

These minutes were approved at the March 12, 2008 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, FEBRUARY 13, 2008
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.**

REGULAR MEMBERS PRESENT: Chair Bill McGowan; Vice Chair; Lorne Parnell;
Secretary Susan Fuller; Steve Roberts; Richard Kelley;
Richard Ozenich; Councilor Jerry Needell

ALTERNATES PRESENT: Annmarie Harris; Councilor Diana Carroll; Wayne
Lewis

MEMBERS ABSENT: Doug Greene

I. Call to Order

Chair McGowan called the meeting to order at 7:05 pm. He appointed Mr. Lewis in place of Mr. Kelley, who had not yet arrived at the meeting.

II. Approval of Agenda

Susan Fuller MOVED to approve the Agenda as submitted. Councilor Needell SECONDED the motion, and it PASSED unanimously 7-0.

III. Report of the Planner

Mr. Campbell reviewed the documents in Board members' packets, which included the latest draft of the Shoreland Protection Overlay District provisions. And an email from Administrator Selig concerning a proposed small addition to the Goss International building. He provided some details on this.

He noted a memo to the Board on his monthly meeting with University planner Doug Bencks, and said a public hearing on the planned addition to Philbrook Hall would be on the March 12th Agenda. He also spoke about recent rumors regarding the idea of a new UNH public safety/police building, but said this idea had been put aside for now.

Mr. Campbell said there were still openings on the TIF District Advisory Board. He explained that the Town Council had requested applicants for this board, but there had as yet been no response. He noted that 3 of the people on the Board needed to live within the district itself.

He said there had been an Economic Development Committee meeting the previous Friday, when the Committee had met with developer Perry Bryant regarding ideas for a project on Madbury Road, off Route 4.

Ms Fuller asked if at the upcoming quarterly planning meeting, the Board could discuss the possibility of putting together PUD provisions for the Zoning Ordinance. She said a lot of the mixed use developments being proposed in Durham were essentially mini PUDs, and said these would be in keeping with a small town like Durham. She asked if Mr. Campbell if he could perhaps draft something that the Board could look at, at the quarterly planning meeting,

Ms. Harris noted that the Town had such provisions about a dozen years ago, but they were later removed from the Ordinance.

Mr. Campbell noted that the language for these provisions had been poorly written. There was discussion about whether any projects in Durham had been approved under these provisions.

Ms. Fuller noted again that she was suggesting the possible use of a PUD for smaller types of development in Durham, such as perhaps the Bryant property. She said such a development might include a more old fashioned type of convenience store. She said this kind of development would fit with energy conservation and work where you live concepts.

Mr. Campbell said the Board might be able to talk about it at the quarterly planning meeting, but said he didn't think he would have time to draft something on this.

Councilor Needell noted that the PUD provisions had existed up until the 2004 Zoning Ordinance revisions.

Mr. Roberts said when he first came on the Planning Board, he was told the concept scared people.

Mr. Campbell told the Board that Mr. Bryant would like to do student housing as well as some workforce housing, as part of his mixed use development.

He said the EDC had also discussed the idea of the Town buying the Evangelical Church, and said the Committee would continue to move that idea forward. He said he had informed the Committee that NHDOT had held its scoping meeting on the transportation issues involved with the development of the Durham Business Park.

Mr. Campbell said he had provided the EDC with draft maps showing areas in Town that could be considered for development. He said these maps went with the discussion on transfer of development rights, and said even if the TDR didn't go forward, they would provide the EDC and others with an idea of where the development and where the conservation could occur. He said that hopefully there would be a joint meeting with the Conservation Commission, and these maps would be an integral part of that discussion.

He said traffic counts would be done over the next few weeks to provide data for the traffic model. He said data was also being collected on speed limits, pavement widths, sidewalk networks, etc.

Mr. Campbell said that at the upcoming quarterly planning meeting, Town Engineer Dave Cedarholm would present the draft storm water ordinance. He noted that this ordinance would be part of the Town Code, but said Mr. Cedarholm, thought it would be wise for the Planning Board to have a discussion on it because it would be dealing with it when there were site plan and subdivision applications.

He said representatives of the Energy Committee would also be present at the quarterly planning meeting, to discuss with the Board possible energy efficiency related changes to the Town Code.

