

These minutes were approved at the January 13, 2010 meeting.

**Durham Planning Board Agenda
Wednesday November 18, 2009
Durham Town Hall - Council Chambers
7:00P.M.**

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

ALTERNATES PRESENT: Wayne Lewis; Kevin Gardner

MEMBERS ABSENT: Richard Ozenich; Councilor Neil Niman

I. Call to Order

Chair Parnell said Mr. Gardner would be a voting member in place of Mr. Ozenich, and Mr. Lewis would be a voting member in place of Mr. Roberts. Mr. Roberts subsequently arrived at the meeting, at 7:06 pm.

II. Approval of Agenda

Bill McGowan MOVED to approve the Agenda as submitted. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

III. Report of the Planner

Mr. Campbell said the Chair of the Economic Development Committee would not be able to get to the Planning Board meeting that evening to make the presentation on the SWOT analysis. He reviewed issues discussed at the EDC's meeting on Friday.

- He said there had been continued discussion on business retention and expansion in Durham, and described the business visitation program that was being developed as part of this.
- He said the Committee had developed a list of projects it wanted to work on, and would be forwarding the list to the Town Council in December so the projects could be prioritized.
- Mr. Campbell said the EDC discussed the idea of providing wi-fi service in the downtown, and would be meeting with MIS Manager Luke Vincent and some people from the University concerning this.
- He said the EDC thought it would be a good idea to allow non-residents to serve on the Committee, because that would mean a business owner who didn't live in Durham could provide valuable input.

Mr. Campbell said the recent charrette was well attended. He said the consultants were now in the process of looking at the information that had been gathered, and would have

a draft report completed in 6 weeks. He said the major work to be done was still ahead. He noted that segments of the charrette had been filmed and were being aired on DCAT.

Mr. Campbell said he had recently attended his last meeting on the Executive Committee for the NH Planners Association after serving on it for 8 years.

Mr. Campbell said the Council did not pass on first reading the amendments to the Courthouse District Zoning provisions at its November 16th meeting, and said the Board could discuss this under Old Business.

Mr. Campbell said he had recently attended a form based code workshop held in Lowell, MA. He noted that this concept was a big part of the recent charrette, and would probably be a part of the recommendations coming from B. Dennis Town Design.

Mr. Kelley congratulated Mr. Campbell on his 8 years of service on the Executive Committee of the NH Planners Association. He then asked if there would be a presentation on the charrette report when it was ready.

Mr. Campbell said yes, and said the presentation would be to the Town Council.

Mr. Roberts said making a question and answer period available to the Planning Board on the report would be appreciated, and Mr. Campbell said absolutely.

IV. Acceptance Consideration and Public Hearing on an Application to Amend a Previously Approved Site Plan and Conditional Use Permit submitted by Park Court Properties Inc., Durham, New Hampshire for the construction of a mixed-use, multi-unit building which would create 42 units. The properties involved are shown on Tax Map 13, Lots 5-0 and 7-0, are located at 262 Mast Road and 260 Mast Road respectively and are in the Multi-Unit Dwelling/Office Research Zoning District.

Bill Doucet of Doucet Survey spoke before the Board, and noted that the last time he was before the Board regarding this project was because of on-going negotiations on the sewer and water agreement, which had now been finalized.

He said the proposed amendment to the previously approved site plan was for a project that had been scaled down to 2 buildings. He said this would result in a reduction in site impacts, and explained that the same site features were proposed as before, including porous surfaces, green roofs, and the same high level of landscaping and enhancement of the wetland area. He said both buildings would be 3 stories.

Mr. Kelley noted that Building #1 would be located very close to the edge of pavement, just behind the sidewalk, and asked if there were any concerns regarding this. He said he realized they were somewhat limited by the easement, but assumed that the easement was constraining the edge of pavement but not necessarily the slope work associated with that road.

Mr. Doucet said there was a slope easement across the lot line, and said they were trying to stay a certain distance off of it. He said they were also trying to keep the building as far out of the buffer as possible.

There was discussion on the turning radius for fire trucks in the revised parking lot. Mr. Doucet said they had met with the Fire Department, and the turning radius met their criteria.

Mr. Kelley said he would be looking for a memo from the Fire Department on this. He then noted the proposed water line going under the proposed sewer, and said he would like to see the sewer pipe incased in concrete. He said he wasn't sure if it was a State requirement or not, and then said with the water line beneath the sewer line, perhaps both needed to be incased in concrete.

Joe Procino of Appledore Engineering said an 18 inch separation had to be maintained between the sewer and water pipes, and said the design had been reviewed and approved by the State and the Town. He said the need to incase the pipes in concrete was part of the old State rules, and provided details on what was planned.

Mr. Kelley summarized that within 10 ft of the crossing, there was to be no joint on either the sewer line or water line. He said he would like to see a note on the plan stating this, and Mr. Procino said wording could be found under note #19 on sheet C-4 of the site plan.

Mr. Kelley asked when the water and sewer work on Route 155A would occur, and Mr. Doucet said it would be constructed by the Town on its desired schedule. He explained that the project was put out to bid in the fall with a tight time frame, and there wasn't a very good response from bidders. He said the plan was to put it out to bid again, for spring construction, and said this would work with the applicant's schedule

Mr. McGowan asked whether there would be phasing of the project, and Mr. Doucet said both buildings would be built at the same time, which was another advantage of the amendment to the site plan. He noted that porous surfaces didn't hold up well to construction on a site, and said because the approved site plan had had several phases, this issue had previously been a concern.

Mr. Kelley asked if additional earthwork would be needed for the grading, and if so, how much truck traffic could be expected.

Mr. Doucet said with the sophisticated parking lot that would be installed, which essentially contained a leach field underneath, there would be a lot of material leaving and coming to the site. He said the construction sequences were on the plan, and said what was proposed would mitigate impacts.

