

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

**Durham Planning Board Agenda
Wednesday December 9, 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

MEMBERS ABSENT: Richard Ozenich; Kevin Gardner; Councilor Neil Niman

I. Call to Order

Chair Parnell said Mr. Lewis would sit in for Mr. Ozenich.

II. Approval of Agenda

Steve Roberts MOVED to amend the Agenda to include approval of the October 28, 2009 Minutes. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

III. Report of the Planner

Mr. Campbell said the EDC would meet on December 18th, and said he would let the Board know when the Agenda was set.

He said on Monday, he and Administrator Selig had met with the Mr. Dennis and Mr. Chelman, the consultants who had done the recent charrette, to look at next steps and consider some possible future projects downtown. He said the consultants would get a draft report to the Town in January, and after some editing would either do separate presentations to the Council and the Planning Board, or a joint meeting.

Mr. Roberts said the recommendation to make Main Street a two way street needed some hard data behind it, and Mr. Campbell said they would be providing something on this. Mr. Roberts said there should be a comprehensive look at this idea, involving DPW, the University, etc. He noted that he and Councilor Smith had lived in Durham when Main Street was previously a two way street, and it was a nightmare.

Mr. Campbell said he had recently met with University planner Doug Bencks, and said they discussed the recent planning charrette as well as the results of the charrette on the future fire station siting and design.

He said they also discussed the fact that Smith Hall would become the University's Admissions office instead of a dorm when the existing Admissions office was torn down as part of the construction of the new Business School. He said this seemed to be a pretty innocuous change of use, and said he had told Mr. Bencks that a public hearing probably wasn't needed. But he said if the Board felt differently, they could require the hearing.

There was discussion about whether the public would be impacted by this change of use.

Mr. Roberts said after the Jenkins Court expansion was complete and residents realized what this private dormitory expansion looked like even if it was tastefully designed, there might be concern about the idea of the University abandoning dorms and Durham then paying for this in other places in Town.

Mr. Campbell said Smith Hall didn't hold a significant amount of residents, and said the numbers could be absorbed fairly easily. He also said there were plenty of other opportunities available for student housing.

There was discussion that the Planning Board couldn't do much about the change of use at Smith Hall anyway, other than hold the public hearing.

Mr. Kelley arrived at 7:10 pm.

Mr. Campbell noted that Perry Bryant had completed the pre-signature conditions for the Route 155A development.

He said he, Nick Isaak Tom Johnson and Wes Merritt had recently met concerning Mr. Merritt's possible plans to tear down Stats Place and construct a new mixed use building on the site. He said it had been determined that it would be more feasible to tear the existing building down and build new rather than adding on to it.

Mr. Campbell said he had recently spoken with Jess Gangwer regarding a geothermal and solar installation that would take place on one of his properties in Madbury the following week. He said Mr. Gangwer had invited members of the public to observe the installation.

IV. Public Hearing 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 said the Board had received a letter from an attorney who represented an abutter to the project, which laid out several arguments. He said one issue raised in it was whether there needed to be a site plan application as well as a conditional use application for this project. He said he hadn't thought so and still didn't think so, but said Attorney Hogan did think so, and said the Planning Board decision would be appealed to the ZBA

if the Conditional Use application was approved.

Mr. Campbell said this would lengthen the process for everyone, and said to avoid this, the applicant would complete a site plan review application. He suggested that the Board open the public hearing that evening and immediately continue it to January 13th, and on that date hold the acceptance of the site plan application as well as hold the two public hearings concurrently, something the Board often did.

Mr. Kelley noted that another concern raised in Attorney Hogan's letter that needed to be addressed was the notice of public hearing. He said this was briefly discussed during the site walk, and said the applicant needed to make sure the notice of public hearing was out there.

Mr. Campbell said the notice of public hearing had been put up, but was blown down during the storm, was put back up, blown down again and put back up again. He said the Board's attorney had said the important thing legally speaking was that the attempt was being made to have the notice of public hearing there. But he said between now and January 13th, it would be important for the applicant to make sure the notice of public hearing was there.

Mr. Kelley suggested that the notice of public hearing should have a wooden backing.

