

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

**Durham Planning Board  
Wednesday March 10, 2010  
Durham Town Hall - Council Chambers  
7:00P.M.  
MINUTES**

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

**ALTERNATES PRESENT:** Kevin Gardner; Councilor Neil Niman

**MEMBERS ABSENT:** Wayne Lewis

**I. Call to Order**

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

**II. Approval of Agenda**

*Richard Ozenich MOVED to approve the Agenda. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.*

**III. Report of the Planner**

Mr. Campbell said the Seacoast Repertory Theatre had requested a continuance, and he suggested that the public hearings should be continued to the March 24<sup>th</sup> meeting. He said the rest of this evening's meeting would therefore be devoted to the Work session.

He noted that due to the outages from the storm the previous week, he had been unable to get out the notices for the site plan application concerning the two goats proposed on Spinney Lane.

Mr. Campbell said Under New Business, he would discuss his recent meeting with Administrator Selig and some developers regarding a possible student housing project on a 40 acre Technology Drive property. He said the concept was very interesting, and said the developer was looking to do a combination of multi-family units and single family housing units. He noted that in that zone, multi-family units were allowed, but single family units were not, so he would like the Planning Board to discuss this.

Mr. Campbell said that the previous evening, the ZBA had denied Pine Ledge Holdings' appeal of the Board's site plan approval for Xemed.

- IV. Continued Public Hearing on an Application for Site Plan** 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.

Continued until March 24, 2010.

- V. Continued 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. 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.

Continued until March 24, 2010.

*Councilor Smith MOVED to continue the Public Hearing on the Site Plan Application and Conditional Use Permit Application 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. Susan Fuller SECONDED the motion, and it PASSED unanimously*

**VI. Other Business**

**A. Old Business:**

**B. New Business: Work Session on the Draft Report from the Charrette**

Bill Dennis, of B. Dennis Town Design spoke before the Board. He first noted that he had made a presentation to the Council the previous week on the details of the draft report. He briefly ran through this presentation again, and said the meeting now was meant to be a working session.

He showed a view of the downtown that indicated that there was a lot of asphalt, and said this meant the Town was losing a lot of economic value. He said this was one of the reasons a strategic plan was needed. He said the design team had studied the downtown core, and had provided a number of different scenarios as to what it might look like. He said if it was decided that a form based code should be developed, a goal of this would be to look at shaping the downtown into what they wanted.

Mr. Dennis noted some themes that had come out of the charrette:

- the importance of having some civic green elements for Town residents
- change one way road system(s) to two way
- improve the intersections at Quad Way and Main Street, and Madbury Road and Main Street

- develop a park once and walk strategy
- create a network of small streets off of the main roads to slow traffic speeds and favor pedestrians
- possible roundabout at Quad and Main, which could also be something that was a larger green that would still function as a roundabout, but would have more character, and could be a good moderating piece between the University and the Town. Mr. Dennis said the roundabout approach would make traffic safer and allow it to keep moving. He said tying into that was the possibility that the University would be willing to consider two way traffic on Quad Way, which would take some of the traffic off of Mill Road.

He spoke about the Pettee Brook Road area, including the Greens property, and the concept of a design for the area that would encourage some small roads and walkability. He noted that the Fire Department was looking at the Greens as a possible location for the new Fire Station, and said some municipalities were able to include housing on upper floors of their fire stations. He said there could perhaps also be some structured parking as part of such a design. In addition, he said there could be some enhancements of Pettee Brook, which was currently an under-utilized resource.

Mr. Dennis spoke about building types in this area of Town that would fit better, and bridge neighborhoods and the downtown. He said the Town could require that where a development followed the street, there would have to be retail or office, or some kind of public use on the first floor, with a private courtyard for housing behind, and parking either in the back or on the side. He said they could begin to set this kind of design up with a form based code, and said a developer doing this kind of thing would know that approvals could be obtained relatively easily.

He noted that some people at the charrette had said they would like to see a green in the downtown for citizens. He said it could be something similar to what one would see in Princeton, NJ, and said this would create a lot of value. He also said some type of civic building might face on such a green, and could have a form that related to the street.

He suggested the idea of having retail on a first floor of such a building, with a library on the second and third levels. He said if it was decided that the civic uses would go some place else in Town, there could at least be a building that looked civic even though it wasn't a civic use.

Mr. Dennis spoke next about the area of the downtown near the Post Office, and the idea of connecting Main Street to Pettee Brook Road on the other side of the Henderson building. He said this could calm the traffic down, and would also make it easier for people to cross. He also spoke about how Mill Road could possibly be shifted, in cooperation with the University, to line up with Jenkins Court. He spoke about how that area might then be redesigned, in part to create some public spaces.

