

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

**DURHAM PLANNING BOARD
WEDNESDAY, AUGUST 25, 2010
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Vice Chair Susan Fuller; Secretary Stephen Roberts; Richard Ozenich; Town Council representative Julian Smith; alternate Wayne Lewis; alternate Peter Wolfe

MEMBERS ABSENT: Chair Lorne Parnell; Richard Kelley; Bill McGowan, Town Council representative Bill Cote

I. Call to Order

Vice Chair Susan Fuller served as Chair in place of Mr. Parnell, and called the meeting to order at 7:05 pm.

II. Approval of Agenda

Chair Fuller said Mr. Lewis would be a voting member in place of Mr. McGowan, and Mr. Wolfe would be a voting member in place of Mr. Kelley.

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

III. Report of the Planner

Chair Fuller read through the Report of the Planner, in Mr. Campbell's absence. She also summarized Mr. Campbell's memo on his meeting with University planner Doug Bencks on August 8th, noting that they discussed the following issues:

- the recently approved ORLI/MUDOR Zoning Ordinance amendments
- RSA 79-E, the Community Revitalization Tax Relief Incentive Program and the Sigma Beta application under this program that was recently approved by the Town Council
- the Inclusionary Zoning Implementation Program
- additional speed counts for Pettee Brook Road
- The planned UNH Business School, and upcoming review of traffic aspects of this project by the Traffic Safety Committee

IV. Continued Public Hearing on an Amendment to Article XIX, Conservation Subdivision, Section 175-107(B), Applicability, of the Zoning Ordinance to add Office, Research & Light Industry and Multi-Unit Dwelling/Office Research Zoning Districts to the list of Zones permitted to be developed as Conservation Subdivisions.

Steve Roberts MOVED to reopen the Public Hearing. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

Chair Fuller asked members of the public who wished to speak in favor of the proposed Zoning change to come forward.

Beth Olshansky, Packers Falls Road, noted that sustainability had become a popular notion of late, and said as a society, they had come to understand that they couldn't continue to thoughtlessly exploit natural resources and still plan for the future. She said the sustainability of a community must balance environmental issues with economic sustainability, and said that balance was what made the Durham community so attractive to home buyers. She said while taxes were high, people continued to move to Town because of the schools and the natural beauty Durham had managed to preserve.

She quoted from Chapter 9: Land Development Regulations, Vision in the 2000 Master Plan, which spoke about valuing Durham's small town flavor and rural characteristics, and maintaining them in the face of increasing pressure for residential and commercial growth. She also noted that the Master Plan spoke about the importance of encouraging the types of fiscally beneficial commercial development that broadened the tax base and contributed to stabilization of the tax rate.

Ms. Olshansky also quoted from this chapter of the Master Plan that much of the remaining and undeveloped land in the rural areas of Durham was of a fragile nature, or contained soils that were not able to support significant new development in the absence of municipal water and sewer. She noted that this chapter said that land use regulations that were land or resource based should be established, and should include objective standards to specifically measure the land's ability to support development.

She quoted further from the Master Plan chapter, which discussed how cookie cutter subdivisions were carved out, without much regard to the resources or landform. She noted that the chapter said an answer to the sprawling landform created under conventional cookie cutter subdivisions was a new approach to subdivision design for rural areas as outlined in the books entitled *Conservation Design for Subdivisions: A practical Guild for Creating Open Space Networks* by Randall Arendt.

Ms. Olshansky noted that the Master Plan said this approach to land development was anti-sprawl but not anti-development, and was brought to the Master Plan Land Development Regulations subcommittee by Chair Jack Farrell, who was a well respected developer in Town. She then reviewed the Master Plan's recommendations concerning using a conservation based development design approach.

Ms. Olshansky next read from the Commercial Land Availability Issues, Goals and Recommendations section of the same chapter of the Master Plan, which said the Town should "Consider extending standards for the conservation development approach to Office Research districts for site planning to be allowed by right". She then asked why the Town was so reluctant to follow those guidelines.

She said while some said the Master Plan was outdated, now that there was a better understanding of the need to protect natural resources, the concept of conservation subdivision was more relevant than ever. She said she agreed it was time to review and revise the Master Plan, and said this should be done by committee and through a series of community wide public discussions, and not by a series of Zoning amendments enacted to accommodate the latest development proposal, or the wishes of a single landowner.

Ms. Olshansky said the Town was moving in a direction clearly counter to the vision of the greater community as reflected in the Master Plan, and said instead of being proactive, they were being reactive. She said they were making changes to the Zoning Ordinance piecemeal, without thinking through the greater unintended consequences of those amendments.

She said now that single family homes in ORLI and MUDOR had been adopted in order to accommodate a particular development project, it was important to address the unintended consequences of now once again permitting cookie cutter development, which ran clearly against the vision of the Master Plan.

She noted the use of the words “site planning” in the previously quoted Master Plan section “Consider extending standards for the conservation development approach to Office Research districts for site planning to be allowed by right”. She said that clearly, the Master Plan guided the Town to adopt Conservation Subdivision Regulations in the commercial, and now residential as well zones.

She next noted that Chapter 175-107 Conservation Subdivisions, Section F, stated that “Residences in a Conservation Subdivision may be located on individual residential lots, or on common lots with more than one dwelling unit on a lot, or a combination thereof. If more than one dwelling unit will be located on a lot, the ownership and management arrangement for that lot, and the units thereon, shall be detailed as part of the subdivision application, and those arrangements shall be subject to approval by the Planning Board in accordance with the Subdivision Regulations.”