He said he had met with GIS planner Dale Abbott of Strafford Regional Planning Commission regarding two possible coastal program grants. He noted that the Town had been awarded a grant for updating the 2005 Buildout analysis, and for the formulation of a pilot for a shoreline study. He provided details on this, and said the data collected would be integrated into GIS, and hopefully the Town could then apply for a grant to study a larger part of the coastline in a future year. He said the second grant being applied for was to study the Town's culvert system, and said this information would be integrated into GIS as well.

Mr. Campbell and Councilor Needell summarized the Town Council's recent discussion and decisions concerning the Planning Board's proposed changes in regard to the mixed use categories in the Table of Uses and the Definitions section of the Zoning Ordinance.

1. The proposed new mixed use category "mixed use with residential (office down/multi-unit residential up) will not be added to the Table of Uses, and this definition will not be added to Section 175-7.
2. The existing category "mixed use with residential (office/retail down, multi-unit up)" will stay in the Table of Uses and in 175-7 as a definition. Under it, the Table will reflect that this use is allowed by conditional use in the Professional Office District (and is also permitted, or allowed by conditional use in some other districts.)
3. The existing category "mixed use with parking (parking and office/retail)" will stay in the Table of Uses, and in 175-7 as a definition. Under it, the Table will reflect that this use is not allowed as a conditional use in the Route 18(OR) District (but is allowed as a conditional use in some other districts.)
4. The proposed new mixed use category "mixed use with parking (parking and office)" will be included in the Table of Uses.

Mr. Parnell asked if there was an update on the Stonemark case, and there was discussion on this. Councilor Needell said there had been ongoing discussions between Administrator Selig and Stonemark.

Mr. Campbell said if nothing was worked out by March, the stub issue against the Town would go forward in court. He said the abutters' case against the Planning Board for approving the site plan application would also go forward, and said the applicants' lawsuit against the ZBA would also go forward. He said there could also be a fourth lawsuit against the Town and certain officials not named, and said the Town was hoping to avoid one or more of these court cases.

Councilor Carroll asked for an update on the trails issue involving the Durham Point Road property.

Mr. Campbell said at the last meeting, the Planning Board's letter concerning this had been finalized. But he said he and others were also looking at the bigger picture of whether properties containing the other trails in Durham would need to go to the Planning Board for a conditional use permit. He said he had met with Dea Brickner Wood and Cynthia Belowski regarding this, and had discussed changes might be made to the Ordinance so going through the conditional use process for a trail system wouldn't be necessary.

He said he had drafted something on this, and Mr. Johnson had added some comments to it. He said Mr. Roberts, as the Board's representative to the Conservation Commission, would take this further.

Mr. Roberts noted that among other things, he was looking at Concord's approach, which seemed to be much less complicated.

IV. Continued Public Hearing on a Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth New Hampshire for a 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. Campbell noted that the Board hadn't heard from the applicant since December, and said Mr. Caldarola and his engineers had been working on the drainage analysis with the UNH Stormwater Center. He said Town Engineer Dave Cedarholm had also asked them to do a mounding analysis, which they were in the process of doing. .

Ms. Fuller and Mr. Ozenich recused themselves. Chair McGowan appointed Ms. Harris in place of Ms. Fuller.

Lorne Parnell MOVED to reopen the public hearing on a Conservation Subdivision Application submitted by Joseph Caldarola, Portsmouth New Hampshire for a subdivision of one lot into 9 lots. Wayne Lewis SECONDED the motion, and it PASSED unanimously 6-0.

Mr. Caldarola spoke about the initial meeting between himself, engineer Rubin Hull and Rob Roseen of the UNH Stormwater Center. He said he had had a lot of questions on how the drainage design could be improved, and said he had learned a lot at the meeting. He also said he had found a hydrogeologist to review the plan and do a mounding analysis, and so had been working with this person as well.

He said something that became clear in the meeting with Mr. Roseen was that the goal with the drainage plan was low impact, sustainable development of the site. He said this meant that the site would be engineered in such a way that the water flow on the site would be the same before and after the development was built. He provided details on this.

He said there had been a long discussion about the maintenance of the chambers, and said of

two options, he had been told that the preferred way was to install rain gardens that were engineered to hold a one year storm. He said the chambers would then be the secondary area where water would flow, when there was overflow. He said this was a cleaner, easier approach, which would involve less need for cleanout of the chambers. He noted that there were economic advantages, as well as aesthetic advantages to this approach, in that there would be reduced cleanout costs, and the special fabric in the chambers wouldn't be needed.

