 units or even less was still orders of magnitude more than what the Zoning Ordinance allowed. He said the fundamental concept of density hadn't changed.

Attorney Hogan said he had read some of the other written submissions of residential property owners in Town, concerning this application, and also noted that there had been discussions among residents about the idea of combining two lots in other places in Town, where these lots were connected by narrow easements. He said some Board members who decided on the density question at the February 21<sup>st</sup> 2007 Board meeting said they were only considering the facts in this case. But he said the facts here were two recognized, noncontiguous lots, and he said these facts could now be easily replicated in other situations. He said this was not what the Master Plan or the Zoning Ordinance had envisioned

Attorney Hogan said that concerning the height issue, the Ordinance said that by approval of the Board, the building height could go beyond 30 ft. to 35 ft. But he said he saw no standard of review as to how to address that request, and also said this was not the same as a waiver request. He said that even if the proposed level of density were somehow allowed by right, he would still argue that a building this size, because of its institutional nature, traffic, lights, etc. would be unreasonable.

He noted that there were other towns where clients he represented were facing this kind of development, and said abutters in this kind of situation were placed in a position where they were looked at as NIMBY abutters. He said the abutters in this instance now appeared to be twice unreasonable because revisions had been made to the plans and they were still objecting to them. He said that looking at a five-acre parcel, the density would be in the low 30's in terms of units, even with the elderly housing bonus. He said what was now proposed was twice the density of what was envisioned by the Ordinance, so nothing had changed, as a legal matter, that evening.

Attorney Hogan said that the conceptual design review process served the Board and the applicant, and said without it, it was harder for the Board to decide on the design issues.

**Hillary Scott. 20 Davis Ave,** said she had spoken at the March 14<sup>th</sup> Planning Board meeting, but said she was now submitting her comments in writing. Ms. Scott also noted that Mr. Roberts had said that the applicant's final plan was not in yet, and asked whether in fact the plan was still in flux.

Chair Kelley said he had spent some time looking at the plans, and had found they were not complete, and had a lot of information missing from them. He said he couldn't support closing the public hearing until after this information was received.

Mr. Roberts said with applications like this and the hotel project, the Board could help the applicant see what was in his best interest, and said this sometimes happened later on in the process. He said that was the meaning of the comment Ms. Scott had referred to.

Ms. Scott requested that the public hearing be continued, so the public would be able to review, within a reasonable time frame, that end product.

**Robin Mower, Faculty Road**, said she was not directly affected by this project, but said there were several troubling aspects to it. She provided details on this, and said she hoped the Board would extend the period for public input in order to gather additional information that would guide Board members in their deliberations.

She noted that Board member Arthur Grant had said the project required legal and technical decisions that would establish precedent in terms of the Zoning Ordinance and Master Plan. She said she hoped the Board would reconsider its position regarding this project, and therefore protect the community from setting a precedent that was not firmly based on those two documents.

She said her first concern was that the proposed development appeared to disregard the character of the single-family neighborhood, and she quoted from the Master Plan concerning this issue. She said a project with 66 units squeezed onto a 5-acre parcel, regardless of its design, was inappropriate for a single family neighborhood. She said growth in Town should not be allowed through a project that would have such dramatic impacts, so quickly. She said this was not elitism that was involved; it went to the heart of the definition of a neighborhood.

Ms. Mower said this particular neighborhood seemed to have the legal resources needed to protect its character, but she questioned whether other neighborhoods were prepared for such a challenge. She said the neighborhoods shouldn't have to face this kind of challenge if the Planning Board relied on the Master Plan and the Zoning Ordinance.

Regarding density, Ms. Mower said it appeared to some residents that the Board had ignored NH state law and the Zoning Ordinance. She provided details on this, and said that all three attorneys had said the two lots were separate and non-contiguous. She said the Planning Board's decision to treat them together as one lot beggared belief. She said this also raised a fundamental question for future projects, concerning how far apart two lots could be and still be considered contiguous.

She said that conservation subdivision required that lots be contiguous, and also said that considering these two lots as one appeared to disregard NH state law concerning voluntary lot mergers. She also said the Zoning Ordinance did not allow transfer of development rights, and therefore did not allow a transfer of density. She said that taking all of these points together, the Board should restrict the density to the 5-acre parcel. She said the 66 unit redesign was a mere



15% reduction in density, and was still considerably more than the 25-30 units that would be allowed for a lot of this size.

