

*These minutes were approved at the February 26, 2014 meeting.*

**DURHAM PLANNING BOARD**  
**Wednesday, December 4, 2013 at 7:00 p.m.**  
**Town Council Chambers, Durham Town Hall**  
**MINUTES**

**MEMBERS PRESENT:** Peter Wolfe, Chair  
Andrew Corrow, Secretary  
Lorne Parnell  
Bill McGowan  
David Williams  
Councilor Lawson, Council Representative to the Planning Board  
Councilor Smith, alternate Council Representative to the Planning Board  
Wayne Lewis, alternate  
Jennifer Pribble, alternate (arrived at 7:42 pm)  
Linda Tatarczuch, alternate

**MEMBERS ABSENT:** Richard Kelley, Vice Chair

**I. Call to Order**

Chair Wolfe called the meeting to order at 7:03 pm.

**II. Roll Call**

The roll call was taken.

**III. Seating of Alternates**

Chair Wolfe said Ms. Tatarczuch would sit in for Mr. Kelley.

**IV. Approval of Agenda**

*Lorne Parnell MOVED to approve the Agenda. Andy Corrow SECONDED the motion, and it PASSED unanimously 7-0.*

**V. Town Planner's Report**

Mr. Behrendt said he had nothing specific to report on.

**VI. Public Comments**

**Bill Hall** said a few days ago he had discussed stormwater management efforts with a Planning Board member. He said the expenditures on this were nothing compared to those for water, noting that the Town was in the middle of a \$4.8 million infrastructure improvement plan for a University water source. He said the Town shouldn't pay for any of it.

He noted the report by Councilor Dave Howland on this issue. He said the Town produced all the water it used through the Lee well, and said the University got its water from the impoundment by the water treatment plant and from the Lamprey River. He noted that the Town had paid \$900,000 of \$1.5 million for the pipe down Mill Road, and also maintained the Beech Hill tank and the pipe to it.

Mr. Hall spoke further on this. He said no way should we pay for more than 1/3 of water Expenditure of 2.5 million for Spruce Hole. We have nothing to do with that water supply. He discussed other water projects the Town needed, including the Madbury road pipes, which the University didn't help with. He said he was prepared to answer any questions have about this.

**Councilor Robin Mower, Faculty Road**, requested that the Planning Board ask applicants to provide several copies of the printouts of drawings, so these would be available to the public to review. She said it would be helpful to have these posted on bulletin boards if possible. She noted an email from Mr. Behrendt to a current applicant requesting possible additional renderings and 3-d modeling of a proposed project and some adjacent sites in order to give a good overall sense of the scale of a project.

Councilor Mower noted discussion at the Planning Board meeting on October 23<sup>rd</sup> regarding a proposal she and Energy Committee Chair Kevin Gardner had asked the Board to consider concerning downtown bike planning and pedestrian infrastructure. She said there had been a misunderstanding of their intent.

She said it was understood that downtown projects would bring large incremental numbers of people to the downtown, many of whom would be walking or would have bikes. She said it was appropriate to ask for a contribution from developers concerning impacts relative to a stretch of property in the immediate vicinity of their properties.

Councilor Mower said the town of Scarborough, Maine had commissioned a pedestrian plan that focused on improving the sidewalk network in order to facilitate the use of bikes by those who weren't comfortable riding on the road. She noted that Durham didn't allow bikes on sidewalks.

She said it was interesting to note that implementation of Scarborough's plan had occurred through public funding from the State DOT and via projects that had undergone site plan review. She said she had spoken with the planner there, who said that although there had been some pushback from developers, this approach was working. She said she hoped this was something that the Planning Board would consider, as opposed to asking a developer to contribute to a grand master plan, which wasn't the Energy Committee's intent.

**VII. Durham Master Plan update - Molly Donovan, Chair of Master Plan Advisory Committee**

Chair Wolfe said he, Mr. Behrendt, and Ms. Donovan had recently met concerning the Master Plan update process.

Mr. Behrendt said there wasn't much to update the Board on right now, so Ms. Donovan wasn't present. He said she would come before the Board in January. He said the Master Plan Advisory Committee had reviewed the Commercial Core chapter and had a number of concerns about it, but was aware that the Planning Board was continuing to review the draft.

