

This set of minutes was approved at the October 28, 2009 Planning Board meeting

**Durham Planning Board
Wednesday September 9, 2009
Durham Town Hall - Council Chambers
MINUTES
7:00 pm**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Stephen Roberts; Susan Fuller; Richard Kelley; Councilor Julian Smith

ALTERNATES PRESENT: Kevin Gardner

MEMBERS ABSENT: Richard Ozenich; Bill McGowan; Wayne Lewis; Councilor Neil Niman

I. Call to Order

Chair Parnell called the meeting to order at 7:06 pm.

II. Approval of Agenda

Richard Kelley MOVED to approve the Agenda. Councilor Smith SECONDED the motion, and it PASSED unanimously 5-0.

Chair Parnell said Mr. Gardner would replace Mr. Ozenich as a voting member of the Board.

III. Report of the Planner

Mr. Campbell said the next regular EDC meeting would take place on Friday at 7:30 am, and said they would be continuing discussion on the strategic plan and SWOT analysis. He said this analysis would be presented to the Council on September 21st, and said he hoped to follow up shortly after that with a presentation to the Planning Board.

He said the Council had approved the contract with B. Dennis Town Design, and said everyone was looking forward to that process kicking off. He said he would keep the Planning Board in the loop as to the schedule.

Mr. Campbell said the TE grants were due Sept 15th, and said he had developed two letters of intent, the first for a sidewalk project to fill in gaps of missing sidewalks in Town, and the second to extend the shoulders of Route 155A to Packers Falls Road. He said he probably would not follow through on the second letter of intent. He also noted that there were 80 letters of intent submitted to the State, and that \$6 million in funding was available so it was quite a competitive process.

He said he was continuing to look at bringing forward Zoning amendments, including changes to the shoreland district, the Durham Business Park, a possible PUD Ordinance,

and Transfer of Development Rights (TDR). He said he would keep the Board posted on how this was going.

IV. Public Hearing on Zoning Ordinance Amendments to Article II, Definitions, the definition of “Contiguous” and “Structural Parking;” Article XII, Zone Requirements, Section 175-41(F)(2), Section 175-43(F)(2) and Section 175-56(A); and Article XXI, Off-Street Parking and Loading, Section 175-116 and Section 175-117(A)(2).

Mr. Campbell noted that the Board had discussed these proposed changes at its meeting on August 26th, and at that time, it was suggested that the Board look at and possibly change its definition of “contiguous”. He said at that meeting, there was a copy of an older version of Black’s Law dictionary, and said a new version had come out in 2009 that had a different definition for contiguous: “touching at a point or along a boundary; adjoining”.

He said copies of this newer definition had been provided to Board members. He said if the Board was going to move forward with a definition for contiguous, they should possibly go along with this most recent definition in the Black’s Law dictionary.

Councilor Smith said he had been the only Board member who voted against the proposed definition for contiguous that was now being brought forward, and said he hoped that someone who had voted in favor of it would vote to change it now.

Steve Roberts MOVED that the Planning Board remove the proposed definition of “contiguous” and explore appropriate innovative land use planning methods similar to those recommended by the OEP handbook “Innovative Land Use Techniques: a Handbook for Sustainable Development” dated October 2008. Richard Kelley SECONDED the motion.

Mr. Roberts said there was concern that with several development proposals before the Board, there were issues secondary to achieving planning goals that had sidelined those developments. He said he felt the Board would be better served by exploring innovative land use planning techniques. He noted that the 99 Madbury Road proposal eliminated sprawl; had buffers, housing variety, and public open space; minimized energy use; etc. but got tripped up by the words in the Zoning Ordinance.

He suggested that it would be better for the community if the discussion on the definition of “contiguous” was sidelined, and if the Board instead focused on basic planning techniques.

Mr. Kelley said he appreciated that goal, but said the matter of the definition was before the Board now, and regardless of the Stonemark project, had to be addressed.

Mr. Roberts said the uses of the Stonemark parcel were contiguous, but the parcels were not contiguous in area, and said Black’s Law and the ZBA didn’t address this kind of situation. He said the Planning Board’s job was to do planning, and said innovative land use planning could deal with this kind of situation.

Councilor Smith said the simplest thing to do was to continue with a straightforward definition of “contiguous”, and said Black’s Law provided a good one. He said if the Board was opening the Public Hearing with the understanding that there was a conflict between earlier and later definitions in Black’s Law dictionary, he suggested that they go with the June 2009 definition.

Ms. Fuller said the more the Board tried to define words and put them into the Ordinance to fit potentially abstract processes or legal uses of land, the more this provided ambiguity for someone to argue that something was not what the Ordinance said. She said it boiled down to the Planning Board not being able to plan. She said she liked Mr. Roberts’ idea of setting the definition aside, and instead looking at some innovative land use tools.

Mr. Gardner said he appreciated that idea, but said any plans would have to rely on words that described what the Town allowed and didn’t allow. He said the Board was dependent on these words to do that. He said he was not convinced that the Board needed its own definition if there were those out there that already existed, and said if a definition was needed, it seemed that a simple one that was in the Black’s Law dictionary would suffice.

Mr. Roberts said the reason he had proposed that the Stonemark parcels were contiguous was because of the use, as dedicated set aside land, but he said the appeal was about the area issue. He suggested that perhaps the definition could be expanded to say that “contiguous” applied to area and use. He noted the definition in the State’s forestry RSA. He also said he didn’t see a lot of other towns defining contiguous, because of ambiguity issues. He said innovative land use techniques addressed the issues themselves without getting into that kind of discussion.

