

DRAFT

**Durham Planning Board
Wednesday July 13, 2011
Durham Town Hall - Council Chambers
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Chair Lorne Parnell; Vice Chair Peter Wolfe; Secretary Susan Fuller; Richard Ozenich; Bill McGowan; Town Council representative Jay Gooze; alternate Town Council representative Julian Smith; alternate Wayne Lewis; alternate Andrew Corrow

MEMBERS ABSENT: Richard Kelley

I. Call to Order

Chair Parnell called the meeting to order at 7:03 pm. He said Mr. Campbell would be arriving shortly.

II. Approval of Agenda

Councilor Smith asked that later in the meeting, there be a formal discussion on the site walk that day at the Capstone property, regarding the difficulty Capstone was having finding an entity to hold the conservation easement and monitor the property.

Chair Parnell said the Board could discuss this under Old Business. He also said the Planner's Report should be done later in the meeting, since Mr. Campbell hadn't arrived yet.

Susan Fuller moved to amend the Agenda to add the discussion on the site walk and to do the Planner's Report after approval of the Minutes. Richard Ozenich SECONDED the motion, and it PASSED unanimously 6-0.

Chair Parnell appointed Mr. Corrow as a voting member in place of Mr. Kelley.

IV. Approval of Minutes

April 13, 2011

Page 1, under Members Present, should say alternate Julian Smith

Page 3, 2nd paragraph, should say Chair Peter Wolfe

Line 27, Motion should read "and schedule the Public Hearing for..."

Page 6, line 16, put period after the word applicant. Also, but space between the paragraphs there

line 46, should read "...Councilor Smith noted the distinction in..."

Page 7, line 12, put period at end of sentence.

Page 9, line 28 should read “He said because of emission benefits from reduced...”

Page 10, line 7 should read “...traffic into Town on Mill Road.

line 23, should read “...which had the potential of causing accidents...”

Page 11 line 20 should read “...at the intersection of Mill Road...”

Page 13, line 7, Motion should read “...February 23, 2011 Minutes as amended.”

Susan Fuller MOVED to approve the April 13, 2011 Minutes as amended. Andy Corrow SECONDED the motion, and it PASSED unanimously 5-0-2, with Bill McGowan and Chair Parnell abstaining because of their absence from the meeting.

Mr. Campbell had not yet arrived at the meeting at this point.

- V. Public Hearing on an Extension Request on the Approval of a Conditional Use Permit** submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District.

Chair Parnell explained that at the time Ionian Properties was before the Board with its application, it said it would be starting work in 2012. He said for some reason, this wasn't included as a condition of approval for the Conditional Use Permit, so the extension was now needed.

Susan Fuller MOVED to open the Public Hearing. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Mike Sievert of MJS Engineering spoke for Ionian Properties. He said he had missed in the regulations the fact that there was a one year time limit with a Conditional Use Permit, and said it was set to expire soon. He said the applicant had always said work would be started in June of 2012, and said this was still the time frame. He noted that the applicant had received a variance to allow an additional floor on the building that was planned, and said they would be bringing an amended site plan application and conditional use permit application to the Planning Board.

Chair Parnell asked if there were any members of the public who wished to speak for or against the application. There was no response.

Susan Fuller MOVED to close the Public Hearing. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Bill McGowan MOVED to grant an Extension Request on the Approval of a Conditional Use Permit submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of Ionian Properties LLC, Dover, New Hampshire to demolish the existing buildings and an accessory shed in order to construct a new four-story, mixed use building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.

- VI. Public Hearing on a Proposed Amendment to the Durham Zoning Ordinance to introduce a new**

section on Workforce Housing and the creation of a Developer's Guidance Document for Workforce Housing.

Susan Fuller MOVED to open the Public Hearing. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Mr. Campbell arrived at 7:18 pm. He said the Town had received a grant from the NH Housing Finance Authority to hire a consultant to review the Zoning Ordinance in order to find ways to make it more inclusionary in regard to workforce housing. He said consultant Jack Mettee had worked on this with the Town's workforce housing subcommittee, which included Councilor Gooze and Ms. Fuller, and developed some language for the Ordinance. He said these proposed changes would bring the Town in line with State statute.

He explained that what was proposed was to create a new overlay district for conservation subdivision, which would enable a developer to apply to do a workforce housing conservation subdivision development. He said there would be density bonuses allowed for market rate as well as workforce housing units, and also said there would be covenants involved, to ensure that the workforce housing units remained affordable. In addition, he said there would be guidelines for developers that would allow them to work through the Ordinance in a way that resulted in a good product.

Ms. Fuller asked what the next steps would be, after the public hearing.

Mr. Campbell said the Board could vote down what was proposed, or could recommend the proposed changes to the Council, which would then decide whether to adopt them. He noted that typically when the Planning Board held a public hearing on a proposed Zoning change, no one spoke at the hearing, but people then wanted to speak on it at the Town Council's public hearing. He said another option for the Board would be to leave the public hearing open tonight, in order to get more people to speak about the proposed Zoning change before it went to the Council.