Mr. Kelley asked how many trucks and cubic yards were involved, and Mr. Procino said some material would be brought in at the beginning and some would come in later. He

said it wouldn't be an intense process at the beginning, and said a couple of thousand cubic yards of material would be brought in.

Mr. Roberts asked if any water from the parking area would be shunted into a collection pond, or if just the porous pavement would be used to do the mitigation.

Mr. Doucet said there would be no detention ponds or other collection media.

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

Richard Kelley MOVED to accept and open the public hearing on the Application to Amend a Previously Approved Site Plan and Conditional Use Permit submitted by Park Court Properties Inc., Durham, New Hampshire for the construction of a mixed-use, multi-unit building which would create 42 units. The properties involved are shown on Tax Map 13, Lots 5-0 and 7-0, are located at 262 Mast Road and 260 Mast Road respectively and are in the Multi-Unit Dwelling/Office Research Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell noted that while the Planning Board didn't usually do this, it would deliberate on the application that evening, because it was an amendment to a project the Board had previously spent quite a bit of time on.

Councilor Smith stated that the Board was having a public hearing on the proposed amendment to the existing site plan.

Councilor Robin Mower, Faculty Road, noted the rain garden planned for the roof with the applications that had previously been approved. She said the Conservation Commission had been very interested in this, and said she hoped the Planning Board would discuss this.

Chair Parnell said green roofs had been proposed with the existing site plan, and were proposed with the amended plan as well.

There were no other members of the public to speak for or against the application amendment.

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

Mr. Campbell said he had provided the Findings of Fact and Conditions of Approval. He explained that the additional submittals had been included in the previous Findings of Fact, and said there were no changes to any of the Conditions of Approval.
Mr. McGowan noted that there should be a FOF #34 that the public hearing was held that evening.

Mr. Campbell said he would get a letter confirming what the Fire Chief had said

regarding the turning radius.

Mr. Gardner noted the description on the HVAC system in the letter accompanying the proposed amendment, and said it wasn't clear what the reason was for this amended application.

Mr. Doucet said economics played a role in this, and said the wording on the HVAC system was meant as one example of this. But he said it had been interesting how things had worked out, because they came up with a better design.

There was discussion between Mr. Gardner and Mr. Doucet that the number of beds was proposed to be the same, and while previously there were fewer units and more beds per unit, now there were more units and fewer beds per unit.

Mr. Gardner asked if this suggested that non-students might chose to live here.

Mr. Doucet said the apartments were marketed to students, noting that the applicant was in the business of student housing. He also said most non-students would find it cost prohibitive to live there.

Mr. Kelley asked if the square footage per resident would be the same with the proposed amended plan.

Mr. Doucet said there would be approximately 100 sf less per unit, but said this would still meet the requirement of 1 occupant per 200 sf of habitable floor area.

Mr. Kelley said the Findings of Fact needed to indicate that now there would be 48 parking spaces instead of 46 spaces.

Mr. Kelley asked if the Board needed to re-approve any of the waivers, and Mr. Campbell said no.

Mr. McGowan said it should be noted in the Findings of Fact that the water and sewer for the project was approved by the Town Council.

Mr. Kelley said if the property management plan had not already been prepared, he was ok with making it a condition of approval to be met subsequent to the signature of approval on the site plan and prior to occupancy.

Mr. Campbell said the Town had already received the property management plan.

There was discussion between Mr. Kelley, Mr. Doucet and Mr. Procino regarding the utility work that would be done on Route 155A. Mr. Doucet explained that the utility work on Route 155A was separate from the applicant's project. He said the Town was doing the actual work of extending the water and sewer up to the site, and the applicant would be tying into this.

Mr. Kelley asked who was making the cut under Route 155A, and Mr. Doucet said it was the Town.

Mr. Procino said the Town would bring the pipe across the road to the project site and the contractors for the project would take it from there.

Mr. Kelley noted that if the contractors for the project were doing the work within Route 155A, they would have had to get a traffic management plan approved by DPW. But he said it sounded like this wasn't needed since the Town was going to be doing this work.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval on an Application to Amend a Previously Approved Conditional Use Permit submitted by Park Court Properties Inc., Durham, New Hampshire for the construction of a mixed-use, multi-unit building which would create 42 units. The properties involved are shown on Tax Map 13, Lots 5-0 and 7-0, are located at 262 Mast Road and 260 Mast Road respectively and are in the Multi-Unit Dwelling/Office Research Zoning District. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

Richard Kelley MOVED to approve the Findings of Fact and Conditions of Approval on an Application to Amend a Previously Approved Site Plan submitted by Park Court Properties Inc., Durham, New Hampshire for the construction of a mixed-use, multi-unit building which would create 42 units. The properties involved are shown on Tax Map 13, Lots 5-0 and 7-0, are located at 262 Mast Road and 260 Mast Road respectively and are in the Multi-Unit Dwelling/Office Research Zoning District. Bill McGowan SECONDED the motion and it PASSED unanimously 7-0.

- V. Acceptance Consideration of an Application for Conditional Use Permit** submitted by 50 Newmarket Road Inc., Portsmouth, New Hampshire for the expansion of a non-conforming use of a performing arts facility with temporary housing for actors. The property involved is shown on Tax Map 6, Lot 9-8, is located at 50 Newmarket Road and is in the Residence B Zoning District.

Mr. Campbell explained that the applicant had been granted a variance for this project, which an abutter had appealed to Superior Court. He said in the meantime, the applicant was moving forward with the application. He noted that he had received an email from the abutter asking that the application not be accepted because of the court case.

Mr. Campbell said he and Mr. Johnson had checked with the Board's attorney on this about a month ago, and were told the Board could in fact move forward with this application before the court case was heard.

Mr. McGowan asked what it would mean if the ZBA's decision was overturned.

Mr. Campbell said if the Planning Board was still deliberating on the application, which

he doubted, the Board could make it a condition of approval that this issue would need to be settled. He said the conditional use permit would be null and void if the ZBA's decision was not upheld in court.