He noted that developer Matt Crape had attempted to create a positive development on Jenkins Court, working with the existing Ordinance. But he said because it was often

hard to get retail or office on the second floor, he had to go with three stories, and six bedrooms per unit of student housing. He spoke about alternatives that might be possible if the code was different, and said the Town could get into design alternatives if there was a form based code. He said such designs would provide more space in back, which would allow either more green space, or more parking.

Mr. Dennis next spoke about the Church Hill area, and showed a sketch that indicated that there was a lot of undeveloped area there. He noted the possible idea of putting in a grid of small streets that would connect to Mill Plaza so there would be more than one way in and out of it. He said it seemed that this would be possible, but said the Town would either need to change the existing code slightly, or have another code that encouraged and allowed this.

He moved on to discuss the intersection of Main Street and Route 108. He said right now there were 30,000 cars passing through per day, which among other things made it very hard to cross these streets. He noted that historically, there was a roundabout at this intersection. He said Mr. Chellman had looked at this area, and said a roundabout would work very well there because it would allow the traffic to flow better, cars would go slower, and it would be easier for pedestrians to cross the streets. He said a roundabout would also create a kind of gateway to Durham, and more of a sense of place.

Mr. Dennis then spoke about the Coes Corner area, which he noted was a more rural area that still had the potential for some civic uses. He described the idea of putting a restaurant in the landing area, as well as other bits of infill, and said the idea was to make this area of Town more walkable, from the high school, etc.

He summarized that the draft report combined what the design team had looked at prior to the charrette, the ideas people brought to it, and what the team saw as opportunities for the Town. He said the plan was pretty much what people saw at the end of the charrette, and said the report now included the vision and the strategy.

Mr. Dennis said the idea now was to go beyond that, and said the other part of his contract with the Town was to look further at the downtown and the rest of the commercial core, and consider what things were preventing people from developing there in a way the community wanted. He said the design team had also been asked to consider what approaches could be used to change this. He said while the Town could keep what it had or could fiddle with it, the team was recommending something in the realm of a form based code.

He spoke about the idea of having a regulating plan for the downtown, with which they would be able to define the edges of the blocks they wanted, and could include a requirement that there would be passageways, parking, etc. He then spoke in some detail about the kinds of things that would be considered in a form based code, and recommended that it be administered by an entity other than the Planning Board.

He noted that the Smart Code was one type of form based code, which was available on

the Internet, and said it could be used as a checklist as the Town came up with its own form based code. He also spoke about how design standards could be integrated into the code, either as a legal document or as guidelines.

Design team member Ms. Beth Della Valle said she had reviewed the Town's Zoning Ordinance and regulations. She said it was a complicated and old fashioned ordinance, in its very fine differentiation of various land uses, and also noted that conditional uses comprised about 30% of the uses in the Table of Uses. In addition, she said the requirement that 5 of 7 Board members approve a conditional use application was a pretty stiff hurdle to get over.

She said if the Town adopted a form based code, this would simplify the Ordinance in a number of ways. She said they could encourage more vitality downtown by guaranteeing a mix of uses, green spaces, and interconnected streets. She said they could also start to define the type and character of new housing/development on Main Street, and could promote infill to re-create the street front, in a way so that would fit in seamlessly with what was there now. She spoke further on this, and said they could repair the historic fabric and also create a more walkable area.

Ms. Della Valle said whatever approach was taken, it would be important to recognize that they had to think about how to frame the code so it didn't look extremely different from what already existed. She said they would also need to build some flexibility into the code, for example in identifying possible access roads, in order to take into account possible real estate changes.

She said a third thing to keep in mind was that with a form based code, building site details would be much more prescriptive than what the Town currently had. She said the exchange for this would be to offer developers a streamlined review process. She also said the intense public engagement would occur in developing the code, rather than when the Board was looking at a specific development proposal.

Ms. Della Valle next spoke about some of the policy issues identified in the charrette:

- work with the landlords and the University to explore and develop strategies to deal with student housing needs and conflicts Town wide.
- work with landlords to develop meaningful strategies to support the availability of affordable workforce housing.
- determine the approximate location and mix of new civic uses
- adopt a park once and walk strategy, coupled with working with the University shuttle bus system
- create a parking authority that would look at such things as how to establish a public/private relationship in order to get additional parking, and setting up a parking enforcement scheme
- create incentives for land owners to build new street connections, or use public/private partnerships to accomplish this
- work with the State to adopt building code provision that support the renovation of older, possibly historic buildings, when there is a change of use

- develop a robust economic development strategy that explores the role of the student population in the demand for housing, goods and services; asses unmet need for retail in the downtown; determine the feasibility of and demand for incubator space for University start up businesses
- improve the connections between the University and the Town, both physically and administratively on a whole series of issues

Ms. Della Valle said in the best of all worlds, the design team would recommend a form based code for the entire commercial core, from the downtown to Coes Corner, and would recommend some kind of mechanism for administering the code. She said the review approach that was chosen to administer the code would depend on what the community would be most comfortable with. She noted that the Planning Board currently had a Technical Review Committee, and said it perhaps could be given the responsibility to review and approve/deny applications, with appeals of decisions going to the Planning Board.