She said clearly the intent of this was to leave open the possibility of applying Conservation Subdivision principles not simply to subdivided land, but also to undivided parcels. She said the Chair of the Master Plan’s Land Development Regulations subcommittee was recently asked about the intent of that subcommittee, and he said:

“I think the basic concept of the whole conservation development process was that only land which was suitable should contribute to density, and that clustering and densification of the most suitable areas should be required so as to end up with large areas of contiguous open space. It was originally referred to as conservation development, not conservation subdivision.

From the master plan discussion, it seemed clear that the community was very much in favor of the concept, and wanted major developments to include large areas of open space. It seems illogical to me that the concept should only apply to house lot developments. I believe that the lack of inclusion in the site plan regulations or the Zoning Ordinance for multifamily and nonresidential density was an oversight during the long implementation process, of which I was not a part.”

Ms. Olshansky said given what was understood now about sustainable land use practices, it made no sense to permit, even by conditional use, single family cookie cutter developments, whether for student residences or family residences. She said either way, they would be permitting sprawl, which ran counter to the recommendations of the Master Plan.

She urged the Planning Board to honor the wishes of the greater Durham community as represented in the Master Plan, and to vote to apply conservation subdivision regulations to all subdivisions and single parcel developments in ORLI and MUDOR. She said while this would require some effort in flushing out the changes to the Conservation Subdivision regulations and Site Plan regulations, it was clearly the direction the community had called for.

Ms. Olshansky said that as stated by the Chair of the Land Use subcommittee, "...the lack of inclusion [of conservation development regulations] in the site plan regulations, or the Zoning Ordinance for multifamily and non-residential density, was an oversight during the long implementation process...". She asked the Planning Board to consider the desires of the community and the wisdom of the Master Plan in voting on this proposed Zoning amendment.

Jay Gooze, 9 Meadow Road, said once this Ordinance was brought from the Planning Board to the Council, he had realized there was the unintended consequence that if a residential subdivision was done, it wouldn't be required to be a conservation subdivision.

He noted the response from Attorney Spector, and quoted from it: "An amendment which requires any subdivision in the ORLI or MUDOR zones to be conservation subdivisions in no way impacts whether a CUP should be granted for such a use, and merely requires that if a single family residential subdivision is proposed that it be laid out in a certain manner."

He said that was exactly why he had made the proposal, and said he felt this was all the proposed Ordinance change in front of the Board now was meant to do. He said there might be people who wanted other things for the ORLI district, or it might be that the district needed to be divided into further districts.

But he said he had proposed this amendment because he thought the Council would be willing to pass the Zoning amendment from the Planning Board with this small amount of extra protection that if a CUP was granted, it would be, as the Master Plan wished, a conservation subdivision.

Councilor Smith reviewed the wording of Attorney Spector, and said it struck him that she had missed the point of what the Planning Board was being asked to consider. He said the Board wasn't being asked to consider an amendment that required conservation subdivision, but one that would apply to residential subdivisions the standards of conservation subdivision, which did not require that every subdivision be a conservation subdivision. He noted that under the present ordinance, there could be a traditional subdivision in a residential area, which ORLI now was, as long as it was no more than a certain number of lots, etc.

Councilor Gooze said he was part of the phone conversation with Attorney Spector, and said what she was referring to was 3 or more lots.

Chair Fuller read into the public record the email from Attorney Spector.

Mr. Gooze said he thought this email explained his proposal, and that if a CUP was granted, it would be one extra layer of protection, per the policy of the Master Plan, to make it a conservation subdivision.

Mr. Roberts said he took great issue with how Attorney Spector had responded to his letter, and the fact that he and other members of the Planning Board were not included in the conversation between her, Councilor Gooze and Administrator Selig.

Councilor Gooze said this proposal came from the Council, so they had thought it was proper to consult with her.

Mr. Roberts said the basic issue was that the Planning Board was now being told by the State Office of Energy and Planning that it considered conservation subdivision to be sprawl. He said the issue here was the efficient use of the existing and small ORLI zone. He said this issue hadn't been explored, and said rather than rejecting the Board's concerns, it should attempt to fix the zone so the concerns regarding cookie cutter subdivisions were addressed without destroying the viability of the commercial zone. He said 50% was a big chunk.

Mr. Gooze said what Mr. Roberts was asking for was a big discussion on the ORLI zone, and conservation subdivision. He said this was a good discussion to have, but said he didn't think this was the appropriate place to do it, when it was represented to the Council by the Planning Board to please pass the original Zoning amendment to ORLI and MUDOR, without realizing the unintended consequences.

Mr. Roberts said Attorney Spector didn't point out the unintended consequences, or address the issues that the Planning Board had.

Councilor Gooze said he appreciated what the Board was trying to do, and would accept what ever decision they made.

Councilor Smith said the email just read into the record was dated July 22nd, and the Board received it via Mr. Campbell in an email dated August 25th. He said it had taken a month for it to get to the Planning Board.

Chair Fuller asked if there were any other members of the public who wished to speak.

Malcolm McNeill, 44 Colony Cove Road, said he wasn't speaking against the Zoning proposal, but wanted to raise concerns that were appropriate. He said because of the recommendation of the Planning Board to the Council, if a developer came to Durham and

proposed a mixed use project of single family, duplex or multifamily units, on a property that was not a subdivision, he would go for a CU permit.

He said if a similar project involved condominiums, which inherently did not involve a division of the underlying real estate, it would also be a permitted use, if a CU permit was granted. He said the only additional scope of review would be site plan review, since it wasn't a subdivision.

He first noted that he had testified before the Council and the Planning Board that the original Zoning change proposal was reasonable. He then said he would incorporate into his comments much of what Mr. Roberts had said. He said it was very important that the ability to develop ORLI and MUDOR for commercial reasons was sustained, without this proposal adversely affecting that ability.