Mr. Roberts noted the 12 month nonconforming use issue, and also noted that one of the reasons for planning was to encourage uses that were of benefit to the Town. He said this was backed up by the Town's regulations and Master Plan. He said there might be some teeth behind trying to address the 12 month issue by considering the type of nonconforming use that was under discussion, and suggested that the Board should have some legal support in the room to guide it on how to approach this.

Mr. Campbell said there was an email from Attorney Mitchell on this issue. He said there were some Supreme Court cases that said there had to be an intent to discontinue a nonconforming use, and if there wasn't such an intent, the 12 month limitation didn't come to bear, even if it was in the Ordinance. There was further discussion about court cases regarding that addressed this issue.

Mr. Roberts asked if perhaps Attorney Mitchell could send one of his attorneys to address this issue with the Board.

Chair Parnell said Attorney Hogan would probably be at the meeting in January, and said he agreed with Mr. Roberts that it would be good for the Board to have its own lawyer present.

Mr. Campbell said he would make sure either Attorney Mitchell or someone from his firm was at the meeting in January.

Richard Kelley MOVED to open the Public Hearing on 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, for the property shown on Tax Map 6, Lot 9-8, located at 50 Newmarket Road in the Residence B Zoning District. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

Stefany Shaheen represented the applicants, and thanked Board members for attending the recent site walk. She first noted that more information would be provided on the septic issues at the January meeting. She then said they had hoped to have the public hearing that evening, and to have lots of people come to testify in favor of this project.

She said she agreed with her attorney that most of the claims in the letter from Attorney Hogan were baseless, but said in order to avoid a lengthy appeals process, the applicants planned to complete the site plan review application, and continue the Conditional Use application public hearing until January.

But she said at some point, they had to move through the process in a way that didn't allow for unnecessary delays. She noted that the Conditional Use process required a higher threshold than site plan review, and said while the applicants were happy to do both, they had been advised that site plan review wasn't necessary which was why they didn't originally complete that application.

Ms. Shaheen noted that the notice of public hearing originally put up was made from foam board and blew down, was immediately put back up and then blew down again. She said they would make sure that at the January meeting, there could be no dispute that the notice of public hearing had been up. She also said they had done everything in their power to publicize that there was a public hearing on this application, to let the Board to know that there was vast support in the community for this project. She said the implication that the applicants wouldn't want to publicize it was frustrating.

She asked that the public hearing be continued to the January 13th meeting.

Mr. Roberts said some letters of introduction to the project from Richard Winn dated 10/28 and 11/11 indicated that he planned to produce plays, black box performances, etc. limited to 49 people, which would be ticketed. Mr. Roberts noted that the applicants had indicated that there wouldn't be as intensive a use as the prior Mill Pond Center had had, and asked for clarification on this issue.

Ms. Shaheen said from a walk through of the theatre with the Fire Chief, it was very clear that they couldn't have more than 49 people in it, including cast and crew. She said the Mill Pond Center had had 125 seats, but said the applicants would have a maximum of 49 seats. She noted that the original works, poetry slams, etc, wouldn't be a huge component of the use of the building in terms of frequency of performances, compared to the former the Mill Pond Center.

Mr. Roberts suggested it would be useful to quantify this somewhat concerning traffic impacts, etc., and Ms. Shaheen agreed to do so.

Mr. Kelley said he had seen a notice of public hearing when he was at the site walk, and said he didn't believe the Board thought the applicants were trying to sneak this application through. But he note that Attorney Hogan was paid to look at the nitty gritty issues. He said he agreed that the Conditional Use threshold was far greater than site plan review, but also said his reading of Attorney Hogan's letter caused him to believe that site plan review was required. He said he was pleased to see this would happen.

He said he was happy to continue the public hearing, but said on January 13th, he would like to hear explicitly what the planned use of the facility would be, and said he intended to incorporate that information into the conditions of use.

Mr. Campbell recommended that the notice of public hearing be checked every day, and Ms. Shaheen said they would do this.

Chair Parnell asked if any members of the public would like to speak.