He said some thoughts were expressed that this chapter should be part of the Economic Development chapter. He also said some concern was expressed about the process that had been set up to review individual chapters but not to adopt them until later when adjustments had been made to them after they had all been looked at together.

He said some members of the Advisory Committee were concerned that if the individual chapters were endorsed by the Planning Board at some point, it would then be more difficult to change the chapters later on. He said it was thought that the Board could review the chapter and make some recommendations, but there would need to be a clear understanding that there might still be changes to the chapter later on.

He said an RFQ was sent out for a new Master Plan consultant, and said a separate RFQ was sent out for a consultant to work on the Historic Resources chapter. He said the Planning Board needed to discuss whether it wanted the EDC to take on the role of writing the Commercial Core chapter, or wanted that chapter and the Economic Development chapter to remain separate. He said perhaps this could wait until the consultant was hired.

**VIII. Public Hearing (continued) 118 Piscataqua Road.** Tax Map 11, Lot 24-4, Residence C Zoning District. Formal application for Site Plan and Condominium Conversion for a **4-unit condominium for seniors**. Submitted by **Alexander Bakman**; Corey Colwell, MSC Engineers, engineer/Surveyor; Scott Hogan, attorney. *Recommended action:* Continue to December 11.

Attorney Scott Hogan said he had gone to the Conservation Commission on November 14<sup>th</sup> to discuss the dock, path and well issues. He also said Mr. Bakman met with the Energy Committee. He noted Mr. Behrendt's recommendations, and summarized the following concerning the application

- There are no access issues; the driveway was determined to be sufficient.
- Surface parking was moved to a place on the site where there are no Zoning issues.
- The Conservation Commission and DES approved the dock expansion, and the only issue remaining was concerning a dock expansion within the Town's shoreland overlay. He noted that the Zoning Ordinance said the Conservation Commission "shall provide recommendations to the Planning Board for a well, path or dock expansion."

He said the quirk in this instance was that the Planning Board didn't have an active application before it when the Conservation Commission comments were submitted. He said the dock expansion therefore wasn't technically before the Board, but said he wouldn't question this.

Councilor Lawson asked if an application for the dock should have been submitted to the Planning Board. There was discussion with Attorney Hogan. Councilor Lawson noted that other applicants had submitted applications for docks to the Planning Board, and said he was therefore uncomfortable approving the dock as part of this present application review process.

There was discussion that Conservation Commission members who attended the site walk had provided comments on the dock. Councilor Lawson said he had seen these comments, but noted that there were comments from the Conservation Commission for other dock applications that had come before the Planning Board.

There was discussion about whether the Planning Board had sufficient information about the proposed dock to be able to make a decision on it.

Councilor Smith said the major issue here was the condominium conversion and said he could see the dock expansion as being a separate issue. Councilor Lawson agreed.

Attorney Hogan said the applicant agreed that the Japanese knotweed would be removed, and agreed with Mr. Behrendt's recommended language concerning this.

Attorney Hogan noted 1 c) under the Precedent conditions concerning Plan modifications needed, and said he didn't agree with this.

Mr. Behrendt said he thought 1 c) could be eliminated if the Board was comfortable with this.

Attorney Hogan noted that Mr. Behrendt had provided specifics on what to provide in the plans concerning a driveway turnout. He said the applicant was fine with this language.

Chair Wolfe asked if any members of the public would like to speak concerning the application. No members of the public who came forward to speak.

It was noted that Councilor Smith would be voting in place of Councilor Lawson on this application.

***Lorne Parnell MOVED to close the Public Hearing. Councilor Smith SECONDED the motion, and it PASSED unanimously 7-0.***

Councilor Lawson said he didn't think the Planning Board should approve the dock at this time, because he had a problem with requiring others to come before the Planning Board concerning a dock but not this applicant. He noted that there had been previous

discussion about the issue of docks coming before the Planning Board. There was discussion about whether there needed to be a condition of approval concerning this.