There was further discussion.

Mr. Kelley called the question, and Mr. Roberts restated the motion.

Steve Roberts MOVED that the Planning Board remove the proposed definition of “contiguous” and explore appropriate innovative land use planning methods similar to those recommended by the OEP handbook “Innovative Land Use Techniques: a Handbook for Sustainable Development” dated October 2008. Richard Kelley SECONDED the motion, and FAILED 3-3, with Chair Parnell, Councilor Smith and Richard Kelley voting against it.

Richard Kelley MOVED to revise the definition of contiguous to read as presented to the Planning Board this evening from the Black’s Law 9th edition, June 2009 dictionary, “touching at a point or along a boundary; adjoining”. Councilor Smith SECONDED the motion.

Mr. Roberts said there needed to be a discussion regarding use and area, and whether contiguous applied to one or both of them.

Mr. Kelley noted that coming out of the Zoning Rewrite process, he was one of the people who supported using the latest definition from Black’s Law. He said what they

thought they had there was it, but it wasn't. He also said he thought the root of the problem was the definition of "lot", and said there had been discussion on this by the Zoning Rewrite committee at that time. He said this definition still needed to be revisited.

Mr. Kelley said Mr. Roberts's points were valid and needed to be examined, but not that evening.

Councilor Smith said he was sorry the 99 Madbury Road development had gotten hung up over technicalities, and spoke in some detail on this. But he said because the word contiguous was in the definition of lot, this definition needed to be nailed down unambiguously in the Ordinance.

Mr. Gardner said it seemed that any definition like that would require interpretation. He asked whether working with the contiguous concept was a matter of definition or interpretation.

Mr. Roberts stated again that the Board was trying to do planning, and he said that was his concern.

The motion PASSED 4-2, with Steve Roberts and Susan Fuller voting against it.

Richard Kelley MOVED to open the Public Hearing on Zoning Ordinance Amendments to Article II, Definitions, the definition of "Contiguous" and "Structural Parking;" Article XII, Zone Requirements, Section 175-41(F)(2), Section 175-43(F)(2) and Section 175-56(A); and Article XXI, Off-Street Parking and Loading, Section 175-116 and Section 175-117(A)(2). Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

Chair Parnell asked those who wished to speak on these proposed Zoning changes indicate which one they were speaking about.

Hillary Scott, 20 Davis Ave. noted that the proposed Zoning changes they were not spelled out, and asked that they be read out loud so people would know what they were.

Chair Parnell said copies would be made and provided to members of the public. He then read the proposed changes out loud.

Section 175-7 Definitions:

"Contiguous" – Touching at a point along a boundary; adjoining.

"Structural Parking" - Any structure **primarily** for the parking or garaging of five (5) or more vehicles that is not surface parking. (Bolded wording is new)

Section 175-41 (F)(2) and 175-43(F)(2) Vehicular Access - No new vehicular access or driveway shall be located or pass between the front wall of the principal building and the front property line. Proposed elimination of (F)(2) for both the Central Business District and Professional Office District.

Section 175-56 (A)(1) Density for elderly residential uses. In determining the maximum density for Elderly Housing, Elderly Care Facilities and Nursing Homes, the following provisions shall apply **to the entire development**: (Bolded wording is new)

Section 175-116 On Site Landscaping and Exterior Screening. All **surface** parking areas over five (5) vehicles shall meet the following conditions below: (Bolded wording is new)

Malcolm Sandberg, Langley Road, said the notice for the Public Hearing included the definitions presented to the public, and now the Board had changed a definition, so the public had therefore not been given adequate notice on the subject of the Public Hearing. He said he thought the hearing should therefore not be held, and should be re-noticed.

Chair Parnell asked Mr. Sandberg if he was saying the hearing could be delayed on all the items, or just the definitions.

Mr. Sandberg said the hearing should be delayed because the notice didn't fully describe what the hearing involved.

Councilor Smith said he suspected that some or many of the people in the audience were there because they knew the proposed definition of contiguous was very broad. He said he didn't see the harm in the change proposed now, but had seen harm at the Board's last meeting in having the overly broad definition of contiguous. He said there was a straightforward, sensible definition now. He said he didn't see any harm in continuing with the public hearing.

Chair Parnell said the Board would allow the hearing to go forward and would hear from people on this subject.

Jay Gooze, Meadow Road, said he commended the Planning Board for proposing the Zoning amendments, noting that as the Chair of the ZBA, he had been before the Planning Board a number of times on some of these issues. He said the ZBA had to follow the law as it was written, and said he was very much in favor of clarification of the Ordinance.

He said it had been somewhat disconcerting when he had seen the proposed definition of contiguous at the last meeting, noting that it had been changed in the 8th edition of Black's Law dictionary in 2004 to what it was now so was in effect at the time the ZBA had discussed it a few years ago. He said he was pleased to see the Board's proposed definition change now. He also said he believed that the people present were concerned about the previously proposed change to the definition of contiguous, so it was appropriate to go forward with the public hearing.

Mr. Gooze said he had done a lot of research on this issue, including looking at definitions around the country, some of which involved current use properties. He said the definitions he had found fit with what Black's Law said. He also said he thought the Board would have to be careful if it looked at the "lot" issue. He said he was in favor of the definition of contiguous the Board had chosen that evening, as well as the other

proposed Zoning changes on the Agenda.