Jeff Hiller, 6 Laurel Lane, noted that he was the abutter who had some issues with the application. He thanked the Board for allowing him to participate at the site walk. He also thanked Mr. Campbell for the recent email. He said it was not his intent to delay the process.

He noted that the next Planning Board meeting was January 13th, and that the ZBA appeal to Superior Court was on January 14th, and said if he was a Planning Board member, he would be concerned about considering issues like impacts on property values, site suitability, external impacts, etc. before the ZBA appeal was heard.

Mr. Hiller said he was concerned that his interests might not be protected because a Planning Board member might not feel he/she could openly discuss one of these issues regarding the Conditional Use permit because it might put the Town at jeopardy by openly discussing these issues the day before the Superior Court case. He noted said he might be doing himself a disservice in pointing this out, because he might be eliminating a possible grounds for appeal in the future. He spoke further about this, and suggested the that the Planning Board might want to delay deliberating on these issues until after the ZBA appeal.

Chair Parnell said it was possible but not likely that there would be discussion and deliberation by the Board after the public hearing on January 13th.

Mr. Hiller asked if the Board would potentially have a conflict concerning the property values issue, and have an interest in not putting the Town in jeopardy concerning this issue.

Chair Parnell said the Board had to come to agreement as part of the Conditional Use process on whether approving the application would negatively impact property values.

Mr. Hiller asked if Board members might feel they couldn't express their opinion on this because there was a court case appeal, and Chair Parnell said he wasn't sure the Board was in a position to answer that question.

Mr. Kelley said historically the Board voted on the Conditional Use application prior to voting on a site plan application, and said he was very comfortable moving forward as they were planning to. He also said Mr. Hiller had raised a very good point that there was a burden for a concerned citizen who was paying an attorney to be in front of both the ZBA and the Planning Board at the same time. He said he hadn't considered this before because he hadn't experienced this personally.

Richard Kelley MOVED to continue the Public Hearing until January 13, 2009. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

- V. Public Hearing on an Request to Amend a Previously Approved Subdivision Condition of Approval** submitted by Stan Pasay, Pasay Properties LLC, Newfields, New Hampshire in order to construct two additional 3-unit apartment buildings. The property involved is shown on Tax Map 18, Lots 3-2, is located at 257 Newmarket Road and is in the Rural Zoning District.

Mr. Campbell explained that the property in question was part of a subdivision that had occurred in 2003. He said the Powers, the owners at that time, had subdivided the property into a 5.23 lot containing the apartment building and a 93 acre parcel that went to the Nature Conservancy and subsequently to NH Fish and Game. He said 5.23 acres was below the threshold of being subdividable.

He also explained that Mr. Pasay had recently gone before the ZBA to seek approval under the nonconforming section of the Zoning Ordinance in order to build two new triplexes, because the square footage for this would be greater than the 50% increase allowed concerning a nonconforming use. He said the variance request was denied, but on rehearing was approved.

Mr. Campbell said Mr. Johnson had subsequently discovered that as part of the conditions of approval for the original subdivision approval in 2003, there was a condition that no new buildings, septic systems other than replacement systems, or any other changes could be made to either parcel. He said the reason this request was before the Board now was to remove this condition from the 2003 conditions of approval.

He said the original Minutes from 2003 showed that the condition was put in with no reasoning behind it. He noted that at that time, the Powers really wanted to sell the property, so were willing to do a lot of things in order to get the subdivision approved.

Mr. Kelley noted that the February 12, 2003 Minutes indicated that the applicants had suggested the condition. He asked if they would have been required to have a ZBA waiver at the time.

Mr. Campbell said no, and also said that at the time, the changes to the Zoning Ordinance concerning conservation subdivision had already been posted.

Mr. Kelley pointed out that the Minutes spoke about whether the posted regulations or the regulations in place should be referenced.

Mr. Campbell said what the Board was now looking at concerning the February 12, 2003 meeting was a recent transcription of the meeting, not the Minutes from 2003.

The applicant, Stan Pasay, said he had watched the video of the 2003 meeting, and said Jennifer Powers had indicated that the condition did originate with them. He said he was under contract with them for 7 months, and had no awareness at the time that this would be the verbiage. He also said he had never represented as a buyer that he had no intention to develop the property.

