

## **D-R-A-F-T**

### **DURHAM PLANNING BOARD WEDNESDAY, SEPTEMBER 26, 2007 TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL 7:00 P.M.**

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

**ALTERNATES PRESENT:** Wayne Lewis; Councilor Diana Carroll

**MEMBERS ABSENT:** Vice Chair Lorne Parnell; Secretary Susan Fuller; Annmarie Harris; Doug Greene

**ALSO PRESENT:** Victoria Parmele, Minutes Taker

#### **I. Call to Order**

The meeting was called to order at 7:08 pm. Chair McGowan said Mr. Lewis would be a voting member in place of Mr. Parnell.

#### **II. Approval of Agenda**

*Councilor Needell MOVED to approve the Agenda. Wayne Lewis SECONDED the motion, and it PASSED unanimously 6-0.*

#### **III. Report of the Planner**

Mr. Campbell said that in Board members' packets, there was a memo from Town Engineer Dave Cedarholm regarding the drainage for the proposed Sophie Lane subdivision; a letter from MJS Engineering asking for a continuance of the Adams subdivision application to October 10<sup>th</sup>; and an email from the Public Works Department regarding the Adams subdivision application.

Mr. Campbell providing the following updates from his memo to the Planning Board:

- He said he had recently met with University Planner Doug Bencks, and had provided a memo to Board members on issues that were discussed.
- He said he was working with the Planning Board's Attorney on a Rehearing Request from the Planning Board concerning the 99 Madbury Road application.
- He said he was working with Doug Bencks and University transportation planner Steve Pesci on developing some traffic models for Durham and UNH. He provided details on this, and noted there was a need for more detail on the costs that would be involved. He said the Town would like to test the model by doing a simulation for the Mill Plaza redevelopment. He said the Town Council had opened and closed the public hearing on the TIF district for Stone Quarry Drive on September 17<sup>th</sup>. He said the Council now had to wait 15 days before making a decision on it, and said it would be on the Agenda for the October 15<sup>th</sup> meeting.
- He said that on September 10<sup>th</sup>, the Town Council had passed on first reading the creation of

formal Economic Development Committee. He said there would be a public hearing on this on October 1<sup>st</sup>.

- He said he was in the process of drafting Zoning amendments that were discussed at the most recent Zoning Rewrite meeting. He said he would bring these to the Board for further comments at the October 10<sup>th</sup> meeting. He said that perhaps some of these proposed amendments would be sent on to public hearing, while others that needed more work would go back to the Zoning Rewrite committee.
- He said he had asked planning consultant Steve Whitman of Jeff Taylor Associates to look at some of the other Zoning proposals he hadn't had the time to look at.
- He said he had met with Don Rhodes of Norway Plains regarding the idea of studying some of the traffic reports done over the years as well as the Town and the University Master Plans, to see what the differences were, and to see what could be done to ease the Town's traffic problems.
- He said the Mill Plaza Study Committee had met at the high school on September 8<sup>th</sup>, to review 3 conceptual plans, and said it was a good meeting, with good turnout. He said the Committee met again on September 19<sup>th</sup> and discussed more feedback for the design teams. He said the Committee also looked at a proposal from RKG Associates to do some economic analyses. He said the Committee would meet again on October 17<sup>th</sup>, and also said there would be a second round of design presentations on October 28<sup>th</sup>.
- He said there was one new application for the October 10<sup>th</sup> Planning Board meeting, from Paul Berton, who wanted to do a multi-use redevelopment of an existing building near the downtown. He provided details on this, and noted that this would be a conditional use application, and that Mr. Berton would also have to get 2 variances for the project.
- He said he had had further discussion with Mark Henderson concerning his proposed application off Madbury Road and Main Street. He said the design review phase for this project was expected to be on the Agenda for the October 24<sup>th</sup> meeting.
- He said he had contacted impact fee consultant Bruce Mayberry concerning the drafting of other possible impact fees for the Town. He said Mr. Mayberry would be looking at the idea of possible fees for sewer and water, storm water, the public safety building and a new library. He noted that at part of his work, Mr. Mayberry would do a side by side comparison with another approach to collect funds for infrastructure improvements that didn't have the constraints that impact fees did. He said the proposal for this work hadn't been received yet.
- He said he was working with the Public Works Department to complete a NH Estuaries grant. He noted that the Town had previously received such a grant for storm water education and the development of a draft storm water ordinance. He provided details on this, and said they were hoping to do further work concerning this. He also noted that the Public Works Department was putting some storm water management related information on its website.
- He said that on September 20<sup>th</sup>, he had attended the Governor's Advisory Committee on intermodal transportation. He said Durham's projects were still in the 10 year plan, but provided details on the funding problems NHDOT was having and the cuts that had been made. He said he suspected there would be further cuts. He noted that members of the public and Strafford Regional Planning Commission had spoken up concerning the shoulder widening project for Route 108. He said NHDOT had moved this project out to 2012, but he had asked that it be moved back to 2008. He said it was hoped that it could at least be moved back to 2010.
- He noted that the CIP had been mailed to Board members, and that they would discuss it with Town Administrator Todd Selig and Business Manager Gail Jablonski that evening.

Mr. Kelley asked who had initiated the proposal from RSG, and where the funding for it was coming from. He also asked if the software was proprietary or off the shelf.

Mr. Campbell provided details on how the proposal had come about. He said the total cost would be \$40,000, and explained that there was approximately \$20,000 from the CIP to pay for Durham's half of this. He said that was just to get the model going, and said there would then be budgeting needed for the model runs, which he said RSG had estimated would cost \$4,200 per run. Mr. Campbell said the software was proprietary, and also said it had to be updated every 3-5 years, which involved additional costs.