***Councilor Smith MOVED to approve the application for Site Plan and Condominium Conversion Submitted by Alexander Bakman for a 4-unit condominium for seniors located at 118 Piscataqua Road. Tax Map 11, Lot 24-4, in the Residence C Zoning District, with the condition that a formal application will be submitted to the Planning Board for approval of the dock expansion.***

Mr. Behrendt recommended that the condition of approval concerning a formal application for the dock should be put in as the first subsequent condition of approval. Councilor Smith said he was agreeable to this.

***Lorne Parnell SECONDED the motion, and it PASSED unanimously 7-0.***

**Notice of Decision:**

**Precedent Conditions**

- 1) Plan modification. Make the following modifications to the plan drawings:
  - a) Include a plan for a driveway turnout including a cross section to be approved by the Town Engineer. The turnout shall be:
    - i) on the right side of the driveway as one enters the property from Route 4
    - ii) just past the gate
    - iii) built of gravel
    - iv) large enough to accommodate a rectangle that can fit one passenger car (or larger vehicle), i.e. a rectangle at least 20 feet long and 8 feet wide, so that a driver can completely pull off, with curves to enter and exit.
  - b) Show a revised path - including switchbacks and erosion stone or other acceptable materials, and water bars, as appropriate, in steep areas; avoid desirable trees. The path is to be approved by the Town Engineer (with input from the Conservation Commission chair and Town Planner) after a site walk with the applicant.
  - c) Submit a plan showing appropriate erosion control measures for installation of the well, as appropriate, to be approved by the Town Engineer.
- 2) Plan notes. Add the following notes (or equivalent) to the plan drawings:
  - a) "For more information about this site plan, or to see the complete plan set, contact the Town of Durham Planning Department, 15 Newmarket Road, Durham, NH 03824. (603) 868-8064."
  - b) "All outside construction activity related to the development of this site is restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. Saturday".
  - c) Add approval block on each page of drawings for signature of Planning Department. It should read: "Final Approval by Durham Planning Board."

Certified by Michael Behrendt, Planning Director, \_\_\_\_\_  
Date \_\_\_\_\_”

- d) “Access into the site for fire apparatus must be maintained at all times during the construction process. This is the sole responsibility of the applicant/developer to maintain this access. Please contact the Fire Department at 330-7182 with any questions about access requirements”.
  - e) “All elements shown on the approved site plan must be properly completed prior to issuance of a certificate of occupancy, unless appropriate surety is placed with the Planning Department.”
  - f) “Note that this approval is for the site plan only. Life safety code and building code review will be required as part of the building permit process when the construction plans are submitted.
  - g) “The building shall be sprinkled as stipulated by the Durham Fire Department.”
  - h) “Vegetation in the vicinity of the driveway shall be kept clear to maintain emergency access for the Durham Fire Department.”
- 3) The applicant shall submit a plan to eradicate (as can be reasonably accomplished) the Japanese Knotweed, to be approved by the Durham Tree Warden in consultation with the Town Planner and the Chair of the Conservation Commission.
- 4) Obtain a permit or letter from NHDOT for the expansion of use.
- 5) Physically relocate the shed that is located near the lot boundary.
- 6) Meet all precedent conditions of the related 2-lot subdivision creating this lot and record the plat at the Strafford Registry of Deeds.
- 7) Remove the poison ivy on site/provide a reasonable treatment to control it
- 8) Sign this notice at the bottom.
- 9) Final drawings. The following complete sets of final approved drawings shall be submitted for signature (except the electronic version) by the Town: (a) one large set of mylars; (b) one large set of black line drawings; (c) one set of 11"x17" drawings; plus (d) one electronic version by pdf or CD. Each individual sheet in every set of drawings must be stamped and signed by the land surveyor, engineer, or architect responsible for the plans. (The primary set of plans was last received October 3, 2013.)

#### General and Subsequent Terms and Conditions

- 1) The well and path, which are located in the Durham Shoreland Protection Overlay Districts, are all approved herein. A separate application for the dock expansion must be submitted to the Planning Board and must be approved prior to the issuance of any certificates of occupancy.