She said they could decide not to do anything to the existence Ordinance, or could decide to stay with the existing Ordinance but fix problems with it, perhaps using more conditional uses, putting in design standards, and addressing other provisions that weren't giving the Town the kind of development it wanted.

She said if they did decide to adopt some kind of form based code, it could be done as an overlay, where there would be additional standards on top of the existing Ordinance. She noted that this could make things more complicated. She said they could also adopt a floating zone that would get landed when there was a development proposal. She said developers who agreed to apply the form based code for their proposed development would be able to get a permit faster, because they would know what the Town wanted them to do rather than having to guess.

Ms. Della Valle said a form based code could be applied across all zones, or just some zones, which perhaps would be contiguous. She noted that this was a new concept for the Town, and said perhaps they could start with the Central Business district and see how it worked there, and then perhaps could expand it to other areas.

She said in addition to the idea of having the Technical Review Committee administer the code, other options included having the Code Officer or the Town Planner review the proposal based on the code and then making a recommendation to the Planning Board, which would then go through the formal review process. She said this approach could reduce the number of meetings needed with the developer and the public.

She next spoke about the types of standards that could be adopted. She said there could be simple ones, like consideration of building placement, where roads were, the need for some kind of connections. etc. She also said there could be design standards for things like roof lines, building materials, openings for windows relative to solid walls, and even more specific things like colors. She said the specificity would depend on what the comfort level was with this.

She and Mr. Dennis spoke further about where one could find more specifics on form based codes. Mr. Dennis noted that there was an advanced form based code class being taught in Portsmouth in April, and also said [www.formbasedcodes.org](http://www.formbasedcodes.org) and [www.smartcodecentral.org](http://www.smartcodecentral.org) showed places where these codes had been adopted or were in the process of being adopted.

Ms. Della Valle said there were about 5 communities in the Northeast that had adopted a form based code, including Dover, NH, and said they were aware of another 5-7 municipalities in the Northeast that were exploring the idea.

Mr. Dennis said there had been enough happening across the country with form based codes so that the approach had now gone through a lot of testing, including being looked at by land use lawyers. He noted that there had been no court cases brought against the code.

There was discussion about why the form based code concept hadn't caught on as quickly in New England as in other parts of the country.

Ms. Della Valle said some had said this might be because many New England towns already had the form that a lot of other places were trying to achieve. But she said these same places had gotten so hung up on the uses now that they had forgotten about the form.

Mr. Dennis said he had been working on these issues since the 1980's. He noted that there were a lot of downtowns in the Northeast where if they burnt down, they couldn't be rebuilt in the same way because of the codes now in place. He said this was insane. He said he had spent 10 years trying to update existing codes to make them work, and said that finally, it had made sense to start clean and make a code that was understandable, had graphics, was very clear as to what was expected, and could be administrated very simply.

He said developers would build exactly what was in the code, and said the idea was to give them something that was reasonable and that would produce something that people would like. He spoke in some detail about how this approach had worked in Albuquerque, New Mexico, Petaluma, California and Winslow, California.

Mr. Kelley asked what sort of incentives and mechanisms there were to get developers to develop their properties and get current owners downtown to redevelop their properties, in order to achieve this kind of development.

Mr. Dennis said the Town needed a marketing plan and strategy for the downtown. He said the code could make development easier, but said the true economic value of the downtown would not be unleashed unless there was a partnership with the Town. He said there were certain things the Town could do, and certain things developers could do, and said he thought both the code and the strategy were needed.

He said at some point, the Town would need structured parking downtown. He said making this happen would mean that there needed to be a relationship with the University or some other entity to get over that hurdle. He said otherwise, the Town would be limited to having lesser buildings downtown.

He said some other ways to work with developers were TIF districts and business improvement districts, and also said bonding could be used for certain kinds of infrastructure improvements. He said the case could be made that a 20 year bond on a garage would see the pay back, because it would act as an economic generator for the downtown.

Mr. Kelley asked if in its review of the Zoning Ordinance, the design team had felt there were too many zones in the downtown area.

Mr. Dennis said the question was what the Planning Board and others thought about this. He said it was confusing for a developer when there were a lot of zones in a small area. He said there should be a code that allowed the Town to determine how things were sculpted within an area to get the effect they wanted. He said the regulating plan that would allow the Town to do this would evolve from the strategic plan.