Councilor Gooze said if the Board decided to send the proposed changes as they now were, and the Council then thought that substantive changes were needed, this would wind up going back and forth. He said there were some things in the draft that might need to be vetted, and said it could be done at the Planning Board level, or before the Council. He said if it was done at the Council level, it would then have to come back to the Planning Board. He said he wasn't quite sure how to handle this, without Mr. Mettee's guidance.

Mr. Campbell said he could provide the guidance now, and could also see if Mr. Mettee could attend a future Planning Board meeting. He noted that he had asked Chinburg Builders for feedback on the draft provisions, including whether this was something that the company would perhaps use. He said Eric Chinburg had said he probably wouldn't because of the conservation subdivision provisions themselves, which he said wouldn't allow him to make a profit.

Mr. Campbell noted that this was one developer's opinion. He explained that the subcommittee had tried to put something in the Zoning Ordinance that met the State requirements, and said whether it would be used or not was another issue.

Councilor Gooze said perhaps there should be some additional incentives in the Ordinance to encourage developers to provide workforce housing downtown, noting that right now, there was nothing proposed to accomplish this. He said the Board should push for more ways to accomplish workforce housing than through conservation subdivision. He said this could be added later, but said what had been provided now was a start, to get the Town into compliance.

Mr. Campbell noted that Mr. Mettee had recommended that the Planning Board should look at the conservation subdivision ordinance again in general, and should tweak some of the language.

Mr. Mettee unexpectedly arrived at the meeting at 7:28 pm.

Chair Parnell asked if there were any members of the public who wished to speak for or against what was proposed.

Mike Sievert first noted that his firm, MJS Engineering, was working with developer Peter Murphy to do workforce housing downtown, with the Grange property. He said he echoed Mr. Chinburg's perspective that doing workforce housing as part of conservation subdivision wouldn't happen because those provisions were too restrictive. He provided details on this.

Mr. Wolfe asked why the subcommittee had only looked at including workforce housing as part of conservation subdivision.

Councilor Gooze said the subcommittee had looked at several possibilities, and found that this was the easiest way to get into compliance with State statute.

Mr. Campbell said there was some political motivation involved. He said the subcommittee thought it was prudent that since conservation subdivision was required for regular subdivision developments, they should probably do workforce housing as conservation subdivision. He said the thought was that this might help an application get approved rather than shot down.

Mr. Wolfe asked why something should be approved that no one would use, and Mr. Campbell said the goal was to be consistent with State statute.

Councilor Gooze said the subcommittee didn't think that it would never be used. He also said they thought the Town was under the gun to get into compliance, because they were told that if something wasn't put in place relatively soon, a developer could request to do workforce housing anywhere in Town.

Mr. Mettee said the question was a good one, and also said the comment that what had been developed was somewhat of a low bar wasn't totally inaccurate either. He said the Statute said every town needed to provide a reasonable and realistic opportunity for workforce housing, and said at least 50% of the land in a town zoned residential must be available for this. He said the provisions for Durham therefore needed to include it in the rural areas, and said the only way to do this was to try to create some degree of density, with some density bonuses

He said this was still a bit of a stretch, because the density currently allowed in rural areas of Town was so small. But he said under the circumstances, this was the most appropriate way to address State law. He said if there were some problems concerning the existing conservation subdivision provisions, that could be worked on separately.

Mr. Mettee explained that if a developer came forward today, he could dictate the density and type of units of a proposed workforce housing development. He said if the Town refused what the developer applied for, the developer would have the remedy of going directly to court to get the development remanded back to the Planning Board for approval.

Councilor Smith noted the wording in the draft provisions on page 3:

5. All lots comply with the New Hampshire Department of Environmental Services requirements (RSA 485:A) for subsurface wastewater management (developments may utilize individual or community wells and/or septic systems) and private water wells within the decreased lot size; and

He asked if this meant that if a lot met the bare minimum size required for adequate wastewater management, it could be fairly small. He also noted that the Town Engineer had recently observed a clivus multrum composting toilet, where there was no leach field. He asked what happened if someone had one of those systems, so didn't have to worry about subsurface wastewater management because there were no subsurface issues.

Mr. Mettee said the workforce housing subcommittee was trying to provide an opportunity to increase density. He said one way to do this was the 40% bonus piece, and the second way was that there could be a smaller lot if it complied with State and local regulations with regard to wastewater. Concerning the use of composting toilets, he said the Town would need to take up this issue up separately. He said in theory, they could probably get to a higher density with this.

Councilor Gooze said Councilor Smith had raised an excellent point, which was whether it gave the Planning Board the opportunity to make the minimum lot size the size it wanted, which would give the developer the density that was needed.

Mr. Campbell said the Planning Board wouldn't be able to do this. He said there could be alternate lot sizes, as part of the Conditional Use process, but the Board couldn't simply say that it didn't care about lot sizes. He also noted that it would be hard for the Planning Board to approve something if a lot of members of the public were against it.

Ms. Fuller spoke about the fact that without what the subcommittee had proposed, the courts could make a decision that a developer could do a project.

Mr. Campbell noted that the Board would still be able to alter the project, if the draft Zoning provisions were approved.

Councilor Gooze said it came down to whether the Town really wanted workforce housing, or just wanted to meet the State requirements.

Mr. Mettee noted that there had been discussion that there might be some other areas in Durham to do workforce housing. But he said what was proposed seemed to be the most logical way to

go right now, given what they were charged with in the grant, and given Durham's particular situation.