Mr. Kelley said UNH was a major traffic generator, and said it was not fair that there was a 50/50 split for the upfront costs or ongoing costs. He said his second concern was the proprietary nature of the software and how that impacted the cost.

In response to another question from Mr. Kelley, Mr. Campbell explained that RSG had been asked to provide more detail and clarity in the proposal, concerning specific pricing for items in it.

Councilor Carroll said she had recently attended an intermodal transportation meeting. She said Durham was well served at the meeting by Mr. Campbell and Mr. Cedarholm, who spoke about important transportation projects for Durham and asked that they not be put off until 2012. She said they also spoke generally about the need for more public transportation and intermodal transportation.

Mr. Roberts said he echoed the concerns expressed about the traffic modeling that was planned, and he provided details on this.

Mr. Campbell said RSG would be running the software, not the University or the Town. He said he understood the concerns that had been expressed by Mr. Kelley and Mr. Roberts.

#### **IV. Public Hearing** on the proposed Excavation Regulations in accordance with Chapter 155-E of the New Hampshire Revised Statutes Annotated.

Mr. Campbell provided some history on the development of these regulations. He said with the Zoning changes, the Table of Uses indicated that excavation and mining uses were not allowed anywhere in Durham. He said the concern was raised at the Town Council that the Town couldn't do this. He said the Council had passed the Zoning changes with the caveat that the Planning Board would do some further work on excavation regulations.

He said Steve Whitman of Jeff Taylor and Associates had been hired to assist with this work, and said he was present to explain the regulations that had been developed.

Mr. Whitman said they were able to start with a clean slate in developing these regulations, because the Town didn't have any such existing regulations on the books. He said regulations had been crafted that followed the guidelines developed by the State on this land use issue. He said language was used that had been found to be effective in other NH communities.

Mr. Roberts noted that the State RSA on regulation of excavations asked NH towns to go

through a specific process in developing local excavation regulations. He asked where Durham was in this process.

Mr. Whitman said the Town was in pretty good shape. He said there were now draft regulations as recommended by the 2000 Master Plan. He noted that an inventory of excavation operations had not yet been done, and said progress was needed in this area.

Mr. Roberts noted that the State suggested that the inventory be done first, and then the regulations could be done.

Mr. Whitman said this wasn't a problem, noting that a lot of towns didn't do things in that particular order. But he said knowing where existing excavation operations in Town were located, and whether they had reclamation plans would be an important next step.

Councilor Needell noted that these regulations would be adopted by the Planning Board, and he received clarification that once this happened, the Table of Uses in the Zoning Ordinance would need to be changed concerning where in Durham excavation operations would be permitted.

Mr. Campbell noted that the Table of Uses would be changed to indicate that excavation operations would be a conditional use in the Rural District.

***Richard Kelley MOVED to open the public hearing on the proposed Excavation Regulations in accordance with Chapter 155-E of the New Hampshire Revised Statutes Annotated. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.***

There were no members of the public who spoke on this issue.

***Councilor Needell MOVED to close the public hearing. Richard Kelley SECONDED the motion, and it PASSED unanimously 6-0.***

Board members recommended some non-substantive, editing changes to the excavation regulations document

Mr. Kelley asked why it said on page 4 that excavation of dimension stone from granite was exempt.

Mr. Whitman explained that this was covered under RSA 12-E. He also said that even though these operations were exempt, they had to follow the other recommendations of 155-E, and if they didn't, they had to file a permit.

Mr. Kelley noted dates in the regulations that indicated that facilities in existence since 1979 would not be required to have a permit. He asked if there were any sites like that in Durham.

Mr. Campbell said there was only one active site in Town now, and said he didn't know how long it had been in operation.

***Richard Kelley MOVED that the Planning Board adopts the Excavation Regulations dated September 2007, as amended this evening. Richard Ozenich SECONDED the motion, and it***

***PASSED unanimously 6-0.***

It was noted that a public hearing would be required, as part of revising the Table of Uses in the Zoning Ordinance, to allow excavation as a conditional use in the Rural District.

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

Mr. Ozenich recused himself.

Mr. Campbell said it was very likely that the Board would need another extension from the applicant. Mr. Caldarola requested another extension.

Rubin Hull, the engineer for the subdivision proposal, spoke before the Board. He said the applicant was looking to get past the remaining questions on the table, which would then allow the completion of the engineering design for the project. He said there were still some comments to be acknowledged or formally acted upon by the Board.

He then reviewed items from Mr. Campbell's September 24, 2007 memo.

**Changes to the Plan**

Mr. Hull spoke about the ecological assessment and priority list of resources on the site that had been developed and then presented to the Conservation Commission and the Planning Board. He said the applicant was told by the Planning Board that the way the resources had been prioritized was generally ok, and was instructed to move ahead based on this prioritization. He said that as result of this, the design for the site had changed somewhat.

He said the two lots on Canney Road that had been designed as smaller lots were replaced by one lot on Canney Road that was fully conforming to the Zoning lot size, etc. requirements. He noted that the lot was on an existing road, so had to meet these requirements, even though this was a conservation subdivision. He said with that change, the seven lots to be accessed off of the private way had been shifted somewhat so that there were now eight single family house lots that would be accessed by the private drive.

He said with the new design, the lot on Canney Road didn't have 40,000 sf of contiguous upland, so 7,000 sf of the primary conservation area was added to it. He said the lot had been laid out so that the bulk of the green area incorporated into it was for roadside drainage, and said they kept away from the vernal pool. He noted that the vernal pool was a physical area that didn't need to be included or excluded from the buildable area, but did need to be respected in terms of setbacks, etc.

Mr. Hull said the layout of eight lots where seven had been, along the private road changed the configuration of these lots in relationship to the somewhat poorly drained soil areas. He noted that the applicant had tried to create a somewhat regular lot line on the back, which went into the somewhat poorly drained soils somewhat. He said 4 areas of somewhat poorly drained soils, totaling approximately 20,000 sf, would be incorporated within the individual lots or the

roadway.