Chair Parnell noted that the Board's vote so far was to move forward with the public hearing on the proposed Zoning amendments. He said the Board would have to vote after the Public Hearing on whether they should be put forward to the Town Council.

Mr. Gooze noted that he wasn't sure the definition for contiguous was actually needed.

Attorney Scott Hogan, Lee, NH, noted that he had represented the residential abutters to the proposed Stonemark project. He said this Board was free to adopt whatever definition it chose, or to not adopt anything. He noted that if there was no independent definition of contiguous, there would still be the wording "contiguous" as part of the definition of "lot" in the Ordinance.

He said when the Board's decision on the Stonemark project was appealed, the Court looked at the fact that the Ordinance said a lot was defined as "a parcel of land or two (2) or more contiguous parcels to be uses as a unit..." He said the Court had said that in general, traditional rules of statutory construction would govern, and so looked at the plain meaning of words, and did not add words the Town did not see fit to include. He said this meant that if the Town didn't include a definition of its own, dictionary definitions would be applied.

Attorney Hogan said that on a policy level, with the Stonemark application, they all had gotten into a discussion on how contiguous two separate lots were, when they didn't touch each other but had an easement between them. He asked whether, if there were two lots a mile from each other with three intervening parcels between them, and yet they still had a right of way across all of them, they would still be considered contiguous lots under the prior definition. He said the problem for the Planning Board, not only with the Stonemark situation, but with other properties in Town was how to actually work with that kind of definition. He spoke in some detail on this.

Attorney Hogan said when the Court had looked at it, without a definition of contiguous, it said the Ordinance said a lot might be two contiguous parcels, but they had to be used as a unit. He said it looked to the Court like the developers wouldn't be using the two parcels as a unit, with one parcel built on and one parcel not built on, and basically taking the land area for both and putting it on one lot, which would defeat the purpose of the Ordinance in spreading out density. He said a TDR (Transfer of Development Rights) ordinance, where there would be donor and receiving parcels, was really the only appropriate way to go about transferring density.

Attorney Hogan noted that he had hoped the Board might have heard from the public before adopting the definition of contiguous, but he said he was glad the Board had now voted as it had. He said the Court had said that the kind of definition of contiguous the Board had recently brought forward would undermine the purposes of the Ordinance to regulate density in an appropriate setting. He also said the 2004 definition from Black's Law dictionary, which was the same as the 2009 definition, was the basis of the Court's order in the Stonemark case.

Attorney Hogan said that regarding the elderly housing density bonus provision, the Court said in regard to the Stonemark case that based on the words in the Ordinance at the time, it was very clear that the 20% of the development not for elderly occupancy did not get the density bonus. He said if the Planning Board wanted to extend the density bonus to 100%, it was perfectly within its authority to do that, but he said he thought this reflected a different policy choice if it was done.

Attorney Hogan noted that both of these proposed Zoning changes would apply to every property in Durham, so he had been a bit concerned to hear them discussed in the context of the Stonemark proposal. He said this made him think of spot zoning, and said he hoped that when the Board had considered these changes, it was not in the context of that proposal.

Mr. Roberts said they were absolutely not talking about that, and said it was more likely there would be an issue in other zones than the zone that Stonemark was in.

Chair Parnell said the impetus for these proposed Zoning changes was that they were items that had gone to court, and said the Board's view was that it was therefore important to clarify the provisions. He said the goal was to not to correct what happened in the past, but to prepare for other projects that would be coming up, so that this kind of thing didn't happen again.

Councilor Smith provided clarification that the Planning Board had adopted a proposed definition, but had not actually adopted the definition.

Beth Olshansky, Packers Falls Road, said she supported the new definition for contiguous. She said that regarding the issue of whether a definition was needed or not, that in watching the Stonemark proceedings, it was clear to her that different members of the Planning Board had chosen to define contiguous in different ways, and that this was pivotal to the situation. She said a costly process had ensued because of that.

Ms. Olshansky said the discussion on this issue by the Planning Board a few weeks ago was confusing, and would not serve the Town well. She said the new definition was clear, simple, and should help the Planning Board and the ZBA deal with the matters that came before them. She said that regarding TDR, that should be a separate, thoughtful discussion to be sorted out in its own right.

Hillary Scott, said she was pleased with the proposed new definition of contiguous. She also asked how the proposed Zoning amendments had been chosen.

Chair Parnell said the Planning Board had had difficulty with the wording in some Zoning provisions with two past cases, and said after the most recent case, the Board had decided to address all of them at the same time. He said the Board was not being forced to make these changes, and simply hoped that the changes would benefit the Town in the future.

Ms. Scott said she was not in favor of the proposed change regarding the elderly housing density bonus. She said the bonus should only be applied to the percentage of a

development that was actually for elderly residents.

Richard Kelley MOVED to close the Public Hearing. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

Councilor Smith said to the extent that the Board had been in agreement on all the proposed Zoning changes at the last meeting, with exception of contiguous, and had now voted on a new definition of contiguous, he believed these proposed changes could be moved forward to the Town Council.

Richard Kelley MOVED to recommend to the Town Council Zoning Ordinance Amendments to Article II, Definitions, the definition of “Contiguous” and “Structural Parking;” Article XII, Zone Requirements, Section 175-41(F)(2), Section 175-43(F)(2) and Section 175-56(A); and Article XXI, Off-Street Parking and Loading, Section 175-116 and Section 175-117(A)(2). Councilor Smith SECONDED the motion.

Mr. Gardner asked what the rationale was for changing the wording regarding the density bonus for elderly housing.

