

**These minutes were approved at the February 13, 2008 meeting.**

**DURHAM PLANNING BOARD  
WEDNESDAY, JANUARY 9, 2008  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 P.M.**

**REGULAR MEMBERS PRESENT:** Vice Chair Lorne Parnell; Secretary Susan Fuller; Steve Roberts; Richard Kelley; Richard Ozenich

**ALTERNATES PRESENT:** Doug Greene, Councilor Diana Carroll; Wayne Lewis

**MEMBERS ABSENT:** Chair Bill McGowan; Councilor Jerry Needell; Annmarie Harris

**I. Call to Order**

Mr. Parnell served as acting Chair, because of Mr. McGowan's absence. He appointed Mr. Lewis to serve as a voting member in place of Mr. McGowan, and appointed Councilor Carroll to be a voting member in place of Councilor Needell.

**II. Approval of Agenda**

*Richard Kelley MOVED to approve the Agenda. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.*

**III. Report of the Planner**

- Mr. Campbell first reviewed materials received by the Board after the meeting packet had been sent out.
- He updated on the Board on the first meeting held by the Traffic Model Working Group.
- He noted that there had been some tweaking of the Draft Stormwater Ordinance, and said his plan was to bring this back to the Board under New Business at the quarterly planning meeting on February 22<sup>nd</sup>.
- Mr. Campbell said no new applications had been received for the January 23<sup>rd</sup> meeting. He said the Caldarola conservation subdivision, as well as the design review for the Park Court property had been continued to that meeting.

**IV. 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.

*Richard Kelley MOVED to continue the public hearing on a Conservation*

***Subdivision Application submitted by Joseph Caldarola, Portsmouth, New Hampshire for subdivision of one lot into 9 lots until January 23, 2008, at the request of the applicant. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

- V. **Continued Public Hearing on an Application for Site Plan Review** submitted by Thomas Christie, Slania Enterprises, Durham, New Hampshire, to build a mixed-use, three-story building with three units and commercial space. The property involved is shown on Tax Map 4, Lots 9-0, is located at 12 Jenkins Court, and is in the Central Business Zoning District.

***Richard Kelley MOVED to continue the public hearing on an Application for Site Plan Review submitted by Thomas Christie, Slania Enterprises, Durham, New Hampshire, to build a mixed-use, three-story building with three units and commercial space. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Christie said when he had last faced the Board, he had the challenge of dealing with the drainage issue. He said he was able to reach agreement with Town Engineer Dave Cedarholm and Mr. Campbell on appropriate wording in the Conditions of Approval concerning the expected design of the stormwater drainage system.

He read this language, and said now that he had a specific target, his engineer had assured him that this was attainable. He said that hopefully, he could describe generally what the system would consist of that would fit within the required parameters, and the system would then be approved by Mr. Cedarholm. He explained that he was no longer concerned about these parameters possibly changing. Mr. Christie then provided some details on the stormwater system that would be used on the site.

Mr. Kelley asked if what was proposed was to go back to the previous design that had been described.

Mr. Christie said yes. He said this would be delineated based on the existing information in the site plan dated October 24, 2007, concerning the size of the building, etc.

Mr. Kelley determined that Mr. Christie hoped that the Board would vote to approve that plan at the present meeting.

Mr. Christie noted that he had looked into any previous covenants/restrictions applied to his property, and he provided details on this.

Chair Parnell asked if any members of the public wished to speak in favor of or against the application. There was no response.

***Richard Kelley MOVED to close the public hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

It was agreed that the Board would deliberate on the application that evening. Mr. Campbell then reviewed changes to the draft Findings of Fact and Conditions of Approval, concerning the drainage plan/details and analysis, the posting of a \$5,000 financial surety for the drainage and landscaping work, and a maintenance guarantee.

Mr. Kelley noted that additional materials that had been presented, - the easement deed, correspondence from Mr. Christie to the Town on February 10, 1999, and the memo from the Town Engineer, should be included in the Findings of Fact.