He said the rain gardens had to contain specific soils, and had to be located 3 feet above the water table. He said they were designed to empty out within two days, through infiltration.

He said he liked this system and wanted to see if it could be incorporated into the site design.

He said Jack McKenna, the hydrogeologist, had analyzed the impact of the chamber system on drainage, including the impact on the foundation drains. He noted that he had put in many foundation drains over the years, which were put in below the seasonal high water table. But he said he had realized that this essentially converted groundwater into surface flow that the drain then took away.

He said this was an issue because the chambers were between the buildings, and the mounding analysis showed that for the foundation drains not to be a problem, the garages would have to be located below the houses. He provided details on this, and also said a problem with having the chambers between the buildings was that it was a tight design on the site.

He said they came up with a different approach that addressed all of these things. He said the plan for this wasn't yet done, but said he hoped to have it done by the next Planning Board meeting. He said every lot would have its own rain garden, noting that they were small enough so that this would be possible, and said they would be designed to contain a one year storm.

He noted that there were two areas on the site that had relatively good soils, including a higher depth to the seasonal water table. He said overflow from each of the rain gardens would go to one of two plastic chambers that would be located on these two more suitable areas of the site. He said it was felt that this design could be fine tuned to get a low impact development.

Mr. Roberts asked if the houses were being sited in fill, and Mr. Caldarola said it depended on where on the site the house would be located. He provided details on this. He said in the center of the development, the road, front yards and houses were all raised, but not drastically. He said there wouldn't be a drastic elevation difference between the road and the first floor of the house in order to stay above the seasonal high water table, and noted they still had to do this so as not to convert groundwater into surface water.

Chair McGowan asked if the rain gardens would be located in the backyards of the lots, or in the conservation area.

Mr. Caldarola said that was being debated. He said the first thought was to put them on the lot lines, and he provided details on this.

Mr. Parnell asked if there would be a backup generator for the pump that would take water beyond a one year storm to the two chambers.

Mr. Caldarola said that was a good point. In answer to a question from Councilor Needell, he also said that each rain garden would have its own pump. He said each would operate independently, and each home would pay a separate electric bill.

Mr. Roberts asked whether ponding that the Board had observed on the site would be conducted off by a drainage channel.

Mr. Caldarola explained that originally, they were trying to design the site to reduce the flow to Ms. Bradley's house. But he said based on the way the site was being looked at now, that was no longer part of the goal. He said they came up with a plan to have a surface ditch at the edge of her yard, below which was a French drain to pick up subsurface water. He said this water would then flow across to the other side of Ambler Way.

Mr. Roberts asked if the intention was to remove the ponding that was occurring.

Mr. Caldarola said the goal was for the development to not make the current drainage situation worse, and also said an effort would be made to do something about the existing problem, through a separate project to improve the drainage on Ms. Bradley's lot.

Mr. Roberts noted that right now, there was flow from Mr. Caldarola's property onto Ms. Bradley's property, and that a separate leg of the solution would be to address some of that flow. He noted that the drainage problem had not been caused by Mr. Caldarola's property.

Mr. Caldarola said he was confident that what was planned would drastically improve the drainage in her yard.

Mr. Campbell asked if there was still an easement for the sewer, and if Ms. Bradley was still planning to get rid of her septic system.

Mr. Caldarola said that was still on the table, for Ms. Bradley's property and her neighbor's property.

Councilor Carroll said it sounded like Mr. Caldarola had gotten a lot of useful information from the Stormwater Center, and said they were all very lucky to have UNH in Town. She said rain gardens were relatively new, and said the concept looked good in theory. But she asked if the homeowners would have some kind of warranty concerning the rain garden and the chambers, in order to protect them.

Mr. Campbell said rain gardens were being used a lot more these days, and were effective. He said it might be a good idea to have some kind of surety put in place for this, to make sure they were put in correctly, and would work.

Councilor Needell said with any new technology, the key was in the installation. He asked if

this would be reviewed by the storm water center. He said would need an independent review.

Mr. Caldarola said the plans would be reviewed concerning this.

Mr. Campbell noted that for the Kimball development, UNH Stormwater Center personnel would be on site during installation of the pervious pavement system to make sure this was done correctly.