Ms. Mower referred to comments made by Chair Kelley and Steve Roberts, and said she was concerned about the subjectivity of these statements. She provided details on this, and also noted the Board's discussion on whether to release its discussions with its attorney. She said this was disturbing, and reflected ignorance regarding attorney client privilege. She also said that several Board members who voted didn't disclose their rationale for voting, other than protecting attorney client privilege, something that was only owned by the client (the Board), not by the attorney and the Board. She said they also didn't give weight to the perception this created of acting on information that was not available to the public.

She thanked Councilor Needell and Councilor Carroll for emphasizing the rights of the public to know information, and the danger of allowing misconceptions to go unaddressed. She also thanked Chair Kelley for providing the opportunity for the Board to reconsider its previous vote on this matter.

Ms. Mower said a final question was how much a resident could trust in adherence to relevant laws and regulations. She said that given that the Town was working with a new Zoning Ordinance, and was at a crossroads in terms of development in Durham, residents needed to feel that there was objectivity. She said that as Arthur Grant had stated, if the Board encountered a situation that was not covered by the Zoning Ordinance, it must assume that the Ordinance did not allow it.

Chair Kelley said he did not want to get into a debate between the Planning Board and the public at present, and said these issues would be addressed later. He said there was still a lot of work needed on the site plan application package, and asked the applicants when they thought the plans would be more complete.

Mr. Farrell said they would like to get a list of what still needed to be refined, and would then try to get that information to the Board.

Chair Kelley asked if Board members had any other comments on the application that evening.

Mr. Roberts said the Board had a lot of material to study, and should continue the hearing to another time. He said more meetings might be needed to allow more thoughtful analysis and discussion with members of the public and among Board members.

***Councilor Needell MOVED to continue the public hearing to April 25, 2007. Lorne Parnell SECONDED the motion.***

Chair Kelley said the Board's comments regarding the plans dated March 30<sup>th</sup>, 2007 would be compiled and sent to the applicant within the next week.

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

***Councilor Needell MOVED to extend the meeting adjournment time to 11:00 pm. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.***

- VI. **Continued Design Review on a Site Plan submitted by Northam Builders Inc.,** Durham, New Hampshire, on behalf of Joyce Terrio to build 48 multi-dwelling units in two buildings. The property involved is shown on Tax Map 9, Lot 8-2, is located at 53 Old Concord Road and is in the Office, Research and Light Industry Zoning District.

The applicant's engineer, Robert Stowell of Tritech Engineering said they had done further work on the plans, after their previous meeting with the Board, and said a number of improvements had been made. He said they had consolidated the units into a single building in order to achieve density, and said they would be able to achieve this within a 40 ft height restriction.

He said 2 bedroom units were proposed for all 48 units, with a maximum of 96 residents. He said all of the units would be below the 600 sf threshold. He also said they had worked with different parking configurations, and had gotten the required 1 parking space per resident that was required. He noted in answer to Chair Kelley that handicap accessible parking spaces were included in the plan. He also said they were not expecting that all the individuals who resided there would require parking spaces.

Mr. Campbell noted that there was long term parking available at the West Edge lot.

Mr. Stowell said the applicant was asking for a waiver regarding the two access points that were less than 1200 ft apart, and stated that the proposed separation in the plan was 220 ft. He said there would be two-way traffic on the site, and also said there would be acceptable room for truck turnarounds. He noted that Wildcat bus service access was included in the plan.

He said some landscaping design work had been done, noting that Robbie Woodburn was part of the team. He said she had tried to address some of the concerns relative to the height of the building, and said that among other design ideas that a berm effect had been added in front of the building, on top of which some landscaping would be added, in order to soften the appearance of the building.

Ms. Woodburn said that because of the location of the site, the openness of the lot, and the corridor it was in, it was important that the berm that was put in look like a landform. She said this could be accomplished by varying it in height and form. She also a row of hybrid elms would be put in along the street, which was appropriate for this corridor.

She provided additional details on landscaping elements that were being considered, and also suggested that there should be some sort of entry treatment, like a three rail fence, or perhaps pieces of a stone wall. She said this would provide the opportunity to put some signage up, and also would keep the look coming down Main Street. She also said the plan was to designate an area of the site as lawn and field to be mowed, and to provide a gradual transition to a natural landscape which would not be mowed.

There was discussion on elements of the landscape design. There was also discussion on the two way traffic planned for the site, and whether there was enough room for this. Mr. Campbell recommended that the applicant get in touch with NHDOT, which would have the ultimate say on this.

Mr. Stowell said there had been a scoping session with NHDOT.