- 2) Prior to issuance of any certificate of occupancy the Japanese Knotweed shall be effectively treated in accordance with the plan.
- 3) This Notice of Decision shall be recorded at the Registry of Deeds within 2 months of plan certification.
- 4) Site work. No site work may be undertaken until: a) all of the precedent conditions are met; b) the preconstruction meeting with Town staff has taken place; and c) all appropriate erosion and sedimentation control structures are in place. Contact the Planning Department to arrange for the preconstruction meeting.
- 5) As built. Three sets of full size (measuring at least 22" x 34") or black line paper plus one full size mylar plus 1 set of 11" x 17" plus one digital pdf copy of the as-built site plans (or "record drawings") stamped and signed by the Engineer or Surveyor are to be submitted to the Planning Department prior to issuance of the Certificate of Occupancy (or use/occupancy of the site where no CO is required). The as-built drawings must include the following language or equivalent: "This as-built drawing substantially conforms with the final plans approved by the Town of Durham Planning Board and certified by the Planning Department except for the following significant modifications: ....". If no significant modifications were made simply state "none". Otherwise, itemize the modifications on the as-built or on an accompanying letter.
- 6) Execution. The project must be built and executed exactly as specified in the approved application package unless changes are approved by the Town.
- 7) Approval. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
- 8) Violations. In the event of any violations of these conditions of approval or of any pertinent local, state, or federal laws – such as those regarding erosion and sedimentation control, wetlands, stormwater management, and general site development standards – the Town of Durham reserves the right to take any appropriate permissible action, including, but not limited to, withholding of building permits, withholding of certificates of occupancy, withholding of driveway permits, revocations of permits/approvals, referring violations to other agencies, and calling of bonds.
- 9) Other permits. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project. Contact the Durham Building Department at 868-8064 regarding building permits. Please also contact the Durham Fire Department at 868-5531 to ensure that the proposed building meets all Fire Codes.

10) Findings of fact. a) The applicant submitted an application, supporting documents, and plans for the project; b) The Planning Board held at least one public hearing on the application; c) The Planning Board accepted the application as complete on October 9, 2013; d) The Planning Board reviewed the application in accordance with state law, the Durham Zoning Ordinance, the Durham Site Plan Regulations, and other applicable law and found that the application meets all requirements (including any waivers, conditional uses, special exceptions, and/or variances that might have been granted); e) The applicant met with the Energy Committee to discuss the Energy Checklist and there were no particular items to include in this approval; f) The Conservation Commission recommended approval of the path and well; and f) The Planning Board duly approved the application as stated herein.

**IX. Mast Road.** Approved site plan under construction for 142-unit/460 bed apartment-style housing development. **Peak Campus Development, LLC.** Office Research/Light Industry Zoning District.

- A. **Public Hearing** - Cutting of trees along the multi-use path and possible remedies and review of proposed **Planting Mitigation Plan**.
- B. Proposal to locate gas line serving Peak project underneath the multi-use path and determination of appropriate review process.

Jonathan Barge of Peak Campus Development reviewed the mitigation plan that was proposed. He noted that he had worked on this with Conservation Chair John Parry and DPW Director Mike Lynch, and noted Mr. Parry's memo. He said a recent adjustment to the plan for the path compared to the original plan was to keep 4-5 trees near the Forest Service building.

Chair Wolfe noted the comment made about reviewing the path in a year, since a section of it would be hidden by conifers and so there might be a safety issue. Mr. Barge said Peak would address any safety concerns like this.

Mr. Lewis said a concern he had was that with some of the trees to be saved, some of the large limbs on them would need to be cut, which would make the trees look strange.

Ms. Pribble arrived at 7:42 pm.

Conservation Commission Chair John Parry thanked the Planning Board for having this important discussion. He said while it was a small area involved, some of the small areas were starting to add up, and said resolution of this issue was setting a good precedent for future developments. He said a fairly significant tree canopy, involving about 50 trees had been lost, but said the Conservation Commission was happy with the current proposal to plant about 20 new trees. He said a lot of natural vegetation would re-sprout,

which would be managed, and also said undesirable species would be removed. He said all of these things would help to restore the area that had been impacted.

He noted that the part of the path further down, in front of the Forest Service, was owned by UNH and leased to the Forest Service, which maintained the vegetation there. He said the path went through a small grove of conifers about 14 ft tall that the Forest Service had planted.