Chair McGowan asked if any members of the public wished to speak for or against this application. There were no members of the public who wished to speak.

Lorne Parnell MOVED to continue the public hearing to March 12th, 2008. Wayne Lewis SECONDED the motion, and it PASSED unanimously 6-0.

Ms. Fuller and Mr. Ozenich returned to the table.

- V. Acceptance Consideration on Subdivision Application** submitted by John H. Farrell, Durham, New Hampshire, on behalf of the Shirley A. Thompson Trust, Durham, New Hampshire for subdivision of one lot into two lots. The property involved is shown on Tax Map 3, Lot 3-5, is located at 48 Bagdad Road, and is in the Residential A Zoning District.

Councilor Needell recused himself. Councilor Carroll was appointed as the voting member.

Jack Farrell represented the applicant, and spoke before the Board. He said if approved, this subdivision would result in one new single family building lot. He said each lot would be in excess of lot size and frontage requirements, and he showed the buildable area on each of the two lots.

He said the applicant had asked that this application be reviewed as a subdivision that was exempt from the conservation subdivision provisions because only two lots were involved. He said Mr. Campbell had agreed to this, and had provided a letter to that affect. He also noted that a number of waivers were being requested, which for the most part reflected the fact that this would not be a conservation subdivision.

Mr. Farrell said the only construction beside the house was to connect both properties to the Town sewer, and said there had been discussion with the Public Works director on this. He noted that the existing home on one of the proposed lots had a septic system. He said there was a slope easement on the property, and also noted that a portion of the property was located in the shoreland protection area, but said this areas was outside of any area that would possibly be built on.

It was noted that there were two curb cuts provided along the frontage, and that the applicant would like to keep one and surrender the other one. Mr. Campbell said the applicant would need to get a driveway permit for that one driveway. He also noted that if the applicant had wanted to use the two curb cuts, a conditional use permit would have been required for this.

There was discussion on the water and sewer hookup. Chair McGowan asked what would happen with the leach field after the sewer hookup, and Mr. Farrell said it would be left there, but the pipe would hook into the sewer line. He noted that a pump would be needed for this. He also said there was no indication that the sewer system was failing.

Mr. Ozenich asked if there was anything in the Ordinance concerning a minimum distance of the driveway from the corner.

There was discussion on this, and Mr. Farrell said it was 80 ft from the corner.

Mr. Ozenich said there weren't a lot of cars at that stop sign.

Chair McGowan asked Mr. Campbell if there were issues with any of the waivers that were being requested by the applicant.

Mr. Campbell said no, stating that most of them pertained to things that went with a conservation subdivision. He also said the Public Works Department hadn't said there were any drainage problems so he didn't see that there would be a problem with waving the stormwater drainage analysis. He suggested that the Board should vote on the waivers that evening, if it was planning to accept the application.

Mr. Parnell noted that one of the lot lines went parallel to the stream.

Mr. Farrell explained the reasoning for this, and the fact that only one of the lots had frontage on the stream. He noted that there couldn't be any development in that area because it was in the shoreland protect zone.

Susan Fuller MOVED to grant the waivers that have been requested and outlined by Mr. Campbell. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

Ms. Fuller asked if the application was complete, and Mr. Campbell said yes.

Susan Fuller MOVED to accept the Subdivision Application submitted by John H. Farrell, Durham, New Hampshire, on behalf of the Shirley A. Thompson Trust, Durham, New Hampshire for subdivision of one lot into two lots, for the property located at 48 Bagdad Road, in the Residential A Zoning District. Lorne Parnell SECONDED the motion.

It was agreed that the public hearing would be held at the March 12th Planning Board meeting, and that the site walk would take place that same day, at 5 pm.

The motion PASSED unanimously 7-0

Councilor Needell returned to the table.

Councilor Needell MOVED to amend the agenda to move up Item VIII B 2 to occur next on the Agenda. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

VIII Other Business

B.2 - Request for Extension of Conditions of Approval for Northam Builders Conditional Use Permit and Site Plan

Mr. Campbell said the applicant was requesting a 90 day extension in order to fulfill the conditions of approval. He explained that when the application was approved, that at the recommendation of the Town Engineer the applicant was going to put in a holding tank, and pump between the hours of 12:00 and 6:00 am, which were lower flow periods for the Town.