Mr. Kelley said the way the proposed wording read was the way the Board had been applying it, and he said this hadn’t been questioned until recently. He noted that some developments had been approved based on applying it that way.

Mr. Campbell said the Zoning Ordinance provision was written with the purpose of given the density bonus to the entire development, and he said the Master Plan was clear on this goal.

Mr. Roberts noted that research indicated that there were a minimum of non-elderly residents in these kinds of developments,

Mr. Gardner asked if the language proposed was the best language, noting that he was having a problem with it.

Chair Parnell said the intent was that the density bonus would apply to the whole development. He said it had been applied this way to other developments, so no new standards were being set. He said the wording change simply provided clarification.
The motion PASSED unanimously 6-0.

- V. Acceptance Consideration on an Application for Site Plan Review** submitted by Daniel Sheehan, Durham, New Hampshire on behalf of Colonial Durham Associates, New York, New York, to expand the Mill Plaza Parking to create an additional 28 spaces. The property involved is shown on Tax Map 5, Lot 1-1, is located at Mill Road Plaza and is in the Central Business Zoning District

Mr. Sheehan said what was proposed was to enlarge the existing parking area and do some enhancements, which would balance the needs of the property owner, businesses and abutters. He noted the changing businesses in the area, including a new restaurant at the former Movie Stop space, the upgrade of the Chinese restaurant, significant changes

to Durham Marketplace, expected growth at Wildcat Fitness, etc. He provided some details on the existing parking at the Plaza, and said it needed to be addressed first in order to accommodate the growth that was expected.

Mr. Campbell noted that Mr. Sheehan had spoken to DPW Director Mike Lynch and Town Engineer Dave Cedarholm that day, and Mr. Sheehan said the issues that had been raised had been solved. Mr. Campbell asked if it was correct that the applicant would be submitting a drainage analysis report and Mr. Sheehan said yes, and said it was expected that the analysis would come out favorably, and that what would be proposed would cause less pollution than was currently happening.

Mr. Kelley asked about the timeline for getting the stormwater analysis.

Tobin Farwell, Farwell Engineering services, said they could have the drainage analysis ready by the end of the following week.

Councilor Smith noted the letter of May 2009 said there would be an additional 28 spaces. He said he was glad to hear about the proposed changes to the Movie Stop building, and said this would take up some parking spaces. He asked how many spaces at the Plaza were currently rented and leased to people who were not parking there because they were customers at Mill Plaza.

Mr. Sheehan said about 30 spaces were leased out. He said this was the only plaza around, and that a full time parking attendant was needed there.

Councilor Smith said he realized that. He said the first time plaza management had proposed to increase parking at Mill Plaza, it was clear not that all of it was being used by customers or employees of the businesses there. He said the increase in parking spaces was meant to increase revenue. He said he was not opposed to the Plaza increasing revenue, but he said it was required to have a specific number of spaces for customers and employees.

Councilor Smith said the people who originally developed the Plaza asked the Planning Board to allow them to pave less than the required number of spaces at the time, with the condition that when they needed more spaces for customers and employees, more area would be paved. He said when more parking spaces were applied for in 2002, it was patently clear that the Plaza businesses did not need them, because there were already spaces being rented without the Plaza management going through the step of a change in use.

He said he thought would be a great boon to the community if the Plaza installed parking meters near Mill Road and got the revenue, from people conducting business on Main Street or going to a class. He said right now, other spaces were being taken up by students or faculty who could afford a permit, which was eating up space that might better be used by the larger community.

Councilor Smith said he would encourage the applicant to use this as a reason for wanting to expand the parking. He asked Mr. Sheehan what “changing needs of the

community” he had referred to required more parking.

Mr. Sheehan said it was expected that there would be more people in Durham and more people coming to the Plaza, because of high class restaurants, the changes to Durham Marketplace and the gym expansion.

Councilor Smith asked whether, if these businesses were successful and there were more customers using the Plaza, the property owner would stop leasing spaces to people who were not customers of the businesses.

Mr. Sheehan said he hadn't given that a lot of thought, and would get back to the Planning Board on this.

Mr. Kelley said he would not support acceptance of the application that evening, and said one reason for this was the lack of a stormwater analysis, which was critical to what the applicant was proposing. He also noted that once the Board accepted an application, it was under the clock to complete its review.

He said the third and most important reason for not wanting to accept the application that evening was that this was a Conditional Use proposal as well, and he noted that the Planning Board had historically voted on the Conditional Use application first. He said he would like to see the whole package before he could support accepting it.

Mr. Roberts said the Planning Board was there to support the applicant, noting that the Plaza has been a focal point of the community. He said what some members were indicating was that there were ingredients in the planning regimen that they had to get through, and he said details were needed on such things as square footage, number of employees, etc. He also said the storm water and lighting concerns were real, and needed to be addressed in the application.

Mr. Sheehan provided some lighting information to Board members.

Mr. Roberts said the Board needed to see more details in order to understand what the need was in terms of parking. He noted that he was on the Planning Board when the first expansion was approved, and said that kind of information had been provided at that time.

Mr. Farwell noted that he had received a letter from Mr. Lynch specifically itemizing what he was looking for from the applicant. He asked if there were other lists, concerning what the Planning Board wanted to see in the application(s).

Mr. Roberts briefly outlined some of the details the Board wanted to see, and said Mr. Campbell could guide Mr. Farwell and Mr. Sheehan through what needed to be provided.

Mr. Kelley said he would like to see a professional parking analysis which discussed what parking was there now, and what would be needed there in the future.