He said it had been hoped that the path could swing around these trees, and he provided details on this. But he said the way the path was laid out now, he was starting to think that about 5 of the trees on the outside row would need to be removed. He said perhaps tree planting could be done in further toward the Forest Service building to compensate for the trees that were lost.

Mr. Parry said there had been lessons learned from this process, and said one was to start to encourage the use of best management practices for protecting trees and other natural resources as much as possible with these types of projects. He said these practices didn't need to cost a lot of money, and also said they should be considered in the conditions of approval. He said a better job could also be done regarding recommendations on how wide the zone of clearing would be, and what the expectations were concerning this.

Mr. Parry noted that the path was a straight line, and said there was no reason the layout of a path couldn't be adjusted in order to work around natural and manmade features, in order to try to protect them. He also asked why the path had to be 8 ft wide, and Mr. Barge said that was because of the University snow plow.

Mr. Parry said it was important to promote the fact that natural resources had an economic value and weren't just pretty to look at. He said good air and water quality and good stormwater management increased property values, and said it was worth investing some money in protection natural resources.

Chair Wolfe said a concern was that bringing the path closer to the road meant taking out some trees and planting more later. He asked how the Board could allow flexibility for this in its approval. There was discussion. Mr. Behrendt said if Board wanted to provide flexibility concerning this, it should add one more condition to provide this. There was discussion. Mr. Barge said Peak had no problem with agreeing to have the path on the road side of the trees, and doing supplemental plantings inside to compensate for the trees that were removed.

Mr. Behrendt said this could be left up to Peak, Mr. Parry and Mr. Lynch to come to agreement on the final layout and arrangement of the trees. Mr. Barge said he was fine with this. It was agreed that University planner Steve Pesci would need to be involved with this discussion as well. Mr. Behrendt suggested language concerning this.

Ms. Tatarczuch asked if the language in condition #8 “Pursuant to discussions with UNH and Peak, Peak will attempt to coordinate annual walks along the path to address security and maintenance issues along the path.” would remain, and there was discussion.

Mr. Barge spoke briefly about the gas line issue. He said there was no gas service to the property yet, and said Peak was working on this with Unitil. He said Mr. Cedarholm had suggested putting the gas line under the path, and there had been discussion about getting an easement for this. But he said this process wasn’t working out, and said there would be a meeting next week to discuss putting the gas line within the road right of way.

**Bill Hall** said putting the gas within the road right of way wasn’t the way to go, and he provided details on this.

**Councilor Robin Mower, Faculty Road**, said she greatly appreciated the applicant's cooperation with the Town on the path issue, and said it was important to acknowledge the expertise of the Mr. Parry in helping Peak, The Town and the University find a resolution to this issue. She said if a professional had been hired to do this work, it would have cost thousands of dollars.

**Councilor Diana Carroll, Canney Road**, said she agreed with what Councilor Mower had said. She said Mr. Parry was a wonderful volunteer for the Town because of his knowledge and experience, and his willingness to share them. She said when she saw path, it had raised her blood pressure. She said she realized that because of what had happened, the Planning Board, Conservation Commission and Peak had to spend much more time on the path. She said when conditions of approval were followed, this could eliminate the extra work.

Councilor Carroll said it was very important to look at the trees and the other natural landscaping on a site early on in the development process, and to think about preserving them rather than considering them at the very end of the process.

She said Mr. Parry had been willing to be called upon by the Planning Board and other groups to provide his advice, and said this could be very helpful in the future. She said the words “will maintain” could mean different things to different people, and said it was important that this was well defined.

***Lorne Parnell MOVED to close the Public Hearing. Andy Corrow SECONDED the motion, and it PASSED unanimously 7-0.***

The Board agreed to keep condition #8 concerning security and maintenance.

Char Wolfe said there should be something in the conditions that stated that the prior conditions of approval for the site plan concerning the path should remain in full effect. Mr. Behrendt provided language on this.

Mr. Williams said that regarding what Councilor Carroll had said concerning maintenance meaning different things to different people, a question was whether the Board needed to be careful about that. There was discussion that the path was located on UNH property, so maintenance of the path was at UNH's discretion.