Ms. Della Valle asked if the use distinctions between the Central Business District, Professional Office District and the Church Hill District were distinctly different, and said her sense was that the Town was doing this because it was afraid of what the use might do to the form in those areas. She said if the Town started tackling the issues of scale and placement, the question was whether this would take care of a lot of the uses. She noted that while the Town would still struggle with student housing, this was a bigger issue, which even the current code couldn't handle effectively.

She said for the Church Hill area, they probably didn't care if there was a little store, but did care about what it would look like, and where the parking would go to support customers. She said that was the kind of thing that a form based code would help them address.

Mr. Dennis said having a form based code didn't mean that the Town didn't designate uses, and said it was just a matter of emphasis. He said a use code talked a lot about use, a little about management, and very little about form. He said with a form based code, the form was considered first, although the management and use were also important. He said the question was whether, with what the Town currently had, it could get to the vision people had talked about at the charrette. He said while this was possible, it would be difficult, and Ms. Della Valle said it would probably take a long time.

Councilor Carroll said with a form based code, a lot of emphasis was on form, but it also got into the uses. She asked if perhaps they could say something such as that a certain percentage of the Central Business District could be student housing.



Mr. Dennis said percentages like that could be used for uses, but said this could be an administrative nightmare. He spoke further on this, and said one of the things to consider in bringing on a form based code was being able to administrate it. He said it would be a change from what people were used to doing, and said it would be good to be able to blend it in so it didn't feel completely alien to the way things were already done.

Mr. Roberts said he felt that the discussion on form based codes was a major distraction from all of the great ideas produced by the charrette and now in the report. He said the vision was great, and then spoke about how conditional use had been used by the Planning Board to possibly allow some uses. He said towns around the State were fighting back against the malls, and said one of the things they had used was conditional use. He said what was needed now was to firm up the vision and develop a marketing plan, and said where they went from there would then be easier to tackle, if there was wide acceptance of where they wanted to go.

Mr. Dennis agreed that the vision was pretty good right now, although it could be tweaked a bit. But he noted that the design team had also been asked to look at the Zoning, which was why they were discussing this now.

Mr. Roberts noted that with each of the projects underway in Town right now, if it wasn't for variances from the Zoning Board of Adjustment, they wouldn't exist.

Mr. Dennis said if the Town went forward with the vision, something to decide was how it would affect how they were doing business right now.

Mr. Roberts said that was a concern of his, and said with this vision, the selling job could be much easier.

Mr. Dennis said if the code was going to change, there needed to be a vision plan, because there was otherwise no way to judge consensus on what needed to be done. He said the Town had the vision now, so had the chance. He noted that the EDC had asked some tough questions on things like the need for a marketing plan. He said he agreed that this was needed, but said that was a strategy, not a code.

He also said there had also been discussion with the EDC about the need for a capacity analysis and how much space was actually needed, as well as about traffic flow issues, including whether additional development would create additional traffic.

Ms. Della Valle said something that kept getting repeated was that people didn't believe that a form based code could actually get adopted in Durham.

Councilor Clark said he liked the idea of a form based code, and thought it could work, but said a public perception was that many of the discussions had been monopolized by the form based code. He said they hadn't talked nearly enough about all the great ideas the design team had presented. He said he agreed with Mr. Roberts that they could not let really great ideas get lost right now.

He said the issue of a traffic circle, minimal front setbacks, parking on side streets, and others were the ones that would get people to rally around the need to do something.

Mr. Dennis agreed, noting that he had been asked to talk about form based codes, and also said while there was this vision now, it needed a mechanism to implement it. He said that was the next step.

Ms. Fuller said the next step seemed to be to think about the existing code, and adopt a different code that would be an invitation to start putting in place some aspects of this vision.

Mr. Dennis said that was right, and said there were a range of codes that could be used. He also said he didn't want to get too far into the things that were identified in the plan, because he didn't want them to be identified with his firm. He also said they were still ideas and weren't specific.

Councilor Mower said it did seem reasonable to consider some major changes like traffic flow, which didn't have to do with the code but might require some lead time so the Town could work with property owners, the University, etc. She said as that happened and some immediate changes to the Town were seen, they could meanwhile be working on these other things.

Mr. Dennis agreed, and suggested that there should be some prioritization of shorter term and longer term things to do. He noted his experience working on Albuquerque, where the one way streets were changed to two way streets, which allowed an additional 600 parking spaces downtown, and saved the city \$10 million by using the existing asphalt better.

Chair Parnell asked if the analysis the design team had done had determined that the zoning in place was preventing the kind of development shown in the vision.

Mr. Dennis said it sounded like when people were trying to build, they were running into things that made this more difficult. He noted the Crape development as an example of this, where the developer wasn't able to take full advantage of the economic value of the site.