He also said that regarding Condition of Approval #2, which addressed the storm water drainage plan/details and analysis, there should be wording that stated "...to the approval of the Town Engineer." He noted that the Board might not see this plan again, and wouldn't have the chance to review the drainage calculations. He said he was fine with the idea of giving Mr. Cedarholm oversight, but said he would like to see that language included.

He said he suspected Mr. Christie's engineer would have to tweak the stormwater analysis at this point. He then asked what the \$5,000 surety was based on, and Mr. Campbell said it was based on the cost of drainage and landscape improvements.

There was discussion on this, and also on the condition that there would be a maintenance guarantee required of the applicant. Mr. Kelley said given the relatively small amount of money that would be involved with a maintenance guarantee, and the fact that it was a bureaucratic headache, he could support the removal of that condition.

Councilor Carroll noted that for some past applications involving residential units, the conditions of approval had included something concerning a management plan for those units. She asked if something like this needed to be put in for this application.

Mr. Campbell said those applications Councilor Carroll had referred to were conditional uses, which allowed the Board to impose those kinds of conditions. But he said this application involved a permitted use.

Councilor Carroll asked if Mr. Johnson needed to review the application at this point, and Mr. Campbell said Mr. Johnson had had a chance to see it.

There was discussion about the issue of waiving the impact fee for this application. Mr. Ozenich noted the idea of doing a census periodically to see if there would still be no school age children living there in the future.

Mr. Roberts said he disagreed with this idea, saying it exceeded the Board's grasp, especially given the scale of the development that was proposed.

Mr. Ozenich said if the Board was waiving the impact fee because no school children were expected to live there, how could it be known over time that this wouldn't change.

There was discussion on how this had been handled for some previous applications. Mr. Christie said he agreed to include a condition concerning this.

Mr. Kelley said he disagreed with Mr. Ozenich, stating that he felt the burden should be placed on the honesty of the building manager or owner.

There was further discussion on this.

Mr. Kelley noted the character of the proposed development, and said he would be surprised if school age children were seen living there. He said this was a different situation than existed at a place like Fitts Farm.

Chair Parnell noted that this application didn't involve an age restricted development. He said although the applicant was asking for a waiver, he could rent to anyone he wanted to.

There was discussion on the wording that would be included in the Conditions of Approval concerning waiver of the impact fee.

After further discussion on whether to include the maintenance guarantee requirement in the Conditions of Approval, it was agreed that it could be taken out.

## **FINDINGS OF FACT**

1. The applicant submitted an Application for Site Plan Review on October 24, 2007.
2. The applicant submitted a deed for the property on October 24, 2007
3. The applicant submitted a Drainage Analysis on October 24, 2007
4. The applicant submitted on October 24, 2007, a Site Plan entitled "Site Plan" prepared by Farwell Engineering Services LLC, Lee, New Hampshire, dated October 24, 2007
5. The applicant submitted a letter of intent on October 24, 2007.
6. The applicant submitted a Landscape Plan on October 25, 2007.
7. The applicant submitted an engineering study on October 26, 2007 prepared by Underwood Engineers, Inc., Portsmouth, New Hampshire.
8. Durham Police Chief, Dave Kurz, submitted a memo of comments on the application on October 31, 2007.
9. A Public Hearing was held on November 14, 2007, December 12, 2007, and continued to January 9, 2008. No members of the public were present to speak to the application.
10. Town Engineer, David Cedarholm, submitted a memo regarding drainage on December 14, 2007.
11. A copy of the February 10, 1999, Memorandum of Agreement on Pettee Brook Sidewalk and of the August 16, 1999, Easement Deed was submitted on January 9, 2008.

## **WAIVERS**

- The applicant has requested a waiver from Section 175-54 of the Zoning Ordinance to exceed the 30 foot height limit. The building is not to exceed 35 feet in height.
- The applicant has requested waivers from the Site Plan Regulations, Sections 7.02(D)(4)(d) Proposed Contours, 7.02(D)(4)(i) On-Site Parking and Loading shown on Plan, and 7.02(D)(4)(q) Location of Wells or Leachfields within 150 feet.
- The applicant has requested a waiver from Chapter 75 of the Town Code regarding the School Impact Fee.