Mr. Kelley asked whether, if the Planning Board approved this application, the applicant could then do what they intended to do including what the ZBA had allowed them to do, before the case was settled.

Mr. Campbell said it would be wise to carry on as it was today without the ZBA approval. He said the variance received was that the single family home on the site could have up to nine people living in it, instead of 3 unrelated people.

Mr. Kelley asked if the request for 9 people instead of 3 was what made this a Conditional Use Permit application.

Mr. Campbell explained that when the Mill Pond Center was first approved, it was part of the RB district, and the approval said the single family home was allowed to have an arts facility associated with it. He said the zoning of the property subsequently changed, so it was now a legally nonconforming use. He said Mr. Johnson was treating what the applicants wanted as an expansion of a legally nonconforming use.

He said Mr. Johnson wouldn't do anything without Planning Board approval, and not just because the ZBA said they wanted the Planning Board to handle all the abutters' concerns

Councilor Smith asked if it was the case that these 9 unrelated people would not be considered permanent residents.

Mr. Campbell said that was correct. He also noted that the house where they would reside had an accessory apartment in it, and said a property manager would live there.

Chair Parnell re-confirmed that the Board's attorney said it could proceed with the application.

Stefany Shaheen, Director of Seacoast Repertory Theatre, said they were requesting a Conditional Use Permit for the expansion of a legally nonconforming use by housing more than 3 unrelated people at the house at Mill Pond Center. She said everything else proposed was consistent with what was allowed when a variance for the property was issued in the 1980's.

She said there would be a studio for dance classes, athletics, etc, and said they would also continue and expand their existing youth programming, which included day camps, music classes, etc.

She said the house would be used to house actors. She explained that Seacoast Repertory Theatre performed 6-7 shows annually, each of which ran for 4-5 weeks. She said 8-9

actors would need housing at these times as well as during the rehearsal period. She explained that these were professional adults who traveled year round, and said there would be very stringent house policies. She said no one under 18 would be allowed on the premises, and said there would be a property manager on the site.

Ms. Shaheen noted that Seacoast Rep had gotten a great vote of confidence from the local community for what they were proposing. She said local families were very invested in the youth programming that Seacoast Rep already provided in the Seacoast area.

Ms. Fuller asked for details on the youth camps that would be held.

Ms. Shaheen said currently, they had three 2 week sessions in Portsmouth that served no more than 35 kids, and said the groups would probably be smaller in Durham because if the camp had to be held indoors because of the weather, the facility wouldn't be large enough to hold 35 kids. She said the camps would be held only during business hours, starting no earlier than 8:45 am and ending no later than 5:00 pm. She said parents would drop the kids off and pick them up.

There was discussion about the ages of the people living in the house. Ms. Shaheen said people under 18 affiliated with any of the actors wouldn't be allowed in the house. She also said it wouldn't be student housing.

Mr. Kelley said he would like to see an engineer's assessment of the on-site sanitary disposal system, and Ms. Shaheen agreed to provide this information.

Ms. Shaheen said she had met with three abutters who had voiced the strongest concerns about what was proposed. She said the key concern was about possible noise problems, and she noted that the former Mill Pond Center had sometimes held outdoor events with amplified music. She said she had assured the abutters that it was not their intention to have such events. She said it was likely there would be children's voices during normal business hours, but not events with loud amplified sound.

She said another issue raised was lighting that was considered intrusive in the parking lot next to an abutter's yard. She said they had talked about putting some blinders or screens to direct the light down to the ground.

She said concern was also expressed about how frequently the field on the property would be hayed. She said she had spoken about this with the entity that held the conservation easement, and said Seacoast Rep would do everything it could to keep the field well maintained and cared for, in compliance with the easement.

Mr. Campbell said the application was complete.

Mr. Parnell asked if the people living in the house would pay rent, and Mr. Shaheen said no.

Mr. Campbell said if the Board decided to accept the application, he recommended

having the public hearing on December 9th .

Richard Kelley MOVED to accept an Application for Conditional Use Permit submitted by 50 Newmarket Road Inc., Portsmouth, New Hampshire for the expansion of a non-conforming use of a performing arts facility with temporary housing for actors, and schedules a public hearing for December 9th. The property involved is shown on Tax Map 6, Lot 9-8, is located at 50 Newmarket Road and is in the Residence B Zoning District. Susan Fuller SECONDED the motion and it PASSED unanimously 7-0.

The Board decided to do a site walk on December 5th at 9 am.

- VI. Conceptual Consultation** submitted by R.W. Norfolk Holdings LLC, c/o The Kane Company, Portsmouth, New Hampshire, on behalf of Gamma Theta Corporation, Dover, New Hampshire, for the construction of a hotel. The property involved is shown on Tax Map 2, Lot 14-2, is located at 66 Main Street and is in the Central Business Zoning District.

Mark Stebbins, of Schleiker and Stebbins Hotels, said they had developed preliminary plans for a proposed hotel on the ATO lot on Main Street. He first noted that his company was based in NH and owned and managed over 20 hotels, 2 of which were under construction right now, one in downtown Portsmouth and the other in downtown Keene. He said they owned 4 hotels in Manchester, had renovated and were the owners of Wentworth by the Sea, and owned and operated the Hilton Garden Inn and Homewood Suites in Portsmouth. He said they owned hotels from North Carolina up to New Hampshire.

Mr. Stebbins said their partners in this venture would be the Kane Company out of Portsmouth, and said the architects would be from Pro Con, Inc, a company that had designed and built over 60 hotels over the last 12 years, and had 3 under construction right now. He said architect Jim Loft would go through the conceptual design with the Board.

Architect Jim Loft of Pro Con provided sketches to the Board, and said the present conceptual design would be for a facility that would cover the ATO lot. He noted that there was a Town lot behind the ATO lot on Pettee Brook Road. He said the hotel was proposed to have 100 guest rooms, as well as a meeting and banquet space accessible from the Pettee Brook Road side that would serve about 300 people. He also said the portion of the building facing Main Street would have space for retail.

