

These minutes were approved at the May 12, 2010 meeting.

**DURHAM PLANNING BOARD
WEDNESDAY, FEBRUARY 24, 2010
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
MINUTES
7:00 P.M.**

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

ALTERNATES PRESENT: Kevin Gardner

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

I. Call to Order

Chair Parnell called the meeting to order at 7:03pm. He asked Kevin to sit in for Richard Kelley.

II. Approval of Agenda

Councilor Smith MOVED to approve the Agenda. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

III. Discussion on amending the Site Plan Review Regulations and Subdivision Regulations to deal with Stormwater issues

Mr. Campbell provided a quick introduction. He noted that the Planning Board had established the water resources protection subcommittee, and they had been working on several issues, one of which was improvements that could be made to the site plan and subdivision regulations regarding stormwater management. He noted that the existing provisions often led to confusion, and said the goal now was to spell out exactly what developers would need to do when putting together an application.

Mr. Cedarholm said working with the subcommittee had been a great experience, and said members had agreed to jump into updating the regulations. He said they started with a document that Jamie Houle, Chair of Conservation Commission and an employee at the UNH Stormwater Center had worked on with the town of Newington to update the drainage section of its site plan regulations. He said last fall, that town was finishing up this document and he said it was adopted in December.

He said the subcommittee started working with this document in October, and added some definitions and revised some things to fit better for Durham. He said the formatting was also revised so the provisions would fit with the current site plan regulations. He said the drainage regulations right now were very vague and brief, and hadn't been updated

since around 1982.

Mr. Cedarholm also noted that the Town had been out of compliance for a number of years, and was supposed to either adopt an ordinance or include updated stormwater provisions in the Town regulations as part of the NPDES federal MS4 permit. He said these proposed regulations would move the Town far in the direction of doing that.

Mr. Cedarholm said all Durham water bodies were on the federal list of impaired water bodies, and said all of this was stormwater related. He also said developers who brought forward stormwater plans currently had no definition of what they were supposed to do.

He noted that page 3, 4th paragraph, section 9.03, first sentence said "All development shall provide adequate management of stormwater runoff." He said the committee had added to that "and prevent the discharge of stormwater runoff from creating or contributing to a water quality impairment." He said this language was very important in order to satisfy the NPDES MS4 permit.

Mr. Cedarholm said something different proposed, and a bit of a relaxation of the current regulations, was that a disturbance threshold of 10,000 sf was being established. He said for a development with a disturbance less than that, the wording was that "The Planning Board reserved the right to require any development that disturbs less than 10,000 sf to submit and implement a Stormwater Management Plan....to prevent the degradation of local water resources."

He said the point of this was that a small development sitting right on Pettee Brook, for example, could do something to address stormwater, such as guttering the building and piping stormwater directly to a drain rather than spilling stormwater onto the parking lot. He noted that this was exactly what Matt Crape's development, which was just under 10,000 sf, had done.

Mr. Cedarholm said he had done a litmus test on five developments built or moving forward in Town, and said the development being done by Mr. Crape was one of them. He said this applicant had done a full blown stormwater management plan and design, which was appropriate, but said he was limited in what could be done on the site because it was already 100% impervious. He said while the site wasn't great for infiltration, the applicant was able to address water quality issues.

Mr. Parnell asked if these proposed regulatory changes excluded single family houses, and Mr. Cedarholm said yes. He said this wasn't spelled out in the regulations, but said they did say that they pertained to developments requiring site plan review, which he noted didn't include single family homes.

Mr. Campbell said that regarding the 10,000 sf limit and the ability of the Planning Board to require a stormwater plan, that there might be a developer who came in with 9,995 sf who said he didn't need to do a plan. He said in such a case, the Board could say the plan did have to be done, and said it was good to have that flexibility.

Mr. Roberts noted that regarding wellhead protection zones in the aquifer protection district, the Town's aquifer subcommittee was talking about a 2,500 sf disturbance. He said it appeared that rather than making it specific regarding aquifer protection in the proposed stormwater regulations, the general language regarding less than 10,000 sf was being used as the way to provide aquifer protection.

Mr. Cedarholm said that was correct, and said the aquifer protection ordinance update probably would do more than that.

Mr. Roberts agreed, and said such provisions would be in that ordinance, but he said he wondered about coordination needed between the two sets of regulations. He said the aquifer protection subcommittee had pulled it from the State that anything within 2,500 sf in the wellhead zone or within a sanitary radius had to have a stormwater management plan and the added requirements.

Mr. Cedarholm noted that there were a number of other regulations in Town that sort of overlapped, such as the road regulations, aquifer ordinance, and the Zoning Ordinance, with respect to the impervious surface ratio. He said all these things would need to be looked at, particularly the section in the Zoning Ordinance. He said he had some suggestions about that.

He said a new thing in the site plan regulations was the definitions section. He noted that the road regulations, subdivisions regulations and solid waste regulations already had definitions. He also said some new definitions were posed, and noted that the word "Development", currently found in the Zoning Ordinance, had been repeated in the site plan regulations. He said this made sense so someone didn't have to look elsewhere to find that definition.