He said for every square foot of primary conservation area to be included in a private lot, there were two square feet of additional non green area to be in the common open space. He noted that the calculations on this were somewhat confusing, and he provided details on this. He said the total common open space that was now proposed for the development was 20,000 sf more than what was required.

He said the mechanism for how this would be done, and the assignment of the common open space, could be dealt with between the applicant and the Board. He said the applicant was looking for concurrence from the Board that the way the lots had been laid out was appropriate, so they could then do the final engineering on the drainage and grading plans.

### **Drainage**

Mr. Hull said the final design layout of the drainage system had not been done, but said the chambered drainage system, to be located between the lots, was still proposed. He said the design approach had been reviewed and approved in concept by the Town Engineer, who felt that this was a desirable approach, and could ultimately be a model for the Town to point to as a way to address storm water at the source.

Mr. Hull provided details on the chambered drainage system. He said subsurface chambers similar to leach beds were proposed to be placed between the lots. He said storm water would be collected in the chambers and would infiltrate back into the ground on site. He said 4 analyses had been done, where a 25 year storm and a 100 year storm were each modeled for peak rate of flow and for total volume, at six different locations on the site.

He described the drainage problems for the surrounding area, and said the proposal had to address volume in order to address the whole drainage picture for this area. He said the volumetric analyses therefore had measured the total amount of water coming on the site and going off the site, for both a 25 year storm and a 100 year storm. He said the applicant had to be able to prove that the water entering the site as a result of a storm could be stopped, retained and put back into the ground before it got to the other properties in the area.

He said there was only one analysis where there was a flaw in the design of a chamber, - at the back of the property near the major wetland area. He said the final chambers that were laid out would be located so that the six analysis points were balanced for flow rate and for total volume. He said at none of these points would the allowable runoff rate be exceeded or would the total volume increase

Mr. Hull said the applicant could say that mitigation of surface runoff would well exceed any requirements in place, mostly driven by the fact that the Town Engineer wanted all this water to go back into the aquifer at this location, rather than sending it elsewhere. But he said the applicant couldn't make a commitment concerning what happened to the water once it got into the ground.

He noted that there had earlier been some discussion about changing the ditch line on Canney Road. He said the conclusion of Mr. Cedarholm was that some major earthwork would be

needed to get some runoff into the culvert. He said the applicant was looking at managing everything on the site, and not doing anything with the roadside drainage.

**Water tests, hydrant flows**

Mr. Hull said Underwood Engineering had done modeling and hydrant tests in this area, and he said the conclusion was that there was nothing in this development that would negatively impact any of those areas. He said a letter concerning this would be sent by Underwood Engineering to the Public Works Department.

**Locus map, ownership stewardship plan**

Mr. Hull said that once the layout had been approved by the Planning Board, these things would be included in the final set of plans.

Mr. Roberts said the neighbors to the back and to the north of this property were subject to periodic flows, but the applicant was saying that the neighbors would see no changes in water flows as a result of this development.

Mr. Hull said the situation would be the same or better as a result of the development. He said the wildcard was what would happen to the groundwater. He described the surface water flows in the area near the Bradley house, and said if any of this was coming from the groundwater itself, there was nothing the applicant could do to mitigate this. He said the applicant was mitigating all of the potential surface runoff from this development, and was putting more recharge into the ground by design than was happening there now. He said it wasn't known what would happen once that water got into the ground. He said he could stand behind the statement that the surface runoff would be no worse as a result of this development.

Mr. Roberts asked if there was a design possibility that would definitely lessen the current overflow.

Mr. Hull said that without a very detailed hydro-geologic analysis of the groundwater under this lot and the other properties, there was no way to know this.

Mr. Roberts noted that earlier in the application process, some Board members had hoped that some of the runoff could be piped off to a collection area.

Mr. Hull said the original design was that the runoff from the road would go to a municipal catch basin, and would be directed down Bagdad Road. But he said the applicant was directed against this approach by the Public Works Department, and was told to put everything back in the ground at the site.

Mr. Roberts said his concern was that what was there now was unacceptable, and said this was a Town issue.

Councilor Needell asked how the setback for the vernal pool would be respected and enforced, and Mr. Hull provided details on this. There was discussion on this.

Councilor Carroll asked for details on the placement of the houses on the lots, relative to the common open space boundary, and there was discussion with Mr. Hull and Mr. Caldarola.

Mr. Caldarola noted that the boxes seen on the plan were simply examples, and were meant to show what a reasonable person might build on the lot that was consistent with the Zoning Ordinance. He noted that this wasn't a site plan, with precise building envelopes. He said that for the center lots, someone wouldn't build right against the wetland setback, and he provided details on this.

Regarding the somewhat poorly drained soils issue, he noted how the reconfiguration of the lots from seven to eight had changed the impact on this area somewhat. He provided details on the individual lots that were designed, and what the thinking had been concerning them. He said they were trying to do a minimal amount of trading of land, and still have good, buildable lots. He said the somewhat poorly drained soils in and of themselves were not one of the best assets of the site, so it seemed reasonable, in the context of substituting twice as much open space, for them to do this.

Mr. Lewis said he had concerns about the existing homes, with the existing drainage problems. He asked who was responsible for addressing this.

Mr. Campbell said he didn't think it was just the Town that was responsible to fix the problem. He said there were things the Town could do, but said he didn't think they would be done in association with this project.

Mr. Lewis asked if the Town should look into this problem, or if it was outside of the Town's responsibility, and Mr. Campbell said he didn't have the answer to that question.

Chair McGowan asked if there were any members of the public who wished to speak for or against the application.