He explained that from an image standpoint, they wanted to do something that picked up some of the detailing of the Town, including detailing of the ATO house. He said the idea was not to go overboard and Disneyland the architecture, but to establish a mix of brick and clapboard, and create an extension of Main Street that could add to the architectural cohesive whole as one came into the downtown.

He provided details on how things could be laid out on the site, noting among other things that there was a 6-8 ft drop in elevation going from Pettee Brook Road to Main

Street. He explained that access to the banquet area would be from Pettee Brook Road, and access to the hotel would be from Main Street as well as Pettee Brook Road. He said having the hotel facing on Main Street, with retail next to it moving in the direction of the shops downtown, would work as an extension of the retail that was already there.

He provided details for Ms. Fuller about the relatively small loading area behind the hotel. He said this area didn't have to be especially large because normally a box truck type delivery would occur at off-peak hours, so guests weren't disturbed.

Mr. Roberts asked if there was a way to incorporate the lovely elements of the dorms across the street, and spoke about how this had been done at Suffolk University in Boston. He noted that the former fraternity house where Huddleston Hall now was had been a beautiful federalist building, and also said the theatre had had the same design elements. He said there was a lot of integrity to those dorms.

Mr. Loft agreed, and said they had looked at the dormers of that building, and would make an effort to blend in with them although not exactly mimic them. He said there was a lot of history there, and said it was New England too. He spoke about possible detailing ideas.

Mr. Roberts said that the key thing was to step back and look at the image of the street on both sides, going both ways. He said a lot of the buildings to the east were early-mid 1900's, and also noted that at the charrette, there was discussion that the bank should get a new front in order to stitch in better with the whole area.

Mr. Loft said he thought they were on the same page. He said this was a destination site, and said playing off of what was already there would make the facility feel that much nicer.

Councilor Smith asked if it was contemplated that there would be a time limit on residency at the hotel, and noted that this issue had come up when the Hotel New Hampshire application was before the Board.

Mr. Stebbins said this hadn't been considered because they didn't contemplate it would be an issue, given what they would be charging to stay there.

Councilor Smith asked if a tavern or a bar and grill was contemplated at the hotel, and Mr. Stebbins said yes. Councilor Smith noted that the location of the hotel would be very convenient to the UNH campus, and asked if the company had managed any hotels located right next to the campus of a large University town.

Mr. Stebbins said no, but said they would be opening such a hotel in Keene next spring. He also said the bar at the hotel to be located in Durham would be more for guests than for people coming in off the street. He said it wouldn't really be a bar setting, and provided details on this. He said it would have 9-10 seats at the bar and a number of seats around it.

Councilor Smith asked if there would be some control over access, and Mr. Stebbins said yes.

Mr. Loft explained that the bar area would be open to the lobby, so would be visible.

Chair Parnell asked if they were contemplating underground parking, and Mr. Stebbins said no. He said there would be valet parking.

Councilor Neil Niman, speaking at the podium, said the Town had been working with the University for some months now concerning how the University could support redeveloping the downtown. He said as part of this there had been discussion about the fact that there wasn't enough parking downtown, and he noted that this was the number one complaint of downtown merchants.

He said they had talked with the University about how they could help expand the amount of parking available without actually paving over and striping more land downtown. He said they had reached a tentative agreement on this, and said he expected that some existing University parking would be leased to the hotel project.

He said he was reluctant to talk about details right now, because parking was a politically sensitive issue on campus. But he said there would be a parking plan in front of the Board before they voted on the application, and also said leasing University spaces to the Town would require Town Council approval.

Councilor Niman said another part of the plan was to lease a portion of the parking spaces at the Depot Road parking lot for people staying at the hotel. He provided details on this and said there would be a shuttle service from the parking lot to the hotel.

Mr. Campbell noted that the length of stay at the hotel would be limited to two weeks according to the Zoning Ordinance.

Mr. Stebbins said he had been meeting with the University for 18 months, and said the University was very interested in this project because of the closing of the New England Center. He said the new facility would provide banquet and meeting space, which the University would need in support of their professional education programs at the new business school that would be constructed downtown. He said the parking was needed for the banquet space as well as the hotel rooms.

Mr. Kelley asked if the concept being described had been shared with the consulting firm that was currently working with the Town regarding redevelopment of the downtown core.

Mr. Stebbins said it had not been shared.

Mr. Kelley asked how critical it was that Pettee Brook Road would be maintained as

vehicular access to the facility, and then asked if there would be a problem if it went away.

Mr. Stebbins said it would be a problem if it were removed because of the access needed to the meeting room/banquet facilities. He said if they had to get people from Main Street back to the banquet facility, this would create a problem, and also said it could create a traffic problem on Main Street.

Mr. Loft noted that access from Pettee Brook Road was important because a covered entrance to the hotel would be needed for some guests.

Mr. Roberts said he would support allowing a longer length of stay than two weeks, based on his own experience staying at hotels.

Mr. Gardner noted that the Town had just gone through a charrette process, and said there was a lot of public input as part of this process and a lot of excitement about what was put forward. He said he thought the hotel proposal could fit well with designs that had been developed during the charrette, but said it would be worthwhile to look at those designs to see how they fit with what was being proposed here.

Mr. Loft said that was a good idea.

Mr. Kelley said whatever they would be willing to share with the Town's consultants would be great.

Mr. Gardner said the Town's consultants seemed well aware of the project. He then said he was concerned that the New England Center was going out of business, and yet there was another hotel popping up in Town. He asked whether as a Town, they should be concerned that the new hotel could be built and then go belly up.