Councilor Smith asked for clarification about whether single family homes were addressed by these proposed regulations. There was discussion that these provisions could go into the subdivision regulations as well, with Mr. Campbell noting that currently the storm water provisions in both were the same.

Councilor Smith said he had asked the question because of the definition of development, which said "any man made change to improved or unimproved real estate....." He asked if this meant any change to a building.

There was discussion that this definition was taken from the Zoning Ordinance. Mr. Cedarholm said if the Planning Board saw inconsistencies with a definition like this, it would need to start with the Zoning Ordinance and tweak it as well as the site plan regulations definition at the same time.

Mr. Roberts said concerning the words "impervious surface" that the Board had noted that the Zoning Ordinance contradicted the administrative rules that DES had set up. He said the aquifer committee changed the definition to conform to the revision in

Administrative rule, 421-03. He said he wasn't advocating one way or the other on this. He said the State had also tried to establish its own definition. He asked if it was wise to deviate from the administrative rule.

Mr. Cedarholm said he thought it was in the Town's power to do that, and said what was important was that the definitions in the Town's various documents were consistent.

Mr. Roberts said the aquifer committee was changing its definition of impervious surface because of the State administrative rule, and he spoke generally about how these kinds of issues and contradictions could occur .

Mr. Campbell asked if the administrative rule Mr. Roberts was referring to was more stringent than the Town's.

Mr. Cedarholm said the subcommittee would look at it.

Mr. Campbell said he believed the Town's definition was more stringent, but agreed that the subcommittee would take a look at this.

Mr. Cedarholm said the definition of pavement was written to help resolve some of the issues the Board had had with impervious surface ratio, when a developer then proposed pervious pavement, and the distinction needed to be made between pervious and impervious if it was all pavement, and the Board wanted to limit the amount of overall pavement on a site. He said the Board could do that with this definition, and could then give some kind of credit for the percentage of pervious pavement that was a component of the pavement.

He said this was therefore a lead-in to how the Board might go about tweaking the impervious surface ratio concept, and at the same time give credit to pervious pavement. He said at the same time, he didn't think anybody wanted to see a site that was 50% impervious go to 95% paved. But he said perhaps some increase in imperviousness could be allowed as long as there was a commensurate increase in pervious pavement.

Councilor Smith asked what the significance of the word "hardened" asphalt was under the definition of pavement.

Mr. Cedarholm said there could be asphalt that had been ground up that could be considered a porous media.

There was discussion. Councilor Smith said it would still be hardened concrete, and Mr. Cedarholm said he encouraged comments on all of the definitions.

Mr. Roberts spoke about how section 3.02 of the site plan regulations could be changed to reflect this.

Mr. Cedarholm said another new thing in the regulations was the checklist. He said it had

been set up to go along in the same order as the site plan regulations section had been set up. He said the stormwater management plan would have two parts, and said the checklist and regulations both set this up in a logical order.

He said when the Board got an application, these various pieces would be provided in a specific order. He provided details on this. He said the checklist also provided a table for the developer to work with. He noted that under Part II of the stormwater management Plan, another column, the percentage of increase or decrease, could be added to the drainage analysis section.

There was discussion about whether that the checklist would be just for the stormwater section, and Mr. Cedarholm said it could be the checklist for the whole application.

Mr. Campbell said he would prefer to make it attachment #6 in the site plan regulations, and call it the stormwater management checklist.

Ms. Fuller asked what "Need for third party review, yes/no" meant.

Mr. Cedarholm said in the regulations, the Board had the ability to require a third party review. He said this item in the checklist was therefore more for the Board, and it could consider whether third party review was necessary for a particular application.

Mr. Cedarholm said another new thing was the 10,000 sf threshold. He said that would give the Board quite a bit of latitude in managing small projects.

Chair Parnell asked at what stage the Board would determine if a stormwater management plan would be required.

Mr. Campbell said he could tell the developer a plan was needed, but then could bring the application to the Board for acceptance, and the Board could say it disagreed with him.

Chair Parnell asked if this would occur beyond the conceptual discussion.

Mr. Campbell noted that if there was a conceptual discussion, it could be done at that point. But he noted that a conceptual discussion wasn't required in the current regulations.

Ms. Fuller said the checklist was also a good tool for a developer to see, even if he knew he was going to do a plan.

Mr. Gardner said there could be a part that was identified for the Board to be thinking about.

Mr. Roberts asked if there should be an item for onsite public waters systems. Mr. Cedarholm said this had to be included under the existing conditions plan, which also needed to show the sanitary protective radius of any public water system. He said this

was spelled out in the regulations.

He said another new component was an erosion and sediment control plan, and the operation and maintenance plan. He said the regulations also provided flexibility for redevelopment. He said the committee really struggled over this, as other towns did, because they wanted to encourage some type of stormwater management, but didn't want to discourage a site from being redeveloped.