Ms. Della Valle noted an example in Town where a landowner was approached by a hospital that wanted to put in medical offices, but couldn't find a place that worked because of the use restrictions, size of the lot, etc.

Chair Parnell said he thought there were other more important issues having to do with the way the economy of the Town was set up, so that the best use of every site downtown was a student apartment. He said he wasn't sure that changing the Zoning would change this.

Mr. Kelley said the Town's strategy was to say developers could go up another level if

they gave the Town something other than student housing. There was discussion.

Mr. Dennis said it might turn out that they would decide not to totally redo things, and would do some fixes. But he said this was a larger issue than what was in the code, and had to do with the process a developer had to go through.

Tom Elliot, Chair of the EDC, asked why putting in two way streets would add parking spaces in Town.

Mr. Dennis said theoretically, parking spaces could be put on both sides of Pettee Brook Road now, but he said traffic was going very fast in that area, so it would be difficult. He said two way traffic would calm things down somewhat, and would therefore allow parking to work.

He said at the highest demand levels, they wanted to be able to charge for parking. He also said once there was a parking garage, they could do things like allow 90 minutes of free parking for people who parked there. In addition, he said the more they could change the character of the streets, the more they could change parking behaviors.

Mr. Elliot asked if it could be determined how many parking spaces could actually be added.

Mr. Dennis said this could be determined, and explained that putting in additional streets and adding parking on both sides of these streets could add quite a bit of parking.

Mr. Kelley noted that the Planning Board had embarked on a traffic model with the University, and said its fundamental input was use, not form. He said it would be a challenge to look at a revised downtown traffic circulation without plugging in some uses to see how it would work in the future.

Mr. Dennis agreed that they did need to consider the uses when thinking about traffic and parking. He said one idea expressed with the vision was that people wanted more of a mix of uses, and said the more of a mix there was, the more there could be an overlap of parking requirements.

He noted that Mr. Chellman had done a study of downtown parking in Portsmouth. He said typical suburban retail meant 5 cars per thousand sf of retail, for each use, and said it was 2.4 cars per thousand sf of retail when a mix of uses was considered. He noted that a study done in Santa Monica showed that 2.1 would work. He said it was important to try not to offer free parking, and to not require parking for some housing downtown.

There was discussion that while the Town required parking in the CB District, a developer could request an exemption and would then pay a fee to the Town.

Mr. Dennis said the Town seemed to be part of the way toward a park once strategy and management, and he suggested a public/private partnership for this.

Ms. Della Valle noted that the ITE Green Book now had parking space standards for mixed use areas.

Mr. Dennis said there was also the potential for cooperation with the University, which had parking lots where people who worked downtown could park and then take the shuttle downtown. He also said if a representation of downtown merchants was on the enforcement end, they could determine if employees were parking consistently in front of their stores. He said there were ways to make parking more user friendly and still allow enforcement to take place. He said if the parking wasn't well run, the Town was throwing away tax money.

Councilor Mower said a lot of the traffic that flowed through the village was University related. She said if the traffic through the downtown became two way traffic, a question was how the traffic that was only associated with UNH and wasn't necessarily looking at Durham as a place to stop and shop could be managed.

Mr. Dennis noted that they would want some of these people to stop in Town, but he also said if Quad Way was made a two way street, that could help with traffic flow.

Mr. Campbell noted that it was the Town and not the University that had prevented two way traffic on Quad Way.

Mr. Dennis said encouraging other ways through Town with more roads would disperse traffic, as opposed to having everyone jam up in one area.

Mr. Gardner said the vision expressed by the citizens that was put down on paper included a lot of additional roadways, which he thought was a great idea, but might be difficult to pull off. He asked how public/private partnerships might make some of those things happen.

Mr. Dennis said there had already been conversations about the need for more roads, etc., and said the Town would want to be able to lay out a series of options. He noted that there could perhaps be a private road, which would provide benefits because it would be narrower and more pedestrian friendly.

He said in some areas there might be land that was traded back and forth, and said in other areas, in exchange for getting more development rights for a parcel, a developer might agree to put in some roads. He said there could be different strategies for different areas, but said the idea would be to do this in a cooperative way, and not by eminent domain. He spoke further on this.

Mr. Campbell noted the existing access at the fraternity house site on Main Street, and said if it was redeveloped, that would be a great time to turn it into a new road. He also noted the Henderson property near the Post Office, and said Mr. Henderson was interested in looking at the idea of allowing the road change to the other side of his

property, as long as there was a swap of land involved.

Mr. Dennis said someone agreeing to do this could perhaps get faster permitting, and he noted that there would be more frontage for retail with such a design.