Ms. Fuller said if the workforce housing provisions were in place, this wouldn't preclude someone from making a proposal to allow it in another zone than what was proposed now.

Councilor Smith noted that developer Peter Murphy planned to provide workforce housing as part of the redevelopment of the Grange property, also noting that the conservation subdivision provisions didn't apply there.

Councilor Gooze asked whether, if the Planning Board decided it wanted the draft provisions to go to the Council, they could go as is, without tweaking by the Board.

Mr. Mettee said he thought the subcommittee had done an outstanding job on the draft provisions, stating that they had vetted the issues and asked the right questions. He said the provisions weren't perfect, but they did fit Durham's situation.

Chair Parnell said the Board could either continue the hearing, or could close it, deliberate, and decide whether to pass it on to the Council as it was.

Ms. Fuller said she would like to pass it on as it was and have the Council look at it. She said having something on the books was important, and said it could get tweaked later, as it got tested.

Councilor Gooze said he was ok with doing that, but said he thought it might come back to the Planning Board.

Susan Fuller MOVED to close the Public Hearing. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Chair Parnell said the conservation subdivision issues could be dealt with separately from dealing with the workforce housing provisions. He said the way the Ordinance was set up now, residential subdivisions had to be conservation subdivisions, so the workforce housing piece was just an add on. He said if they had problems with the conservation subdivision provisions, that was a larger issue than trying to solve it through this current process.

Councilor Smith said it seemed cumbersome to connect workforce housing to conservation subdivision.

Councilor Gooze said to the subcommittee, it was thought to be the least cumbersome approach, because the conservation subdivision provisions already existed.

Chair Parnell said he agreed.

Susan Fuller MOVED to move the proposed Amendment to the Durham Zoning Ordinance to introduce a new section on Workforce Housing and the creation of a Developer's Guidance

***Document for Workforce Housing to the Town Council for a first reading. Richard Ozenich
SECONDED the motion.***

Councilor Smith noted that he had lived in Durham longer than anyone else on the Board. He passed around a map from 1965 of the Town that he had known in terms of workforce housing. He said starting on Mill Road, where the railroad tracks were, 100% of the housing on Mill Road between the tracks and Packers Falls Road had been workforce housing. He said when he first came to Town, he met most of the people who lived on the roads in the area to the west of the railroad tracks, and said about 75-80% of them were people who worked in the shipyard, in Newmarket, etc. He said he bought his first house from a policeman who had to move into town.

Councilor Smith said they didn't have workforce housing anywhere in Durham now, and said part of the reason was what happened if the Planning Board was asked to reduce lot sizes. He said abutters came out because Durham was now mostly suburban, middle class housing. He said he was aware of only two families to the west of the railroad tracks who could now be characterized as workforce.

He provided details on those who had lived in this area previously, and noted that many of them had been farmers. He said the Town had unintentionally pushed out workforce people, who were not connected to the University, and weren't commuting to Boston. He said he hoped the Planning Board would vote to send this on to the Council.

The motion PASSED unanimously 7-0.

III. Planner's Report

Mr. Campbell said he would like the Board to discuss the idea of having a special Planning Board meeting, where they could invite Roger Hawk again, to discuss the draft design guidelines that had been developed.

He also said Lisa Henderson from the NH Workforce Housing Coalition would like to discuss with the Planning Board the findings from the recent workforce housing charrette done for the Goss property on Route 155.

Mr. Campbell also said he'd received an email from Councilor Robin Mower, who said the Energy Committee was interested in speaking with the Planning Board about moving forward with the energy checklist the Energy Committee had developed.

Mr. Campbell said the Traffic Safety Committee had met last week, and discussed several items, including town-wide speed limits, bike lanes on Madbury Road, going from a two way to one way traffic loop downtown, and progress on the work being done on the Morgan Way intersection. He said 4 ft bike lanes would be installed on Madbury Road, and also said that as part of this, the current permit parking on the east side of the road would be eliminated. He said this parking was currently underutilized.

He said some additional painted parking spaces would be added on the west side of Madbury Road, between Pettee Brook Lane and Main Street, for people working downtown. He also noted

that there was now a stop sign, for vehicles coming down Church Hill and turning right onto Madbury Road.

Councilor Smith said as the Planning Board representative to the Traffic Safety Committee, he had suggested that stop sign. He said it was an experiment, and would come to the Town Council for discussion.

Mr. Campbell said Capstone was most likely closing soon on the Woodward property, and said once that was done, they would start pulling the permits. He said they were behind on the construction schedule, but perhaps could catch up. He also said the boundary line adjustment was now recorded, so Capstone would own the Shea property,

Chair Parnell noted that the Board would be discussing the issue of who would hold the conservation easement, later in the meeting.

VII. Acceptance Consideration of an Amendment to a Previously Approved Site Plan Review submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of 9 Madbury Road LLC, Durham, New Hampshire to change the construction plans for a new four-story, mixed use building to place the electric utilities underground. The property involved is shown on Tax Map 4, Lot 12-0, is located at 9-11 Madbury Road, and is in the Central Business Zoning District.