Mr. Cedarholm said section 9.03 defined what the plan needed to include, and 9.04 was the standards that defined the details and regulations behind employing whatever structural best management practices and low impact development strategy proposed. He said these standards were defined in the State stormwater manual.

He noted that Newington's stormwater regulations required that everything be defined according to the State manual, but said in the draft the subcommittee had proposed, it said the BMPs proposed needed to be designed in accordance with the manual. He noted that the State manual was very thick, and said if everything in it was required, it would be hard to design and build much of anything. He said the approach taken with the draft provided some flexibility for developers.

He said for a development project, someone would need to balance precondition flows to post condition flows, just like right now. He said what was new was that they would also have to balance discharge volumes with proposed condition volumes. He said it was also a standard thing in stormwater management today to not to just design for the discharge rate, and also to design for volume.

Mr. Cedarholm next spoke in detail about how sites meeting the definition of a redevelopment project and having less than 40% existing impervious surface could do a significant amount of storm water management, similar to what would be required for a new development. He said for sites with more than 40%, which were sites the Town really wanted to see developed, they needed to do something. He said developers were given a choices, and he elaborated on each of these. He noted that these provisions had come from Newington, and said the committee had tried to make them work a little better for Durham.

Chair Parnell said since the Town currently allowed 100% imperviousness in the CB district, this could be a challenge for redevelopment.

Mr. Cedarholm said that was why the wording "to the maximum extent practical" was included in the regulations.

He next gave some practical examples of how the provisions could be applied to some existing and planned projects in Durham. He said at 6 Jenkins Court, the area of disturbance was 9400 sf, just below the threshold. He said it was all impervious, and said there were discharges to Pettee Brook, which was definitely impaired.

He said it had made sense for them to put together a stormwater management plan, and as part of this, do something for water quality. He said they covered part of the parking lot, and would collect all of the stormwater from the roof, compared to previous runoff from the lot which picked up all kinds of things on the way to Pettee Brook. He said the water would be managed and then piped to Pettee Brook. He also said there would be a reduction in the discharge rate for the 1-inch storm, 10-inch storm, 25-year storm, and even the 100 year storm. He said this was because it would now be piped into a detention system. He noted that the applicant had done this voluntarily, and was the right thing to do.

Mr. Cedarholm noted that with Mr. Christie's project on Jenkins Court, there was quite a bit less than 9,000 sf, and said he had installed a system to catch the water, which was very appropriate for its location relative to Pettee Brook.

He said the Bryant Park West project disturbed 36,000 sf. He said a stormwater management plan was needed there, and noted that water on that site discharged eventually to College Brook. He said porous pavement was employed for the whole access road and sidewalks, and said there was also a green roof on 80% of the building.

He said these features reduced the existing discharge rate by 14%, and decreased the volume by 8% for the 2 year storm, and decreased the discharge rate by 22% for the 10 year and 25% for the 25 year storm. He said the applicant had really stepped up to the plate, on a volunteer basis. He also said an erosion control plan and an operation and maintenance plan were provided. He said the things done for this development met all the requirements in the draft storm water regulations.

Mr. Cedarholm said the 10 Pettee Brook Lane development proposed by Iona properties would disturb 12,000 sf, and said there was 10,300 sf of existing impervious surface on the site. He said the development would increase the imperviousness to 11,420 sf, but said runoff from $\frac{3}{4}$ of the roof would be run into a bio-retention pond.

He said this and other features would decrease discharge rates from 25-27%, for 1 inch storms all the way to 100 year storms. He also said the volumes would decrease for all the storms except for the 100 year storm, which was fantastic. He said even though the site was over 90% impervious area, the applicant hadn't had a difficult time meeting what was proposed in the new regulations.

Mr. Cedarholm, said for the 22 Rosemary Lane development, there was 5,300 sf that sat right next to Pettee Brook, so it made sense to have a stormwater management plan. He said there was a small vegetated detention pond in the back, as well as an infiltration trench in the front that took runoff from a portion of the street and the gutters from the building. He said for the 10 year storm, there was a 10% decrease in the discharge rate and a slight increase in volume.

He noted that the applicant had added a fair amount of impervious area with this development. He said for the 25 and 100 years storms, they had decreased the discharge

rate by 13% and 18%, primarily with the infiltration trench in the front. He said there was great discharge rate management and also great volume management with this project, considering the size of the site.

Mr. Cedarholm next spoke about the Sophie Lane project. He said this development disturbed 5.7 acres, which meant it definitely needed a stormwater management plan. He said there also were some offsite issues that needed to be considered, and he noted that Johnsons Creek was nearby. He said there would be porous asphalt on the whole access road, and said building gutters would discharge underneath the porous pavement.

He said there would be decreases in all the discharge rates and volumes, and said the effective impervious cover had ended up being 2% of the undeveloped land, because all the building roofs fed into the porous area. He said 57,000 sf of impervious area turned into 40,000 of pervious area, which was exciting.

Mr. Cedarholm said all five of these projects seemed to have no problem with meeting these proposed regulations, and said this was very exciting.