Mr. Stebbins said from his experience, it was a nightmare when universities tried to run hotels. He said while the New England Center had a great architectural design, it wasn't designed to make sense as a hotel/conference facility. He also said the fact that no one had reinvested in it was typical of universities, and noted that Dartmouth had the same problem with the Hanover Inn.

He explained that his company took 5% of the income each year from each of the hotels it ran and put this into escrow, noting that this was required as part of financing. He said every 6-8 years, they then redid the entire interior of the hotel. He said the company had made a lot of money buying hotels where such reinvestment had not occurred, and said Ashworth by the Sea was a great example of this. He then said he wasn't worried about the possible scenario Mr. Gardner had asked about.

Mr. Kelley said the Board's concern was that if things went bad with the hotel, the applicant would come back seeking to utilize the rooms in the building for student rentals. He said he realized this was an allowed use in the Central Business District, but

said it was still a concern.

Mr. Stebbins said this absolutely should be a concern. But he said his company wouldn't have spent so much time developing this project if they didn't think it would be successful. He also said he realized things didn't always turn out as they were planned, but said one dealt with that at the time.

Councilor Smith asked if there had been discussion with the Town about the idea of providing a completion bond regarding finishing this project.

Mr. Stebbins said there hadn't been such a discussion yet, and said the issue wasn't the completion but whether there would be financing of the project or not.

Councilor Smith said he imagined the financial backers would want to have assurances of completion.

Mr. Roberts asked what would be offered to the townspeople with this project.

Mr. Stebbins said there would be a dining experience, and said it would be informal but also fine dining. He said Durham didn't yet have what Hanover had in terms of opportunities to shop, go out to eat, etc., but said the Town had this potential. He said hopefully the hotel would be one of the cornerstones of this, so when people came to visit their children, they didn't have to run to Portsmouth for such things.

Chair Parnell asked what the proposed schedule was for the project.

Mr. Stebbins said they hoped to get an approval within the next 4 months, and said the goal was to start construction by spring or early summer of 2010. He said this was a large project and they would have to get financing. He said so far with this recession, they hadn't had problems with this and had built two hotels the past spring and had three under construction. He said he couldn't promise anything regarding financing, stating that it was the biggest issue for any construction project right now. But he said the goal was to open in the spring of 2011.

In answer to questions from Ms. Fuller, Mr. Stebbins said the company had built and managed the Hilton Hotel in Portsmouth, and also said it was an the owner, designer and builder of the new Residence Inn in Portsmouth at the former location of the Parade Mall.

Mr. Kelley said one thing he would be interested in seeing and understanding better was the ability of the Town's water and sewer infrastructure to service the new project, and whether upgrades would be needed.

Mr. Stebbins said the company had spent some time considering this.

Mr. Kelley also recommended that the company's traffic engineer engage with RSG, the company that ran the traffic model for the Town.

Break from 8:25 to 8:37 pm

- VII. Presentation of an Internal SWOT Analysis - A primary goal of the strategic planning** process is to obtain a profile of a community's economic environment including available resources, barriers to local economic development and a plan for the future. A community's competitive advantage has a clear impact on the economic condition of the town's businesses and residents. SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats) is one method to assess a community's competitive advantage. A well thought out SWOT analysis leads directly to a set of conclusions that should drive marketing and policy decisions.

Postponed

- VIII. Review of Findings of Fact and Reasons for Denial for a Site Plan and Conditional Use Permit** 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. Campbell discussed the documents that had been developed. He said it should be noted under the Findings of Fact that the Board had received a number of letters from concerned citizens, as well as some petitions, and said details would be provided on this.

Mr. McGowan said it should be noted in the FOF that the letter from the Board's attorney was released to the public.

Mr. Campbell said all the letters from the attorneys would be noted in the FOF.

Concerning the Notice of Denial, Mr. Campbell said he developed these items in it from notes taken of the Board's discussion. He said he had focused on reasons for denial that were based on the Zoning Ordinance and Site Plan regulations.

Mr. Kelley recommended that Item #1 should say "...first applying for approval of the existing leased spaces."

Ms. Fuller noted that Attorney Rattigan had asked for the opportunity to come back, before the Board had denied the application, and said she wondered what this would have involved.

Mr. Campbell said he didn't know, and said there were various options for the applicant to take.

Ms. Fuller said she didn't feel good about the Board's recent denial of the application. She said they had missed the opportunity to improve the drainage, and to work with the developer to form a relationship that would be good for him and good for the Town. She

said the Plaza wasn't there just to survive, and said it needed to be able to thrive.

Councilor Smith said he understood what Ms. Fuller was saying, and said he thought others felt the same way. He said he wished the proposal had come in a different way, and had included some concessions from the owner or his agents. He said he had recently spoken to Mr. Pinto at Mill Plaza, and told him he could not support the application that was before the Board, but could support an application that provided more benefits for the community.

He said he had pointed out that if Mr. Pinto wanted to lease spaces, he should do this on a different basis, and would probably make more money by setting some of the parking lot aside for controlled time parking for people who wanted to shop on Main Street. He noted that this would require coming back to the Planning Board or the ZBA.

Councilor Smith said 30 years ago when the original application was approved there were a number of conditions of approval including raised sidewalks and plantings, which fell by the wayside over time. He said as the decades passed, the Town didn't encourage the new owners to make some basic improvements. He said given that atmosphere, he was not surprised that seven years ago the management did something that really disturbed the people in the community. He said he was also not surprised that in attempting to do this again now, after the previous denial of the application, there was an even greater reaction.

Councilor Smith said he would hate to see the Town spend a lot of energy enforcing a ban on rental parking. He said he hoped the owner would talk to the Town, regularize what he wanted to do and talk about the best way to get what he wanted. He also said that in time, with the redevelopment of Plaza businesses, there would have to be discussion with the Town about the Grange property. He said there was a wonderful opportunity to do something with this property that would benefit the Plaza and the whole Town. But he said the Board had to turn down this application.

Chair Parnell said the Board had previously made this decision, and asked if Board members now wanted to revisit this decision.