VIII. Acceptance Consideration of an Amendment to a Previously Approved Conditional Use Permit submitted by MJS Engineering, P.C., Newmarket, New Hampshire on behalf of 9 Madbury Road LLC, Durham, New Hampshire to change the construction plans for a new four-story, mixed use building to place the electric utilities underground. The property involved is shown on Tax Map 4, Lot 12-0, is located at 9-11 Madbury Road, and is in the Central Business Zoning District.

Councilor Gooze said when the Council did the conditions for the RSA 79-E application in regard to this development, it decided that one condition should be that the electric utilities should be buried underground. He provided details on this, and said it now turned out that the Planning Board had previously granted a waiver to not bury them. He noted that the area involved was in the wetland conservation overlay district.

Chair Parnell said the Board had granted this waiver for some very good reasons.

Councilor Gooze said the Council had thought that it was important that in order to qualify for the RSA 79-E benefits, the applicant had to meet that criterion.

Mike Sievert of MJS Engineering spoke about the change the Council had made under the RSA 79-E process. He said there were no changes involved to the footprint, and he provided details on what would be involved in doing the work. He noted that the proposed location for putting the electric utilities underground was within the 75 ft wetland conservation overlay district, and was also within the 25 ft shoreland protection overlay district. In addition, he said the area was within a flood zone.

He said he was therefore before the Board to amend the previously approved Conditional Use

Permit. He noted that it would only be the electric utilities that would be underground, and said there would be overhead telephone wires coming into the site from Madbury Road.

Chair Parnell asked if there were any issues concerning the fact that the electric utilities would be buried in the flood zone.

Mr. Sievert said they wouldn't be within the 100 year flood zone, but would be within the 500 year flood zone. He explained that the electric utilities would be sealed, in a waterproof conduit that was approved by PSNH for that location. He also noted that there was a sewer easement in the area they had been trying to stay out of.

Mr. Campbell asked if this proposal had gone to the Conservation Commission, and Mr. Sievert said yes. He said the Commission had reluctantly said it was ok with what was proposed, and was going to send a letter concerning this. He said their concern was the disturbance involved, but he said it was realized that there would be disturbance happening in that area anyway with this project because of the pavement there.

Mr. McGowan asked for details on the conduits. Mr. Sievert said they would bury 30 inches under the surface. He said there would probably be nine 4 inch conduits, and said five of them would be for the secondary service. He also said there would be some spares. He explained that it would be tough to have to go back in and put in additional conduits later, without having to remove the whole patio system planned as part of the development.

Councilor Smith asked whether, from an engineering point of view, it would be better if the electric service came in overhead, as originally planned.

Mr. Sievert said yes, but said the Council didn't want it to go there.

Councilor Smith noted that he had remained silent when the idea of burying the electric utilities was proposed.

Mr. Sievert said he understood what the process was, and said it was a somewhat unique situation.

Mr. Campbell asked if there was anything that involved NHDES in terms of what was proposed.

Mr. Sievert said no, noting that the applicant already had the wetland permit. He also said there was no tidal buffer involved.

Councilor Gooze said this RSA 79-E application had been a learning process for the Council. He said with future applications, the Council would have the conditions of Conditional Use Permit applications and Site Plan Applications in hand when reviewing them.

Mr. Campbell said the application was ready for acceptance.

Susan Fuller MOVED to accept an Amendment to a Previously Approved Site Plan Review Application and Conditional Use Permit application submitted by MJS Engineering, P.C.,

Newmarket, New Hampshire on behalf of 9 Madbury Road LLC, Durham, New Hampshire to change the construction plans for a new four-story, mixed use building to place the electric utilities underground, and schedules a public hearing for July 27, 2011. The property involved is shown on Tax Map 4, Lot 12-0, is located at 9-11 Madbury Road, and is in the Central Business Zoning District. Andy Corrow SECONDED the motion.

Councilor Gooze said a question was whether there was perhaps a provision for the Council to modify an RSA 79-E application, if after the public hearing, it was decided that it would be better not to bury the electric utilities.

Councilor Smith said this was a question for the Council.

Mr. Campbell said he assumed there would be a way to do this, and there was discussion.

The motion PASSED unanimously 7-0.

IX. Acceptance Consideration of an Application for Site Plan Review submitted by Graham Camire, Durham, New Hampshire on behalf of Kyreages Inc., York Harbor, Maine to construct a deck on the back of a commercial establishment. The property involved is shown on Tax Map 5, Lot 1-17, is located at 45 Main Street, and is in the Central Business Zoning District.

Mr. Camire said what was proposed was a 30 ft by 22 ft deck, and said access to it would only be provided through the restaurant.

Mr. Campbell provided details on the access that would be provided. He said anyone using the deck would have to get there by using the front door first. He said no coming in and off the deck from the back would be permitted, except in an emergency, when exit off of the deck would be allowed.

Ms. Fuller asked if there would be stairs off of the deck, and Mr. Camire said there would be stairs in case of emergency, as the code required. Ms. Fuller asked how the whole thing would be monitored, and Mr. Camire said there would be staff located at the exit the entire night.

Councilor Smith asked how one would be able to get to the rear of the property, and Mr. Camire said people could come up through the Grange. He said this would only be used if there was an emergency.