He said he was seeking to remove the condition under discussion, and said if he couldn't go forth and develop the property as approved by the ZBA, he would like to be able to exercise his option to build a 50% expansion on the existing property, which he already had approval for. But he said the septic portion of the condition would still prevent that. He said he would like the "no new buildings or no new septic" language to be removed, but said if he couldn't get that, he would at least like to get the "no new septic" wording removed, so he could do the 50% increase to the existing structure.

Mr. Kelley said the septic did Mr. Pasay no good unless there was the conditional use permit to allow him to increase the use by 50%.

Mr. Pasay said the septic plan for the triplexes that was submitted to the State came back with some minor modifications. He said Mr. Johnson had then suggested that he hold off on that given that the condition language had surfaced after the ZBA applications were completed. He said if the Planning Board allowed him to go forward with the septic plan, he could go forward with the 50% expansion of the existing building.

Mr. Kelley said he assumed money wouldn't be invested in the septic system until Mr. Pasay had approval for whatever expansion he decided to go for. He noted that nothing the Board did prevented Mr. Pasay from getting the septic approval.

Mr. Pasay said someone from DES had indicated that there was no problem with the soils and the septic plan submitted, but that he wanted to see two septic systems for the two buildings rather than one system.

Mr. Roberts said it was difficult to respond, and said there needed to be some grounding in terms of the location, and whether the extension of the septic system would have any effect on wetlands, soils, and abutters, or if the building expansion would have any effect on abutters.

Mr. Campbell said those issues would be taken care of when there was the Conditional

Use application for the project. He said all the applicant was asking for now was to have the condition under discussion removed from the previously approved conditions of approval.

Mr. Roberts said there would have to be a postscript that the Board's approval for the removal of the condition did not imply an acceptance of either the building enlargement or the septic addition.

Mr. Campbell said if the condition was removed that evening, the Conditional Use application would be concerning two new buildings on the property. He said if the Board said no to removing that condition, Mr. Pasay had said he would have to figure out how to do a 50% expansion with the existing septic system.

Mr. Roberts said he thought the best way to proceed would be for Mr. Pasay to come before the Board to discuss the best plan that would do the most for his commercial interests as well as the interests in the area, and as part of this could indicate the handicaps to get there. He noted that the septic system was centrally located on the property and was far enough from the property lines to not be a concern.

Mr. Pasay said the septic engineer had taken into consideration the interests of NH Fish and Game and the abutter, and said he would locate the septic systems in a location that didn't infringe on anyone. He said the septic system was designed for the two triplexes the ZBA had approved, which was separate from the existing building and septic in place now.

Councilor Smith asked on what basis the Board could remove the condition under discussion from the original conditions of approval.

Mr. Campbell said there would be a public hearing, and then deliberation by the Board. He noted that the Board had recently gone through something similar with Fitts Farm, and said this was the third time since he had worked in Durham where there was a request to remove a condition of approval. He said the Board did have the authority to do this.

Chair Parnell said he thought the Board was being asked to remove something explicitly put in place by a previous Board, and said he didn't feel the Board had enough information to decide on this. He said this wasn't an insignificant clause the Board was being asked to remove.

Mr. Kelley said he agreed. He noted that the draft Findings of Fact Mr. Campbell had put together for the meeting said the applicants had received a variance from the ZBA in 2002 to allow for the creation of the 5.23 acre lot, so for one reason or another they were before the ZBA for this. He said he had no doubt that Mr. Pasay had been unaware of this condition, but said he would have been aware that any expansion would be to a nonconforming use, which would require him to go before the Board for a Conditional Use Permit.

He said the ZBA's recent decision had caught his attention because of the amount of increase they were allowing, and also because of the conditions in their decision. He said the ZBA was asking the Board to address these conditions. He said the ZBA certainly had a concern regarding the visibility of what was proposed. But he said nowhere in the Zoning Ordinance did it say if something couldn't be seen, it could be done.

He said he shared the Chair's concern regarding this, but said he was willing to have the process move forward. He said if the application was complete, he was willing to vote to accept it, schedule the public hearing, and get more information, including what happened in 2003.