**Jeff Lombard, 48 Edgewood Road** said he abutted the Fitts Farm property. He said a pond on his property was now a swamp, as a result of that development, and also said he had had a sub-dividable lot, whose value was diminishing. He said it was incumbent upon Town officials to be very clear and precise with regard to situations where existing homeowners abutted new developments. He said it was not fair that the abutting homeowner in this instance, who had lived there for several years, would potentially experience more runoff and drainage problems as a result of this development. He said in the spirit of community, it was imperative that the existing property owner get the opportunity to resolve the potential hazard before the Board granted approval for the proposed development. .

**Pam Bradley, 4 Ambler Way**, thanked Mr. Lombard for his comments. She said she didn't understand how someone could plan to build something and say he didn't know what would happen with the groundwater. She said she needed some assurance that something would happen in her favor. She asked if there was anyone who could address this problem.

Chair McGowan said this was an existing condition that would continue to exist unless the Town did something. He said he had heard the applicant state that this development would not add additional water to this site, and that it might even decrease. He said if the applicant had



never come forward, the flooding situation would still exist unless there was something Ms. Bradley could work out with the Town to change this. He said he was not sure the Planning Board was in a position to have the applicant do something, and was not sure the applicant was in a position to do something.

Mr. Lombard said he had sump pumps for his house now, when he had never needed them before, and he spoke again about how his pond had become a swamp. He asked the Board to make sure that whatever was developed on this property mitigated any doubt as to whether existing, contiguous homeowners would be negatively impacted. He asked what the Planning Board was going to do to help this woman.

Councilor Needell said the developer was making representations that the drainage plan would perform in some way. He asked who determined whether the plan met certain standards, and what recourse the abutters would have if the standards weren't met. He asked if perhaps the Board needed to include conditions concerning this.

Mr. Campbell said that in addition to conditions, there could also be wording in the declarations, and homeowner association documents, that the drainage chamber systems had to be maintained, etc. He said it was their responsibility to address the problems, and said the Town would monitor this with NHDES.

Councilor Needell asked whether, if an abutter was affected in some way by a failure of the system, he/she would have legal recourse, and Mr. Campbell said yes.

Councilor Needell said in other words, there was a mechanism where the homeowner could be forced to comply with the conditions.

Chair McGowan said he was also hearing the question as to whether there was anything the Board could do in terms of having the applicant improve the existing drainage conditions in the area.

Councilor Needell said no one really knew what impact the injection of water into the ground would have, and whether it would make the existing drainage situation better or worse. He said it wasn't a given that injecting the water would make things better or worse, but he said if it did get worse, this would have been caused by the development, even though the intention wasn't to do this. He asked what the Board could do to address this kind of situation, and if it couldn't do anything, what the abutters' recourse was.

Chair McGowan said a question was where the water was coming from now, and what could be done to make sure that it went someplace else.

Mr. Roberts said he was disappointed with the Town Engineer's response concerning this issue, and he provided details on this. He said there had been a good discussion with the developer early on concerning possibly doing something about this issue. He said the Board needed support to get some defense from the Town Engineer as to why there couldn't be a joint venture.

Mr. Kelley said what the Board had asked the Town Engineer to address was not addressed. He said the Board had also asked that Mr. Cedarholm be present at the meeting, and said he still felt

he should be there. He said the present drainage design seemed to be driven somewhat by the Town Engineer and his preference for this site.

Chair McGowan noted that the Town Administrator was present, and could pass this discussion on to Mr. Cedarholm.

**Robin Mower, Faculty Road**, said she had personal experience with drainage impacts to her property as a result of activities on an abutting property. She suggested that the Board should request that a hydrological study be conducted to find out what happened to the water that would go into the ground on the applicant's property. She said they couldn't just have faith in the engineering that was proposed, and said more information was needed. She also said it was her understanding that the Board could require bonding for mitigation of the results of the development. She requested that the Board include something like this in the conditions.

Ms. Mower asked how far a building on a lot in this development would be from the open space, and Mr. Caldarola said 25 ft. Ms. Mower then said she would like to request again that the management plan for the open space be a separate document from the homeowners' association documents.

She then read a letter from David Frankfurter, which spoke in detail about problems at another property owned by Mr. Caldarola in Durham., where the development projects there had not been completed. Ms. Mower said that at a meeting of the Mill Plaza Study Committee, a member of the community had spoken about the area of Town Mr. Frankfurter had referred to. She asked if the Planning Board could use its influence to encourage the completion of the previous unfinished projects as part of the approval of this project, as a way of respecting homeowners who were already paying taxes.

Mr. Kelley said the applicant has asked the Board to decide if the layout of the lots was ok. He said he thought the Board should give him an answer that evening, one way or another.

Ms. Mower said she wondered how the drainage chambers would work in the somewhat poorly drained soils as compared to other soils that were less vulnerable.

Chair McGowan noted there was one lot that had substantial acreage in it that was somewhat poorly drained soils, and asked if the Board needed to say this was ok.

Mr. Campbell said this was part of the waiver the Board had to decide on. He said the Board would have to grant that waiver in order to provide the input the applicant needed.

Mr. Kelley said when the applicant came in with the resource prioritization, the Board had taken some time looking at that. He said the overall boundaries of the open space and the private residential lots hadn't changed significantly, and said he could therefore support the waiver request.

Councilor Needell said the applicant had made a compelling argument as to why the swapping was reasonable, given the resource allocation, and said he didn't have a problem with it. But he said he was not ready to grant a waiver yet. He said he was willing to say in principal that things could move forward, but said he wanted to resolve some of the issues about drainage questions. He said he wasn't sure whether, if there wasn't agreement on this issue, the Board would want

this waiver in place.