Mr. Wolfe asked if everything was in order with the application, and Mr. Campbell said yes. He noted that there was a waiver request to not have to provide a surveyed site plan. He said the applicant has provided a copy of a subdivision plan, which showed meets and bounds, and also showed the deck on the back of the building.

Peter Wolfe MOVED to accept an Application for Site Plan Review submitted by Graham Camire, Durham, New Hampshire on behalf of Kyreages Inc., York Harbor, Maine to construct a deck on the back of a commercial establishment, and schedules the public hearing for July 27th, 2011. The property involved is shown on Tax Map 5, Lot 1-17, is located at 45 Main Street, and is in the Central Business Zoning District. Richard Ozenich SECONDED the motion.

Councilor Smith recommended that before the public hearing, the applicant should give some thought to how noise coming from the deck would be controlled. He said at the hearing, this would be a very significant issue.

The motion PASSED unanimously 7-0.

The Board scheduled the site walk scheduled for 5:30 pm on July 27th.

- X. Acceptance Consideration of an Application for Site Plan Review** submitted by MJS Engineering, PC, Newmarket, New Hampshire on behalf of GHL LLC, Durham, New Hampshire and the Town of Durham to move the Grange building closer to the street, conduct a full historic renovation of the building and to construct a 3-story addition to the rear of the building. The property involved is shown on Tax Map 5, Lot 1-5, is located at 37 Main Street, and is in the Central Business Zoning District.

Mike Sievert of MJS Engineering first reviewed the variances the applicant had received, which were to permit the construction of a 3-story addition with residential use on the first floor, and to allow for less than a 20% area of windows on the front façade of the current Grange building.

He reviewed what was proposed with the project. He said the existing structure would be moved closer to the street, a new foundation would be put in, and the building would then be developed into 1,000 sf of new commercial/ community space, as well as 3 workforce housing apartments on the second floor and a back addition to the original building. He said there would be two flats, each with 2 bedrooms as well as one 2 bedroom townhouse apartment with a private courtyard.

He said a 6,000 sf building would also be constructed to the rear of the original structure, and would contain 6-8 luxury student housing apartments with 4+ students per unit. He said one of the student apartments would be handicap accessible.

He said there were utilities at the site already from Main Street, and provided details on how the development would connect up to this. He said right now, overhead utilities went to the front corner of the Grange, and said what was proposed was to put the utilities from the pole to the new building underground.

Mr. Sievert spoke generally that drainage on the site would be maintained in a way that was similar to what was there now. He also said as part of the negotiations concerning purchase of the Grange from the Town, Mr. Murphy had agreed to provide a 25 ft wide easement to maintain a pedestrian walkway that was on the property now. He said it would be reconstructed out of the existing walkway.

He said right now, the path was 10 ft wide in front, and said they would try to maintain this as an area to allow access for emergency vehicles or for unloading, or for the commercial space, but not for parking. He said the path there now would be enhanced with some kind of paver type walking surface, and would be 8 ft wide.

Mr. Sievert provided details on how the buildings would be accessed, and noted that they would be ADA accessible. He showed architectural renderings of the proposed development, and noted that what was proposed had been in front of the Historic District Commission already. He said the applicant would be requesting two waivers, one of which was for height, and said the maximum height would be about 38 ft. He said there would also be a request to be allowed to have no parking on the site, noting that about 42 spaces were required. He said the applicant would pay the fee for this, and said the timing of that payment would be worked out.

Mr. Sievert said Mr. Murphy planned to start work in August, and hoped to be ready for June occupancy in 2012 .

Mr. Campbell noted that the Historic District Commission had granted Mr. Murphy a certificate of appropriateness for the project. He said he wasn't quite sure what this was for.

Chair Parnell noted some concerns raised by the HDC about the facing on the foundation, and Mr. Sievert said there had been discussion about including some stone as part of the new foundation.

Mr. Sievert said some minor changes were requested, and said one was to remove the fence on the property, and to do some landscaping there. He said this was being looked at.

There was discussion between Mr. Campbell and Mr. Sievert that the Fire Department had raised the issue of access to the back building in regard to this. Mr. Campbell said the most recent email from the Fire Department said this apparently was not an issue.

Chair Parnell asked how many students would be living in the back building, and Mr. Sievert said there would be a maximum of 35, and no less than 30. He said there would be 4 flats, 3 of which would be five bedroom units, and 1 which would be a four bedroom unit. He also said one townhouse would have a maximum of seven people, and another would have a maximum of eight. He said that regarding the workforce housing in the Grange building, there would be 3 two bedroom units.

Ms. Fuller asked what the square footage of the workforce housing units would be.

Mr. Murphy said the two units in the original Grange building would each be 925 sf. He said the townhouse behind it would be a little over 1000 sf, and would have two bedrooms.

Ms. Fuller asked if the applicant would be requesting a waiver from having to pay the school impact fee.

Mr. Campbell said yes, and noted that the waiver would be a request to not have to pay the impact fee for all of the units, including the student housing.

Councilor Gooze asked Mr. Mettee to discuss the workforce housing aspect of the application. Mr. Mettee provided a handout on what was proposed.

Councilor Gooze noted that there couldn't be discrimination in terms of who the units were rented to, and asked what was therefore to prevent the workforce housing units from being occupied by UNH students.