Mr. Roberts said Board members had all agreed that there were benefits from these things, but he asked whether from a developer's perspective, there was an increase in development costs.

Mr. Cedarholm said the cost increase was insignificant, noting that this was a subject that the State stormwater committee was evaluating. He said implementing reasonable low impact development strategies was easier to permit, and said maintenance of a rain garden or green roof was pretty minimal as compared to expensive subsurface infrastructure installations. He said certainly a full access road that was porous was expensive, but said things like rain gardens were not expensive solutions.

He noted that the Sophie Lane site had significant issues, and said there also off site issues, but he said this had not stopping the development. He said Mr. Caldarola was able to make the development work, using the low impact development strategies, and even taking the significant sewer extension into account.

Mr. Ozenich asked if there was a standard for a rain garden construction.

Mr. Cedarholm said the subsurface material used would determine how well it functioned. He noted that the DPW office's rain garden was lucky enough to have porous media under it, because it was built in a stone quarry. He said plants grew there, and said he only had seen it overflow once. He also noted that the rain garden out by the skating rink wasn't draining so well, and probably could have used an underdrain, with an outlet, which was key. He said while perhaps such a design didn't recharge the groundwater, it did filter the runoff through the filter media.

He agreed, as Mr. Gardener noted, that there were design standards for rain gardens in the NH stormwater management manual. There was discussion about this. Mr. Cedarholm

said the regulations said that any subsurface filtration or infiltration structure would be required to have an underdrain. He said he inserted this provision because of the problem over by the skating rink, and he provided further details on the need for an underdrain as part of a rain garden, and one that day-lighted, as well as having an appropriate site to put in the rain garden in the first place.

Councilor Smith said there were many places in Durham where beyond the clay, there was water, or other soils through which water could percolate.

Mr. Roberts asked Mr. Cedarholm if he was expecting that the Planning would have to have a third party verify plans coming in, or if the DPW staff could do this.

Mr. Cedarholm said the DPW wouldn't be a third party, but could certainly review plans. He said he'd be happy to continue to do this, and said with the new standard and the checklist, his job would be a lot easier. But he said if someone had an issue with his review, that was when the third party review was needed.

Mr. Roberts said he envisioned there could be a mountain of work on Mr. Cedarholm's desk as a result of the regulations changes.

Mr. Cedarholm said there could also be a situation like the Sophie Lane application, which had been very complicated, in which case the Board would want someone like Rob Roseen of the UNH Stormwater Center to do the review. He noted that Mr. Caldarola had wound up hiring Mr. Roseen, which had dramatically helped the project move forward.

Councilor Smith said section 9.03 A said "The Planning Board reserved the right toto submit and implement a Stormwater Management Plan", and he asked if there should be language that specified more than that.

There was discussion, and the wording "...submit and implement an approved stormwater management plan" was agreed on.

Councilor Smith said on page 7, under (g), it said, "Efforts shall be made to utilize...." He said there should be further definition of what kind of effort, and how much effort should be made.

Mr. Cedarholm said this was where "to the maximum extent practical came in. He said the idea was to encourage anything in the developer's tool box, but this said the developer needed to demonstrate an honest effort.

Councilor Smith said it didn't say that yet. It was noted that the wording at the bottom of page 8 and on page 9, under (b) and (e), spoke about "to the maximum extend possible". But he said it didn't say this under (g) at the top of page 7.

Mr. Cedarholm agreed.

Councilor Smith said ironically, he would rather not have to do this stormwater document, but said since Mr. Cedarholm had said the Board had to do it, he wanted it to be as good as it could be.

Mr. Cedarholm said this was the Board's document, and codified what developers were going to bring forward. He said he thought it would make it easier for the developers and the Planning Board.

Chair Parnell asked if there was anything in this document relative to what existed or was about to exist in other nearby communities that would dissuade developers from coming to Durham.

Mr. Cedarholm said he didn't think so, and said it was actually less than what Perry Bryant and Joe Caldarola had done. He said it was also consistent with what the Rivers Edge development had done, noting that he hadn't previously talked about that development.

He said he didn't think the regulations would discourage redevelopment. He noted the proposed reworking of some of the parking area at Mill Plaza the previous year, and said there was a lot that could be done to make improvements for redevelopment. He also spoke about how green roofs could be done at Mill Plaza, at a minimal cost.

Ms. Fuller said she liked the fact that things were spelled out in these proposed regulations. She noted how Mr. Caldarola had struggled to work with the existing regulations.

Chair Parnell asked what the process was, moving forward.

Mr. Cedarholm said the end of April was when the update for the federal permit had to be submitted, and said it would be great if he could say that the Planning Board had adopted updated stormwater regulations.

There was discussion that a public hearing needed to be held, after which the Board could adopt the regulations.

Mr. Roberts asked if Mr. Campbell should check the definitions before going to public hearing and it was agreed that this should be done.

Councilor Smith MOVED to schedule for March 24, 2010 the public hearing on the amendments to the Site Plan Review Regulations dealing with stormwater issues. Susan Fuller SECONDED the motion.