Mr. Campbell said 370 parking spaces were originally required for Mill Plaza, but only

277 spaces were required to be paved at the time. He said the owner had come back to the Planning Board since that time for additional spaces. He said it would be good to show how the parking had changed over time, and how the demand for parking had changed as well. He said the Board had yet to see a response to this request.

Mr. Roberts said the issue of renting spaces could be dealt with as part of this

Richard Kelley MOVED to not accept the application because it is lacking some critical materials. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

VI. Presentation of Capital Improvement Program (CIP) 2010-2019 by Town Administrator Todd Selig and Business Manager Gail Jablonski

Administrator Selig noted that the Town Charter mandated that the CIP provide the long-term outlook for a 6 year period, but that Durham used a 10 year time horizon in order to provide a better sense of what the Town's capital needs would be in the future.

He said the draft CIP had been developed by Town boards, committees, commissions, etc., and reflected the information received to date. He said it was realized that this was a lot of information for the Planning Board to digest, so he and Ms. Jablonski would be meeting with the Board to go over the draft. He noted that there were particular areas of the CIP that he especially wanted to get feedback on from the Planning Board. He said as he went through the department sections, he would flag those areas.

Administrator Selig said the Library Board of Trustees had an anonymous donor who had offered to provide approximately \$250,000 toward a new library if a definitive site could be found for it. He said one of the two primary sites being considered was the Pines property, located across from Old Piscataqua Road. He noted that Doucet Survey had been engaged to survey the property, and said wetland delineation had just been completed, which would determine how much of the property was developable.

He said there had been meetings with the Jacques, the owners of the property, to get some of their goals for the site and to discuss some initial designs that would meet their objectives. He said some initial layouts were being considered, and said architect Walter Rous would also be developing some visuals.

Administrator Selig said the Trustees were also interested in the Greens property on Madbury Road, near Woodman Road. He said they envisioned an approximately 20,000 sf. facility for a new library, and noted that an outstanding item was what the cost sharing with the Town would be for this effort. He said the Trustees had committed to funding \$1 million of the project, and said hopefully there would be additional fundraising once it was known what the site would be.

Ms. Fuller received clarification that the \$250,000 from the anonymous donor wasn't certain until the site was decided on.

Chair Parnell noted the \$1million allocation in the CIP for 2009, and Administrator Selig

said this reflected money the Trustees had on hand based on fundraising. He said there had been no expenditures yet. He said it was a fairly fluid situation in terms of when the expenditures would actually take place. He said the Trustees were hopeful that in 2010, they would be able to use the prior monies to do design, site acquisition, and move the project forward so that in 2011 the Town could bond and commit some funding to the project. He said this timeframe would also give the Trustees time to do more fundraising.

Mr. Gardner noted a really good article in a recent planning journal on the importance to communities of having libraries downtown, including the economic value they provided for a town. He said it was encouraging to hear that there was a possible downtown location for the new library, and said it was important that these benefits were factored in.

Administrator Selig said it was projected that the Jacques site as compared to the downtown site would be less costly to acquire. But he said it was possible that the site development costs there might make the comparison with the Greens site much more equivalent.

He said an attribute of the Pines site that the Trustees especially liked was the possible pedestrian pathway to the High School. But he noted that the challenge there was the terrain throughout the stretch of land where the pathway would go. He said there was a tremendous differential in grade, and also said the area was quite dense, so there wasn't a good line of sight, which meant that there were some safety concerns.

Administrator Selig said in order to create a pedestrian way people would feel safe walking on, at a minimum there would have to be lighting and sufficient width to make people feel comfortable. He said it was not clear whether this would necessitate allowing cars to come through as well, but he said vehicular traffic would make it feel more like a street, which would be more comfortable for people. But he noted there was a tremendous cost associated with that, and also noted that there were significant wetlands in the area.

Ms. Fuller said perhaps there could be something in between, such as a paved path for bikes, skating, walking, but not necessary vehicular traffic.

Mr. Kelley noted that the access would have to be able to handle emergency vehicles.

Administrator Selig told Planning Board members that the Town had a 50 ft right of way in that location identified for vehicular traffic.

Mr. Kelley provided clarification that the proposed library would be approximately 12,500 sf., not 20,000 sf.

Ms. Fuller asked if the Jacques property was big enough to hold a new library as well as some other Town facilities that were needed.

Administrator Selig said there were actually two parcels, one of which contained the Pines bed and breakfast. He said each parcel contained approximately 7 acres, but noted that there were wetlands on them. He said if the existing wetland setbacks were adhered to, this would drastically minimize the use of the right hand parcel. He said it might be

possible in this location to enhance some existing marginal wetlands on the site and infringe on other wetlands, with the overall result of creating a more beneficial wetland in the area.

He said possible Town facilities on the site included a new Library; Town offices; a youth center/community center with one building or possibly more; and possible linkages to Jackson's Landing. He said it had been considered whether a new fire station could go there, but said the Jacques didn't feel that use would be compatible with their bed and breakfast, so it had been taken off the table.

Administrator Selig noted that the Pines property was located in a busy corridor, which meant that money would have to be spent on traffic calming, a possible roundabout, etc, so people would feel safe crossing the road. He said there was the possible idea of aligning the entrance to the Pines with the entrance to Old Piscataqua Road, but said right now it wasn't clear what the best way to do that would be.