Ms. Della Valle said in revising their codes, the Planning Board could go out to the development community and ask them what kinds of incentives would work for them.

Mr. Dennis said the vision plan could be referenced in the Zoning Ordinance, but said interpreting it would then be totally subjective. He said whatever it was called, they needed to find a way to make this vision legal.

Mr. Roberts said the Master Plan had a road map concerning road patterns, construction suggestions, timetables, etc., and said a lot of the building that had just happened reflected this. He said with this vision in the Master Plan, it would have legal standing.

Mr. Dennis said typically, the design team recommended a greater range of road standards, and being very specific about the character of the roads. He noted that with most codes, the only issue was keeping traffic moving, and making sure fire trucks and snow plows could get through.

Administrator Selig said the RFP did include an update of the Master Plan, and said the Planning Board should consider how much it wanted the report and the B. Dennis design team to move those chapters forward.

Mr. Roberts said that was his hope, and Mr. Campbell said a lot of this plan could be incorporated into the downtown and commercial core chapter. Mr. Roberts said again that having this in the Master Plan would provide a legal basis, and it could then be implemented in some kind of Zoning Ordinance.

Mr. Dennis agreed, and said this plan could flow very smoothly into the Master Plan after tightening things up. He noted that for a town this size, they had gotten a very good response from the public, which satisfied the need for public involvement in the Master Plan process.

Mr. Kelley said the Planning Board heard public responses a lot. He said he recognized that regardless of what project was proposed, there would be abutters who didn't want a project next to them, but said there was a lot more involvement than that in Durham. He asked if these kinds of challenges had been encountered elsewhere, and if so, what strategies were used to deal with them.

Mr. Dennis said if a project was administratively approved, someone could appeal that, but said that would be a more specific process than what the Planning Board currently saw. He said such an approach took a good deal of that process away, so the Board could deal with the truly contentious issues, which would make their job more effective. He spoke further on this.

Councilor Mower asked Mr. Dennis to talk about how towns that adopted form based codes had to tweak them over time.

Mr. Dennis said there would be a process available to allow this, and said a number of towns did this, and in different ways. He noted that Albuquerque had originally adopted a primitive form based code, but over time had adopted a much more specific code, and had become much more comfortable with proposing it and administering it. He said this was a reason the design team had suggested to Durham to perhaps start with the downtown, and see how it worked.

Mr. Campbell asked Mr. Dennis to talk about the market analysis, noting that resident Dick Gsottschneider had said they needed to find out first what the market would bear.

Mr. Dennis said for \$3,500, the Town could get a tier one marketing analysis/strategy done by Gibbs Consulting, which used a special software program and had a lot of experience with downtowns, including University downtowns. He provide details on what would be involved in such an analysis, and said it could include some strategy. He noted that developers interested in doing a project downtown would probably do a market study. He said if the Town wanted to sell the downtown, it would need to do a tier two level study.

Ms. Della Valle said Gibbs Consulting did retail market strategies, and she noted that a recommendation of the report was that Durham's marketing strategy should also include looking at the need for offices, incubator spaces, and other areas of the Town's economy that went well beyond downtown retail.

Mr. Dennis said he could provide the names of some firms that looked at the whole area, and especially what the capacity of the Town was and how that merged with the private sector. He recommended Zimmerman Volk as a firm that did market analyses for housing. He said they divided up the housing market into multiple sectors, and might be able to provide some categories of people who wouldn't mind living next to students.

Mr. Roberts said when the Hotel was put in, it was thought by some that it would turn instantly into student housing. He said a market analysis done for the Planning Board by the UNH Business School had determined that a hotel at that location would do well, and he said this had given the Planning Board some comfort to stand tall.

Mr. Dennis said he recommended that the Town get some backup with a market analysis. But he said his own sense was that Durham was incredibly underserved and there was incredible pent up demand, so there was a really a good chance that they could do something. He said the question was how they wanted to shape development as it came forward.

Mr. Roberts said right now, the major developments over the past year had to go to the ZBA for some relief, and needed to include stormwater management systems on site. He

asked how these things would be integrated into a pre-approved form based code.

There was discussion about the fact that Pettee Brook and College Brook, which had previously had no setback requirement, now had a 25 ft setback according to the Town's shoreland district.

Mr. Dennis said the Town could change that back.

Mr. Kelley noted that Durham was an MS4 community, and the requirements were getting stricter and stricter regarding the permit, so the Town really had no choice in the matter.

Mr. Dennis said under the Smart Code, there were modules to address stormwater related issues for urban areas. He also noted that there were some new urbanist people working at the EPA now.

Councilor Mower said these bodies of water were already impaired. She also said there were some new storm water regulations proposed, which didn't have anything to do with zoning.