***Lorne Parnell MOVED to approve the new planting mitigation plan prepared by the Town Planner, as discussed, for Peak campus development LLC,..... Councilor Lawson SECONDED the motion***

There was detailed discussion on the importance of making sure that there would be coordination between Peak, the Town and UNH if further changes were proposed to the plan. Mr. Parry said he would make sure that this happened.

Mr. Corrow asked if the Planning Board could commit UNH to doing an annual check of the path. There was discussion, and wording for a condition on this was suggested. "Pursuant to discussions with UNH and Peak, Peak will attempt to coordinate annual walks along the path to address security and maintenance issues along the path."

***The motion PASSED unanimously 7-0.***

Mr. Behrendt asked the Planning Board whether if Peak decided it wanted to put the gas line under the path, this should come back to them. Mr. Parnell said he didn't think he had the expertise to address this, and said it was appropriate for DPW do address this. Chair Wolfe said he'd be happy to have the Technical Review Committee address the gas line, and Councilor Lawson agreed.

**Notice of Decision - Peak Multiuse Path – Amendment to approved plan for new planting mitigation plan**

The new planting mitigation plan ("Multi-use path landscape plan") is approved with the following conditions:

- 1) The plan is approved as submitted with the following modifications/clarifications.
- 2) Increase the caliper of the 3 maple species to 2" [This is the minimum caliper in the Zoning Ordinance for shade trees.]
- 3) Change Public Works Requirements #3 on the Plan to be approximately 5 feet on each side of the path.
- 4) There will be prolific sprouting in the area outside of the loamed/seeded strips. This sprouting can help that regarding-vegetate area, but it must be managed. A qualified person shall select desirable sprouts and saplings to keep, and by hand remove other undesirable vegetation and invasive species. This is to be done approximately June - July, 2014 and 2015. Peak shall provide reports, as appropriate, to the chair of the

Durham Conservation Commission (with copies to the Director of Public Works and Town Planner) about how this will be done and after it will be done.

- 5) Provide a plan for protecting trees to the chair of the Durham Conservation Commission with copies to the Director of Public Works and the Town Planner. The plan should include procedures for the protection of root systems on these trees (such as root pruning, limiting disturbance/compaction of soil, erecting a fence/barrier to keep equipment off root system).
- 6) Provide a plan to the chair of the Durham Conservation Commission, with copies to the Director of Public Works and the Town Planner, for the protection of other existing trees (Forest Service trees), as construction will pass very closely to these trees. The plan may include erecting fencing, root pruning with air spade, pruning of some conflicting branches would be beneficial (Forest Service staff can do branch pruning with notification of starting date).
- 7) If changes are proposed to the path layout, Peak, John Parry, UNH, and Michael Lynch shall coordinate the exact layout of the path including removal and restoration of trees. For any conifers that are removed from the land used by U. S. Forestry, these parties, above, shall coordinate on the planting of new trees on the U. S. Forestry land.
- 8) Pursuant to discussions with UNH and Peak, Peak will attempt to coordinate annual walks along the path to address security and maintenance issues along the path.
- 9) All prior conditions of the site plan and path remain in full force and effect unless superseded herein.

- X. Public Hearing** (continued)- **17 & 21 Madbury Road**. Formal site plan and conditional use application for “Madbury Commons,” a complete redevelopment of multifamily site known as “The Greens” for **mixed use project** with student/multifamily housing for 460 +/- residents, office/retail, and parking. **Golden Goose Properties**, Barrett Bilotta, Ken Rubin, and Eamonn Healey (applicant); Rose Lawn Properties, Laura Gangwer (owner of 17 Madbury); GP Madbury 17, Barrett Bilotta (owner of 21 Madbury); Michael Sievert, MJS Engineering (engineer); Shannon Alther, TMS Architects (Architect). Tax Map 2, Lots 12-3 & 12-4. Central Business Zoning District.

Ken Rubin of Golden Goose updated the Planning Board on the status of the application review process. He noted that at the last meeting, he’d spoken about facilitating this process, and wanting to make sure that all the parties concerned had an explicit list of what was required. He said the team met with Mr. Behrendt and ended up with a robust, comprehensive list of requirements of what needed to be done. He said it was hoped that they could go through this list at this meeting and subsequent meetings.