Mr. McNeill asked if the currently proposed legislation was necessary, or if instead the community was adequately protected by the CU standard, which didn't apply in the residential zones. He said in these residential zones, where conservation subdivision applied, duplexes and multifamily dwellings were not allowed.

He asked what happened when single family homes were part of a multi-use project that happened to be a subdivision that had the same form and character of the Capstone proposal, or another development that wasn't subdivided.

Mr. McNeill suggested that this Zoning proposal required further study in the context of the Master Plan, to make sure that it was effectively treated through all sections of the Ordinance. He said there were already unintended consequences with regard to this proposal, because it couldn't be satisfactorily accomplished by the means presently proposed by the planner.

He said if the Board was inclined to go forward with the proposal in its present form, the question was whether it could be done as presently proposed. He asked whether, if there was a subdivision in ORLI and MUDOR that was commercial in nature, this would activate any components of the residential component, since residential wasn't completely defined.

He asked whether, if a developer proposed a multifamily development that might be subdivided for investment purposes, this would then become a residential subdivision that required control under conservation subdivision.

He asked whether, if commercial subdivisions came forward, there were any components of the law that would apply. He said the current proposal attempted to regulate both singles and duplexes and other subdivisions. He said there were no limits on commercial subdivisions. He asked if the control should be limited to single family, cookie cutter subdivisions, just as was the case in the other residential zones.

Mr. McNeill asked if the definition of "residential" in the conventional subdivision ordinance provisions required further definition. He quoted from this definition, and asked if

the intent was that duplex and multifamily were residential, especially if they were divided in a subdivision. He said at present, elderly housing and multifamily in ORLI were not subject to any conservation subdivision control, and said this was intended, and should be retained.

He asked if CU criteria should now be applied to the residential zones, so there would be a balance in terms of regulatory control, or if they should just be applying a second level of regulatory control in ORLI and MUDOR for single family homes and duplexes.

He asked what happened if there was a mixed use project, where the developer wanted multi-units on one lot but also singles and duplexes that were individually owned. He said such a project and a Capstone condominium project might look just the same, but they would be regulated differently.

Mr. McNeill said the real question was whether there should be greater flexibility in these two zones, to provide the tax stabilization the Town sought.

He asked what the open space requirements should be, in a zone that allowed greater density, and said this wasn't covered by the proposal, in the simplistic form by which it was currently being advanced.

He asked if this would result in a change so that elderly housing was considered residential, because of the absence of a thorough definition under Conservation Subdivision, and thereby came under control it had not been under before. He also asked if multi-families now would also be considered residential, with the same consequences.

Mr. McNeill said the four residential zones and the ORLI and MUDOR zones were an apples and oranges consideration, in terms of their underlying zoning characteristics. He asked whether they should be treated the same, and why ORLI and MUDOR should be regulated more, when there was already the CUP overlay for these districts. He said if this sounded confusing, it was because it was.

He said there was some concern about the way the Capstone matter was advanced, and the appearance of the conservation subdivision component. He said if the ultimate bottom line was that they should plan things and do things that made sense in their totality, the question was whether, given the context of how the legislation was passed, it was appropriate to proceed now with this legislation without fully airing it out, putting it through the Master Plan test, and fully exploring the unintended consequences.

Mr. McNeill said the proposal in its present form shouldn't be passed, because other parts of the Zoning Ordinance would have to be changed in order for it to make sense. He also said a second question was whether looking at the CUP controls, and considering a cookie cutter subdivision for ORLI, such an application could actually pass.

He said given the context and the confusion, they all owed it to the landowners, the people concerned with conservation, and the people concerned with growth, to do this the right

way. He said he didn't think they were there yet.

Beth Olshansky, 122 Packers Falls Road, said that regarding the question of whether a cookie cutter subdivision would be approved, whether it was commercial residential intended to house students, or for families, as Attorney Spector had pointed out, the Planning Board was held to the Zoning Ordinance and not to the Master Plan.

She said while it was clear what the wishes of the community were regarding adopting conservation subdivision type development and maintaining open space, the Planning Board was held to the Zoning Ordinance, not the Master Plan. She said if it wasn't in the Zoning Ordinance, the question was what grounds the Planning Board would have to vote a project down.

Ms. Olshansky also noted that Attorney Spector had clearly stated that single family homes and duplexes in the ORLI zone were considered residential, not commercial.

Steve Roberts MOVED to close the Public Hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

Councilor Smith said he thought the Board should discuss this now and provide a recommendation to the Council, to see if the majority of Councilors was indeed aboard with the notion of doing what they said they wanted to do, before they changed the Table of Uses to make single family and duplexes a CU permit option in the ORLI zone.

He said despite what others had said about the complexity of this matter, it was a fairly simple matter. He said he didn't think there would be any impact on commercial development, and said given the limited amount of land available in ORLI and especially in MUDOR, he didn't think the time would ever come when anyone wanting to subdivide would be thinking about doing so many lots that they would be addressed under the conservation subdivision requirement.

He said the Board should recommend this Zoning change to the Council, and then let it decide whether or not it wanted to do what was promised. He said for months now, in talking about the Zoning changes, etc., again and again people had talked about Capstone. He said if they kept hanging all of this on Capstone, this would poison the well. He said he was annoyed by the whole process where it had come to the Planning Board, and said he was annoyed that the Council passed the change of use, which he didn't think they should have done.

Mr. Roberts said he didn't think they should decide on this that evening. He said he had extreme concerns about the process Councilor Smith had outlined. He said there was a planning issue starting with a large area designated as ORLI over the Planning Board's objections a few years ago. He said the Board had asked for some time to do the Table of Uses right, and now there were more unintended consequences. He said the Board hadn't fixed the first problem yet. He also said there were other members of the Planning Board who should be part of this discussion.