The Planning Board has reviewed the requests and hereby approves all the waivers.

**CONDITIONS OF APPROVAL - to be met prior to the Signature of Approval on the Site Plan**

1. The applicant shall supply one mylar and one paper copy of the Site Plan for signature by the Planning Board Chair.
2. All plans must be stamped by the appropriate professionals. In addition, the applicant shall submit for approval to the Public Works Department, a drainage plan/details and analysis prepared by a NH licensed engineer, to balance pre and post development flows to 2% of the 2, 10, and 25 year events.
3. The applicant shall post an acceptable financial surety prior to the signature of the final Site Plan that is approved by the Planning Board. The financial surety shall be in an amount sufficient to ensure the completion of drainage, landscaping and/or any other improvements required by the Town. The financial surety shall be effective until the issuance of all certificate of occupancies needed for the property. The financial surety shall be approved by the Town as to the form and type. The Town will accept cash, pass book savings in the Town's name, letter of credit or a construction surety bond. At its discretion, the Planning Board may require approval of the construction guarantee by the Town Attorney. The amount of the surety shall be \$5,000.

**CONDITIONS - to be met subsequent to the Signature of Approval on the Site Plan:**

1. These Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. All permits must be obtained by the applicant from the CEO/Building Inspector prior to the commencement of any work.
3. The applicant shall receive sewer and water permits from the Town Council.
4. As-built construction drawings, plan and profile, of all infrastructure

improvements shall be submitted in electronic and paper copy at a scale of 1" to 20', including, but not limited to: Underground utilities (sewer lines, storm drains, water lines, electrical, phone, cable, natural gas lines, etc.); Drainage ways, ditching, impoundments, swales, etc.; Driveway and access.

5. As a condition of the waiver of the school impact fee, should one or more units become occupied by children attending the local public school within six years of the initial occupancy, the impact fee will be assessed to those units at the time occupancy begins.

***Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval, as revised, for an Application for Site Plan Review submitted by Thomas Christie, Slania Enterprises, Durham, New Hampshire, to build a mixed-use, three-story building with three units and commercial space at 12 Jenkins Court, in the Central Business Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

- VI. **Public Hearing Presentation** on a proposal for the construction of a parking area, a pedestrian trail, a small kiosk and interpretive panels on property owned by the State of New Hampshire Fish and Game Department. The property involved is shown on Tax Map 19, Lots 9-0, is located on Dame Road, and is in the Rural Zoning District. (The public hearing was informally opened at the beginning of the discussion.)

Rachel Stevens, the Land Coordinator for the Great Bay National Estuarine Research Reserve, spoke before the Board, regarding the proposed project to construct a parking area, a pedestrian trail, a small kiosk and interpretative panels on the Crommet Creek Fish and Game property located on Dame Road.

She said Fish and Game's focus with this property was on restoration and interpretation, and said it was hoped the property would become a quality education site, which would be available to a variety of user types. She said the property contained 20 acres, and she described it in the context of other properties in the area, including other protected lands. She noted that there were about 3,000 acres of Estuarine Reserve land along Great Bay.

Ms. Stevens described restoration work that had been done on the property since it had been obtained by the State, and said the planned layout of the site made use of previously disturbed areas. She said it was proposed to put in a parking area at the location where there formerly had been a house. She also said it was proposed to do as much as possible to make the site available to visitors with disabilities, including the inclusion of a slow, graded slope from the parking lot, and accessibility to a small viewing platform, looking out over a wetland.

She described the interpretative panels that were to be placed on this platform, including information on beaver activities that were responsible for much of the wetland at that location. She described this area as an awesome site, from an ecological perspective. She also said there would be a 3 panel kiosk that would tell the story of how an oil refinery proposed by Aristotle Onassis in the 1970's had

almost been built on that site and others along Great Bay, but was stopped by citizen action at that time.

Ms. Stevens provided details on work being done to the site to make it a valuable interpretative area.

There was discussion between Mr. Kelley and Ms. Stevens regarding Code Enforcement Officer Tom Johnson's December 10<sup>th</sup> letter, and it was noted that it pertained to another project than the one Ms. Stevens was now discussing.