Mr. Mettee said this would be handled administratively. He explained that in order to qualify, a potential renter would have to show an income tax return. He said because most students were dependents, they would be on their parents' income tax returns, so couldn't demonstrate the need. He note that potentially, some graduate students would qualify.

Councilor Gooze asked whether if a student did qualify based on this, he/she could sublease the rental unit to other students who weren't qualified.

Mr. Mettee said this was another administrative issue to be worked out. He noted that the workforce housing subcommittee had come up with a covenant for owner occupied workforce housing, but said potentially this could also be done for renter occupied workforce housing, so a renter would not be allowed to sublet or sublease to other individuals.

Peter Wolfe MOVED to accept an Application for Site Plan Review submitted by MJS Engineering, PC, Newmarket, New Hampshire on behalf of GHL LLC, Durham, New Hampshire and the Town of Durham to move the Grange building closer to the street, conduct a full historic renovation of the building and to construct a 3-story addition to the rear of the building, and schedules a public hearing for July 27th, 2011. The property involved is shown on Tax Map 5, Lot 1-5, is located at 37 Main Street, and is in the Central Business Zoning District. Susan Fuller SECONDED the motion, and it PASSED unanimously 7-0.

The Board scheduled the site walk for 6 pm on July 27th.

Break from 8:43 to 8:50 pm

- XI. Acceptance Consideration of an Application for Subdivision** submitted by Jones & Beach Engineers, Stratham, New Hampshire on behalf of The Nature Conservancy, Newmarket, New Hampshire, and Jennylyn Beaudette and the Estate of Roland Beaudette, Somersworth, New Hampshire, to subdivide a property into two lots. The property involved is shown on Tax Map 15, Lot 6-0, is located at on Bennett Road, and is in the Rural Zoning District.

Christopher Albert, an engineer from Jones and Beach Engineers, said he had been employed by the Nature Conservancy in regard to the subdivision of the land. He said the property contained approximately 76 acres, and explained that the proposal originally was to subdivide it into the 63 acre conservation property and 6.9 acres for the remaining house lot.

He said there had been some recent discussion about shifting the boundary line somewhat, and said what was proposed now was to shift it so the Nature Conservancy piece would be 66 acres, and the other piece would be 5.3 acres. He said he would make those corrections in time for the next Planning Board meeting.

Mr. Albert reviewed some waiver requests, which for the larger piece, included not having to do

a topographic survey and test pits. He said with the smaller piece, a wetland delineation was done, and also said a topographic survey and test pits would be done in time for the meeting on July 27th. He said the conservation parcel was a nice piece of land. He noted that there was already some conservation land in the area, so a good wildlife corridor was being developed in that part of Town.

Ms. Fuller said most of the land the Nature Conservancy was acquiring was in the 100 year flood plain, and said she had watched it turn into part of the Lamprey River on several occasions. She said it couldn't be developed anyway, and asked why it was therefore important that the Nature Conservancy acquire it.

Mr. Hyde said he didn't believe there was a prohibition on developing the property, but said buildings would need to be elevated above the flood level. He also said the property wasn't totally within the floodplain.

Mr. Albert said most of the Bennett Road piece of the property was developable. He said there were wetland sections, but there was also some open field that could be developed.

Mr. Hyde acknowledged that with the extensiveness of flooding in recent years, it did inundate a portion of the property. He explained that a benefit of conserving the property was that there was nothing to prevent subdividing it for development right now, so this was a public safety issue. He said it was almost like the Nature Conservancy was doing a flood storage project.

Ms. Fuller asked if the Nature Conservancy would be keeping the land, or if instead the land would be transferred to NH Fish and Game.

Mr. Hyde said the proposal was to transfer the property to NH Fish and Game, noting that the agency owned and managed another 133 acres or so in that area. He provided details on this. He then spoke about the fact that the Town's contribution to the project was proposed to be \$45,000, which would come from Conservation Commission funds. He said the Town Council had scheduled a public hearing to approve this request, and said if it was approved, the Town would hold the conservation restrictions on the property, in order to ensure that the conservation land would be maintained and not developed.

Councilor Gooze asked if any farming took place on the property now.

Mr. Hyde said the land hadn't been actively farmed in many years, and said the last time it was hayed was more than 4 years ago. He said it had been left fallow since that time.

Ms. Fuller received confirmation that the land was presently in current use. Mr. Lewis asked how much the Town would lose in terms of tax income.

Mr. Hyde said he didn't have the figures with him, but said since the land was in current use, the Town would only lose a few hundred dollars in terms of tax revenues.

There was discussion between Chair Parnell and Mr. Hyde that the deferred taxes because of current use taxation would not be due now, because there would be no change in the use of the

property.

Ms. Fuller asked if the application was complete, except for the test pits, and Mr. Campbell said yes.

Susan Fuller moved to accept an Application for Subdivision submitted by Jones & Beach Engineers, Stratham, New Hampshire on behalf of The Nature Conservancy, Newmarket, New Hampshire, and Jennylyn Beaudette and the Estate of Roland Beaudette, Somersworth, New Hampshire, to subdivide a property into two lots, and schedules the public hearing for July 27th, 2011. The property involved is shown on Tax Map 15, Lot 6-0, is located at on Bennett Road, and is in the Rural Zoning District. Peter Wolfe SECONDED the motion, and it PASSED unanimously 7-0.