Chair Kelley asked what the plan was for lighting.

Mr. Stowell said the objective was to provide enough lighting for safety purposes, while not having too many bright spots. He said they would provide more technical details on this in the future, but said the intent was to put lighting at building entry points, and to light the sidewalks from the building.

There was discussion on how management of the site would occur. Mr. Stowell said there would be someone on site to handle site issues that came up.

Councilor Carroll asked if that person would be an employee, and Mr. Stowell said it would be someone who lived there at a reduced rent, and was the eyes and ears of the owners, but did not do physical work on the property.

There was discussion as to whether this person might be a student, and whether a student could maintain order, which was the issue of concern to the Board.

Chair Kelley noted the job description associated with a housemother position, which was developed for a recent conditional use permit application before the Board for a fraternity house, and said perhaps the applicant could consider this.

Councilor Carroll said there were some very responsible people, besides students, who this position might appeal to.

Mr. Roberts said that perhaps graduate students could serve in this role.

Ms. Harris said the University had regulations regarding this, so the applicant would be subject to them. She also said that off campus housing would be better served by having a manager other than an undergraduate student, - either a graduate student, or a family.

Chair Kelley said he would have a greater amount of assurance if this person were an employee of the management company. He said he wouldn't entirely dismiss the idea of a student taking the position, but said he would want to see a description of the authority and responsibilities of whoever had the position. He also suggested that there could be provisions in the lease arrangement that would serve the Board's concerns as well, and could prevent the property from becoming a problem for the Police Department.

Mr. Stowell noted that the Technical Review Committee had recommended that this was in the applicant's interest as well.

He then provided details on the proposed building design, also noting that this design wasn't finalized yet. He said there would be traditional architecture, and said the exterior would be high quality vinyl siding with vinyl shakes mixed in. He noted that variation in texture, angles, etc. would be used to detract from the length of the structure. He also said there would be a hip roof, which would hide the air conditioning units, etc. on the roof.

Councilor Needell asked if there would be interior entrances to units and interior interconnectedness, or instead would be a townhouse style with individual exterior doors.

Mr. Stowell said they were thinking of having interior entrances to the units.

Councilor Needell suggested that the applicant check with the Police Department and Fire Department in terms of possible party spaces in interior corridors of the building.

Ms. Harris noted that the architect on the Planning Board during the hotel project had suggested that the pitch of the roof should be slightly higher, which involved asking the Board for some relief in order to have a roof line that was more appealing and interesting.

Mr. Stowell said they were trying to work within the 40 ft height limit.

Ms. Harris asked them to consider the architectural design improvements that would come along with a slightly changed roof.

Mr. Greene suggested that the applicant could show the Board some possible options.

There was discussion that input from the Board on this could be considered, and that there might be some flexibility in terms of the height of the building.

Mr. Greene said having doors that had direct access in from the first floor was a nice feature, and was an attractive renting point.

There was discussion on possible gathering spaces and the behavioral issues that might come from this. It was noted that having separate town houses might be more appealing, but that if there was an elevator, this might not make sense from a functional point of view.

Councilor Harris said the hotel could provide some ideas in terms of the architectural design.

Mr. Parnell asked if the plan was to break up the building with different colors and shades of colors, and suggested that this would be a good idea. He also asked if there would be any specific lobby or common areas.

Mr. Stowell provided details on this.

Chair Kelley asked how discussions were going with the University concerning the idea of having Wildcat buses stop at the apartment complex.

Mr. Stowell said not much progress had been made on this yet.

Mr. Campbell recommended that the Board not think of this as a development that would have bus service, and said there was a very good chance that the University wouldn't extend the service. He explained that there was scheduling issues involved, and also said with this added leg of the bus route, the University would need to get another bus. He said the factors involved could impact riders and the consistency of the service.

Councilor Needell said students could walk to Technology Drive to pick up the bus there.

Ms. Harris said perhaps there could be a shelter put up so the bus could stop for students. There was discussion that it was only 400 ft from the proposed development to Technology Drive.

Councilor Needell asked for clarification as to whether there had been any fundamental change in the wetlands assessment of the site.

Mr. Stowell said the amount of wetlands determined to be on the site hadn't changed. He explained that there was a finger of land about 80 ft long and 7-8 ft wide that was identified by the Army Corps of Engineers as a wetland, but the question had been whether it was manmade or natural. He said it had been determined that the wetland was manmade for drainage purposes, but still had to be respected as jurisdictional wetland. But he said the applicant was relieved from having to meet the buffer requirement because it was manmade, and he also noted that the development would have no direct impact on the wetland. He also said NHDES still considered it a wetland, so they had to stay out of it.