On another subject, Administrator Selig said he would like to get Planning Board input on the CIP line item on a NW/SE linkage study. He said the University felt there was a better way to go than building a connector, so it was not likely that there would be a financial contribution from them for such a project, and it was also not likely that there would be other State money available for it. He noted that the Town had previously tried to get this project into the State's 10-year transportation plan.

Mr. Campbell explained that grant applications for such a project had never been accepted by the State. He also noted that the project had at one point been in NHDOT's long range plan, but was taken out. He said he had gotten it put back in, but only as a vision element, at least 20 years into the future, because there were no cost figures attached to it. He said Durham needed to do a study and get some figures in order to get the project put back into the Long Range Plan.

Mr. Kelley asked what the University's alternatives were to the Northern Connector.

Mr. Gardner noted the University's growing emphasis on public transportation, and Mr. Campbell said ridership continued to increase, stating that Wildcat Transit was now the largest public transit system in the State. He also said there was a lot of transportation demand management in place, including the provisions of fewer parking spaces. In addition, he said the University had always said there was the west side off ramp, which was being used, so they felt having another off ramp up the road wasn't necessary.

Mr. Kelley asked if things were at a point where the University didn't want to even explore that possibility of another connector.

Mr. Campbell said that was correct, but noted that the University might support what he had put forward in the CIP because it didn't strictly look at the Northern Connector or Southern Connector as the only option. He said with this NW/SE linkage line item, he was saying that they all needed to look at all of the options, including what could be done to improve the current network and what would be the optimal place for any new road systems.

Mr. Roberts said he supported Mr. Campbell on this, and said a comprehensive plan was really needed, one which included new data, in order to take this subject in some completely new directions. He said the University managed the situation by avoidance, but had been making decisions that affected Durham. He said the Town was in a lot of trouble regarding traffic issues, and needed a comprehensive transportation study.

Mr. Gardner said the project name was “NW/SE transportation linkage“, but he said the description said a more comprehensive approach was needed. He noted that the University had paid half the cost of the transportation model development, and said he therefore thought they had demonstrated that they were interested, on that level. He said he thought a possible transportation study should be more comprehensive in nature in order to be able to understand fully the nature of the transportation situation in Durham, including the connection to the issue of having a livable downtown. He said the way the language read in the contract with Mr. Dennis and his team, the goal wasn’t to get cars in and out of Town faster, it was to have a community where people could get where they wanted, including to the businesses downtown.

Mr. Kelley said everyone knew that there were already several studies regarding getting traffic in and out of Durham , but he said not much from these plans had been implemented. He questioned what would be done with another study, which cost \$100,000, until there was a commitment from UNH and the State, and they all moved on from a vision to reality.

Mr. Gardner noted as an aside that he had seen from his travels around the country that the traffic in Durham was actually pretty darn nice, compared to some other places.

On another topic, Administrator Selig spoke about the line item in the CIP regarding lighting on Jenkins Court. He said this request was coming from the Planning Department and the Public Works Department, with the thought being that with the redevelopment of Jenkins Court, some new lighting there could be tied in with new lighting on Main Street. He said his only concern with this was whether this should perhaps be delayed a year or two until construction on those properties was finished, so they could see how best to tie the lighting together.

Mr. Campbell said perhaps the conduit could be run now, so the area wouldn’t have to be dug up again in the future.

Mr. Roberts said a project he didn’t see in the CIP was one that addressed the fact that the estuary was filling up with mud and the moorings were disappearing. He also said the boat ramp didn’t meet the standards because the pitch was wrong, and it was too long. He said putting a boat ramp between two outreaches was a no-no, and said design standards from Virginia and Massachusetts should be looked at to determine how to preserve Durham’s maritime heritage and have it be feasible for a normal person to launch a boat.

Mr. Kelley agreed that it made sense to hold off on the lighting, in order to see if there would be additional development in the area.

Administrator Selig stressed that regarding all these projects, the overarching concern was the present economic situation, and said he was taking a hard look at what projects could be put off, consolidated, etc.

Chair Parnell noted the downtown parking plan proposal in the CIP, and said \$15,000 for this seemed to make more sense than a \$100,000 transportation study, because there were some things it could really address.

Administrator Selig said he liked Mr. Gardner's idea of integrating the transportation issue and the parking issue, and Chair Parnell agreed.

Concerning the Wagon Hill parking line item in the CIP, Administrator Selig said there was a trust fund for the property, which the Town had been hoping could be used for this project. But he said the terms of the bequest didn't allow that at present, so they were revisiting the issue.

Concerning the Technology Drive infrastructure line item in the CIP, Administrator Selig said it was a planning tool to be able to use with potential developers in that area. He said it was a long term project, and said it perhaps could be part of a TIF district.

Mr. Kelley asked whether the resident/nonresident permit parking system approach at Wagon Hill had gone anywhere. He noted that taxpayers were paying for this incredible resource, which was shared with the greater community. He said he could see sharing something in Town in this way, but said Wagon Hill was so remote that one had to question whether it would generate any revenue for the Town.

Administrator Selig said this was an issue that the part-time Recreation Director could look at. He noted that a Durham police officer had come up with a permit procedure a few years back, but said he didn't know if it had been discussed recently. He said this could be implemented now that there were parking stickers, but he said there hadn't been a focus on this.

Mr. Roberts said the Public Works Department had done a beautiful job of maintenance at Wagon Hill.

Concerning the Athletic fields line item, Administrator Selig explained that he had had concerns about the proposed location because kids tended to be attracted to gravel operations. He said he had continued to track this site as a possibility, and said he was open to feedback on it.