He said DES didn't want to approve that, so wanted the applicant to hook directly to the sewer, at normal time periods. He said the money that would have gone into the pump and holding tank was proposed to be put into a capital fund for improvements needed to the Town sewer line. He noted that the area involved was the bottleneck area at UNH. He said the same kind of thing would probably be done with the Bryant application.

Mr. Parnell asked what the problem was with the holding tank.

Doug Larosa of Northam Builders said DES had said that while it could approve the system that had originally been proposed, it thought it would be more prudent to have a gravity discharge system. He provided details on this.

Councilor Needell asked if the new plan would be approved by the wastewater committee, and Mr. Campbell said yes, they would have the final say.

Chair McGowan asked if 90 days was sufficient.

Mr. LaRosa said the revised design had already passed on to the Wastewater Committee, and said what was proposed was a simplification, so it should go quickly.

Mr. Campbell said the Planning Board would get the as-builts, which would be on file.

Ms. Harris asked if it was projected that the bottleneck would be corrected.

Mr. Campbell said he believed the CIP said it would be corrected within a couple of years, and could happen more quickly if there was a public private partnership.

Susan Fuller MOVED to grant an extension of the Conditions of Approval for Northam Builders Conditional Use Permit and Site Plan. Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.

VI. Discussion on Draft Parking Ordinance Amendments

Chair McGowan noted that they had gotten up to Section 175-114 "Shared Parking", the previous time the proposed changes to the Off-street Parking and Loading provisions of Zoning

Ordinance had been discussed.

There was discussion about the word “predicted” in the first line of this section.

Mr. Campbell explained that Section 175-114 was a new section that was proposed, and was an attempt to allow for situations where there wasn’t enough parking on a property for what the owner wanted to do, but there was parking available nearby, for example, a church parking lot where cars parked on Sunday but that was not otherwise used. He said these provisions would allow someone to come up with a shared parking agreement with a church, etc., so that the parking spaces could be counted toward meeting the required amount of parking. He said this was another way to allow some flexibility in terms of the requirements.

Councilor Needell asked if there was any restriction, in terms of residential or commercial uses, concerning this. There was discussion on this.

After further discussion on the use of the word “predicted”, Board members agreed the word should instead be “anticipated”.

Concerning 175-114 B. regarding “Shared Parking Agreement”, Mr. Campbell noted a similar type of agreement for a shared dumpster for Scorpios and Campus Convenience, which the Planning Board had approved.

Chair McGowan received clarification that this was an agreement that an applicant would have to come up with.

The Board agreed that the proposed shared parking section was ok, with the minor wording change to “anticipated”.

175-115 Loading Spaces or Bays

There was discussion on the wording of the first paragraph, with some Board members saying that it was confusing. There was discussion as to whether the second sentence, “Where the gross floor area of a retail business exceeds 10,000 square feet, an off-street lading space or bay shall be provided on the premises” applied to the Central Business District. It was agreed that for clarification purposes, paragraph A. needed to be rewritten.

Mr. Campbell said that paragraph B had not been changed.

There was discussion on how restaurants should be handled under this section. There was also discussion on how large loading spaces really needed to be these days. Mr. Roberts spoke about just in time delivery, and suggested that an applicant should have to develop a plan for off-street loading spaces, and that the business could be allowed some flexibility as to the size of the loading space if this was appropriate. Other Board members agreed this approach should be worked into Section 175-115.

175-116 - On Site Landscaping and Exterior Screening

Mr. Roberts said the buffer was the key, and said the issue was whether or not the vehicles could be seen.

There was detailed discussion about whether the second sentence in B was needed: “Parking aisles shall not contain more than 10 cars in a row”. There was also discussion about an alternative version of B that was put in the draft.

Mr. Campbell suggested that this section should say: “Parking lots shall be broken up into smaller parking areas with landscaping and bio-retention features. The total parking area required shall be broken into sections not to exceed 40 cars, unless otherwise approved by the Planning Board.

Councilor Needell suggested that this should say 40 parking spaces, not 40 cars.

Mr. Campbell said there were no changes proposed to 175-116 C. He said the last sentence of D was new: “All landscaped island, peninsulas, and medians shall be a minimum of six feet in width and shall be separated from the parking area by adequate curbing or tire stops. The design and use of islands for bio-retention is encouraged as a Low Impact Development (LID) application, and some islands shall be used to provide pedestrian walkways.”