Chair Kelley noted that the provisions of the Town's Wetland Conservation Overlay district applied to all wetlands except "wetlands associated with currently functioning and maintained, non-abandoned, manmade ditches and swales, sedimentation and/or detention ponds and swales, and fire ponds, cisterns and related facilities."

Councilor Needell said he wanted to be sure that there was no question that this interpretation was valid, so the wetland area didn't have to be buffered.

Mr. Greene asked what the proposal was to handle runoff.

Mr. Stowell said they were still working on the drainage plan. He said they didn't have the final plan yet, but said they wanted to incorporate infiltration to the extent possible

Chair Kelley said these kinds of things didn't have to be resolved during this phase of the Board's review. But he noted that as the Board moved forward, it would hold the applicant to a very high standard of stormwater treatment.

Councilor Needell said about 2500 sf of recreation space was to be included in the plan, but said there would need to be discussion on what it would be used for.

The applicant's engineer said the area behind the parking lot was a likely candidate for a recreation area, and said they were looking at what type of recreation would be appropriate there.

Councilor Carroll noted that at the previous meeting, there had been discussion on the possibility of not having one parking place per person. She said some students might decide to take the bus, or ride bikes to campus. She said the Planning Board was trying to do reduce the amount of impervious surface in Town in general, and reducing the number of parking spaces was a way to address this. She noted that the Town's parking regulations had not been revised yet to reflect this.

There was discussion as to whether this issue might be addressed at the next step of the application process.

Chair Kelley asked Board members if they felt the design review needed to continue, or if instead the applicant could move on with the formal site plan and conditional use permit applications. He reviewed the design issues that had been addressed, and said other concerns, such as drainage, lighting, etc. could wait until later in the process. He said the Board would rely on the Department of Public Works regarding the Town's ability to provide sewer to the site.

There was discussion as to whether it was appropriate to use the architecture of the recent hotel project as a model for the architectural design of this project.

Councilor Needell asked whether there had been discussion on the likelihood of getting the water and sewer permits for the project.

Mr. Campbell said there had been discussion on this with the Public Works Department, including discussion regarding the sewer bottlenecks in this area of Town and planned UNH hookups to the system. He said Town Engineer Dave Cedarholm would be looking at a buildout scenario for that area of Town, and said a number of factors concerning supply and demand would be incorporated into a model that would be developed. He said there would therefore be some answers to some of the sewer questions within a relatively short period of time. He noted that this application was one of the factors that was being considered.

Mr. Roberts said he encouraged good architecture wherever possible in Town.

The Board agreed that the project could move forward to the formal application stage.

- VII. Acceptance Consideration on an Application for Subdivision** submitted by Arnet Taylor Jr., Durham, New Hampshire, on behalf of Katharine Paine, Durham, New Hampshire to subdivide a property into 3 porkchop lots. The property involved is shown on Tax Map 11, Lot 35-1, is located at 51 Durham Point Road and is in the Residence C Zoning District.

**POSTPONED TO May 10<sup>th</sup> meeting.**

- VIII. **Acceptance Consideration on an Application for Site Plan Review** submitted by Charles Cressy, Durham Marketplace, Durham, New Hampshire, on behalf of Colonial Durham Associates, New York, New York to build an addition onto a commercial property. The property involved is shown on Tax Map 5, Lot 1-1, is located at the Mill Pond Plaza and is in the Central Business Zoning District.

Architect Walter Rous said that in response to the previous meeting with the Planning Board on the application, they had made more room for people standing and waiting at the windows, and had eliminated 3 parking spaces. He said there would be bollards, with flowerpots at the outer edge of the patio area, to provide protection from cars.

He also noted, in response to Ms. Harris concerning the ice cream shaped windows, that Durham Market place had already maxed the amount of signage it could use, so the building would be its own sign.

Chair Kelley asked if the application was complete, and Mr. Campbell said it was. He noted there was one additional waiver request, from Section 9.03 – concerning an engineered stormwater drainage analysis. There was discussion on the existing drainage at the site.

The Board reviewed the following waiver requests made by the applicant, regarding requirements of a full site plan:

Section 7.02. D 3 a), c), and d)

Section 7.02. D 4 a), c), d), h), i), j), k), m thru u), w), x).