The Board agreed to do a site walk the Saturday morning before the meeting, at 9 am.

XIII. Other Business

A. Old Business:

Mr. Campbell explained his rationale for wanting to hold an extra Planning Board meeting. He noted that the Board had missed an opportunity at the last meeting to meet with consultant Roger Hawk concerning the draft design guidelines that had been developed, and said he didn't want to put this item off. He also said that Lisa Henderson would like to discuss the workforce housing charrette results with the Board sooner rather than later.

After discussion, it was decided that the extra meeting would focus on the draft design guidelines and the workforce housing charrette presentation, and the energy checklist item would be scheduled for a meeting in August.

Discussion on the Site Walk that day

Councilor Smith spoke about the site walk that day of the parcel Capstone had purchased from the Sheas, which was attended by some Planning Board and Conservation Commission members as well as members of the Strafford Rivers Conservancy (SRC). He noted that it was a landlocked piece of land located downhill from the Woodward property, and was owned by an abutter in Lee.

He said the issue of concern was that there would have to be some organization to monitor the property and hold the easement on the land, but Capstone was having trouble finding someone to do this. He passed around to Board members a form that SRC used to evaluate properties, and said having done the site walk, SRC members would vote next week on whether to take this project on. He noted the features contained in the form, and said the property in question probably wouldn't rank very high on it. He said the real value of the land, from a conservation point of view, was that it contained some wildlife habitat, and that it abutted the river that ran into one of the Town's water supplies.

Councilor Smith said the big issue, if no conservation group was willing to take the property on,

was what happened next. He noted a condition of approval was that this land would be conserved and monitored, and he questioned whether this would be done if there was just a deed restriction. He asked who in the Town would actually do this. He said this situation was a warning that they had to be careful, in accepting the applicant's statement that the land would be protected and would not be used in ways that were not appropriate.

Chair Parnell said he was at the site walk that day, and did get the impression that the SRC wasn't leaping at the opportunity to conserve the property. He said he wasn't sure why not, and said he thought one of their concerns was that they wouldn't be able to control what students might do there. He said this was a Capstones issue, but said someone should be willing to take on this responsibility, as the condition of approval was worded. He said if the Town was going to take on this responsibility of seeing that the land was used in a certain way, it could hold the easement or go with a deed restriction.

There was discussion that some of the land Capstone was purchasing would not be developed, particularly the land to the west of the main housing area.

Mr. Campbell said he didn't know how much of the nearby land in Lee was in conservation land either.

Councilor Gooze said his thinking was that if the land across the river was in conservation, technically they were abutting properties.

Councilor Smith said there was no land in question connected to the Capstone project that was in conservation across the river.

There was discussion that there was no land in conservation across the river.

Councilor Gooze said he thought someone had said that Lee thought that conservation of this parcel would work with their greenway, and Mr. Campbell said this was on paper more than anything else.

Councilor Gooze said he agreed with Chair Parnell that part of the condition of approval was that someone had to do this.

Mr. Campbell said the condition was that the Board asked Capstone to try to find someone to hold the easement, and if this didn't happen, the property would be deeded as open space. He said the Board didn't say that the land had to be monitored every year.

He said if Capstone couldn't find someone to hold the easement, and it was deeded as open space, the question was whether there was anything the Board could talk to them about that would give it more peace of mind that nothing would happen, and that the Board would make sure about this.

Mr. Wolfe said this would be a burden on Capstone's deed.

There was discussion that the downside of a deed restriction was that there was no monitoring, while with a conservation easement, there were stewardship funds created to do monitoring.

There was discussion about conservation properties the Town currently owned, with Ms. Fuller noting that the Doe Farm was used quite a bit, which was good. She said the same thing could be done with this property.

Mr. Campbell said he didn't think Capstone would be against monitoring the property once a year, and said he thought they would actually welcome doing this. He said he believed they would be out there keeping an eye on things.

Chair Parnell said he had told the person from SRC that this was an excellent opportunity, with a high profile project where they could work with the developer and the students, but they seemed reluctant to get involved.

Councilor Smith said perhaps they were worried about bad publicity. He said it might be hard to get the Capstone management to cooperate.

Chair Parnell said he thought Councilor Smith was looking for problems, and said the Board's experience was that Capstone had been cooperative.

There was discussion, and Councilor Gooze said it would be ideal if they could find a third party. It was noted that the Board had frequently heard about how great this area was, but yet no one wanted to come forward to protect it.

Councilor Smith said in order to protect it, the entity involved would need to pass through a large student complex.

Mr. Campbell said they might think that this could be a headache.

Chair Parnell said he hoped Capstone would find someone to do a conservation easement, but said if it didn't, he didn't see that this was a major problem.

On another issue, Ms. Fuller said she'd missed the Economic Development Committee meeting last month, and would need to miss the next one. She asked if another Board member could attend in her place.

Mr. Campbell said he would be at that meeting, and said he thought the key item at the meeting was that Don Jutton would be there to discuss a possible downtown TIF.