Mr. Campbell said that regarding Councilor Smith's comment on (g) at the top of page 7, similar to what was done concerning the wireless overlay district, an applicant needed to prove to the Planning Board that other things were tried, before a tower was allowed. He said proof of efforts to utilize natural filtration and infiltration BMPs would need to be

demonstrated to the Planning Board .

The motion PASSED unanimously 6-0.

Mr. Campbell asked whether the motion had applied to both the site plan regulations and subdivision regulations, and Councilor Smith agreed to redo the motion to include both of them.

Councilor Smith MOVED to schedule for March 24, 2010 the public hearing on the amendments to the Site Plan Review Regulations and Subdivision Regulation dealing with stormwater issues. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

IV. Discussion on amendments to the Shoreland Protection Overlay

Mr. Campbell said work began on these changes in 2008, because of the updated and more stringent State Shoreland Protection Act. He said for the most part, the Town's regulations were more stringent than the State, and encompassed more water bodies. But he said part of the update was to make the Town's shoreland protection provisions as user friendly as possible. He said the proposed changes were worked on in 2008, and were then sent to the Conservation Commission in early 2009, where some further changes were suggested. He said this document reflected those changes.

He said he wanted to see now whether the Board had any issues with what had been written, and said if not, he wanted to take the draft back to the Conservation Commission one more time for review. He said it would then be brought back to the Board, and then would go on to public hearing and the Town Council for possible adoption.

Mr. Roberts asked if previous Board comments on the document had been included here, and Mr. Campbell said yes. There was discussion that these proposed changes had been discussed previously.

There was discussion about a recommendation presented to the Board to add language on page 5, under Section 175-74.A.3 to say "College Brook and Pettee Brook sections that run through the PO, Courthouse, Church Hill and Central Business Zoning Districts as defined by the current 2010 Zoning Map", and with the setback to remain at 25 ft. There was also discussion that a new #4 would be "All other sections of College Brook and Pettee Brook", and the setback would be 75 ft.

Mr. Roberts said that had significant implications.

Mr. Campbell said it would most likely make every lot nonconforming outside of those 4 districts. But he said if that was what the Board wanted to do, they could take this to public hearing.

There was discussion.

Mr. Campbell said in 2004, when the amendments to the Town's Shoreland protection overlay were made, they added in College Brook and Pettee Brook with a setback of 25 ft, which had made a lot of properties nonconforming. He said this wasn't necessarily a bad thing, because now these water bodies were being considered as an important resource.

Councilor Smith considered how many lots would be outside the 4 districts. He said there would be some upstream on University land that wouldn't be affected, some back yards on the east side of Madbury Road, and a few backyards on the south side of Chesley Drive.

There was further discussion on this.

Mr. Gardner asked if there was a benefit to making such a change.

Councilor Smith said this recommendation was an early effort to get a reaction from the Planning Board as to whether it would be a useful change.

There was discussion that if a public hearing was scheduled, the people whose lots would be affected could get special notification in addition to the public notice.

There was discussion on where this recommendation was coming from, and Councilor Smith said it came from individuals, not the Conservation Commission.

Chair Parnell said he wasn't prepared to change what the Board already had in front of it without some discussion.

Councilor Smith said there was time for this discussion. He said this proposed change recognized that when the 25 ft buffer was put on College and Pettee Brook, it had been recognized that a 75 ft setback wasn't appropriate, for economic reasons, and encouraging density in the downtown. He said this proposed change recognized that there were some residential properties in the RA district that didn't have that need for density.

He said from the conservation point of view, there was a downside, because it might encourage some property owners in the RA district to be have their properties rezoned. He noted that he was playing devils advocate in saying that.

Mr. Roberts said he disagreed with some of this. He noted the Connecticut River compromise, where a compromise was reached in terms of setbacks. He provided details on this, and said #4 might unnecessarily apply a restriction that would have no effect, and would irritate those impacted by it

Ms. Fuller elaborated on what the reaction might be from those impacted.

Mr. Gardner said he wouldn't have a problem with the change if there would be some real positive impact. He said he didn't think it would be expensive to notify the affected landowners, because he didn't think there would be that many.

Councilor Smith said less than a dozen lots would be affected along College Brook east of the Central Business district. He said perhaps two dozen properties would be affected along Pettee Brook east of Madbury Road.

Mr. Roberts said the Board would need to have the correct number on the properties impacted. He said this change could have a significant effect on a lot of people, and said he would hate to irritate everybody with something that wouldn't have any positive effect.

Mr. Campbell suggested taking the recommendation to the Conservation Commission to see if they saw any value to adding it. He said if they did, it could be incorporated into the document that would go on to public hearing.

Board members agreed with this approach.

Councilor Smith said under Applicability, it should indicate that the current US Geological Survey quadrangle maps covering the Town of Durham were the basis for the Shoreland Protection overlay district map. He also noted that the numbering at the top of page 3 needed to be revised. In addition, he said at the top of page 8, the second paragraph should read "Except for Pettee Brook and College Brook, a natural woodland buffer, where existing, shall be maintained...."