There was discussion about landscaped medians, and that they needed to be wide enough to accommodate plantings, pedestrians, snow, etc.

Councilor Needell said this provision might need to be reworded somewhat. He suggested that there should perhaps be two separate sentences to indicate that some medians would be used to provide pedestrian walkways, and others would be used for bio-retention.

Mr. Roberts suggested that someone like Robbi Woodburn, who was a landscape architect, should look at this provision. There was discussion on where planning consultant Steve Whitman had gotten this language.

Mr. Campbell said he would look into this again, and would see if there was some way to put some flexibility into the provision.

Mr. Roberts said perhaps it could be written to allow for different size lots.

Mr. Campbell noted that landscaped islands were counted as pervious area, and said this was one way for these types of developments to stay within the impervious surface ratio.

Ms. Harris noted that the island needed to be wide enough so the trees would survive, and said 6 ft. didn't seem that wide to her.

Councilor Carroll suggested that Robbi Woodburn should provide some perspective on these kinds of things.

Ms. Harris suggested that the Board might also get some feedback on this from the University, which had a lot of parking lots

Mr. Campbell said the change to Section 175-116 E was the addition of the wording

“composed of evergreens or fencing”. He said F, G, H and I were not changed.

Section 175-117 Lighting

It was noted that the proposed change was to the last sentence “All lighting fixtures serving parking lots shall be cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA) .”

The Board agreed that the wording “public and private” in the first sentence of the same paragraph should be removed.

Section 175-118 Driveway Permit; Penalties; Fees

Mr. Campbell said that under 175-118 C:2, OR needs to be changed to Office Research-Route 108. He also noted new wording under C:3, which related to access management approaches.

There was discussion on 175-118 C:3 b., which included wording: “..one driveway of not more than 32 feet in width.” Mr. Roberts noted that Section 175-111 D. said 22 ft. Mr. Campbell said he would put a note in 175-11 D that referenced 175-118 C:3 b.

There was discussion on wording in the last paragraph of 175-118 C:3, which said “If the Planning Board finds that an applicant has complied with one or more of the voluntary provisions outlined above, for each of the provisions achieved, the Planning Board shall permit an additional five percent (5%) of lot coverage above the maximum permitted in the District.”

Chair McGowan suggested that this wording should be moved closer to the beginning of Section 175-118 C:3, and that it should be reworded somewhat.

Councilor Needell suggested that the lot coverage increase should be limited to the amount that was given back by sharing or giving up a driveway. He asked whether, for a typical lot, 5% was a bigger piece than what was being given back

There was discussion on this.

Councilor Needell said he was trying to envision what this kind of thing would be used for. He said it seemed to apply only to residential development, which he thought rarely bumped up against impervious surface limits.

Mr. Campbell noted a commercial example, where perhaps the Kimball development and Xmed had an agreement to share an entrance. He said if Xmed proposed an expansion of the facility, with this agreement it could get more impervious area on the lot so a few more parking spaces could be put in.

Councilor Carroll said that for the public hearing on these proposed Ordinance changes, it would help to show what 5% of a lot looked like for a particular development.

Mr. Campbell said 175-118 D “Interconnections Between Parcels”, was a new section. Mr. Roberts said the concept was good, but said he thought this should be subject to some standards, Mr. Campbell noted that Freeport, Maine was a good example of a town where these kinds of interconnections beyond the main street were developed, to allow parking, walking, etc.

There was discussion on how this kind of thing might work in Durham.

Board members agreed with the proposed wording, and also agreed that the Planning Board should have some say as to the design for this kind of thing.

Mr. Campbell said the remaining provisions of the Off-street Parking and Loading section of the Ordinance had not been changed. He said he would make the revisions, based on discussion with the Planning Board, and would then bring the draft back.

VII. Discussion on Draft Shoreland Protection Overlay District Amendments

There was discussion on how DES would be able to enforce the revised State Shoreland Protection Act. Mr. Campbell noted there would be greater upfront costs to developers as a result of the changes.

He said that in the draft amendments he had put together for the Town’s Shoreland Protection Overlay District provisions, the underlined bolded sections were changes based on the State changes, and the underlined non-bolded sections were changes based on his discussions with the Conservation Commission and Code Administrator Tom Johnson.