Based on questions and comments from Mr. Roberts, there was detailed discussion on hours of operation and trash management for the site, as well as lighting of the parking area.

Ms. Fuller noted the gate on the property, and asked if it would remain.

Ms. Stevens explained that having the gate there eliminated a lot of potential vandalism problems because the gate prevented people from driving further into the site. She also noted that there were some rare turtles on the site, which required a scrub/shrub environment, and said mowing equipment needed to come in every five years to mow this area. She said the gate would be opened for this, and for construction activities on the site.

Councilor Carroll said this sounded like an exciting project, and said it would be a wonderful place for people to visit.

Ms. Stevens said members of the community were helping to make this project happen, noting among other things that a local family had raised money for the interpretative panels, in honor of a lost loved one.

Chair Parnell asked if any members of the public wished to speak concerning this project.

**Bill Hall, Smith Park Lane**, said what was proposed was the most wonderful thing that could happen to this property. He noted that if the property were not to be managed in this way, it could have turned out to be a tangle of junk buildings.

**Tom Christie, Dame Road**, said he had some concerns about this project, and asked that the Department heads think of it in terms of how they would approach it if it was subject to site plan review. He said they should make it as good a project as it could possibly be, and one that wouldn't have an ill effect on the abutters and others.

He noted that he had never had problems with this 20 acres of land until the previous owner didn't own it anymore. He said since the time the property had been sold, there had been numerous campfires there, and the trash situation was terrible. He said he was concerned that because this was a nice project, and was for a good cause, the project wouldn't be looked at with the appropriate scrutiny.

He said the project would encourage people to drive down one of the Town's most poorly maintained roads. He noted that when the Brown Center had been built, the road had been degraded as a result of an increase in traffic.

Mr. Christie suggested that a paved surface was more appropriate for the parking area. He also said the hours of operation at the site was a significant issue, and he suggested that there should be some way of gating the parking area so there could be no access at certain hours. He also questioned Ms. Stevens' comments that volunteers would manage the trash issue, and asked who would be responsible for this if it turned out that the volunteers didn't pick up the trash.

He said that roadside parking was currently a big problem in this area, and also said there was a problem with the fact that some of the trails on the property ended up at Dame Road. He also spoke about the fact that people who used the trails ended up on his property, even though it was posted.

Mr. Christie asked the Town to take into consideration the fact that there were people who lived out in this area, and said he would like to see a better planning process for the Fish and Game site. He noted that he had some concerns about allowing both hunting and hiking on this particular property. He also said that regarding season of operation, although there was a "snow Santa" that mysteriously plowed the parking area, this also allowed greater access, and the opportunity for greater amounts of trash on the site.

He said he supported this project if it could be done in a way that protected him against what currently had been a significant change to the property. He said his property was surrounded by Nature Conservancy land, and said the situation had been significantly better for him when these surrounding properties had been privately owned. He asked that there be appropriate protections provided to abutters of the Fish and Game property, and he provided further details on the kinds of protections needed.

**Craig Rief, on behalf of Winecellar Farm,** noted that he was philosophically aligned with the Nature Conservancy, in terms of the importance of the conservation and preservation of land. He said he felt people should have access to these lands, but said he had noticed a significant increase in traffic, and trash, as a result of the change in ownership of this property. He said he was in favor of the proposed plan, but said it fell short of providing a long term perspective as to how it would be managed.

He said this project was one part of a multi-phase plan, and said the impacts he as an abutter was experiencing now as a result of the property could be far worse if there were more trails. He noted that people often didn't follow the signs and ended up on his property, and said appropriate steps needed to be taken to address this.

He said he was also concerned as a taxpayer as to whether the Town was prepared to allot money for the Police Department to police this area. He said it wasn't fair for the Town to have to take on the enforcement burden for a State project. He said if the State was committing resources to make this project happen, it should also be



committing resources to management and enforcement. He said he would like to see a long term plan for this site, just as would be required for any other proposed project in Durham.

Mr. Kelley asked Ms. Stevens to respond to the concerns that had been raised.