The Board then agreed to wait until the document came back from the Conservation Commission to schedule a public hearing.

V. Discussion on removing the parking requirements from the Site Plan Review Regulations

Mr. Campbell said this was something he had been meaning to get to for a long time. He explained when parking provisions were added to the Zoning Ordinance, it turned out that these didn't match what was in the site plan regulations. He said it would be much cleaner to keep them in the Zoning Ordinance and take them out of the site plan regulations.

Mr. Roberts noted the great compromise that occurred with the Mill Plaza expansion in the 1970s because the Planning Board had the power to waive the parking regulations. He also noted the recent Bryant application, which looked at the idea of a parking demand plan rather than having to have a required number of spaces. He said he was concerned about whether, if the parking regulations were taken out of the site plan regulations, the Board would have enough flexibility to work with developers who weren't simply interested in paving more land.

There was discussion. Mr. Roberts spoke further about the idea of a parking demand plan.

Mr. Campbell said the Ordinance would also need to be changed to allow this kind of thing.

Mr. Roberts said a benefit of having the site plan regulations contain parking provisions was that this kind of provision could be included. He also noted recent changes in the RSA's, which gave some variance power within the Zoning Ordinance to planning boards.

Mr. Gardner suggested referencing the Zoning Ordinance in the site plan regulations, and then taking a fresh look at the Zoning Ordinance's parking provisions.

Mr. Roberts agreed, and said both could be looked at, at the same time. He said they could also look at how towns like Hanover handled things.

Mr. Campbell noted that the Board had considered other possible parking approaches in recent years that could be incorporated into Town regulations, and there was discussion. He suggested setting the public hearing for March 24th, and said in the meantime he could look at other things to do with the Zoning Ordinance concerning parking.

Ms. Fuller suggested that before scheduling the hearing, the Board should see what changes Mr. Campbell might come up with.

Mr. Campbell said regardless of what was done with the Zoning Ordinance, these parking regulations needed to come out of the site plan regulations because the Board didn't have flexibility since the Zoning Ordinance trumped the site plan regulations.

There was discussion that section 9.07 A, the General Requirements section, would remain in the site plan regulations.

Mr. Campbell noted that parking demand offsets were touched upon when there was discussion about possible parking expansions for developments proposed downtown.

Councilor Smith MOVED to schedule a public hearing for March 24, 2010 on amending Section 9.07 of the Site Plan Review Regulations. Susan Fuller SECONDED the motion, and it PASSED unanimously 6-0.

VI. Discussion on RSA 674:39a, Voluntary Merger, and appointing a designee to handle the matters of a voluntary lot merger

Mr. Campbell said there had never been an instance where voluntary mergers had created a violation, and said if there was, it wouldn't come to the Planning Board. He said it seemed like a waste of time for the applicant and the Board to have to address these kinds of applications at a meeting. He said the State statute did allow the Planning Board to

appoint a designee to handle them, and he suggested that the Director of Planning and Community development be the designee. He noted that no notices or surveys had to be done for a voluntary merger.

There was discussion that the Planning Board could decide to make this change now, without a public hearing.

Councilor Smith MOVED that under RSA 674:39a, Voluntary Merger, the Planning Board appoints Jim Campbell, the Director of Planning and Community Development, as the designee to handle the matters of a voluntary lot merger.

Mr. Ozenich noted that if a lot that was merged, and the decision was later made to subdivide it and the Zoning had changed, this might not be allowed.

Mr. Campbell said that right now, if a landowner had two parcels that were nonconforming and were contiguous, they had to be merged. He noted that both properties had to be vacant in order for this requirement to apply. There was further discussion.

Councilor Smith asked if there could be anything sinister about the proposed change.

Mr. Campbell said no, and said the whole point of lot mergers was to make them more conforming, if not completely conforming. He said if a landowner wanted to do something later with the parcel, it would still need to be conforming.

Susan Fuller SECONDED the motion, and it PASSED 5-1, with Richard Ozenich voting against it.

Mr. Ozenich said a lot merger could be a dangerous thing, and said it was important that an applicant be fully informed of what he was getting into.

Mr. Campbell noted that a bill had been introduced in the Legislature that towns couldn't force landowners to merge vacant lots.

VII. Other Business

A. Old Business

Mr. Campbell spoke about the list he had provided of items the Board still needed to cover, going forward. He said he wanted to get a sense of what the priorities were.

Ms. Fuller noted an item on the list that she had brought up, which to work with Mr. Campbell to review the calculation of usable area for somewhat poorly drained soils.

Chair Parnell asked if the landscaping provisions were under review, and Mr. Campbell said he had sent these to Robbi Woodburn, who had recently been ill.

There was discussion that the lighting ordinance was still being drafted.

Ms. Fuller asked if once the Board started going over the B. Dennis report, this would perhaps facilitate moving forward with some of these issues.

Mr. Campbell said it would.