Mr. Dennis said this should be a performance based process, with the goal of making the water clearer. He said storm water management could be part of the checklist, and said it sounded like it could be brought into the pre-approval process, as long as it didn't need to go to the State.

Ms. Della Valle said another thing was that Pettee Brook had been built into the plan as an opportunity. She said a code that reflected the form of the design might actually want to retain the setbacks in order to create opportunities for paths, plazas, small parks along portions of Pettee Brook, whereas in other areas this might not be necessary.

Mr. Dennis said this called for a regulating plan, because it could show where the setbacks could go in and out, according to the conditions.

Councilor Mower asked what the best way was to get a sense of the cost of doing each portion of the plan, such as the ideas involving road changes.

Mr. Dennis said the engineering documents, including costs, would have to be developed for these ideas.

Mr. Elliot asked if structured parking would fit on the Store 24 site.

Mr. Dennis said it had been determined that it would fit, and he provided details on this. He said this didn't mean that it had to go there, and said it might go where the Greens was, or at Mill Plaza. He also said whether it was structured or surface parking, the center of a block was the best place to put it, and also said it would need to be lined with retail. He noted that the design didn't assume underground parking. He said they could easily

do 4 levels without overwhelming the things in front of the parking structure. He also suggested that there could be a green roof, or even housing on the top.

Administrator Selig asked what the best next steps would be.

Mr. Dennis said they would finish up the document. There was discussion about the fact that the document was hard to read right now because of the small font. Mr. Dennis said there would need to be discussion by the Town on what needed to be done next, including looking more at the existing codes and whether they wanted to consider using a form based code. He said time would need to be spent learning more about the form based code, and said a decision on that should be made before updating the Master Plan.

Ms. Della Valle suggested that both could be worked on concurrently, and said they could perhaps focus first on the areas beyond the downtown in working on the Master Plan. She said they also might want to do some things now that weren't regulatory, like capital planning and focusing on a parking authority. She said it would be good to focus on some short term projects that would provide them with some wins. She said they should think about these things strategically in terms of which came first, so other options down the road weren't precluded. She said there were some things that would stand on their own nicely.

Mr. Dennis said they could spell these kinds of things out at the end of the report.

Administrator Selig said it would be good to know of some simple Zoning fixes coming out of this process. As an example, he said if requiring retail on the 2<sup>nd</sup> floor of a 4 story building, or setbacks, were causing problems, they would like to know that.

Mr. Dennis said the design team could do some of this, but said this would be done much more extensively in the next phase, when as part of the process they would talk with landowners as well as Town boards and committees.

Ms. Della Valle said her review had looked at bigger issues and the complexity, rather than on all of the details. She said Planning Board experience with things in the code that were problematic would be useful in determining where there could perhaps be Zoning fixes.

Mr. Dennis said they would look at the Ordinance again, but said the Town would get into this level of detail when it either redid its code or developed a new one.

Mr. Dennis said a question was how the form based code would work with the density issue.

Mr. Dennis said the form based code de-emphasized floor area ratio, and instead considered volume. He said that tied back to the vision plan and Master Plan. He said part of what they would look at was what other metrics could perhaps be used to get what the Town wanted, and whether it should be done per lot or per area. He spoke briefly



about how density might get factored in.

Ms. Fuller asked if the Town would be able to say that more density would be allowed if something like affordable housing was built.

Mr. Dennis said this could be done, but said that might involve having to reduce the vision for the downtown a notch, and they could then build it up again to allow density bonuses. He said otherwise, things could get too tall or too dense.

Ms. Della Valle said it would be important to have an appreciation of the marketplace and the cost/benefits for the developer in setting up an incentive system. She said another issue was that if they really wanted developers to do something, they should simply let them do it. She said she had been using density transfers, which banked credits, in a particular way in a particular location. She provided details on this, but said she couldn't say whether this would work for Durham.

Mr. Dennis noted that his experience with transfer of development rights hadn't been that great. He suggested that if there was a parking authority, a developer wouldn't have to pay as much toward creating this parking if he put in affordable housing.

Ms. Della Valle spoke further on her experience with transfer of development rights, stating that it was tricky, which was why they were seeing variations on it.

Mr. Campbell noted that New Hampshire was moving toward using density transfer credits.

Mr. Dennis said tweaking the code might be as much as the developer would want.

C. Next meeting of the Board: **March 24, 2010**

Mr. Campbell spoke about a recent meeting with Capstone, a student housing development company. He said the company had built a development in Baton Rouge that had over 1000 units, and said they were looking at having about 600 beds for a development in Durham. He said this development would be a mini village, with new streets, parking behind buildings, etc., and would include a mix of multi-unit housing and single family homes.