Ms. Stevens first provided details on Fish and Game rules regarding management of the site, including keeping dogs under the control. She also provided details regarding the fact that conservation officers patrolled the area.

Chair Parnell asked for more information on these conservation officers.

Ms. Stevens said there were three conservation officers based in that region. She said she respected the concerns of the abutters, and said there was a transition period where these issues would be addressed. She provided details on this.

Dea Brickner Wood said that currently, there was no phase II of this project. Regarding the issue of parking on the side of Dame Road, she said it was hoped that the four parking spaces to be provided on the site would create a safe parking environment. Concerning a comment that there had been chainsaws in the area the previous fall, she said these were used for trail clearing and the building of bog bridges, and would not be a regular occurrence.

She said there was in fact a small portion of the trail on Dame Road at present because there wasn't a connective piece of land available that could be used instead. She said there would be appropriate signs concerning this.

She spoke about the fact that hunting and hiking activities were allowed together on the property, stating that hunting was one of the managed uses of Fish and Game land.

She said they were trying to eliminating situations where people using the trails were on inappropriate properties, with education, signage. She said a centralized, focused trail system was being developed so that people would know where to go and where not to go.

Concerning the issue of long term planning, she said the various conservation areas were being pieced together over time, and said that land management planning sessions included discussion with the owners of the properties involved. She said they all would get better at this process over time.

Mr. Kelley said the issue of the cost of policing the Fish and Game property needed to be addressed

Ms. Brickner-Wood said her understanding was that the conservation officers for the Seacoast area patrolled this area, and were also on call. She said Town police could respond as well.

There was discussion on how large the region was that these conservation officers covered.

Peter Wellenberger, NH Fish and Game, provided details on this, and said there were currently four conservation officers for the region, although ideally there would be five. He said Fish and Game was currently having funding problems, so the number was frozen at four. He said that as problems occurred at the Fish and Game property, they were dealt with it through the conservation officers, and said local police were not involved.

Mr. Kelley asked who abutters called if they noticed problem activities on the property at night, and he also asked how long it took for a conservation officer to get out there to investigate a problem.

Mr. Wellenberger said an abutter would want to call the State police, who would refer this to a conservation officer, noting that there was always an officer on duty. He said although a resident might call the local police, this would be an extremely rare situation.

Mr. Campbell asked what NH Fish and Game did if there was a bonfire or trash dumping at the site.

Mr. Wellenberger said Fish and Game could make an arrest, noting that the game wardens were State police officers, with extensive police powers. He said they were able to prosecute cases as well. He also noted that the pay for trash program in Newmarket encouraged illegal dumping activities, but said Fish and Game was trying to be vigilant concerning these activities. He said they were expanding the number of community land stewards, to response within 24 hours to clean up the site.

Mr. Roberts said he lived near the Lamprey River falls area, and was familiar with the transition made there from a private to a public property. He said over time, after the advent of a parking area there, there were fewer and were problems. He said this took some time, but said that it turned out to be a lovely compromise for everyone involved. He said he hoped the process worked out well for this property as well.

Mr. Wellenburger noted that one reason this property on Dame Road had been bought was to avoid seeing it subdivided, which would have changed dramatically the use of the land.

Mr. Kelley said one of his concerns was that Durham tended to be a magnet for land conservation, but this did bring in people who used this land, and the burden concerning this was then born by the Town. He suggested that regarding the management planning sessions that would take place, that there should be discussion with abutters about proposed solutions to management problems.

Ms. Brickner-Wood said these sessions would involve the owners of the conserved properties.

Mr. Kelley said he thought this should be expanded to include abutters of these properties. He said the Board had heard that evening that there were some problems, and that as a new neighbor in this area, Fish and Game would be attempting to address them. He asked that the abutters be included in this effort. He also said he hadn't seen management guidelines for this type of land, and asked if there could be site specific deviation from those guidelines.

Ms. Stevens said the wildlife management rules didn't address short term, site specific issues like trash. But she said Fish and Game staff were on top of this issue at this site, providing details on this, and said they would welcome additional advice on this if it made sense.