He noted that the wording change 175-71 A:5 was included to reference 175-75.1. B:5 Performance Standards in the Shoreland Protection Overlay District, concerning dead, diseased or dying trees. He said this would make things clearer for people reading the Ordinance.

After discussion, it was determined that language on page 5 “The subdivision of a parcel of land shall be subject to subdivision approval by the Dept of Environmental Services under RSA 485-A:29” was the appropriate language.

Mr. Parnell asked if the Town had any leeway concerning putting these proposed changes in, and Mr. Campbell said only in terms of being able to put in something more restrictive.

Councilor Needell noted that the wording referencing the RSA was being put into the local regulations as a convenience for the reader.

Mr. Campbell said he had tried to do this in a way that avoided the need for someone to look all over the place in the RSAs.

There was discussion on a suggestion from Mr. Roberts that the first sentence of Section 175-75.1 should be changed in order to separate out better buildings and structures from land, in terms of the performance standards outlined there. After further discussion on how to do this,

Board members agreed that it was correct as written.

Mr. Campbell said a goal was to try to make these provisions as user friendly as possible. He noted that he had indicated under Section 175-70 that “As per RSA 483-B:5-a, a State permit would now be required for any construction, excavation, or filling activities within the protected Shoreland, except for Timber harvesting and those activities where a permit has been granted under RSA 482-A, Fill and Dredge in Wetlands.” But he said he hadn’t included the various fees for this.

Councilor Needell said the biggest challenge for the Board would be to deal with the requirements in Section 175.75 B.

Mr. Parnell noted that 175-75.1. B:5 Performance Standards in the Shoreland Protection Overlay District, concerning dead, diseased or dying trees was ridiculous . There was discussion on this.

Mr. Campbell noted that under 175-72 A:2, this should reference the performance standards in 175-75.1 A, B and also C.

Mr. Campbell provided details on Section .175-75.1-I, Impervious Surfaces, and the reasoning for this section. He also noted Section 175-75.1-G, Access to the Shorefront. He said the Town had allowed 20 ft for people to access the shorefront, but said the State now said that a permanent 6 ft wide path to the water was allowed. He said he thought allowing a 20 ft wide access was reasonable. He noted that according to the State, there could be a 12 ft wide access during construction of a dock or pier, but once work was complete, the access had to go back to being 6 ft. wide.

Mr. Kelley arrived at the meeting at 9:40 pm.

Mr. Campbell said the Planning Board should put a public hearing for these proposed changes on the Agenda for the March 12th meeting. He noted that the State changes went into effect on April 1st. There was discussion that the draft would be emailed to the Conservation Commission so they could look at it at there upcoming meeting.

Councilor Needell noted that whether or not the Planning Board put these changes in the Zoning Ordinance, they still applied. He said the only place where the Board had discretion was where the Zoning Ordinance was more strict than the Shoreland Protection Act.

Mr. Kelley said he was relieved that the State statute specifically mentioned timber harvesting as being excluded in terms of needing to have a permit.

Mr. Kelley said that the Lamprey River Advisory Committee was interested in tackling some knotweed problems, which would involve using an herbicide at some point. He noted that the Shoreland Protection Act didn’t allow this.

VIII. Other Business (Continued)

B.1. Request for extension of Conditions of Approval of SAE Services, Inc. Conditional Use Permit

Mr. Campbell said the applicants had provided an extensive packet on this, and were requesting a 2 month extension

Richard Kelley MOVED to extend the Conditions of Approval for two months for the SAE Services, Inc. Conditional Use Permit, per their request. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

3. Request for extension of Conditions of Approval for Steven F. Kimball Conditional Use Permit and Site Plan

It was noted that the extension being requested was for 6 months.

Mr. Kelley said the applicant had indicated that the changes that needed to be made had caused a greater expense. There was discussion about this.

Susan Fuller MOVED to grant the 6 month extension of the Conditions of Approval for the Steven F. Kimball Conditional Use Permit and Site Plan. Richard Kelley SECONDED the motion.

Councilor Needell asked what happened if the Board didn't grant an extension, and Mr. Campbell said the applicant would have to start over again.

The motion PASSED unanimously 7-0.

Mr. Roberts said that regarding the trails issue, an attempt was being made to develop some kind of Zoning modification so that if this kind of thing occurred, a conditional use permit, public hearing, etc. wouldn't be needed for every small property change involving trails.