Mr. Roberts said he wasn't sure that this was not a premature development. He spoke in details about this, and questioned whether anything should be done on this site unless the drainage was repaired. He said he had been out in that area on two occasions when there was flooding, and said it was just awful.

Mr. Campbell asked Board members what additional things they would like to hear from Mr. Cedarholm on this issue, other than what he had said in his letter.

Mr. Kelley said there previously had been discussion about re-routing the flow of water that crossed Bagdad and Canney Roads, and went down Canney Road to a culvert that then flowed to the west. He said the answer to this idea that the Board had gotten back from Mr. Cedarholm was that the Town didn't have a drainage easement to accomplish that.

He said the chances were that it was the same stormwater running off Bagdad and Canney and through the project site and onto Mrs. Bradley's property, and the Town didn't have an easement across her land either. He said Mr. Cedarholm's argument therefore didn't fly with him. He also said the current plan called for recharging the aquifer where no aquifer existed. He noted as well that there was some high ledge on the site, and that it would be very expensive to map the groundwater in this area.

Mr. Campbell agreed that a hydro-geological assessment could be done, but it would be very expensive.

Mr. Kelley said his experience was that a high groundwater table along with certain soil conditions led to poorly drained and somewhat poorly drained soils. He noted that the applicant had gone off site and mapped the Bradley land, and there were poorly drained soils there. He said it was reasonable to assume that the groundwater was moving in the same direction as the surface water, without doing a major hydro-geological study. He said the Town engineer had to answer those very pertinent questions.

He said the Board had heard from Mr. Hull that the overland flow would not increase as a result of this development. He said he had more concerns about the groundwater, especially because the drainage system would be putting water into the ground. He said he loved the idea, but said it might be a bad location to do this.

Councilor Carroll said the placement of one of the lots did bother her, because at least 50% of the soils on this lot were somewhat poorly drained. She said that what this said about this property was that while the Zoning Ordinance allowed this number of houses, the site conditions didn't lend themselves to 9 houses.

She also said there were a number of other things that had come up that evening that the Board would have to talk about. She said they should talk about what this property would look like if half the houses were built and Mr. Caldarola then had to stop building. She said she didn't want the property to look like the property on Edgewood Road that had been described.

Mr. Kelley said that perhaps with phasing, lots could be cleared as they were developed. He

noted that when trees were cleared, this raised the groundwater. He said he agreed with Councilor Needell that a waiver motion might be premature, but said that in concept, he could support the proposed lot layout, resource areas, and open space, as delineated on the plan dated Sept 21<sup>st</sup>, 2007.

Mr. Campbell said the Board wouldn't decide on this that evening. He said if the developer got the sense that the plan was ok, he should move forward with one plan, and the Board would go from there.

Chair McGowan said that the layout hadn't changed that much.

Mr. Campbell said the question he had had with the new plan was the two sections of somewhat poorly drained soils that were now included in the lots. He said the Board had gotten an explanation concerning this.

***Richard Kelley MOVED to continue to October 10, 2007 the public hearing on a Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire, for subdivision of one lot into 9 lots, for the property shown on Tax Map 10, Lot 7-0, and located at the corner of Bagdad road and Canney Road in the Residential B Zoning District. Councilor Needell SECONDED the motion, and it PASSED unanimously 6-0.***

Recess from 8:58-9:12 pm

- VI. **Acceptance Consideration on application for Subdivision** submitted by James I. & Kathleen R. Adams, Durham, New Hampshire to subdivide one lot into two lots. The property involved is shown on ax Map 20, Lot 8-1, is located at 401 Bay Road, and is in the Residence C Zoning District.

Chair McGowan said there was a letter from the applicant's engineer requesting a continuance to the October meeting.

***Richard Kelley MOVED to continue to October 10, 2007 the Subdivision Application submitted by James I. & Kathleen R. Adams, Durham, New Hampshire to subdivide one lot into two lots at the property shown on Tax Map 20, Lot 8-1, located at 401 Bay Road in the Residence C Zoning District. Steve Roberts SECONDED the motion, and it PASSED unanimously 6-0.***

- VII. **Acceptance Consideration on an Application for Conditional Use Permit** submitted by James I. & Kathleen R. Adams, Durham, New Hampshire to subdivide one lot into two lots. The property is shown on Tax Map 20, Lot 8-1, and is located at 401 Bay Road in the Residence C Zoning District

***Richard Kelley MOVED to continue to October 10, 2007 the application for Conditional Use Permit submitted by James I. & Kathleen R. Adams, Durham, New Hampshire to subdivide one lot into two lots at the property shown on Tax Map 20, Lot 8-1, located at 401 Bay Road in the Residence C Zoning District. Steve Roberts SECONDED the motion, and it PASSED unanimously 6-0.***

- VIII. **Conceptual Consultation** submitted by CWC Properties, Durham, New Hampshire, to build an addition onto an existing commercial building. The property involved is shown on am Ma 4, Lot 12-0, is located at 9-11 Madbury Road and is in the Central Business District.

Mr. Kelley received clarification that there would be a site plan application for this project.

Mr. Campbell explained that Mr. Johnson wouldn't grant the building permit for any commercial activity that hadn't gone before the Planning Board.

Charles LaFrenier of LaFrenier Eye Care, 13 Jenkins Court spoke before the Board, He said he and Wesley Merritt of Merritt Chiropractic owned the building that was located at the corner of Madbury Road and Pettee Brook Lane. He said that currently there were three commercial businesses in the building, Stats Place, Scorpio's Provisions, and the New Do Hair Salon. The applicants showed a video of the site location.

Mr. LaFrenier said they had some initial elevation drawings to show the Board. He said they were proposing to develop 7 two bedroom, and 2 one bedroom apartments. He said these apartments would be added to the top of Stats Restaurant, with two 2 bedroom apartments on both the second and third floors.