There was discussion on the extent of hunting that would be allowed on the site, and the importance of hunters being educated on the lay of the land. Mr. Kelley said it was a shame that hunters didn't have to be educated concerning this.

Ms. Stevens provided details concerning signage used to inform people of property boundaries, and allowable uses.

Mr. Greene asked why Fish and Game and the Nature Conservancy wanted to provide more access to the site, especially if the ideas was to preserve the site and its wildlife habitat.

Ms. Stevens said they would not be providing more access, but were trying to formalize the current, more chaotic access. She said there was a network of trails on the property now that needed to be redesigned, and said a formalized parking area was also needed. She said Fish and Game's goal was always to put wildlife resources and habitat management first, but she said citizens had to care about this environment. She said they wouldn't care about it if they didn't get to experience it in some way. She said the goal was to build a stewardship ethic among members of the community.

She said the feedback received that evening had been very helpful. She said they were trying to take the time they needed to achieve their goals for the site, with limited resources.

Mr. Greene said that given the limited financial resources available, and the stock of conservation land in Durham, it seemed to make more sense not to make more use of this site, and perhaps even to decrease the use of it.

Ms. Stevens said they were trying to manage access that was already going on, and were also trying to expand access to the site to include a broader range of people who could experience it, - not just a few partygoers, or the small hunting community.

Mr. Wellenburger said the State had made a commitment to maintaining the Great Bay program, and the Federal government had promised to fund it in perpetuity. He said the plan over time was to expand the stewardship staff. He noted that one of Fish and Game's long term plans was to require licenses for salt water fishing, and said the funds from this would be used to supplement federal money. He said this would allow

additional conservation officers and stewardship staff to be hired.

He also said that if the State walked away from its responsibility with this and other lands, the federal government would step in. He noted that the federal government evaluated the State's management efforts every three years, and said this provided people with the opportunity to make comments on these efforts.

Mr. Kelley said just as the Planning Board did in response to University of New Hampshire issues and projects, it would follow up with a letter concerning this project.

Ms. Stevens said comments from the Planning Board would be welcome.

Mr. Kelley asked if campfires were allowed on the property and Ms. Stevens said they were not. She said neighbors were encouraged to report on such incidents.

There was discussion regarding treatment of runoff from the parking area, with Ms. Stevens stating that currently a vegetative buffer helped take up any pollutants that occurred. She said although Fish and Game would like to have a pervious parking area as part of its plans for the site, it didn't have the funds for this.

Mr. Kelley suggested that perhaps a treatment swale could be used, and Ms. Stevens said Fish and Game could look into this.

Mr. Kelley said he appreciated the work being done at this property, and said it made more sense, because of the limited funding available, to include the abutters in the process and gain their insight.

There was discussion on the fact that the Fish and Game management rules were only updated every 10 years.

Mr. Christie noted that part of the land that had been referenced regarding trail cutting was privately held, and said he had concerns about the fact that this land was being used now. He asked why there couldn't be boulders placed on the site to block access, or why there couldn't be a gate by the end of the road, before one even got to the parking lot.

He said it was good that Fish and Game was delineating its property with signage, but he described problems with this. He also said he thought the proposed lookout area was more than 300 ft off of the road, and said it needed to be delineated better.

Mr. Christie said he wished he and others had been brought into this process prior to this public hearing, as abutters, so as many concerns as possible could be addressed.

***Richard Kelley MOVED to close the public hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Parnell noted that the Planning Board had to provide positive or negative

feedback concerning the project within 30 days.

Mr. Campbell said he could draft some comments, and send this out to Planning Board member for their input.

Mr. Roberts said he welcomed hearing concerns about this project, but said he felt some were way over the top. He said the conversion from private to public land that had taken place near his own property was very successful over time, and said there were hundreds of acres of land in Durham that had gone through this kind of conversion. He asked why this situation on Dame Road should be such a departure from that.

Mr. Kelley and Mr. Roberts said they would email their comments to Mr. Campbell.

VII. **Public Hearing** on amendments to Sections 175-7, Definitions; 175-53, Table of Uses; 175-54, Table of Dimensional Standards; and 175-55, General Dimensional Controls of the Durham Zoning Ordinance.