Chair Fuller said she agreed with Mr. Roberts.

Mr. Wolfe agreed, stating that he was not ready to make a decision. He said he needed to look further at the Zoning Ordinance and the issues that had been raised, and wanted to think about all of this more.

Mr. Ozenich agreed, stating that said this was too complex an issue, and there were too many things that could happen that hadn't been investigated. He said it would take more meetings to get this all worked out.

Mr. Lewis said there were several issues he didn't understand, and said if he had to vote that evening, he would probably have to abstain.

Mr. Roberts noted the EPA website, where there was a large library of information on smart growth, some of which tried to discuss smart growth fixes for town codes. He said there was a whole level of detail concerning the proposed Zoning change that wasn't even on the table

Mr. Wolfe noted his previous questioning of what this Zoning proposal was trying to accomplish. He said there was some real benefit to what Ms. Olshansky was saying, but said he wasn't sure the Planning Board would be doing that, and properly, in approving the Zoning change. He said if someone could articulate how the Town would be better if this were enacted, he could understand it better. He also said they might have to look at other areas of the Zoning Ordinance.

Mr. Roberts said he would urge Mr. Campbell to schedule a Zoning rewrite meeting, so there could be an intensive discussion on the issues. He said Attorney Spector hadn't answered the questions he had asked. He said it would be helpful to have her speak with the Board, in order to get this resolved.

Mr. Ozenich agreed that a Zoning rewrite meeting was needed. He said a concern was that the whole ORLI district would morph into a residential district. He asked whether there should perhaps be set aside percentages for industry.

Councilor Smith said this was why the Board should eventually vote to apply the conservation subdivision regulations to ORLI and MUDOR, to make it less likely that this commercial zone would become primarily residential subdivisions.

He said he wasn't surprised that Board members didn't want to decide on this Zoning proposal now, and also said it was a conversation the Board should have had months ago. He noted that he had been the only person on the Planning Board to vote against the original ORLI/MUDOR Zoning proposal, because he felt the Board hadn't had a good discussion on the issues.

He said it was good that the process was slowing down, and the Board was looking at this very carefully. He said if in time, the Board didn't send back a recommendation that this

Zoning amendment should go forward, the Council might find itself in the fix of undoing what it had done several months ago.

Councilor Smith noted that he had called attention to the date of Attorney Spector's email. He said it could have been shared with the Board earlier, and said there was too much information that flowed to the Board at a glacial speed.

- V. Deliberation on an Application for Subdivision** submitted by Peter Andersen, Durham, New Hampshire on behalf of the Elizabeth C. Smith Trust, Durham, New Hampshire to subdivide one lot into three lots. The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road, and is in the Rural and Residence C Zoning Districts.

Chair Fuller asked Mr. Andersen if he had had a chance to look at the Findings of Fact and Condition of Approval, and Mr. Andersen said he had. Chair Fuller noted an additional change recommended by Mr. Campbell, concerning Condition #4 to be met prior. There was discussion on exactly what the wording should be.

Mr. Andersen questioned that obtaining a driveway permit was required as part of a subdivision application.

Mr. Roberts said it was required, noting that the distance between driveways was one of the conditions of a subdivision approval that the Board had to consider.

Mr. Andersen said it was already in the record where the driveway had to be, but Mr. Roberts said the driveway permit was a vehicle that verified that based on sight distance, etc. that this was an acceptable driveway. There was further discussion, and Mr. Andersen said if the Board was going to require this sort of thing, it should change the Zoning Ordinance. He said putting this onus on him was unreasonable.

Mr. Roberts said this was a condition of approval.

After further discussion, the following wording was decided upon: "The applicant must obtain a driveway permit from the Department of Public Works (DPW) for the driveway for the new lot. It shall be located at the existing curb cut...."

Mr. Andersen said he was ok with everything else in the Conditions of Approval except Condition #5 to be met subsequent, regarding a required "...site inspection by the Durham Tree Warden of trees marked for saving, cutting or clearing is required prior to cutting of the lot...". He noted that the lot was over 16 acres. He said he might be cutting some trees further back, and said he didn't see how the condition would be applicable to that.

Councilor Smith said he thought this Condition should be revised to require the Tree Warden's involvement in regard to cutting that was required in connection with the construction of the house and the excavation for the leach field.

Mr. Andersen said he had no problem with not cutting trees over a certain caliper along

the stone wall line, but said he had to be able to take down trees on the property that needed to be taken down.

There was discussion.

Councilor Smith asked where this condition had come from, and there was discussion that it was included in an email provided that day.

The abutters, the Brickner-Woods, said it seemed like the Board was negotiating with the applicant.

Chair Fuller said the Board wasn't negotiating, but was going over the Conditions of approval with the developer.

Mr. Roberts apologized that his minutes of the Site walk didn't mention the comments by the abutters about keeping the screening by the trees along the stone wall.

Mr. Andersen said he had just now seen the Conditions of Approval, and said the language in them sounded like it was written by the abutters' lawyer.

He was told that this was the way Mr. Campbell normally wrote.

Mr. Andersen said he wasn't aware of a precedent in Durham where someone couldn't cut trees on his own land.

Chair Fuller said these were the Conditions of Approval provided by the Planner based on the application submitted and the testimony received.

Councilor Smith said the wording was very unclear, and was too sweeping.

Mr. Roberts recommended adding that the applicant must continue the visual screening along the stone wall except trees necessary for the construction of the driveway permit approved by the DPW. He said this would protect the abutter, and would get away from the idea of the Tree Warden dealing with trees on the rest of the property.