He said that behind the building, they also wanted to add three more floors, and said all three floors would have a one bedroom and a two bedroom apartment. First floor, second floor and third floor would each have a one bedroom apt and a two bedroom apartment. He said that from Madbury Road, the footprint would be the same. He said they would like feedback from the Board and guidance as to how to proceed with these proposed plans.

Mr. Kelley said the drawings for the proposed development looked sharp. He also advised that the applicants should have a strong lease, for their benefit, the Town's benefit and the leaseholders' benefit. Concerning parking, he said if the intent was not to allow residential parking on site and just have it for businesses, this should be in the lease language.

Mr. Campbell provided details on the parking situation. He said they would need to keep the spaces they had now, and said any that weren't provided about that, the owners would have to pay the Town for. He said the Ordinance required the parking for the residences, and not for the businesses, stating that this wasn't logical, but was the way it was written. He noted that the Board was looking to change this, but said he didn't know when the change would be made.

There was discussion that a variance would be needed for parking, since this was a permitted use. There was discussion that the applicants would also need a variance to allow residential on the first floor. Mr. Campbell noted a proposed Zoning change that would be coming forward, which would allow residences on the first floor that were not facing the street.

Councilor Carroll acknowledged a comment made by the applicants concerning limiting parking, and she said it was logical thinking that there were students who would like to live off campus who didn't need to have a car on site for various reasons. She said she thought the Planning Board had simply not had the time to deal with the parking issue, but was trying to see less parking for residential development. She said she had heard it said that UNH caused transportation problems, and here was a development that would help UNH, but would not

cause parking problems. She said the Town needed more developers like this to step forward and provide housing for students who didn't need cars..

The applicant said the proximity to campus allowed easy pedestrian access.

Mr. Campbell said for the downtown area, this was probably a good thing, but he noted that with the Rivers Edge apartment development that had recently been approved, having enough parking was a legitimate concern for public safety reasons.

Councilor Carroll noted the Strafford Ave. development that had recently been approved, and said she personally would have loved to have seen fewer parking spaces, with less disturbed land there.

Councilor Needell said there would be no change in the commercial use here, and asked if the property was currently in compliance with parking regulations for commercial uses. He received confirmation that it was, and that there was currently adequate parking for these commercial uses. He asked if there was any left over parking space, and there was discussion on the requirements for residential parking.

Councilor Needell said the applicants could go for a variance, and also asked whether, if they designated parking there for residents, they could they pay their way around the requirement for commercial spaces by buying permit spaces.

Mr. Campbell said they could do that, and he provided details on this. He said his sense was that the applicants would fall short of the amount of residential parking needed, and if this was the case, a variance would be needed. There was further discussion about this.

Mr. Campbell noted that at the October 10<sup>th</sup> meeting, the Planning Board would be reviewing new parking regulations, which would eliminate all parking requirements in the downtown area.

There was discussion about the fact that there might be this change in the Zoning Ordinance, and about how that might fit with this application.

Mr. Kelley noted that the building footprint did encroach into the AE Flood zone, which would have to be addressed.

The applicant said the first floor didn't encroach into that zone, although the second and third floors did extend into it. He said that was why there was only one apartment planned for the first floor, to avoid that area.

Mr. Kelley said he assumed that the base flood was well under that second floor elevation.

Councilor Needell received confirmation that this was a remodeling of an existing building.

Mr. LaFrenier said the front of the existing building would be updated. He said the footprint would remain the same.

Mr. Ozenich asked what the height would be, and the applicant said it would be three stories.

Mr. Campbell noted 50 ft was allowed with Planning Board approval, and the applicant said the architect had addressed this issue with the preliminary drawings.

Mr. Kelley asked if there would be a false roof line, and the applicant said they hadn't gotten to that yet. But he said it would be a pitched roof.

Mr. Roberts asked if the building would be commensurate with adjacent buildings in terms of height, and the applicant said yes, noting that the buildings across the street were higher.

Councilor Carroll said a concern of the Planning Board was property management. She said this site was smaller than some, but said the Board would like to see a management plan for it.

The applicants said when the building was completed, it would be determined if they could manage the property themselves or hire a firm to take care of this. They noted that some of the businesses on the first floor were open late, which was an additional layer of management for the property.

Mr. Kelley said with the flood zone, and the required setbacks from Pettee Brook, a wetland line associated with this would need to be delineated.

Mr. Campbell said the applicants should check with Mr. Johnson on the ADA requirements regarding parking and other structural issues for the building.

Councilor Needell asked if sprinkling was required.

Mr. Campbell said yes, and said the applicants would work with the Fire Department on this.

Mr. Kelley recommended that the applicants start early on their water and sewer permits.

Mr. Campbell said the applicants would be having discussion with the Town departments on various issues. He said they would then go over the formal plan with him, and it would then be determined whether they would need variances, etc. He noted that the applicants could come back to do design review, although this was not required.

**IX. Presentation of CIP 2008-2017 by Town Administrator Todd Selig and Business Manager Gail Jablonski**

Administrator Selig spoke before the board. He noted that the Town Charter mandated that the Town Administrator meet annually with the Planning Board to get input as part of the CIP process. He said it was important to get feedback, from the Planning Board, which was charged with looking at the long range future of the community.

Mr. Roberts said he would like Administrator Selig to give a synopsis of the most important areas in the CIP, and not necessarily those that would cost the most money.

Administrator Selig noted that what was provided in the draft CIP was what the various departments had requested. He said what he would explain now was based strictly on his own

thinking about the CIP. He said there were three categories of projects he looked at:

- ongoing operational issues, for example, replacement of Police department cruisers.
- longer term infrastructure issues, such as the Library, Town Hall, water and wastewater infrastructure improvements, where there was some flexibility as to when they would be implemented.
- projects that people in Town wanted, to enhance the community, but which were much less of a priority, such as improvements to Old Landing.