Mr. Roberts noted a letter he had recently sent to Mr. Campbell stating that the decision the Board had made at the previous meeting wasn't legal. He said if at the present meeting, the reasons for denial were voted on affirming the previous vote, this would be the only legal denial of the application. He said the Board should have waited until the present meeting to deny the application, but said he realized this was a moot decision now.

He then said a denial was not the way to proceed. He provided some history on Mill Plaza and said his greatest concern was that they needed a way forward. He said the Plaza was much more important today than it was in 1978, and said this was not the way to treat these people who had invested in the Town over the years. He said he agreed with some of the items listed in the Notice of Denial, but said he wanted to find some way

forward.

Mr. Roberts said the developer had not been pushed to offer more of a compromise, and said shame on the Planning Board, not the developer. He said he would not vote in favor of denying the application, and would have voted for a change of agenda or a new plan. He said this would have been a planning response to what was on the Board's table.

Councilor Smith asked what was to stop the owner of the Plaza from coming forward with a new and improved application.

Mr. Roberts said the Board's attorney should be present to discuss the complex issues involved and to help them find a way forward. He said University decisions forced the students and faculty to use the Mill Plaza parking lot as a Town parking lot. He said there out to be some way to get through this.

Ms. Fuller said by working with the developer when he did come forward with a plan, they would find a solution that worked for him and the Town, and wouldn't maintain the status quo. She said it was a way to change things and make things move forward.

Mr. Kelley said he hadn't planned to debate these things that evening. But he said he didn't think the applicant had handled this procedure well at, stating that the direction the applicant gave the people who worked for him had been poor. He said the applicant was well aware of what needed to change in order to get the approval, and didn't exercise that opportunity.

He also said that concerning the comment that the Planning Board hadn't done its part, the Board's job was to evaluate the application. He said they could make suggestions, especially with the conditional use process, but said it was the actions of the applicant that were poor, for example with the illegal clearing that had been done. He said he had no problem casting the vote he did, other than the fact that he had now heard that it was potentially illegal. But he said they could rectify that.

Mr. Kelley asked what the disposition of those leased spaces was in terms of enforcement, not only in that lot, but in the greater community.

Mr. Campbell said Mr. Johnson hadn't been available recently, and said there needed to be discussion with him concerning the issue of the leased spaces. He said one approach was to write nasty letters to everyone the Town knew was leasing spaces, saying they needed to cease and desist, and needed to apply to the Planning Board if they wanted to continue doing this. He noted that some people wouldn't be able to do this because they were in districts that didn't even allow surface parking.

He said a second approach would be to change the Town code to either allow the people with existing leased parking to continue, or to create an administrative rule to allow people to come in and pay a fee, or a combination of the two. He provided details on this, and said one way or another, the Town would have to deal with this.

Mr. Kelley said it was important to deal with this issue, and suggested that it should be put on the Board's Zoning Rewrite list. He said it was the main reason given that this application was turned down, so the Town needed to follow up.

Mr. Roberts said in many ways, Durham required a lot less parking than other towns. He said it needed to be considered what it was that made a lot full: the square footage, the number of employees, the nature of the customers and where they lived, etc. He said there needed to be a plan that reflected this, and also said they needed to look at the existing parking ordinance more carefully.

He said the Town had started with determining parking based on employees and square footage, then went to square footage only and employees for certain categories with a 10% rider. He said maybe they should go some place else altogether.

Mr. McGowan said the #2 reason for denying this application was that there were unlawful activities on the site. He asked how to move forward with the owner and the Town to remedy those situations.

Mr. Parnell said he had real problems with Item #2 in the Reasons for Denial, which addressed the unlawful activities that took place in 2002 as well as aspects of the 1978 Conditions of Approval that needed to be met. He said he didn't think these things were discussed by the Planning Board.

Mr. Campbell said a Board member had discussed the importance of these things at the previous meeting. There was then detailed discussion on Item #2.

There was discussion on Item #4, with Ms. Fuller noting that the Conservation Commission was concerned about the incursion into the wetland buffer, but endorsed the plan on three other points.

Mr. Kelley said Item #4 held true for him as part of the criteria in the Conditional Use process, so whether or not the Conservation commission was mentioned, they should indicate that the criteria were not met.

Mr. Roberts said #4 misstated what the Conservation Commission's position was, and he provided details on this. He said as long as the Board paraphrased the letter written by the Commission, he was ok with that.

Councilor Smith said the Notice of Denial introduction said "As stated in the Planning Board minutes of the November 4, 2009 meeting", and he said the Board didn't have these minutes yet. He suggested this should say "As stated at the Planning Board meeting...."

There was then discussion that the Board had lost the opportunity to put conditions on the project, in denying the application.

Mr. Gardner said there were reasons for this denial. He said he agreed with Mr. Kelley

that the Board didn't have a choice in voting to deny the application. He said the opportunity was presented for the developer to work with the Board and some suggestions were made, but the developer said these approaches weren't feasible. He also said to say that the bulldozing of the hill was not a factor in the Board's decision was to ask whether the public comments could be disregarded.

There was discussion between Ms. Fuller and Mr. Gardner as to whether an opportunity to work with the Board had actually been presented to the developer.

Mr. Kelley said the bulldozing of the hill had played into his decision, and said the applicant hadn't addressed this in the application. He also noted that the Conservation Commission had struggled as to what was the "existing condition".

There was discussion on what the "existing condition" actually was in relation to the plan that was presented, with Mr. Campbell providing details on this. He said some of the paving was legal and some was illegal. He said they were vested in the 1978 plan but went outside of that so in 2002 wanted to get approval of work done that was outside the original plan.

He said a reason it was important to talk with Mr. Johnson was that in 2002, he told the owner they had to stop parking there, couldn't pave there and needed to loam and stabilize the area. He said the owner did that, and said the question now was whether that was legally sufficient and they didn't have to do anything else.