Mr. Andersen said the abutters had cut down trees in their yard, so he didn't have a visual screen of their house.

There was discussion on Condition #3, and that instead of saying "The applicant is encouraged to keep the existing 10-foot buffer along the roadway", it should say "The applicant shall keep the existing 10-foot buffer along the roadway."

There was discussion that the Conditions of Approval had been worked on by Mr. Campbell from afar, and had brought the Board up to snuff on the application.

There was discussion on whether Condition #5 was actually needed, with Councilor

Smith recommending that it be dropped.

Mr. Ozenich noted that Condition #4 said trees for removal shall be clearly marked.

Councilor Smith said he didn't think the Board needed to concern itself with any trees that were not along the roadway.

Chair Fuller said she agreed, but said someone needed to do the job of checking the trees. There was discussion that the role of the Tree Warden could perhaps be included in Condition #3.

Mr. Andersen said there was still a problem because the buffer wasn't clearly defined in the Conditions of Approval. He said he would be glad to say he wouldn't cut anything down that was more than 10 ft back, which would save the trees along the stone wall. But he said there had to be a caveat that said he could take a tree down if it died, because he wouldn't leave an unsafe situation near the road. He said the use of the word "shall" meant he couldn't even do that. He stressed that he didn't want to take down the buffer, and noted that it added value to the lot.

Mr. Wolfe said there was nothing in the Conditions of Approval that said the applicant couldn't take down dead trees, or trim trees.

There was further discussion about the proposed "shall" language in Condition #3 concerning keeping the buffer.

Chair Fuller said she would like to keep as is the Conditions of Approval to be met subsequent that the Board had received. She said if Mr. Andersen didn't think he could live with them, the Board would wait until there were conditions that made everyone happy.

Mr. Andersen asked if a limit could be placed on the distance back in Condition #5. He said it was ludicrous to apply it to the entire 16 plus acres.

Councilor Smith said he understood Mr. Andersen's concerns. He said to him, the intent of Condition #5 was the issue of cutting near the road, and said it should therefore be revised, to address tree cutting related to the construction of the house and the leach field. But he said it would be much better to remove #5 rather than to tweak it.

Mr. Ozenich said he agreed.

Mr. Wolfe said he had some concerns, and wanted some guarantees that there would be an appropriate buffer. He noted that the word "encourage" was still in Condition #3.

Councilor Smith said people in Durham who lived along well traveled roads tended to want to plant trees and bushes between the road and their houses. He said he therefore didn't see that this was a legitimate concern.

Mr. Wolfe said this road and the community had a certain character, and said part of this condition was to try to preserve that character.

Councilor Smith said part of that character in many places was that there were lovely views, because people with large fields had kept all the trees out.

Mr. Wolfe said in this instance, they were talking about a tree line with a canopy over it, which was different than a field. He noted that there was case law on this issue, and said the Planning Board had the ability to protect the trees.

Councilor Smith questioned whether they needed to step in with unnecessarily vague or broad language.

There was discussion that there appeared to be an unbalanced process, where the Board was negotiating with Mr. Andersen.

Chair Fuller asked that the Board wait on deciding on this application, because she wasn't comfortable doing it now. She said at the next meeting, there would be more Board members present and Mr. Campbell would be present to shed light on why the conditions were put in. She said the applicant wasn't happy with the conditions, and she wasn't willing to take out Condition #5.

Mr. Andersen said case law protecting trees was for large caliper trees along a stone wall. He said he had no problem with this, but said the language was vague, and asked why the Board couldn't figure out language that evening that wasn't vague.

Chair Fuller said she wasn't going to do this on the spot.

Mr. Roberts said he would have proposed to add to Condition #5 the wording "within the first 200 ft from the front lot line.", which would exclude the majority of acreage on the lot, and would confine it to the construction site only. He also said Condition #3 should say "The applicant shall keep the existing 10 ft buffer along the roadway...". He said the purview of the Tree Warden would then be this 10 ft buffer, as well as the first 200 ft from the front line.

Councilor Smith said he agreed with this language, and said the Board should apply these limits, approve the application, and then let the applicant deal with them.

Final - Conditions of Approval to be met prior to the Signature of Approval on the Subdivision Plan:

1. The applicant shall supply two mylar copies of the plan and one paper copy for signature by the Planning Board Chair.
2. A certificate of monumentation shall be provided to the Planning and Community Development Department.

3. The conditions of the Zoning Board of Adjustment for the approval of the Special Exception shall be added to the subdivision plan and the subdivision plan shall show only two lots and will not include any reference to a future Boundary Line Adjustment.
4. The applicant must obtain a driveway permit from the Department of Public Works (DPW) for the driveway for the new lot. The driveway for the new lot shall be located at the existing curb cut and the existing angle and pitch/slope of the driveway shall be kept to the greatest extent possible and as allowed by the DPW for safety and drainage. The applicant shall only remove as much of the stone wall as necessary for safety as determined by the DPW.

Final - Conditions to be Met Subsequent to the Signature of Approval on the Subdivision Plan:

1. The referenced Subdivision Plan and these Findings of Fact and Conditions of Approval shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within seven (7) days of the Chair's signature on the Plan.
2. At the time of the submittal of the building permit application, the Code Enforcement Officer/Building Inspector shall seek the advice of the Town Engineer in regards to stormwater drainage issues.
3. The applicant shall keep the existing 10-foot buffer along the roadway. No trees within the town right-of-way, except as approved for public utilities after a public hearing or approved by the Department of Public Works as part of the driveway permit, shall be removed. Trees may be trimmed for sight distance and safety reasons as allowed by the DPW.
4. Trees to be protected during clearing operations and construction shall be clearly marked to caution operators of machinery.
5. A site inspection by the Durham Tree Warden of trees marked for saving, cutting or clearing is required prior to cutting of the lot, within the first 200 ft from the front lot line.