Mr. Campbell said he had started looking at some possible language changes, and had asked Mr. Roberts to get involved with this, as the Planning Board's representative to the Conservation Commission.

Mr. Roberts said Concord had a nice trails system, and said he would try to discuss with someone there how they had worked out this issue.

Mr. Kelley noted that he liked the conditional use process, and said in this kind of situation where there was a change of use, the owner could be asked to provide something like a security and management plan. He said this could depend on the size and scope of what was being proposed.

Mr. Roberts said in some Towns, this was handled by the Selectmen or the Conservation Commission, and wasn't a land use issue per se.

Mr. Campbell said a concern of his was the existing workload of the Planning Board, and the difficulty there would be if it had to follow the conditional use process for these kinds of situations.

Mr. Roberts noted that the conditional use process in Manchester was much more expedited.

Mr. Kelley said perhaps there could be an abbreviated conditional use process for passive recreation land uses.

Councilor Needell said the Code officer had interpreted that the Zoning Ordinance required this, and said appealing this to the ZBA would settle the issue of whether this was the correct interpretation. He said there was also the issue of whether this kind of situation belonged before the Planning Board, so it was clearly a policy that needed to be clarified, perhaps by the Town Council.

Mr. Campbell said the Nature Conservancy's concern was that this could set a precedent that they didn't want to be set. He said if they were denied, their option would be to take the Town to court.

Mr. Kelley noted that ZBA decisions didn't stand forever, and eventually went in front of the courts, where the local land use board was either given a "thumbs up" or not.

Councilor Needell said if the Planning Board didn't want this to be dealt with as a Zoning issue, the Ordinance needed to be changed. He said the question was how this would be done.

Mr. Campbell said for the Dame Road application, the parties involved did have to address Mr. Johnson's decision, so regardless of what the Planning Board did, that process would move forward. But he said that in the mean time, the Board could try to come up with some solutions.

Chair McGowan asked if the parties involved would have to follow the existing Zoning Ordinance, or if any changes the Planning Board came up with would be retroactively applied to their situation. There was discussion on this.

Mr. Campbell said his concern was that this would take up a lot of staff time, board time, and attorney time. He said he would like to come up with a way to address this land use issue in some way.

Mr. Kelley said the Board could say that it wanted a safety and management plan, and that this would have to be changed if conditions changed. He said the conditions of approval would have to state that.

Mr. Roberts said again that this kind of issue was handled elsewhere than by the Planning Board in some other towns.

Mr. Kelley said he would like to hear if the Conservation Commission would be interested in

playing a role in the conditional use process.

Mr. Roberts said the conditional use process wouldn't be involved.

Mr. Kelley said he didn't think he could anticipate what a trail would bring, down the road, which was why he supported using the conditional use process for this kind of situation.

Mr. Roberts said that was why he was doing research on this issue.

Councilor Needell said in some other towns, the Conservation Commission was making recommendations to some other local body. He said the question was what body they would be making their recommendations to.

Mr. Campbell said he would prefer that this go to the Town Council.

Mr. Roberts said he would do some further research on this issue.

IX. Approval of Minutes

December 12th, 2007

Page 1, 2nd paragraph from bottom, should say “..discuss with the Board under New Business.”

Also, bottom paragraph should read “..Madbury on the changes.”

Page 2, 3rd paragraph, should say “Van Asselt”

Page 5, 4th paragraph, should say “..projecting into any setback..”

Page 8, under Agenda Item VI, it should say that Councilor Needell was recused from that discussion.

Page 13, top of page, the motion should be 5-0.

Richard Kelley MOVED to approve the December 12, 2007 Minutes as amended. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

January 9, 2008

Page 7, 5th paragraph from bottom, removed one of the periods

Page 8, 3rd paragraph from the bottom, should read “Craig Rief”

Page 13, bottom paragraph, should read “..had previously been changed to 0..”

Page 14, 1st full paragraph, should read “..the Red Tower..” Same paragraph should also say “..with the Fire Department...”

Richard Kelley MOVED to approve the Minutes of January 9, 2008. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0-1, with Chair McGowan abstaining because of his absence from the meeting.

X. Adjournment

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

Adjournment at 10:25 pm

Victoria Parmele, Minutes taker