Mr. Pasay said the ZBA had had no awareness that this document from 2003 existed, so they were not passing the buck to the Planning Board. He also said if in watching the entire Planning Board meeting in 2003, it had appeared that the Board was in support of the limitation, he would have taken a different approach right now.

But he said it was clear from the video that the idea for the condition was the Powers'. He said it was therefore not like the present Planning Board would be butting heads with the previous Board, because the condition really wasn't something that had been generated by that Board. He said this was clear from the video, but it wasn't clear from reading the transcript.

Mr. Kelley said he liked the second approach Mr. Pasay had thrown out to seek expansion of a nonconforming use. He also said he was a big fan of conditional use, especially when there was a nonconforming use in a residential district. He then said he was willing to hear what Mr. Pasay and the public had to say.

Mr. Pasay said he had worked out an agreement with abutter Jeffrey Todd that a barrier would be built to retain Mr. Todd's privacy and obstruct his view of the property. He said the idea of such an agreement was established at the last ZBA meeting.

Mr. Campbell said the applicant had provided sufficient information to make a decision regarding the request to amend the Condition of Approval.

Mr. Kelley said it was hard for him to make a decision on this matter without a site plan, and he provided details on this.

Mr. Pasay agreed that he should have brought a site plan with him.

Mr. Campbell said he had heard from at least three Board members that they wouldn't make a decision on this without visiting the site and seeing more details about what was proposed on the property.

Mr. Kelley said he wasn't prepared to make a decision that evening on the matter. He said as the request appeared today, the bar would be very high for him to support it. He

said the Board had not seen this kind of situation before, and said he would feel much more comfortable with a Conditional Use application, which would give the Board the power to address the concerns of the community concerning the expansion of a nonconforming use in a rural district.

Mr. Pasay asked if the Board would see fit to remove the septic clause only, which would allow him to move forth with an expansion of the existing building. He said going forward with a Conditional Use application, he might abandon the two triplex idea.

Mr. Roberts said the applicant should come forward with what was the best plan for himself and the neighborhood. He said the removal of the condition under discussion could then be one of the items on a to-do list.

Mr. Pasay said his understanding was that the semantics from the previous condition should be addressed first, and then he would come back with the plan.

Mr. Campbell said that was the approach he and Mr. Johnson had come up with. But he said he was hearing that the Board was very uncomfortable with doing this, wanted to see a plan brought forward that was best for Mr. Pasay and the site, and wanted to run the Conditional Use application concurrently with the amendment to the previous conditions of approval.

Chair Parnell said on the other hand, he was sure Mr. Pasay didn't want to go forward with a great deal of work, knowing that he might not be approved for anything.

There was discussion with Mr. Pasay, and there was also discussion among Board members that regardless of the condition under discussion, Mr. Pasay would still have to come before the Board with a Conditional Use application. Mr. Campbell said if there were new structures, a site plan application would also be needed.

Ms. Fuller said in order for Mr. Pasay to know whether to proceed with one plan or the other, some of the condition language needed to be removed. She said the approach presented that evening seemed to be the logical way to go.

Chair Parnell said it was difficult to make a decision on whether the condition should be taken out without seeing a plan and without seeing the site as it existed now.

Mr. Pasay noted that if the condition was removed, this allowed him to go forward and spend the money on plans. But he said it didn't allow him to do anything unless the Board said he could do so at a subsequent meeting.

Chair Parnell noted that it was unusual for a project to come before the Board and be denied.

Councilor Smith said he was on the Planning Board in 2002 when the Powers had come in for the subdivision. He said the issue for them at the time was that they wanted to be able to subdivide, and were trying to make the deal to create the conservation land and

sell the apartment building with the 5 plus acres.

He said this was probably a good location for more buildings, and asked if a preliminary design had been developed. He noted that there had been discussion with the neighbor about buffering.

Chair Parnell suggested that making a decision on this could be delayed until the Board's January 13th meeting, when it could be provided with a plan of some kind. He also suggested that in the mean time, there could be a site walk on the property.

Board members agreed that this was a good idea. Mr. Kelley asked that information on the proposed plans be provided to the Board before the site walk. He also asked that the footprint of the proposed buildings be indicated with stakes.