Councilor Smith MOVED to approve the Findings of Fact and Conditions of Approval for an Application for Subdivision submitted by Peter Andersen, Durham, New Hampshire on behalf of the Elizabeth C. Smith Trust, Durham, New Hampshire to subdivide one lot into two lots. The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road, and is in the Rural and Residence C Zoning Districts. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

VI. Acceptance Consideration of an Application to Amend a Previously Approved Site Plan submitted by 6 Jenkins Court LLC, Durham, New Hampshire to allow the unfinished attic to be finished and used for any permitted commercial use within the Central Business

Zoning District. The property involved is shown on Tax Map 4, Lot 8-0, is located at 6 Jenkins Court, and is in the Central Business Zoning District.

Mike Sievert of MJS Engineering represented the applicant, Matthew Crape, and said the proposal was to amend the existing site plan approval granted in 2009 to allow the unfinished attic to be finished and used for any allowed non-residential use in the Central Business District. He said a floor plan had been submitted, and said the application was otherwise straightforward.

Mr. Sievert noted that waivers had been requested from having to provide topography on the site plan, since the plan submitted with this application showed the as-built conditions. He noted that the topography had not changed, and had been submitted in the plans for the original application for the development. He also said a waiver was requested to not have to provide another landscape plan, since there were no proposed changes to the original landscape plan.

He noted that the water and sewer connections were recently approved by the Department of Public Works, and also said the Fire Department had approved the fire protection measures provided for the property.

Councilor Smith said he had been on a recent site walk at the property, and said the attic was a lovely space, with a great view across the rooftops in Town.

Mr. Wolfe asked if the attic had been proposed as residential space when the original application came before the Planning Board. He noted that he wasn't on the Planning Board at that time.

Mr. Sievert explained that it was just proposed as an attic space. He noted that the 4th floor was allowed, but at the time the Zoning Ordinance required that with a 4 story building, the first two floors had to be commercial and the 3rd and 4th floors had to be residential. He said the owner didn't want to do commercial on the second floor because of a lack of interest. He said because of a recent Zoning change, nonresidential uses were allowed on the 4th floor.

Mr. Ozenich said he didn't see a bathroom on the 4th floor, and Mr. Sievert said they would be put in.

Councilor Smith said he was ready to accept the application.

Councilor Smith MOVED to accept an Application to Amend a Previously Approved Site Plan submitted by 6 Jenkins Court LLC, Durham, New Hampshire to allow the unfinished attic to be finished and used for any permitted commercial use within the Central Business Zoning District. The property involved is shown on Tax Map 4, Lot 8-0, is located at 6 Jenkins Court, and is in the Central Business Zoning District and schedule a Public Hearing for September 15, 2010. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

It was determined that another site walk was not needed.

VII. Conceptual Consultation on an Application for an Eight-Lot Conservation Subdivision submitted by John H. Farrell, County Line Holdings LLC, Durham, New Hampshire, on behalf of Martha Garland and Joyce Melanson, Durham, New Hampshire. The property involved is shown on Tax Map 13, Lot 15-1, is located at 110 Mill Road and is in the Residential B Zoning District.

Developer Jack Farrell spoke before the Board and said he represented the applicants, who owned the 46.7 acre parcel on Mill Road. He noted the locus plan that had been provided of the property and surrounding properties.

He said the conceptual plan provided was the beginning of the conservation subdivision process. He said they had some suggestions as to how to develop the property, but were not definite on this yet, and were looking for feedback from the Planning Board. He noted that the Wetlands inventory and HISS mapping had already been done, and said there was quite a bit of wetland. He also said there were some somewhat poorly drained soils.

Mr. Farrell said there would be seven new lots, plus the lot where the existing homestead was, and said there would be individual septic systems. He noted the outline on the plan of the areas designated for the septic systems.

Mr. Roberts asked if there was the opportunity for a centralized septic system. He noted that there had been a lot of criticism of conservation subdivisions because the State wanted centralized water and septic, which it was felt tended to be maintained at a higher level than individual systems.

Mr. Farrell said what Mr. Roberts had said might apply to larger developments. He said this was a fairly small development that was proposed, but said there could perhaps be some community septic systems that were shared by 2 or 3 of the properties. But he noted that this approach wasn't very popular with homeowners.

Councilor Smith said he kept hearing that eventually they would have to address the issue of the small lots and septic system issues in the Woodridge Subdivision, and said the time would come when the sewer line would have to be extended out Mill Road. He provided some history on the property in question, and said he remembered the time when it was the only house between the railroad tracks and Packers Falls Road. He also spoke about the Woodridge subdivision that was put in at some point, on some former pasture land. He said this proposed development would add to the pressure to run sewer and water out Mill Road.

Mr. Farrell said the standards for septic systems probably precluded that the proposed development was the tipping point. He said there would only be 8 lots for this development, given the wetlands, etc, which told the story of how things had changed

since the days Councilor Smith was speaking about. He said the wetlands defined what could be done with the property, and said they significantly limited the buildable area. He said this was recognized with what was proposed.

He reviewed the possible home sites, and their accesses. He noted that each of the proposed lots would have 100 ft of frontage, and said all would have access to Mill Road. He also said each lot would be a minimum of 40,000 sf. He said the existing home site would be approved separately, and noted that the septic system there needed to be brought up to current standards.