Administrator Selig said the big ticket item he would like to focus on was a new library. He said there was enough demand at this point to warrant providing it, and said he would like to get this project moving. He noted that the Mill Plaza analysis included consideration of a new library, and said it was hoped that development there could help offset the cost of the library. He also noted that Marjorie Milne had left a bequest to the library, which would help.

He said beyond that project, he would have to go through the different department requests to indicate those he thought were most important.

Mr. Campbell said it was important for the Board to keep the Master Plan in mind in this discussion.

There was discussion about the fact that in most communities, the Planning Board developed the CIP, but that in Durham, the Town Charter dictated a different process.

Mr. Roberts asked Administrator Selig if he had seen any change in the income the Town received.

Administrator Selig said total assessed valuation was about \$800 million. He said that in the short term, the Town was likely to see some modest additional contributions from UNH to offset policing costs. He said it was important to look at addressing the tax situation through a variety of efforts, such as keeping the approved Budget as lean as possible, and by being innovative. He noted as an example of this the transitioning of dispatch services to the County facility.

He also said that broadening the tax base was important, and said the Town was currently seeing a lot of movement in that area. He said there had been the perception that Durham was unfriendly to development, and said there had now been a tidal change concerning this. He said the Town was now seeing a large number of developers coming forward with ideas and proposals to develop their properties, including the following:

- Chinburg Builders and the Durham Business Park
- The TIF for Stone Quarry Drive
- The Mill Plaza redevelopment
- Interest in development off of Mast Road

Administrator Selig said there wasn't a lot of growth right now, and said he wasn't sure there would be a major increase in the tax base next year either. He said it would take time to bring the various projects to fruition. He said in the mean time, efforts were moving forward to work with the University to increase fairness in the sharing of costs, and to work with the Oyster River School district concerning the School Budget and the funding formula. He said the Town Council was focusing especially on the funding formula issue.



Mr. Roberts asked if the increase in assessment that was anticipated as a result of development projects was included in the CIP, and Administrator Selig provided details on this.

Chair McGowan suggested that it would be a good idea to dedicate a Planning Board meeting to discussing the CIP in detail, and Administrator Selig said he would be pleased to accommodate this.

Mr. Kelley agreed this would be a good idea, but said he would also like to go through some of the CIP at the present meeting.

Councilor Needell noted that there were some things in the CIP that were included every year, and that leaving them in wouldn't cause an increase in the Budget. There was discussion on this.

### Library

Administrator Selig said he had been meeting with the Library Board of Trustees. He said they didn't have a definite site yet, but did know what size library they wanted, and what it should include. He said it was still an outstanding issue as to whether it would be a stand alone or combined library/Town Hall facility. He noted that his own preference was that it be a combined facility, because from an operational perspective, this would be less expensive.

He said the Trustees had decided that Mill Plaza was their preferred site, and he said if this project did move forward, there would be a place there for a library. He said if this project stalled, they would have to reevaluate the situation.

There was discussion on funding for the new library. Mr. Kelley noted that the CIP didn't show Town funding until 2010, and said he was fine with this. He said he wouldn't want the Town to commit funds until more was known about the details.

Administrator Selig said he was at the point where he would really like to see something happen on this, and said he wanted to be as supportive as possible of the Trustees in order to facilitate the process.

Mr. Kelley noted that there would be a convergence of some large capital investment purchases in the years 2009-2011.

In answer to a question from Chair McGowan, Administrator Selig said they could survive at Town Hall, but said it was placed in that time frame to coordinate with the development of the new library. He explained that he was not supportive of making improvements to the Town Hall unless he was confident that they would be staying there for a substantial amount of time.

Councilor Needell said the Mill Plaza Committee would be making a recommendation around the end of the year. He said if the recommendation was to put the Library there, it would be up to the Trustees as to whether the timeframe in the CIP for the Library was appropriate, and whether their money in it would actually be spent.

### New Fire Station

There was discussion on the time frame for this. It was noted that the location for a new facility had not been chosen yet. Mr. Campbell said he and Chief O'Leary had been looking at potential sites, noting that one of them was a University property off of Garrison Ave., which was listed in both the UNH and Town Master Plans.

Administrator Selig said when the Town had renegotiated with the University on fire protection services, part of the discussion centered on the facility. He said he felt it was well worth it to pay a bit more and stay at the existing location. He said he felt the fire station item was one that could be moved in the CIP to suit the Town's fiscal needs. He said if the Town didn't have the funds, this could be pushed out until it could afford it, or until the University gave the Town notice that it would need the facility for other purposes, as of 2009. He provided details on this. He said that in the meantime, Mr. Campbell, University Planner Doug Bencks and Chief O'Leary needed to find a site for a new Fire Station and make sure nothing else was built there. But he said the present building met the Town's basic needs, and was sufficient, given the fact that he was very focused on the tax rate.

Councilor Carroll noted that the University Master Plan called for College Road to be closed, and pedestrian only. She said she wasn't sure what the time frame on this was, but said it might impact the idea of new fire station.

In answer to a question from Councilor Needell, Administrator Selig said it would be good to get the fire station off the UNH campus, so that it would be more visible in Town and wouldn't look like it primarily serviced UNH. He said it would be good to have it in the downtown area, but he said this had been cost prohibitive. He said another possibility was that if it could definitely be shown that a new building would somehow cost less or the same as the existing site, it would make sense to move ahead sooner rather than later. But he said no analysis had been done on this yet. He said if there was the chance to acquire a property for the Town in order to reserve a site, he would love to do that. But he said this hadn't been the priority.

Mr. Kelley said the CIP said a Town Hall of 14,000 sf would be needed. He noted that the cost estimate had been based on 13,000 sf, and asked why.