Board members agreed to open and continue the public hearing.

Councilor Smith MOVED to open the Public Hearing on a Request to Amend a Previously Approved Subdivision Condition of Approval submitted by Stan Pasay, Pasay Properties LLC, Newfields, New Hampshire in order to construct two additional 3-unit apartment buildings on the property shown on Tax Map 18, Lots 3-2, located at 257 Newmarket Road in the Rural Zoning District. Richard Kelley SECONDED the motion.

Jeff Todd, 259 Newmarket Road, noted that he was an abutter. He said he and Mr. Pasay had discussed the idea of buffering, which was his big concern. He said he would like to be present at the site visit.

Councilor Smith MOVED to continue the public hearing until January 13, 2009. Richard Kelley SECONDED the motion and it PASSED unanimously 7-0.

The site visit was scheduled for January 9th at 9:00 am.

- VI. 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.

Mr. Campbell reviewed the SWOT analysis that had been completed, and noted that it had been presented to the Council.

(See the September 21, 2009 Town Council Minutes for details on the results of the SWOT analysis).

Mr. Campbell noted that the EDC didn't think any that any of the Weaknesses identified were not correctible, although they thought it might take a lot of work to correct some of them. He then explained that the idea was for the EDC to put the SWOT analysis into the strategic plan, along with some recommendations on policy changes that could be made, zoning changes that could be made, relationships that needed to be built with State agencies, UNH, etc. He said the same approach would be used regarding both Weaknesses and Opportunities.

He said looking at all of this information on the grid allowed the Planning Board to consider input it might want to provide on how things had been ordered.

Mr. Campbell provided some insights into how the EDC had ranked the Skills and Productivity factors. There was discussion on these factors and on whether the Board agreed with the EDC as to how they were categorized in the SWOT analysis.

Mr. Roberts said he thought Skills, Productivity and Availability of labor in his profession was limited in the Durham area, from engineering to supervision, to production. He said it required a different way of thinking than college students were used to, and he provided details on this.

Ms. Fuller said there weren't a lot of young people who stayed in the area and there was discussion that this was because of the high cost of living.

Mr. Campbell said Financial Capital and Public Programs were listed as correctible weaknesses, but said he thought they could become a limited strength. He said the Town now had the ability to do TIF districts, Economic Revitalization zones, tax incentives for community redevelopment, etc. He also noted that the University had an office for venture capitalists, and said the EDC would start reaching out to it.

There was discussion that there needed to be potential places to invest in, as well as the capital to invest in them, and that the Town didn't have much of either right now.

Mr. Campbell said the Town needed to work more closely with the University about moving more companies like Xemed off campus rather than seeing them stay put on campus or move down to Massachusetts.

Mr. Roberts said he didn't think venture capital was the issue, and said it was a matter of having a business plan and a proven return on investment. There was discussion.

Ms. Fuller said good office space was needed for these kinds of businesses.

There was discussion on the relatively lower prices for office space in Dover and Pease right now.

Mr. Kelley note that the railroad wasn't listed on the grid, and said that appeared to be an

oversight. He said there was more and more freight rail in the area, which was market driven.

Mr. Campbell agreed that this was probably an oversight.

Councilor Smith said it should be noted that there was a regional bus system. He said one reason he thought the Pasay application made sense was that the bus system went past that location.

Mr. Campbell said these things would be added to the analysis.

He noted that Access to Markets was considered by the EDC to be a limited strength, with Mr. Roberts noting there was a lack of an east west highway nearby.

There was discussion that there were a lot of potential customers nearby, - the students at UNH. Ms. Fuller said those customers didn't necessarily have a lot of money to spend.

Mr. Campbell said the EDC considered Access to major highways to be a limited strength. He said a reason was that Route 4 was a limited access highway, and said some things needed to happen in order for this to be considered a major strength. He noted that he was on the Metropolitan Planning Organization's TAC committee, where among other things there was discussion on the issues with the Spaulding Turnpike, and the fact that most of the State transportation money was going to Route 93.