Mr. Farrell said a shared driveway was being considered for lots 1 and 2, directly opposite from Fogg Lane. He said the only tricky access was a proposed driveway that would come in along the lot line between lots 3 and 4, which would serve those lots as well as lot 5. He noted that there would be no additional road or drainage infrastructure for the Town to maintain, and said everyone would have trash collection. He said a waiver would be required to allow 3 lots to be served by one driveway.

Mr. Roberts noted that the layout resembled a conventional subdivision.

Mr. Farrell said the conservation subdivision aspect of the development was concerning the amount of open space set aside and the density calculations. He noted that 40% of the usable area had to be provided as open space. He said the applicants would like to provide the largest possible area with the homestead, so that someone could take it on as a project. He said they proposed that a lot of the open space would stay with it, even though there would be an easement on it.

Mr. Roberts determined from Mr. Farrell that lot 8's taxes would be based on 40,000 sf, and Mr. Farrell said they would be individually owned lots.

Chair Fuller asked if livestock would be allowed on the homestead lot.

Mr. Farrell said he would think so, noting that there was quite a lot of wetland on it, but that there would still be some room for livestock.

He noted the section of land in the middle of the property that was owned by one of the applicants, and said she would like to add the large L shaped portion behind it to her lot. He said it would have an easement on it, and would meet the standard of being open space. He said one of the things this would alleviate was the need to have a homeowners' association. He said there would simply be easements recorded for some of the lots, which could be given to the Conservation Commission or another group.

Chair Fuller asked Mr. Farrell what he envisioned for the market value of these properties, and he said it would vary quite a bit, depending on the lot.

Mr. Roberts asked if there would be wetland crossings, and Mr. Farrell said he didn't think so. He said the proposed layout was chosen in part to avoid this.

Chair Fuller asked why 8 lots were proposed, and Mr. Farrell said while the numbers said the density could be 17 units, if this were done, there would be 0 ft lot lines, and a complicated community of clustered houses. He said the owners didn't want to get into this, so wanted fewer units.

Chair Fuller asked if they would consider a higher density in order to have an affordability component.

Mr. Farrell said he could ask them, but said he didn't think they would. He said what they were proposing would work in all kinds of situations.

Councilor Smith noted that there would be 2 large lots with this subdivision, and asked if any thought had been given to future subdivision of them.

Mr. Farrell said that could always happen unless there were a condition concerning it. But he said practically speaking, there was no more place for a septic system, and very little usable land to calculate density. He said the intention was not to re-subdivide.

Councilor Smith asked if the owners would object to the idea of non-divisibility of these lots in the future.

Mr. Farrell said the applicants would like to have as many options as possible going forward. But he said the need for the easement on a good part of this might answer that question.

Mr. Roberts asked if the layout would change if there was water and sewer going past the property right now.

Mr. Farrell said yes, but also noted that if the easements were required as part of the conservation subdivision process, it wouldn't matter much what happened. He said the owners might want to get a few more lots on portions of the property, but said the market was the large single family lot that everyone had grown up with.

He asked the Board if the owners seemed to be on the right track.

Mr. Roberts asked Mr. Farrell what he thought of the application, and the ability to sell the concept.

Mr. Farrell said it met the terms of the Ordinance and was a sensible, realistic approach to a limited development of the property, given its limitations.

Mr. Roberts determined from Mr. Farrell that the applicants planned to pay the school impact fee.

Councilor Smith asked when the application might come forward.

Mr. Roberts said they should be sure the driveways didn't touch a wetland, and that they were certain that the way the open space was laid out didn't require a homeowners' association.

Chair Fuller spoke about how density might perhaps be allowed to increase if there was an affordability component to the project.

Mr. Farrell said given the limitations of the property, it might not be the best place to increase the density.

Councilor Smith said the project would take a lot of land out of play. There was discussion about this, and about the surrounding properties.

The Board agreed that it made sense for the applicants to move on to the next step.

Mr. Wolfe said he thought the applicants were doing what they could with the property.

Mr. Farrell agreed that this was a realistic proposal.

Mr. Roberts spoke further about the fact that the EPA's sprawl book was trying to wean towns off of the conservation subdivision approach, because of the septic issues.

Mr. Farrell said a reason individual septic systems were the way to go was because this avoided a situation where there was one large system for a development that could fail catastrophically.

Mr. Roberts said DES felt that a community septic system could be more highly regulated.

Chair Fuller noted that this also made things more complicated in terms of needing to have a homeowners' association

Mr. Farrell said the technology and standards for septic systems were higher now than they had been in the past.

There was further discussion about how more compact development could perhaps be done on one of the larger lots of the subdivided property, if there was centralized water and sewer.

VIII. Discussion on the Commercial Core Strategic Plan prepared by B. Dennis Town Design.

Councilor Smith recommended that the Board hold off on discussion of the Strategic Plan, given that Mr. Campbell and several Board members were not present.

Chair Fuller read Mr. Campbell's comments on this Agenda item in the Planner's Report, in which he noted that the Board had begun discussion of the Strategic Plan at previous meetings, including discussion on the idea of concentrating on the "quick fixes" to the Ordinance that were recommended under Section D of the Plan. Mr. Campbell noted that Administrator Selig had asked him to move forward with hiring a consultant to move these forward, and said they would continue to work with Beth Della Valle, who was part of the B. Dennis team.

Mr. Roberts said some of the "quick fix" proposals were in direct opposition to the current Master Plan. He said while they might or might not be all right, he would like to see a legal component to make sure the Board had its bases covered. He said all there had been so far was the charrette, as a guideline, and said he couldn't find discussion on some of these "quick fixes" other than an individual saying he wanted it to be considered.

He spoke about the need for architectural guidelines as there was further development in Town. He also said he would like the Board and the Town to have some legal counsel, as well as planning assistance in order to protect the Town's interests, and determine how to move forward.