The Board reviewed further the wording in the Reasons for Denial.

There was discussion that Item #1 didn't have to say the owner needed to apply for conditional use for the existing leased spaces. Mr. Campbell said surface parking was a permitted use in the district, so if it was outside the wetland or shoreland buffer, conditional use wasn't required, but approval would be needed for a second principal use, surface parking.

The wording agreed to for #1 was: "Based on the advice of the Town Attorney, the Planning Board is not in the position to consider approval of this application without the owner first applying for approval of the existing leased spaces."

After further detailed discussion on the issue of the conditions of approval from 1978 that still needed to be met, it was decided not to include them in Item #2. The following wording was decided on for Item #2: "The applicant has failed to address activities that were not approved by the Planning Board in 2002 such as clearing, excavating and grading."

There was discussion on Item #3 and what it should say about the 70 foot buffer. Mr. Campbell said the Conservation Commission felt the buffer in the original 1978 plan was important and should be maintained. But he said it should be kept in mind that some of that buffer was allowed to be paved based on the 1978 plan.

Councilor Smith noted that this was in regard to the annex parking lot behind building 2 on the hill.

Mr. Roberts spoke about how high level parking would impact the neighborhood, including the impacts of construction of the roadway, and said this impact would be much greater than the relatively insignificant incursion into the wetland buffer. He also noted that there was a clay banking protector for the wetland.

Mr. Roberts also spoke in some detail about possible impacts to the neighborhood from uses allowed by right at the Plaza, and said this was why the Board should work with the developer. He said they needed to weigh things and pick what was best for the community.

Mr. Gardner said he agreed. He then asked whether a reason for denying the application was that there was no demonstrated need for the parking.

Mr. Campbell said that would have no force of law, and said there needed to be a certain number of parking spaces regardless of what the actual need was. He said that was the problem with the parking regulations.

Chair Parnell said he didn't think the Board was in a position to say the parking wasn't needed if the owner thought it was needed.

Ms. Fuller said she thought the parking would be needed once the restaurant went in.

There was discussion that the approval of the Mexican Restaurant included approval of the elimination of some parking spaces.

Mr. Gardner noted that the consultant that had just conducted the charrette had said the Town needed a parking authority. He said this discussion pointed to that, and said the existing parking regulations and other things needed to be looked at in a much more holistic way.

Mr. Roberts spoke about the fact that the town of Plymouth Massachusetts had been able to engineer parking out because they had a plan.

As a result of detailed discussion on Item #3, the Board agreed on the following wording: "The 70 foot buffer approved on the original plan in 1978 is an important residential buffer and should be maintained as approved in the 1978 plan."

After discussion, the Board agreed to use wording from the Conservation Commission's motion concerning the application in Item #4: "The Planning Board is in agreement with the Durham Conservation Commission who finds that items 2-4 of Zoning Ordinance Section 175-61 are met assuming acceptance of the current existing conditions. The Commission has reservations regarding item one (1) which deals with alternative

location/configuration for parking that could achieve the developer's needs while respecting the integrity of the wetlands buffer."

There was then discussion that if the applicant addressed these 4 reasons for denial of the application, this would have to be as part of a new application.

Mr. Roberts said there needed to be a way forward, and said the Board's attorney needed to help them with this.

Mr. Kelley said fundamentally the burden was on the applicant.

Mr. Roberts said the Planning Board was founded to plan, and wasn't founded to only follow what was asked of it by the applicant.

There was further discussion on whether the applicant had had the opportunity to work some of the issues out with the Board.

Richard Kelley MOVED to approve the Findings of Fact and Notice of Decision of Denial of an Application for Site Plan Review and Conditional Use Permit 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, as amended this evening. 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, as amended. Councilor Smith SECONDED the motion. The motion PASSED 5-2, with Susan Fuller and Steve Roberts voting against it.

IX. Other Business

A. Old Business:

Mr. Campbell told the Board that the Town Council didn't like the Board's proposed Zoning amendment to use the conditional use process in order to address parking in the Courthouse District. He said the Council thought it appeared to be another barrier for an applicant to get over, and thought people should either be able to park in front of a building or not in that district.

He also said the Council had a problem with the idea of requiring a 5 ft landscape strip. He said some Councilors had suggested that applicants should look at other ways to do landscaping without being required to do the 5 ft landscape strip. He explained that between the curb where the sidewalk was to the curb in front of the building was 32 ft, and if 5 ft was taken out for the landscape strip and 17 ft was needed to allow the diagonal parking, this left only a 10 ft aisle behind.

Mr. Kelley said he hated bringing this issue up in the context of a single parcel, and said someone wanting to develop that parcel could come in front of the ZBA with a variance request for relief because of hardship. He said clearly the lot size of the Cumberland

Farms property was a hardship in that zone.

Mr. Campbell agreed it was a tough spot, and said he and Councilor Smith had noted to the Council that there were other parcels in that zone.

Councilor Smith said he had suggested to the Council that the setback could perhaps be changed from 15 ft to 0 ft, so someone could build right up to the sidewalk, which would encourage parking behind the building. He asked if the Board wanted to discuss this idea.

Mr. Campbell said he just wanted the Board to be aware of this right now, and suggested that he and Councilor Smith could work to create some other language and bring it back to the Planning Board meeting on December 9th. He noted that the Council didn't want the Zoning amendment process to be prolonged.

There was further discussion.

Mr. Campbell said there was an application coming before the Board at the December 9th meeting involved the property at 257 Newmarket Road, which had been subdivided in 2003. He said the subdivision involved 93.2 acres that went to the Nature Conservancy and then to Fish and Game, and a 5.2 acre parcel with a multiunit apartment building on it. He said the reason it was that size was so there couldn't be further subdivision.