Mr. Campbell reviewed the proposed definition changes, first noting that the change to the Subdivision definition would allow it to conform with what was written in the Subdivision Regulations and State Statute. He also reviewed the definitions proposed for Mixed Use with Residential (Office down, multi-unit up) and Mixed Use with Parking (Parking and Office).

He then went through in detail the proposed changes to the Table of Uses in Section 175-53, for Excavation and Mining, as well as the four Mixed Use land use categories.

He said another proposed change was to the Table of Dimensional Standards (Section 175-54), concerning the inclusion of a 15 ft minimum front yard setback in the Church Hill District. He also noted a change to the RSA referenced under Maximum Permitted Building Height, in that same Table.

Finally, Mr. Campbell noted a change to Section 175-55, General Dimensional Controls. He said under F, Calculation of useable area, the proposed change to #4 was: "Fifty (50) percent of the area with moderate depth-to-ledge soils (20" to 40" to bedrock) as identified in the HISS, if the site will use on-site sewage disposal.

***Richard Kelley MOVED to open the public hearing on amendments to Sections 175-7, Definitions; 175-53, Table of Uses; 175-54, Table of Dimensional Standards; and 175-55, General Dimensional Controls of the Durham Zoning Ordinance. Councilor Carroll SECONDED the motion, and it PASSED unanimously 7-0.***

**Bill Hall, Smith Park Lane,** noted that the frontyard setback in the Church Hill district had previously been changed to 0, and that he had been against that change. He said the properties in this area were all more than 15 ft back, and said this was a good distance. He said one of his concerns had been that a 0 setback put people too

close to the high voltage wires on Main Street, which contained 34,000 volts. He said an encounter with that high voltage would be disastrous.

Mr. Hall said he hoped that if the Red Tower disappeared in the future, any replacement building would be placed outside of the setback. He said he was delighted the Board had gone with a 15 ft setback now. He said there were also philosophical issues with allowing buildings over 4 stories, and said there could be serious consequences regarding this with the Fire Department in the future.

***Richard Kelley MOVED to close the public hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

***Richard Kelley MOVED to send to the Town Council the amendments to Sections 175-7, Definitions; 175-53, Table of Uses; 175-54, Table of Dimensional Standards; and 175-55, General Dimensional Controls of the Durham Zoning Ordinance. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

- VIII. **Acceptance Consideration of an Application for Boundary Line Adjustment** submitted by Pohopek Land Surveyors, Rochester, New Hampshire, on behalf of Patricia P. Haarr, Durham, New Hampshire, and Donald Smith and Jeanne Allen, Durham, New Hampshire to change the boundary line between two lots. The properties involved are shown on Tax Map 6, Lots 3-32 and 3-33, are located at 41 and 45 Mill Road respectively and are in the Residence A Zoning District.

Mr. Campbell explained that with this boundary line adjustment, the smaller lot would still be nonconforming, but to a lesser extent.

Mr. Kelley asked if the application was complete, and Mr. Campbell said it was. He said the Board could go through the Findings of Fact and Conditions of Approval and vote on the application that evening if it wished.

The applicant was provided with a copy of the Findings of Fact and Conditions of Approval.

***Richard Kelley MOVED to approve the Application for Boundary Line Adjustment submitted by Pohopek Land Surveyors, Rochester, New Hampshire, on behalf of Patricia P. Haarr, Durham, New Hampshire, and Donald Smith and Jeanne Allen, Durham, New Hampshire to change the boundary line between two lots. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

- IX. **Design Review on a Site Plan Review Application** submitted by Park Court Properties Inc., Durham, New Hampshire for the construction of a mixed-use, multi-unit building. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road and is in the Multi-Unit Dwelling/Office Research Zoning District.

***Richard Kelley MOVED to continue the Design Review on a Site Plan Review Application submitted by Park Court Properties Inc., Durham, New Hampshire for***

***the construction of a mixed-use, multi-unit building, at the applicant's request, to January 23<sup>rd</sup>, 2008. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.***

**X. Other Business**

**A. Old Business**

**B. New Business:**

**1. Set Date for First Quarterly Planning Meeting**

It was agreed that February 27<sup>th</sup> would be the date for the quarterly planning meeting.