He said this could help alleviate some of the problems with student housing in the neighborhoods, noting that it was often upper classmen who lived in the neighborhoods. But he said single family homes were presently not allowed in the ORLI district, and said in order to move forward with this kind of plan, there would need to be a Zoning change to perhaps allow single family homes, or create a new use category of mixed housing.

Mr. Kelley noted that this was not the first time this kind of thing had come up. He asked whether perhaps a Planned Unit Development (PUD) ordinance would be a better tool to

address this. He said he didn't like it when development possibilities came up that required a change in zoning, and said he thought this was spot zoning. He said he would rather see the Board implement a PUD ordinance.

Mr. Campbell noted that the reason why the Zoning Ordinance didn't allow single family homes was that they had wanted more commercial development.

Mr. Kelley said mixed use targeted to the college market was a fine model.

Councilor Smith suggested that a PUD option could be an overlay in any district

Councilor Niman said he didn't have problem with PUD, but said he didn't agree that what they would be undertaking in changing the Zoning Ordinance would be spot zoning,

He said they weren't really talking about single family residences, and were talking about different living options. He said he wondered why they couldn't use the tools they had available, which was accessory apartments, which were considered dwelling units subordinate to a single family house. He said accessory housing could be considered subordinate to the multi-unit housing, and could have many of the characteristics of a single family house.

He said this would allow a mix of housing types, not just for this project, and with the recognition that the market had changed, and that big buildings were not the way developers wanted to go. He said it would be consistent with the way the Zoning Ordinance was written, and would seem to be easier to implement and get consensus on so these projects could go forward.

Mr. Kelley agreed that if they were not looking at single family housing, they could go that way.

Ms. Fuller asked if these units were designed to be used by graduate students and their families.

Councilor Niman said the idea was to have separate housing units that weren't part of a big multi-unit building.

Mr. Campbell said the idea would be to house 4-5 students. He said technically it would be a single family dwelling that more than 3 unrelated people would be able to live in.

Councilor Niman said a family wouldn't live there.

Mr. Ozenich said this would essentially be the same as a senior housing design.

There was discussion on how quickly the Planning Board would have to move on this.

Administrator Selig the goal was to have occupancy by the fall of 2012. He said there

could be 500-900 beds, but said a first phase of 500-600 beds might be all they would do. He said a market analysis was being done.

Mr. Roberts asked if there would be time to do a Zoning change proposal in time for the March 24<sup>th</sup> meeting, and Mr. Campbell said yes. Mr. Roberts said it made sense to support this, and said he would like Mr. Campbell to give the Board something to respond to, including a timetable.

Mr. Ozenich suggested that this kind of development could be called a student complex.

Ms. Fuller said she wasn't comfortable with the idea of a new term for a single family home, and said she preferred the PUD approach on first blush.

Mr. Campbell said this would be a great use of PUD, but said it would take a long time to get this ordinance through. He said he would bring something back to the Board, as Mr. Roberts had suggested.

On another matter, Mr. Campbell said on March 19<sup>th</sup> there would be a pre-construction meeting for Xemed.

Mr. Kelley said he would be happy to attend.

Mr. Roberts asked what the status was on the possible hotel project downtown.

Mr. Campbell said the process was stalled right now, noting that a member of the fraternity's board wanted to investigate all options.

Mr. Kelley asked if there was a tax lien involved,.

Administrator Selig provided details on this, and said \$40,000 was needed to avoid tax deeding this year.

Councilor Niman said there was a cash offer for the property, but said a problem was that there was no other acceptable place for the fraternity to move to.

Councilor Niman left the meeting at 9:45 pm.

## **VII. Approval of Minutes**

### January 13, 2010

Page 1, bottom paragraph, should read "...drafting an exclusionary zoning ordinance."

Page 3, under IV and V, should say Postponed, not Continued

Page 4, 5<sup>th</sup> full paragraph, should read "...building by a minimum of 20 ft."

Page 8, 2<sup>nd</sup> full paragraph, should read "...shall be maintained as a vegetated..."

***Councilor Smith MOVED to approve the January 13, 2010 Minutes as amended. Richard Kelley SECONDED the motion, and it PASSED 6-0-1, with Bill McGowan abstaining because of his absence from the January 13, 2010 meeting.***

January 27, 2010

Page 1, under Call to Order, it should say that Chair Parnell called the meeting to order at 7:00

Page 7, motion at the top of the page should say Bill McGowan SECONDED the motion..."

***Councilor Smith MOVED to approve the January 27, 2010 Minutes as amended. Susan Fuller SECONDED the motion, and it PASSED 6-0-1, with Richard Kelley abstaining because of his absence from the January 27, 2010 meeting.***

**VIII. Adjournment**

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

Adjournment at 9:57 pm

Victoria Parmele, Minutes taker

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Stephen Roberts, Secretary