Mr. Roberts said Dover used to have the second largest industrial base in the State, with the Spaulding Turnpike as its only route. He noted rail was available to Dover as well.

There was discussion about whether Sites and Facilities was a correctible weakness. Mr. Kelley noted that the number of possible sites in Town was limited, but Mr. Campbell said there were still some opportunities. He spoke about the land out by Goss that could be leased by other companies, and also said there were large tracts of land that sometimes became available, which the Town was not taking advantage of.

Ms. Fuller said there were large properties in the downtown area that were underutilized.

Mr. Campbell said he wouldn't say there were uncorrectable weaknesses concerning Sites and Facilities opportunities, but said it would take a lot from the public and private sides to make these opportunities happen.

Councilor Smith said the number of sites for commercial development could be increased through rezoning of Route 108 through Town, so this was correctible. But he said he doubted that the Town would do this.

Mr. Campbell noted that steps were being taken to correct Infrastructure/Utilities.

He said there was a lot of debate on the EDC regarding Knowledge resources and

Training. There was discussion. Mr. Roberts noted that Manchester had a number of R&D facilities, and Mr. Campbell said the Keene area did as well, including incubator facilities that grew businesses that then hopefully stayed in the area.

Ms. Fuller said the EDC had talked about the fact that Pease had some biomedical companies, which certainly could be located in Durham.

Mr. Campbell noted that if something happened to Goss International, which was a distinct possibility, there would be some facilities available. He said the Town needed to be in a position to recruit other businesses to locate there.

There was discussion about the fact that the EDC thought State government was a limited strength.

Mr. Campbell said the EDC was all over the place regarding Public/private partnerships, and said this was why it had ended up as a correctible weakness. He also spoke about what the EDC perceived as obstacles in the Town's regulations. He said taxes was considered a correctible weakness.

There was discussion on Quality of life, Cost of living and Culture and Recreation. Councilor Smith said rather than being a correctible weakness, he thought the Town's culture and recreation was a limited strength. He said this was a university community, and also said there were many cultural opportunities available in Portsmouth and Exeter. He said Durham was close to the ocean, had several rivers running through the Town, had Great Bay, lots of land in conservation, etc.

Mr. Campbell said the EDC had thought Culture was more of a limited strength, and that recreation was a correctible weakness.

Ms. Fuller agreed that Culture and Recreation should be considered a limited strength, but said some EDC members had questioned how many residents used UNH cultural and recreational resources in a meaningful, sustained way. She noted that the Town was working on this.

Mr. Campbell said there were currently limited facilities for recreation, which was why it was considered more of a correctible weakness right now.

Mr. Roberts said the University at one time had allowed townspeople to buy reasonably priced passes to Mendum's Pond, the gyms, etc. He also said there had been a playhouse where shows were held every summer.

Councilor Smith noted that there might be something like this again at the Mill Pond Center for the Arts property.

Mr. Kelley said he agreed that cultural and recreational resources was a limited strength.

Councilor Smith said the Council representative to the Planning Board was insulted that culture and recreation in Durham was considered to be a weakness. He said they didn't want to scare people away.

There was discussion that public service was considered a strength, because there were a lot of volunteers in Durham who really got involved in issues.

VII. Other Business

A. Old Business:

Mr. Campbell said he had made further changes to the draft parking provisions for the Courthouse District, by amending the existing regulations to be in line with what the Council had recently discussed. He said the draft now said "the Planning Board may allow for parking between the front wall of the principal building and the front property line, including within the setback as part of a site plan review application or a conditional use application."

Councilor Smith said some Council members had disliked making something a conditional use.

There was discussion that even without including language on conditional use in the parking provisions, an applicant would still need to submit either a site plan review application or a conditional use application, depending on what the proposed use was.

Councilor Smith said he liked the changes Mr. Campbell had made.

Mr. Kelley asked Councilor Smith if he thought this would be more palatable to the Council.

Councilor Smith said he thought it could be presented if there was strong support from the Planning Board as the best that could be done without scaring the public too much.

Mr. Kelley said he was fine with the language.

There was discussion about whether the Planning Board would need to have another public hearing on these proposed changes. Mr. Campbell said he did think there should be another hearing. He also noted that there was someone interested in a long term lease of the Cumberland Farms property.