Councilor Carroll said the Energy Steering Committee would be coming back to speak with the Board at that meeting.

Mr. Campbell said the draft Stormwater Ordinance would also be addressed at that meeting. He said Mr. Cedarholm would be present for the meeting.

Mr. Kelley said he would like to get the Agenda materials for that meeting in advance so he could comment on them. He noted that he wouldn't be able to attend that meeting.

It was noted that Perry Bryant would be coming before the Board at some point concerning a green building he planned to construct.

**2. Vote on Extension for Conditions of Approval for 51-53 Durham Point Road Subdivision**

Mr. Campbell explained that one of the conditions of approval for this application was that there would be no further subdivision of the property. He said the owner, Katie Paine, had been approached by the Nature Conservancy, which wanted to buy a piece of the property. He said once the deal was underway, he assumed she would come back to revise the subdivision approval in order to allow this. He said in the meantime, Ms. Paine was looking for a six month extension concerning the conditions of approval.

***Richard Ozenich MOVED to grant an Extension for the Conditions of Approval for the 51-53 Durham Point Road Subdivision from February through August of 2008. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Kelley noted the letter in Board members' packets from Stonemark Management's attorneys, and that it spoke about the possibility of negotiating the purchase of the property. He asked if this had gone anywhere.

Mr. Campbell said the idea was being explored.

Mr. Roberts noted that an item concerning this had been on the agenda of a recent Conservation Commission meeting, but Councilor Julian Smith had said it was premature to discuss the matter.

Chair Parnell summarized that the letter from Stonemark had outlined various legal options the owner had, but then offered to sell the land to the Town of Durham.

Mr. Campbell noted that there were various suits regarding this property in the courts at present, including suits involving the Durham Planning Board and the ZBA, which were scheduled for March. He said that regarding the possibility of selling the property to the Town, something would therefore have to happen before that time.

C. Next meeting of the Board: January 23, 2008

## **XI. Approval of Minutes -**

### October 17, 2007

Page 1 should note that Wayne Lewis was appointed as a voting member in place of Richard Kelley.

Page 5, 2<sup>nd</sup> paragraph from bottom, should read “..new language that could be .....”

***Steve Robert MOVED to approve the October 17, 2007 Minutes as amended. Richard Ozenich SECONDED the motion, and it PASSED unanimously 4-0-3, with Richard Kelley, Lorne Parnell, and Susan Fuller abstaining because of their absence from that meeting.***

### November 14, 2007

Page 3, 3<sup>rd</sup> paragraph, should read “..discussion that Rob Roseen of UNH would review...”

Page 6, 5<sup>th</sup> paragraph from bottom, “The motion PASSED unanimously 7-0.” should be deleted. (It was already stated in the 3<sup>rd</sup> paragraph on that page.)

Page 17, motion 2<sup>nd</sup> paragraph from bottom, should read “Richard Ozenich MOVED to continue the meeting to the December meeting.”

Page 19, motion to adjourn should read “...Richard Ozenich SECONDED the motion...”

***Richard Kelley MOVED to approve the November 14, 2007 Minutes as amended. Steve Roberts SECONDED the motion, and it PASSED 6-0-1, with Susan Fuller abstaining because of her absence from that meeting.***

### November 28, 2007

Page 1, 4<sup>th</sup> paragraph in large print and parentheses, should be removed.

***Richard Kelley MOVED to approve the November 28, 2007 Minutes as amended.***



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

## **XII. Adjournment**

***Richard Kelley MOVED to adjourn the meeting.***

Mr. Ozenich asked if the Planning Board would discuss the issue of transfer of development/density rights.

Mr. Campbell said he would be setting up a joint meeting between the Economic Development Committee and the Conservation Commission, to discuss conservation and development areas in Town. He said Planning Board members were welcome to attend this meeting.

***Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

Adjournment at 9:55 pm

Victoria Parmele, Minutes taker