Councilor Smith asked if the Parks and Recreation Committee had recommended this, and Administrator Selig said the recommendation had come from the DPW. He said the Parks and Recreation Committee had been focusing on trails and programming, as well as on having the new part-time Recreation Director. He said he expected that as time went on, the Director would be looking at the issue of fields, and would be getting better data on what kind and how many were needed.

Mr. Kelley said he hadn't seen that a needs assessment had been done for Town athletic

fields, which included consideration of the schools' needs, the needs of ORYA, etc. He asked if anything like that had been done before.

Administrator Selig said he hadn't seen such an integrated study, but said the schools and ORYA had looked at the issue individually.

Mr. Campbell said the Recreation Director was in the process of trying to figure out what and where the needs were, and said this might lead to something like what Mr. Kelley was talking about.

Mr. Roberts said there was need for good athletic fields in Town, and noted that towns smaller than Durham had some nice recreational complexes.

Administrator Selig next spoke about the line item in the CIP concerning proposed vehicle expenditures by the Police Department, and the practice of using used vehicles as a cost saving approach.

Mr. Roberts said he had seen a presentation by the Public Works Director in Keene on optimizing energy efficiency and lowering costs within the DPW. He said the Director had been very knowledgeable and persuasive on the idea of using smaller, energy efficient cars for municipal purposes.

Mr. Gardner said he had attended a meeting with ZipCar, which had an offshoot that did fleet management. He explained that they used sophisticated software for their own fleets of ZipCars, and now were making this available for municipal transportation departments, etc. He said they had done some demos to show the cost savings involved. He noted that Durham might not be big enough to use such an approach, but said it could be quite affordable, and might be something to look into.

Administrator Selig said an ongoing charge from Chief Kurz concerning police cruisers was to see if they could bring on some hybrid vehicles. He noted the extra power demands for police cruisers, which had created some problems for the hybrid technology.

Mr. Roberts said the DPW Director in Keene had said that putting personnel into smaller cars/trucks when possible would actually be cheaper than down-shifting with used cars. He provided details on this

Administrator Selig next discussed the issue of a possible purchase of taser equipment for the Police Department. He said the Department's feeling was that it would prefer to use something other than deadly force to immobilize a person. He said the Department had talked with him about it over the last 4 years, and said he personally had been very reluctant to support this kind of technology. He noted that more and more police departments in NH had provided them to their police officers in recent years.

He said a question was whether someone would be justified in using a taser, and whether someone might perceive it as being too easy to utilize. He said in terms of officer safety, it was an excellent device, and he noted that the specific device recommended by the Police Department would have a digital camera on it so when it was drawn, the video would film what was happening, which would deter abusive behavior.

Ms. Fuller said she thought electric shock had worked in other situation where more control was needed, and said she didn't feel it would be abused. She said more and more communities around Durham were getting more violent. But she asked why there needed to be a taser for each officer, as indicated in the line item in the CIP.

Mr. Kelley said he would like to hear how many assaults on police officers there had actually been in Durham, and whether there was therefore a need to use tasers. He said Chief Kurz did an amazing job dealing in a nonviolent way with the student population, and noted that this was the intended audience with this CIP item. He said he supported it if there was a demonstrated need, but would not support it if the need wasn't there.

Administrator Selig said Durham had an excellent Police Department. He said a question was whether if an officer had a taser on his/her belt, it was that much easier not to talk to a person when there was a problem. He said he was confident that this wouldn't happen with the Durham Police Department, but said the big-brother aspect of the technology did concern him.

Mr. Kelley stated again that he would like to know the actual degree of the threat of violence to Durham police officers.

Mr. Roberts said it had been proven that female police officers were extremely effective, and he said if this technology enabled the Town to use them and improved their safety, maybe it was a good idea.

Chair Parnell said there were also incidents where people were killed by tasers. He said Durham was not a high crime town, it was a high disturbance town, and said he felt giving tasers to police officers was not a good idea. He said potential problems could be avoided in other ways.

Ms. Fuller said the police officers were already carrying guns, and said tasers were a quieter, gentler alternative than potentially using deadly force.

Chair Parnell said he thought Administrator Selig should know how often officers were pulling their guns and firing them, along with other relevant information, before going in this direction.

Administrator Selig said as part of the accreditation process, this information had to be provided annually, and said he would obtain this information.

There was next discussion on the need for a new police station, with Mr. Kelley asking where things stood with this.

Administrator Selig said the figures in the CIP did not reflect a needs assessment for a new facility, and focused on the existing building with some improvements that could serve the Town's needs into the foreseeable future. He noted that there was no real confidence in these numbers. He also said people might want to consider a new police station as part of a possible new public safety complex.

Administrator Selig next spoke about the Fire Department proposals in the CIP, and noted that there was \$230,000 in the Department's capital reserve fund, which was meant to support new equipment purchases. He said the proposed expenditures would burn through that.

He said a possible long term cost saving effort would be to front load projected funding, so that rather than bonding and carrying this bonding cost over time, the money would be taken from tax dollars up front to support long term department needs. He noted that UNH would pay for half of these costs.

Administrator Selig said such an approach would allow the Town to anticipate costs over a longer period of time, but said there would be an impact on taxpayers from such an initiative. He asked Board members what they thought about this alternative approach. He noted that the items in the CIP for the Fire Department all appeared to be legitimate needs, and also said the cost of a new fire station would not be included in this equation.

Ms. Fuller asked if the bottom line figures in the CIP were for 100% or 50% of the costs, and Administrator Selig said it was for 100%, and said UNH paid half of this.