Section 9.03 (concerning engineered stormwater drainage analysis)

Mr. Campbell recommended that the public hearing should be held on April 18<sup>th</sup>.

Chair Kelley said he was fine with all of the waivers, although stating that the applicant would be moving forward with the location of utilities at his own peril. But he noted that it was likely the applicant knew about the utilities already.

Mr. Rous said that the sewer line was right under the building, and was shown in the plan.

Ms. Harris asked if there would be another location for the bike rack that had been displaced by the design for the expansion, and was told it would be moved to the other side of the entrance.

***Steve Roberts MOVED to waive Section 7.02. D 3 a), c), and d); Section 7.02. D 4 a), c), d), h), i), j), k), m thru u), w), x); and Section 9.03 (concerning engineered stormwater drainage analysis). Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.***

***Annmarie Harris MOVED to accept the application for Site Plan Review submitted by Charles Cressy, Durham Marketplace, Durham, New Hampshire, on behalf of Colonial Durham Associates, New York, New York to build an addition onto a commercial property, and to schedule a public hearing for April 18<sup>th</sup>, 2007. Steve Roberts SECONDED the motion.***

There was discussion that a site walk wasn't needed.

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

**IX. 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 postponed.

**X. Other Business**

**A. Old Business: Presentation on History of the Mill Plaza by Julian Smith**

This Agenda item was postponed.

Mr. Campbell reviewed the additional changes that had recently been made to the draft forestry related provisions of the Zoning Ordinance. There was then further discussion, including a review by Mr. Campbell of what the Conservation Commission's recommendations had been, prior to this most recent revision.

Councilor Needell noted that the most recent language in these provisions reflected the fact that the Board was not accepting two of the Conservation Commission's recommendations. He said this would likely engender more debate, and asked that a copy of the draft be sent to the Conservation Commission.

It was noted that the Town Council's original concern about the proposed forestry related changes to the Zoning Ordinance was that it wanted to hear what the Conservation Commission had to say about them, and then wanted the Planning Board to consider what to do with any recommendations from the Commission. It was noted that there was not necessarily an endorsement by the Council of the Commission's recommendations.

There was discussion about this, and about what had happened to the no cut buffer language in the provisions.

Councilor Needell said the Board needed to take some time to discuss the additional changes that had been made to the provisions.

Chair Kelley said this would be put on the Agenda for the April 18<sup>th</sup> meeting.

**B. New Business:**

***Annmarie Harris MOVED that given that issues that had been raised by the public on density, an independent opinion was needed from another attorney. Chair Kelley SECONDED the motion.***



Ms. Harris said it was very important to get an opinion from an attorney outside of the firm the Board's regular attorney worked for. There was discussion on the various opinions the Board had already received on the density issue, and what the options were at this point.

There was discussion as to whether the Board was deliberating at this point, and Ms. Harris said she had only asked for another legal opinion.

There was some discussion on the definition of contiguous. There was also discussion on the vote taken by the Board on the one lot/two lot issue on February 21<sup>st</sup>.

Mr. Roberts noted that there was an opinion from the Board's attorney that he could represent the Board on either side of the vote that it had taken on this issue. He also said there was a considerable body of opinion now that planning boards were supposed to consider the intent of the Master Plan, and the best use of a site, and not just the exact language of the regulations, in making planning judgments.

Chair Kelley said the Board was not there to deliberate on this, and said there was a motion on whether the Board would get another legal opinion.

Mr. Roberts said this discussion at such a late hour was out of order.

Ms. Harris said she had asked repeatedly that the Board consider getting another legal opinion, but this had not been put on the Agenda.

Councilor Carroll said if she were to vote on this, she wouldn't know which way to go, because she didn't know the implications of the vote. She said this needed more thought, but she said the question was still there.

Mr. Campbell said even if the Board got another legal opinion, there was no guarantee it would get to discuss the issue again.

Councilor Needell said there was a limit to what was reasonable for the Board to reconsider. He said if the Board was going to consider reconsidering the previous vote, this needed to be discussed first.

Mr. Roberts said the Board had the Master Plan and Zoning Ordinance to point it in the direction of the things it was trying to accomplish, and said these were the things it should be discussing.

After further discussion, the Board agreed to postpone voting on the motion until the April 25<sup>th</sup> meeting.

#### **XI. Approval of Minutes – March 14, 2007**

This Agenda item was postponed.

**XII. Adjournment**

***Doug Greene MOVED to adjourn the meeting. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.***

Adjournment at 11:45 PM

Victoria Parmele, Minutes taker