There was discussion on whether workforce housing was put on the list, and Mr. Campbell noted that the Town was bringing someone on board to look at this issue, and consider inclusionary zoning provisions.

Mr. Roberts said there were proposed changes concerning the aquifer overlay district, and also said a new drinking water protection district was going to be proposed. There was discussion.

Mr. Roberts asked if there was any interest in allowing the Planning Board to designate areas of sensitive wildlife habitat, and impose use restrictions. He noted the idea of having a wildlife conservation zone as an overlay, which would have some minor restrictions in it, and said other communities had done this.

Chair Parnell asked if there was some way for Mr. Campbell to continue to bring forward possible Zoning amendments that were relatively straightforward, so the Board could address them as part of their upcoming meetings, in order to move through the list. He also said it would be good if items came to the Board as proposals, so they could respond to them.

Mr. Ozenich pointed out that he had previously brought up the issue of what a convenience store was.

Mr. Campbell noted that the Table of Uses had convenience store with gasoline sales.

Councilor Smith said essentially what the Board had said on this issue was that they weren't permitting gasoline sales separate from a convenience store.

Mr. Ozenich said what convenience stores sold had grown, so it was like a mini-supermarket.

Councilor Smith said the problem was that the placement in the Table of Uses of "convenience store with gasoline sales", was really an attempt to define the places where gasoline could be sold.

There was discussion about the fact that gas stations said they needed convenience stores as part of their operations, and also about the fact that the Town didn't allow convenience stores without gasoline sales.

Mr. Campbell said the Town didn't have a use in the Table of Uses that entailed just a convenience store.

Councilor Smith noted that in the 1960s, there were six gasoline stations along what was now called gasoline alley.

There was discussion about why convenience store was even on the list, and it was noted that the issue was alcohol sales, and whether convenience store meant beer store.

Mr. Campbell and Board members agreed that the retail store use category in the Table of Uses covered it.

B. New Business Request for Extension on Conditions of Approval for the Subdivision at 51-53 Durham Point Road

Chair Parnell said the last time the Board discussed this, it had said the application might need to be re-presented. He said the idea would be to have some kind of information session.

Mr. Campbell agreed that the Board could get a more detailed presentation by the applicant at this point.

Chair Parnell asked if the Board's approval ended after a period of time.

Mr. Gardner said it was within the Board's discretion not to approve the extension, and Mr. Campbell said in that case, the applicant would have to come back for approval of the subdivision.

Councilor Smith MOVED to grant the request for an extension of six months on Conditions of Approval for the Subdivision at 51-53 Durham Point Road. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

On another matter, Mr. Campbell said there was an appeal to the ZBA of the Xemed application by Steve Kimball of Pine Ledge Holdings. He said he had already spoken to the Board's attorney about this, who suggested that the Planning Board send a letter to the ZBA. He said the argument suggested was that the Board had given site plan approval not for creating a use, but for an existing use that went in on the site in 2006 after getting a certificate of occupancy, and went through a site plan review to allow the garage to become professional offices as well.

There was discussion.

Mr. Roberts said the question was whether the attorney thought the Board was on very strong grounds, and if so, whether this could be put into a letter.

Mr. Campbell said the Board's attorneys agreed that the ZBA could deny the appeal as

untimely because the time to argue that the use was not professional office was in 2006.

Chair Parnell asked if the ZBA could look at the use itself, and say it wasn't proper in the first place.

Mr. Campbell said that would be grounds for an appeal, under the 30 day time limit.

Mr. Ozenich said this present ZBA appeal was a reason he hadn't wanted to see the loading dock in the front. He noted that Mr. Hersmann was only going to ship 4 items a year. There was discussion. He said it made it look more like a manufacturing facility as compared to what had previously been a residential house.

Mr. Roberts asked if perhaps the attorney should write the letter, covering all the necessary bases, and it was agreed that this would be a good idea.

Mr. Campbell said he would be at the meeting to present it.

Ms. Fuller said it wouldn't be a bad idea for someone from Attorney Mitchell's office to be present as well.

Chair Parnell said if the appeal was accepted, the Board could be liable for approving the application.

Mr. Roberts said the Board's case should be made before the ZBA because that was what the Superior Court looked at first. He said based on previous experience with the ZBA, the Board had to be concerned about the type of argument to present and how it was rebutted. He said it had to be done in a way that fully encompassed all the issues that could be brought up.

Chair Parnell summarized that the Board would get a letter from its attorney and get representation from them at the ZBA meeting, and would also get the chance to look at the letter before it was presented.

There was discussion on who should sign the letter. It was agreed that it should be on the law firm letterhead, and the Planning Board Chair would sign it on behalf of the Planning Board.

On another matter, Mr. Campbell said the Town had received an email from Neil Niman about the fact that there were two consultants coming on board, one who would be looking at the idea of an inclusionary zoning implementation program, which the Town had received a grant for. He said there was also a consultant who would be looking at the transfer of development rights idea. He noted that the Board had discussed this at one point, said the EDC was interested in it, and also said it could benefit the Conservation Commission.