Mr. Roberts noted that the Planning Board would have benefited from having its legal counsel present to discuss the ORLI/MUDOR Zoning proposals. He said there needed to be a guided discussion at this point, because there were questions Attorney Spector hadn't answered. He said the Board needed to have this give and take.

Chair Fuller agreed that there needed to be discussion on the complicating factors involved.

IX. Discussion on 2011 Budget

Chair Fuller noted that for 2010, \$40,000 had been allowed for contracted services, in large part to help with the Master Plan update, which had not started yet. There was discussion about how much of this amount for 2010 had actually been expended. There was also discussion on the idea of asking for \$40,000 for 2011 as well.

Mr. Roberts said a question was whether the Council was going to approve funds for the Master Plan update in addition to the Planning Board budget, or if the Board would have to fund this out of its own budget.

Councilor Smith said supposedly, the Planning Board owned the Master Plan, so had to pay for it.

Mr. Roberts said one of his concerns was that the Planning Board had played a minor role in selecting and relating to the B. Dennis group, and said not all planning boards functioned that way. He described the process by which the Planning Board had done the previous Master Plan update.

He said that process had now changed, and said the Economic Development Committee, Mr. Campbell and other committees saw more of the B. Dennis Group than the Planning Board did, yet the Planning Board had the responsibility. He said perhaps the Board needed to meet more often to carry forward this process.

Chair Fuller asked if such meetings would be solely for the purpose of meeting with planning professionals to accomplish these changes.

Mr. Roberts said he didn't feel as involved in the process as he would like to, and noted that although he had written a long list of his concerns, only 5% of them got transferred to the consultants. He said he realized he was only person, and said it was important that all Planning Board members were represented.

He said the Master Plan update was a mammoth job, and said he would like to know how the Board was supposed to proceed, and if the money for it would come out of the Planning Board budget. He said previous planning boards in Durham had had more control over how the process went. He said the Board should have had a bigger role in the Mill Plaza study, and said no assignments for input were every given to the Planning Board.

Mr. Wolfe asked how this issue Mr. Roberts was speaking about could be addressed.

Mr. Roberts said he would like Mr. Campbell and Administrator Selig to discuss with the Board the roll of the Planning Board in the Budget process and the Master Plan update process, so the Board didn't end up with a list of proposals circulated to the whole Town that it hadn't been asked about.

Chair Fuller asked if the Board should ask to meet with Mr. Campbell and Administrator Selig on this issue at the planning meeting in September.

Mr. Roberts suggested that the Board's attorney and a planner be present for discussion on the ORLI and MUDOR districts. He also said the Master Plan update and the role of the Planning Board in that process needed to be discussed. He said an earlier Planning Board he was on in Durham had interviewed and selected planning consultants, with input from the Selectmen. But he said it had been another committee that had recently selected the B. Dennis Group.

Chair Fuller noted that the EDC was moving forward with the market analysis for the Town, which would be a wonderful tool for them and the Planning Board. She said she would talk to Mr. Campbell to update him on the discussion at this meeting, and would ask that Attorney Spector attend the next Planning Board meeting to discuss with them the proposed conservation subdivision Zoning change for ORLI and MUDOR.

Mr. Roberts noted that planning consultant Mark Eyerman had worked well with the Board. He said he was concerned that things right now were drifting, and that there were some big things due. He said the Board needed to be ready.

Mr. Ozenich said he thought there should be a special meeting, so the Board could agree on how to address these issues, rather than taking a shotgun approach.

Mr. Roberts noted that Mr. Campbell was very busy right now, and said this was not a personnel issue. Other Board members agreed.

X. Other Business

A. Old Business:

B. New Business: .

Chair Fuller said there had been a request for an extension of the Site Plan and Conditional Use Conditions of Approval for the Seacoast Repertory Theatre's 50 Newmarket Road property in Durham.

Councilor Smith MOVED to grant the request for a 90 day extension of the Site Plan and Conditional Use Conditions of Approval for the Seacoast Repertory Theatre's 50 Newmarket Road property in Durham. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

Chair Fuller said developer Joe Caldarola would be coming back on September 15th for some revisions concerning the Sophie Lane subdivision, which had previously been approved by the Board. She said at that same meeting, there would be a presentation on a proposed personal wireless facility to be placed on the top of Christianson Hall at UNH. Mr. Roberts noted that the personal wireless application would be presented to the Board as a courtesy, and that it would not be voting on the application.

Councilor Smith read some paragraphs from that day's Fosters, regarding a recent approval of a Dover Point gas station and convenience store. He then noted that the Planning Board had recently voted against removing convenience store with gasoline sales from the Table of Uses for the ORLI district. He said the Council might for a number of reasons have to initiate that Zoning change on its own, and he spoke further on this issue.

Mr. Roberts said he took great exception to Councilor Smith's words, and said he should either state the facts, or not make the case.

Councilor Smith said he did not say that what had happened in Dover was going to happen in Durham.

Break from 9:50 to 9:55 pm

XI. Approval of Minutes

July 14, 2010

Page 11, line 7, should say “Doucet”

Page 14, line 8, should read “Bill McGowan”

Page 15, line 39, should read “...asked Mr. Murphy if he had...”

Page 19, line 6 should read “...discussion back and forth.”

Councilor Smith MOVED to approve the July 14, 2010 Minutes as amended. Wayne Lewis SECONDED the motion, and it PASSED 5-0-1, with Richard Ozenich abstaining because of his absence from the meeting.

XII. Adjournment

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

Adjournment at 10:00 pm

Victoria Parmele, Minutes taker

Susan Fuller, Secretary