B. New Business:

1. Request for Extension on the Conditions of Approval for an Approved Subdivision for Jerry Gottsacker, 111 Madbury Road, Map 1, Lot 7-3.

Mr. Campbell provided details on the extension being requested. He said Mr. Gottsacker would like find a buyer before finishing meeting the conditions of approval.

Susan Fuller MOVED to grant an Extension on the Conditions of Approval for an Approved Subdivision for Jerry Gottsacker, 111 Madbury Road, Map 1, Lot 7-3. Peter Wolfe SECONDED the motion, and it PASSED unanimously 7-0.

2. Discussion on Conservation Commission Request on Stormwater Issues in relation to Repaving versus Resurfacing of Parking Lots.

Mr. Campbell first noted that at the Conservation Commission the previous Thursday, Commission member Jamie Houle had discussed the fact that Peoples Bank had recently redone its parking lot.

Councilor Smith said Mr. Houle's concern was that the pavement was dug up, and that this should trigger some kind of site review since the subsurface was being exposed. Councilor Smith said the regulations didn't define repaving or resurfacing, but said there was clearly a difference.

He said he thought this was a code enforcement problem. He said the Bank had been in touch with the DPW, and also didn't need a permit from Mr. Johnson. He also said there was nothing in the Zoning Ordinance about it. He said they weren't enlarging the parking lot, so the site plan review process, including the stormwater provisions, wasn't triggered.

Councilor Smith said he wouldn't have sent this to the Planning Board, but said Mr. Houle's point was that perhaps the Board should look at the issue of repaving, and that if more than 10,000 sf was involved, perhaps the stormwater regulations should kick in. He said that currently, there wasn't anything in place to make that kind of thing happen.

Councilor Smith said he thought any provisions concerning this should be in the Zoning Ordinance, not the Site Plan regulations, because Mr. Johnson didn't enforce these regulations. He said the Conservation Commission was interested to know if the Planning Board would be interested in doing something like this.

Ms. Fuller noted that 10,000 sf of pavement could be her driveway.

Mr. Campbell said this didn't kick in now, because it was a single family residence.

Ms. Fuller noted that if this was on the books and some Mill Plaza parking work was done, there could be some improvements in terms of stormwater management. She asked why the Conservation Commission wouldn't work on this, rather than having the Planning Board do this. She asked if the Commission was asking if the Board would support them if they did work on it.

Mr. Campbell said he thought the Commission was asking if the Planning Board would be interested in working on it.

Mr. McGowan asked if the concern was that the subsurface would be exposed when the repaving work was being done, or that there could be some stormwater management improvements put in place as part of the work.

Mr. Campbell said the concern was that the work could somehow alter the drainage on the site. He said someone had also asked if the Board could require porous pavement.

Councilor Smith said he didn't think this was something that should start at the Planning Board.

Chair Parnell asked if the Conservation Commission was concerned about this, or if instead the former Chair, who was a stormwater professional, was concerned. He said this almost seemed like spot zoning.

Councilor Smith said he would send Mr. Houle's email to the Board.

Mr. Campbell said he didn't have a problem with the Board reacting to this issue and possibly making a change. But he said the real issue was whether it should be making a change to the Ordinance in order to address this issue. He asked Councilor Smith to send him more information on it.

Councilor Gooze said doing something like this for Mill Plaza or other locations could certainly make things better.

Councilor Smith said that was a very different issue.

Mr. Wolf said improvements to Mill Plaza would kick in site plan review. He asked what the harm was that they were trying to regulate, and if it was worth the effort of doing this.

The Board agreed to move on.

XII. Approval of Minutes –

Ms. Fuller left the meeting at 9:37 pm.

May 11, 011

Page 1, line 25, should say "...election of officers..."

Page 9, line 4, should read "...Hayden Sports shop in the basement of 40 Main Street..."

Line 14, motion should read "MOVED"

Councilor Smith MOVED to adopt the May 11, 2011 Minutes as amended. Andy Corrow SECONDED the motion, and it PASSED 4-0-2, with Chair Parnell and Bill McGowan abstaining because of their absence from the meeting.

May 25, 2011

Page 2, line 10, should say "Shea"

Page 3, line 8, should say "Councilor Gooze was not a voting member..."

Line 41, delete comma after submitted by

Page 6, line 14, delete comma after submitted by

Page 7, line 28 should read "...and could have been raised..."

Page 9, remove highlighting of text in lines 8 and 9

Also page 9, should read:

Richard Kelley MOVED to appoint Lorne Parnell as the Chair of the Planning Board...

Councilor Gooze MOVED to appoint Peter Wolfe as Vice Chair of the Planning Board...

Richard Ozenich MOVED to appoint Susan Fuller as Secretary of the Planning Board...

Page 13, line 20, should say "...if housing stock started falling off the market..."

Line 24, should read "...presumably more units would be built..."

Bill McGowan MOVED to approve the May 25, 2011 Minutes as amended, subject to verifying the language on page 13. Richard Ozenich SECONDED the motion, and it PASSED 5-0-1, with Peter Wolfe abstaining because of his absence from the meeting.

C. Next meeting of the Board: **July 27, 2011**

XIV. Adjournment

Richard Ozenich MOVED to adjourn the meeting. Bill McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 9:52 pm

Victoria Parmele, Minutes taker