He said when he spoke with both consultants, it became clear that there could be some

overlap in these two projects. He said it would therefore be important for the Board to look through these things. He noted that with density transfer credits or TDR, as part of this there could be incentives and bonuses given to people downtown because they were taking the density from somewhere else. He also said a question was whether with a workforce housing project, it should get the density bonus through inclusionary zoning because it was workforce housing, on top of density bonuses from the density transfer.

Mr. Campbell said there were several committees affected by what both consultants would be doing, and also said the charrette report would fit in with what they were doing. He said an advisory committee would be established, which would serve as a steering committee, and would meet once a month. He said the Planning Board representative to that committee would serve as a liaison with the Planning Board. He also noted that part of what the consultants had been hired to do was to bring their results back to the Planning Board.

Mr. Roberts asked Mr. Campbell what he thought about the issues raised by Neil Niman.

Mr. Campbell said he could see his points, but not entirely. He said unless they went through the exercise they wouldn't know. He said there were a lot of sending zones, but said it was the receiving zones that there would have to be an open discussion about. He said Councilor Niman saw only the ORLI, MUDOR, and the CB districts, but said he personally saw the possibility of the RA District for workforce housing, or the transfer of density credits to allow a bit more buildup in that zone.

He said there could be deed restrictions to alleviate fears about student housing, but said again that they wouldn't know what was possible until they went through the exercise with the consultants.

Mr. Roberts asked if Strafford Regional Planning Commission could do this work, for the fees paid to them.

Mr. Campbell explained that SRPC was short staffed right now.

Ms. Fuller said she would be interested in being on the Advisory committee, and would therefore be able to report back to the Planning Board and the EDC.

Mr. Campbell noted that they were also hoping to have a real estate person on the Advisory committee, as well as someone from the University.

There was discussion that the funds for this work came from the Planning Department budget, and that the consultants had already been hired.

Mr. Campbell thanked Ms. Fuller for volunteering to serve on the Advisory Committee.

Ms. Fuller noted that there was some confusion among some residents about the 14-16 Jenkins Court redevelopment. She said her understanding was that there would be a new

3 story building, and renovation in the existing building.

Mr. Campbell said the Board had approved an addition to the brick building, and said it had also approved a new building between the two existing buildings before the addition was approved.

Chair Parnell noted that the controversy about the drainage was in regard to the new building.

Mr. Roberts spoke with Board members about the fact that the barber downtown was concerned about what he saw as a total evaporation of possible parking for his customers, because of housing coming into his area, and that this same thing had happened to him in Newmarket. Mr. Roberts said it seemed that the barber had been talking to other merchants downtown. He said he had asked Mr. Campbell if there was any way to get a sense of whether this was the prevailing feeling downtown.

Ms. Fuller said the EDC was working on a questionnaire for businesses, and said the plan was to do face to face interviews as part of this.

Mr. Campbell spoke about the business retention and expansion program the EDC had developed, which would involve getting this kind of information. He also said while there might not be ultimate solutions right away, these problems could be identified.

Mr. Roberts said the issue was that all of this housing was going in when there was limited parking downtown.

Mr. Gardner said the person from B. Dennis Design said there should be a parking authority, and said the parking issue was obviously something that should be looked at and dealt with. He said the parking issue and the idea of having a parking authority came up several times during the charrette.

Mr. Campbell said he had put the idea of looking at the parking issue into his budget, but it was taken away.

Mr. Gardner said some places had paid parking, and business people loved it because it could be adjusted so there was always parking available out front. He said the towns that had done this had really seen an improvement in their businesses.

Councilor Smith noted that Mr. Kelley had been annoyed with him for talking with John Pinto, the owner of Mill Plaza, about what he should do. Councilor Smith said among other things, he had suggested that Mr. Pinto should look at what income he was getting from the spaces he was currently renting, and if he could get more by having "for pay" parking in the lot with private meters, for people who wanted to go to campus or to Main Street. He said this would be a change in use, but would benefit the community and the property owner.

Ms. Fuller said a parking garage would serve nicely, and could include a percentage for residential housing, business, too. It was noted that the B. Dennis Report would be coming out the next week.

Mr. Campbell confirmed that the draft report was received from B Dennis and said design team members would be at the Town Council meeting on March 1st. He said they would also be at the March 10th Planning Board meeting, to talk with the Board and the EDC. He said he would send copies of the report to Board members within the next few days.

He noted that the Seacoast Repertory Theatre had asked for a continuance. He also said there was only one new application for that meeting, which was a conditional use permit application to allow two goats in the MUDOR district, since it was considered accessory animal husbandry. He said this applicant also had to go to the ZBA because he was supposed to have a minimum 150,000 sf lot and be no closer than 100 ft from a neighboring property. He said this was a great example of writing something into an ordinance and not knowing what it would do in reality. He noted that ironically, this was a permitted use in the RA District.

VIII. Adjournment

Richard Ozenich MOVED to adjourn the meeting. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

Adjournment at 9:38 pm

Victoria Parmele, Minutes taker

Stephen Roberts, Secretary