Administrator Selig said he would have to look into this.

Mr. Kelley asked how many square feet the present Town Hall had.

Public Works Director Mike Lynch said the Town Hall had 6,800 sf, and Administrator Selig noted that there was a lot of attractive but non-functional space in this building. Mr. Lynch explained that the Town needed a significant improvement in storage capabilities for various Town records, and said it was thought that the basement of a new Town Hall would be good place for this storage.

Administrator Selig said that if the Town Hall continued to be used over a longer period, a storage facility would need to be put in place in the parking lot.

There was detailed discussion on the issue of centralization of records, and interconnections

between Town department, and that this was an issue in relation to where new Town buildings would be located.

Mr. Kelley asked Administrator Selig how important he felt investing in this was now, and Administrator Selig said he was inclined to rent lines rather than make this kind of investment right now.

Chair McGowan said the rest of the CIP would be discussed at the special meeting that had been scheduled for October 3<sup>rd</sup>.

There was discussion that it would be helpful if Board members provided some of their questions and comments, by email to Mr. Campbell.

X. **Discussion on Changes to Subdivision Regulations and to the Planning Board Rules of Procedure**

Subdivision Regulations

The Board developed the following recommended changes to the Subdivision Regulations:

Under **5.02, Pre-application Review Phases, A. Phase 1- Preliminary Conceptual Consultation**, the Board recommended that the following sentence be inserted as the second sentence under 1). “In addition, the applicant is encouraged to seek input from the Conservation Commission at this time, especially with regards to the secondary open space to be provided as part of the application.”

Under **5.02, Pre-application Review Phases, B. Phase 2- Preliminary Design Review**, the Board recommended that the following sentence be inserted as the third sentence under 3) “In addition, the applicant shall meet with the Conservation Commission to discuss the secondary open space prior to submission of a Phase 2 application to the Planning Board.”

Under **Section 7: Submission Requirements**, the Board recommended that for applications that were not exempt from the Conservation Subdivision ordinance, or needed a conditional use permit per section 175-61 of the Wetland Conservation Overlay District or Section 175-72 of the Shoreland Protection Overlay District, the applicant would need to provide 27 copies of the application, 9 of which would go to members of the Conservation Commission. It was also agreed that other references to number of copies in Section 7 would be removed.

Under **9.01, Sewage Disposal, of Section 9 on Design Standards**, the Board recommended that a second sentence should be added: “Evidence shall be provided to the Planning Board that the applicant has secured, or has begun the process of securing, the sewer permits necessary for the application.”

Under **9.02, Water Supply Systems, of Section 9 on Design Standards**, the Board recommended that a second sentence should be added: “Evidence shall be provided to the Planning Board that the applicant has secured, or has begun the process of securing, the water permits necessary for the application.”

### Rules of Procedure

Under **IV. Application/Decisions, A.2**, the Board recommended the addition of a third sentence: “ All submissions, including those from the applicants, abutters, and the general public, must be received by the Department of Planning and Community Development by noon on Friday before the next Planning Board meeting in order for the information to be included in the Planning Board packet. Anything submitted after that time will be placed in an envelope to be given to the Planning Board the day of the meeting. The Planning Board members may, or may not, read the information the day of the meeting.”

Under **IV. Application/Decisions, A.3**, the Board recommended that a third sentence be added” “However, if the subdivision is a Conservation Subdivision, a site walk shall be performed before the Design Review phase (Phase 2) of the application.” The Board said the rest of this section should read “Site walks are considered meetings of the Board and an agenda must be posted and minutes maintained. Members of the public are welcome to attend, but may only be heard at the discretion of the Board. In addition the Conservation Commission will be notified of the site walk and is encouraged to attend.”

The Board recommended that Under **IV. Applications/Decisions**, there should be an **A.7**. Section that said “The Planning Board shall not waive the preliminary phases, Phase I Conceptual Consultation and Phase II Design Review, for any subdivision not given an exemption from the Conservation Subdivision Ordinance.”

Under **IV. Application/Decisions, C. Public Hearing**, the Board recommended that 7.c. should read “Persons who have concerns about the application or those speaking in opposition to the application...”

Under **IV. Application/Decisions, D. Deliberations**, the Board recommended the following wording “Deliberations are for discussions among the Planning Board members only. Deliberations will not begin until the public hearing is closed. At the discretion of the Chair, the Board may ask questions of the applicant, or others, for clarification on items of discussion.”

Under **VI. Amendments**, the Board recommended the following wording: These Rules of Procedure may be amended by a majority vote of the members of the Board provided that a public hearing is held on the amendment prior to the vote adopting the amendment.”

Mr. Ozenich left the meeting at 11:18 pm.

***Richard Kelley MOVED to have a public hearing on the propose changes to the Subdivision Regulations and Planning Board Rules of Procedure on October 10, 2007. Councilor Needell SECONDED the motion, and it PASSED unanimously 5-0.***

## **XI. Other Business**

- A. Old Business:
- B. New Business: Request for Technical Review for changes to Site Plan for Emery Farm.

There was discussion on the proposed minor changes to the site plan. It was noted that there

would be no encroachment into the wetland area.

***Richard Kelley MOVED to deny the Request for Technical Review for changes to the Site Plan for Emery Farm, and to have Code Administrator/Enforcement Officer Tom Johnson coordinate the proposed changes, in conformance with Note #19 on the approve site plan. Steve Roberts SECONDED the motion, and it PASSED unanimously 5-0.***

**XII. Approval of Minutes –**

August 8, 2007

Postponed

August 22, 2007

Postponed

**IX. Adjournment**

***Richard Kelley MOVED to adjourn the meeting. Steve Roberts SECONDED the motion, and it PASSED unanimously 5-0.***

Adjournment at 11:41 pm

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Susan Fuller, Secretary