Mr. Kelley said he supported in concept what Administrator Selig had said, but said he would like to be sure about the costs going out 10 years, noting that they wouldn't want to find out later on that they needed more than what projected

Chair Parnell said once an approach like this was set in motion, what was spent would be what was available, and there wouldn't be any second guessing.

There was discussion that once the money was there, it was much easier to spend it.

There was detailed discussion on the water rescue vehicle line item in the CIP under the Fire Department, and the need for this equipment.

Administrator Selig next spoke about the proposal in the CIP regarding the Morgan Way intersection. He said this proposal was generated as result of concerns from residents on Morgan Way that there had been a large number of accidents at the intersection with Route 4. He said there had been 23 accidents there since 2003, some of which involved high speed and injuries. He explained that because this was a State road, it was not typically a roadway the Town would invest local monies in improving.

He said the proposal was to create a left hand lane turning east. He said the State had no funds to do this, and it was not part of the State's 10 year plan. He noted that as part of the Route 4 Safety study that was done, this intersection was noted but was not corrected.

Administrator Selig said the question was how the community wanted to address this issue. He said it would be great if there was a private developer whose project involved this intersection, and the Town could then require the turning lane as an off-site exaction, but he said that was not the case right now.

He said the State had offered to allow the Town to participate in the Highway Aid program, where the Town would front the cost, and the State would reimburse the Town for 2/3 of this cost over time. But he said the Town needed to appropriate the money first in order to get on the list for this program.

Administrator Selig said this was a big ticket project the Town had not planned for and which had not been in the CIP, and he noted said there were a lot of other public works needs in Durham. He said a possibility was to substitute this project for another project. He said a question he had asked Chief Kurz and the Traffic Safety Committee was whether the Town should focus on this intersection right now, and not other deficient intersections or other priorities.

Mr. Kelley said he assumed that accident details for Morgan Way indicated that there were rear-end collisions occurring, with cars waiting to make the left hand turn. But he said it would be good to know for certain that this was the case.

Mr. Gardner said he had just spoken with Tobey Ball, who had been involved in a recent rear-end collision at the intersection at 55 mph, and said his car had been totaled.

Mr. Roberts asked if there were other locations in Durham with this kind of accident rate.

Chair Parnell asked when the reimbursement to the Town would occur for such a project, and Administrator Selig said 2013. Mr. Campbell noted that this could be delayed further.

Mr. Roberts asked when the stoplight at the Route 4/Route 108 intersection was scheduled.

Mr. Campbell said 2012-2013, and noted that the signalization had been scheduled for 2008 but kept getting pushed out.

Administrator Selig said one possibility was for the Town to revisit that project, and perhaps divert money to the Morgan Way project.

Administrator Selig said the cost for a project like the Morgan Way intersection would be equivalent to the cost of the Town's Road Program for a year.

Mr. Kelley asked whether pushing the items in the Road Program out an additional year would make much of a difference.

DPW Director Mike Lynch said the Town's Road Program had been pushed out twice over the past three years, and said what would have cost \$325,000 two years ago now cost \$539,000. He stressed that roads were the top priority for the DPW.

Ms. Fuller said Wednesday Hill Road had become very dangerous before it was patched. She said it was noticeable that the Town had been somewhat lacking in maintaining its roads.

Mr. Gardner said the infrastructure in the country was crumbling, and no one wanted to pay for it. He noted the problems with the Crommet Creek Bridge, and said his engineering students had wanted to design a new bridge. He said he had asked them to prove that it deserved the money required to replace it, and noted that it didn't see that much traffic according to the counts.

Mr. Lynch said what was proposed for the Crommet Creek Bridge was not a replacement, and involved shoring it up, which was important to the people who lived out there.

On another issue, Mr. Lynch said some residents on Madbury Road wanted the boulders there to be cleaned up a bit. He noted that the area involved had been designed to handle some road and sidewalk drainage, and to recharge the ground in a natural way. He said this work would be revisited, and some modifications would be made. He said the rain garden design would be used, but would be softened.

Chair Parnell determined that the CIP discussion would be continued at the next Planning Board meeting.

Mr. Kelley stated again that he would like to see some more specifics regarding the taser proposal.

VII. Other Business

A. Old Business

None

B. New Business

1. Request for Extension on Conditions of Approval for the Site Plan at 262 Mast Road submitted by Park Court Properties.

Steve Roberts MOVED to approve the Request for Extension on the Conditions of Approval for the Site Plan at 262 Mast Road submitted by Park Court Properties for 90 days. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

2. Request for Technical Review on a Change of Use to Two spaces within the Building at 13 Jenkins Court.

Mr. Campbell said the applicants had bought the old Benjamin's Building, and moved into this location with their existing clothing business. He said Mr. Johnson had informed them that what was proposed was a change of use so it needed to go to the Planning Board. He also said Wings Your Way had previously opened up an ice cream place in the same building, but there was now a retail use there, which was considered a change of use from restaurant to retail.

Chair Parnell asked if any internal changes to the building were proposed, and the applicant said no.

Mr. Roberts said the only issue was that the original building was an excellent federal building, and said he would love to see it cleaned up.

Richard Kelley MOVED to approve the Request for Technical Review on a Change of Use to Two spaces within the Building at 13 Jenkins Court. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

IX. Adjournment

Richard Kelley MOVED to adjourn the meeting. Susan Fuller SECONDED the motion, and PASSED unanimously 6-0.

Victoria Parmele, Minutes taker

Adjournment at 10:09 pm