He explained that a condition of approval was that no new structures or additional septic systems could be placed on either lot. He said the person who bought the property from Mr. Powers in 2003 now wanted to put two new 3 unit structures on the 5.2 acre parcel, so had applied to come back to the Planning Board to remove that condition of approval. He said there would be a public hearing on this so abutters would be able to comment on whether or not they thought this was a good idea.

He noted that the ZBA had denied a variance to allow the two new buildings, but the decision was recently appealed and the variance was subsequently approved.

There was discussion on whether there were abutters, with Mr. Campbell stating that there were always abutters, and also noting that this could open the door for an abutter to question the original approval.

He said he was in the process of checking with the Board's attorney to make sure the right process was being followed. He said a question was whether, since the ZBA had granted the variance, this gave the owner the right to build the 2 buildings even without going to the Planning Board. He said he also wanted to discuss the ZBA decision itself with Attorney Mitchell.

Mr. Campbell noted the issue of underground utilities for Store 24 in relation to the Jenkins Court project being constructed, and he provided details on this.

B. New Business:

Mr. Roberts read a letter from the groundwater resources subcommittee of the Water Committee concerning its plans to upgrade the water resources section of the 2000 Master Plan, as well as the Aquifer Protection Overlay District provisions of the Zoning Ordinance. The letter said what was proposed was to use information available in Town documents, and also use NHDES's model groundwater protection ordinance as well as Tom Ballestero's guidance in developing these documents.

Mr. Roberts noted that the definitions in the Zoning Ordinance would need to be revised as well. He asked if this work could perhaps be delegated to Strafford Regional Planning Commission, and Mr. Campbell said the work would get done one way or another.

Mr. Kelley updated the Board on the work of the stormwater subcommittee of the Water Committee. He said it was looking at two model stormwater ordinances, and was scheduled to meet again next week. He said the goal was to get a stormwater ordinance to the Planning Board soon.

Councilor Smith said he might or might not want to raise an item of new business immediately after doing the Minutes.

C. Next meeting of the Board: **December 9, 2009 (only meeting in December)**

X. Approval of Minutes –

October 14, 2009

Include page numbers on all pages

Should be spelled Attorney Ratigan throughout

Page 1, Under Members Present, should say Secretary Stephen Roberts; under Members Absent, should say Vice Chair Susan Fuller

2nd paragraph from bottom, should say "...met last week to discuss the parking..."

Page 2, bottom paragraph should read "...in what was the Phase 2 outdoor seating..."

Page 3, 4th paragraph, should read "...he wondered if this would allow for future constructions of a road to Main Street through the Grange property."

5th paragraph, should read "...disturb the existing parking lot layout, preserving both the existing driving lanes, and did not preempt any of the Main St. access proposals made recently by the Mill Plaza Study Committee."

7th paragraph, should read "...He said phase two with added outdoor seating..."

8th paragraph, should read "...Marketplace was added, there were parking..."

Page 5, top paragraph, should read "...brief presentation of the application."

Bottom paragraph, should read "...was a path from Chesley Drive that entered to the south of that area."

Page 7, top paragraph, should read "He noted that the elevated lights.....directly pointed at the neighbors."

Page 11, 3rd paragraph from bottom, should read "...memo from the Conservation Commission."

Page 13, 6th paragraph, should read "...he didn't have many evening customers...."

Page 14, 2nd paragraph, should read "...what had done with the parking lot in 2002.....He said anything that the abutters to College Brook could do....."

Page 15, 2nd paragraph, should read "...were going to be rewarded."

4th paragraph, should read "...this issue because of support for engaging the Town."

Page 16, 3rd paragraph, should read "...for the Movie Stop, which was 8 spaces."

3rd paragraph and 5th paragraph, should be spelled "La Paz"

Page 24, 3rd paragraph, should read "...some towns addressed this issue through.....
For the Cumberland Farms site given the restricted layout."

Page 28, 2nd paragraph, should read "...Lamprey River was one of the sources.."

3rd paragraph, should read "...for the hotel with conference center rooms nearby."

4th paragraph, should read "...strategy to have some architectural design coordination between.....just having an architectural design ordinance in place."

Steve Roberts MOVED to approve the October 14, 2009 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED 6-0-1, with Susan Fuller abstaining because of her absence from the meeting.

October 28, 2009

postponed

Councilor Smith said for the October 28, 2009 Minutes, he had made some obvious corrections, and had given the marked-up copy to Administrative Assistant Karen Edwards. He noted that Karen had been saying in emails that if Board members had corrections to Minutes, they should send them to Jen Berry. He said he asked Jen how frequently she got corrections to make, and Jen said Karen did them and that no one had ever sent her any corrections to make.

He said as an experiment, he did what Karen had been asking the Board to do, and said the October 28, 2009 Minutes reflected that. He then asked if someone would like to do this for the Planning Board on a regular basis. He noted that he had been doing this for the Council for the past 4 years, including watching the DVD, which took quite a bit of time. He said once the Minutes got to the table, the Council then made few changes at all.

Mr. Roberts said he had indicated to Councilor Smith that he thought this was illegal. He provided details on this, and said each member should make the correction of their voice in the Minutes, especially when they normally had to be spend so little time on this. He said sometimes the words that were there were very important.

Chair Parnell said he agreed with Mr. Roberts. There was discussion about the process that should be used.

Mr. Kelley said if someone had taken the time to suggest changes to the Minutes, and these were made to the draft, this should be tracked in the draft so Board members could see the changes.

Mr. Campbell noted that some attorneys said nothing should be changed other than misspelled words.

Ms. Fuller said all she had typically changed was grammar and punctuation.

Chair Parnell said it would seem that it probably would be better that the Board do the corrections together at the meeting, and that although the electronic copy should be sent out to Board members, Karen shouldn't be asking for changes to it.

There was discussion that the unrevised October 28th Minutes should be put in the next packet.

XI. Adjournment

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

Adjournment at 10:21 pm

Victoria Parmele, Minutes taker

Stephen Roberts, Secretary