He reviewed the change to the language concerning landscaping: "All the areas within the front yard area that aren't used for pedestrian access, vehicular access or parking shall be maintained in a vegetated landscaped area." He said this provided some flexibility to the Board.

Councilor Smith said if the Council didn't like these proposed changes, he thought it would then have to initiate the Zoning changes. There was discussion about why the Council had not done this already.

Councilor Smith asked if under F 2, it could perhaps say: "New parking shall be located to the side or rear of the building unless the Planning Board allows parking between the front wall of the principal building and the front property line, including within the setback as part of a site plan review application or a conditional use application." He said he thought the wording "whenever possible" was a deal breaker.

The Board agreed to make this change to the draft Mr. Campbell had provided.

Richard Kelley MOVED to schedule a public hearing for January 14, 2010 for Zoning changes to Article XII, 175-45 F 2, F 3 and F 4. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Kelley said the Stormwater Subcommittee met the previous Friday, and said they had draft stormwater regulations they were currently reviewing. He said they planned to have something back to the Planning Board by January or February.

B. New Business:

C. Next meeting of the Board: **January 13, 2010**

VIII. Approval of Minutes

October 28, 2009 Minutes

Page 1, 1st paragraph, should read He said the charrette would run from November 5-9 at..."

Page 7, 1st full paragraph, should read "Mr. Roberts said if a postal truck was in front of the building (as in the photo he had taken), and with the addition of the tables out front, there would be no room for a car to pass the front of the building without going into the oncoming travel lane."

Page 12, top paragraph, should read "He said to the extent ..." Same paragraph, should read "...was quite a bit different back then than the standards...."

Page 13, 8th paragraph, should read "...80% of their customers...."

Page 15, 1st paragraph, should read "...enhance the buffer.." Also, 4th paragraph from bottom should read "..., so acknowledged these impacts existed."

Page 16, 1st full paragraph, should read "He said the 70 ft buffer should not be encroached..."

Page 19, last paragraph, should read "...should be exceptionally beneficial to the community, this didn't stand a chance."

Page 24, under Other Business, should read "Mr. Roberts said he had read that water withdrawal companies had European owners, which was unfortunate. "

Susan Fuller MOVED to approve as amended the October 28, 2009 Minutes. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.

November 4, 2009

Page 1, line 36, should read “..all of the sessions...”

Page 3, line 8, “.. the Main Street used to have events...”

Page 6, line 34, should read “..fire lanes..”

Page 7, line 40-41, should read “Councilor Smith said the previous week he had spoken with John Pinto, who asked him where new parking could be put.”

Page 9, line 3, “She said there was considerable question...”

Throughout Minutes, should say Councilor Mower and Councilor Carroll, not Ms. Mower and Ms. Carroll.

Page 10, line 21, should read “incomplete.” Then eliminate lines 21 and 22.

Also page 10, line 3, should read “He said if they stopped leasing 28 spaces...”

Page 11, line 6, “...second principal use),.....”

Page 14, line 45, should say “Councilor Carroll”

Page 16, line 29, should say “...fully prepared to deny...”

Page 18, should read “..there was a love/hate relationship with the Plaza...” Also, line 44-45, should read “He said he would oppose this application regardless of what the ...”

Also line 13, should say “She said she hoped the owner...”

Page 19, line 17, should read, “Richard Kelley SECONDED the motion.”

Line 39, should read “Mr. Kelley restated the amendment to “suspend the vote..... denial”.

Page 20, line 2, should read “The motion to amend PASSED unanimously...”

Page 22, line 21 - the wording there should be labeled as **VII Other Business (continued)**, instead of being put under **Adjournment**

Page 23, line 10, should say “.....resolved.” Eliminate line 11.

Line 19-20, should read “He noted that surface parking as a principal use wasn’t allowed in the residential zones.....”

Councilor Smith MOVED to approve the November 9, 2009 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED unanimously 7-0.

IX. Adjournment

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

Victoria Parmele, Minutes taker

Adjournment at 9:47 pm

Stephen Roberts, Secretary