Mr. Rubin said the key items being provided this evening were:

- The construction management plan
- Refinements to the Landscaping plan

- Letters from the Energy Committee and the Conservation Commission indicating that both have worked closely with Golden Goose on various aspects of the project. He said Golden Goose believed that it had met their requirements.

Mr. Rubin said additional architectural details would be provided at the next meeting.

Chair Wolfe noted that he hadn't been at the last two meetings, and said in listening to the DVD of the meetings, he'd had heard that there had been several requests for a model of the buildings in relation to abutting properties, so people could get an idea of the mass and scale of the development. He said he personally couldn't really get an idea of what the development would look like until he could see this. He said the renderings, hadn't been very helpful, and said he would have difficulty voting on the application unless he could see the massing.

Mr. Rubin said Golden Goose had heard that concern, and had tried to respond with a new version of the elevations, from different angles. Chair Wolfe said he'd seen them, but said they still didn't do it for him. Mr. Rubin noted that at the second site walk, there had been a tangible review of the property using balloons. He said they could consider what more could be done in terms of modeling, and what was practical to do.

Chair Wolfe said this was a 2.5 acre lot, and would be the single biggest complex in the Town, so the Board needed to be able to see the impact it would have. He said the public had asked to see this. Mr. Rubin said Golden Goose would be happy to look at this again. He noted that the massing had been a persistent issue that had been raised. He said if the popular view was that more information on the massing was needed, the team would respond.

Councilor Smith said a problem some of them were having was that there was going to be a large building over ground level parking, and then buildings around it, and said it was hard to visualize how they would play together. He said he hated to slow the process down, and asked how long it would take to do what Chair Wolfe had asked for. Mr. Rubin said it could take weeks, and would throw the schedule off.

Ms. Tatarczuch asked if a 3D animated/virtual view of the development could be done by a computer. Councilor Lawson said he appreciated the excellent job done with the site walk to help them visualize the development. He also said if he was an applicant before the Planning Board, and Chair Wolfe said he needed to see a model, he would try to figure out how to do this. He encouraged Golden Goose to figure out how to do this.

Ms. Pribble agreed that a model could be helpful, among other things to allow people to see the development in the context of the buildings around it.

Mr. Rubin said Golden Goose would do some work on this. He asked that the Board alert the team now to other goal posts.

Chair Wolfe said this was the biggest project there would be in Town for a long time, and said the Planning Board wanted to make sure that it was done right. He said if a mistake was made, it would be massive.

Mr. Williams said he appreciated the point made about unintended consequences, which were possibly not reversible. He said a model could be very useful in providing some clarity.

There was discussion about the idea of getting an outside review of portions of the site plan. Mr. Behrendt said he and Chair Wolfe had discussed this today, given the fact that it was a very large project that would be located in the core of the downtown. He spoke further on this and there was discussion.

Mr. Behrendt said while they all shared concerns about the architecture because of the scale of the project, he didn't think outside help was needed to look at this piece of the project, because the particular architect involved was one of the most talented in NH. Councilor Lawson said he would be surprised if the architect wasn't using a 3 D printer, and said it perhaps would be a pretty reasonable thing for him to do a physical model, and do this in a timely manner.

Ms. Pribble said some of the concerns people had were a comparison of the development to adjacent properties, and said a model would allow them to see the physical size and mass of the proposed buildings, but wouldn't need to include much detail on the buildings themselves.

Councilor Lawson asked if there was a time frame concerning the completion of the fiscal impact analysis and the pedestrian study. Mr. Rubin said the fiscal impact analysis would be available by the end of January.

#### Construction Management Plan

Councilor Lawson said he didn't have the expertise needed to evaluate sections 1-6, and encouraged Mr. Behrendt to see if there were the resources to evaluate them and provide feedback to the Planning Board on them. He provided comments on Section 7.

- He said he didn't think construction related traffic should come down Madbury Road or the west side of Main Street, and suggested that it enter through Dover Road and Newmarket Road in order to keep the traffic on State roads..
- He said that concerning hours of operation, there was nothing in the plan that specified the periods when construction would occur, and said this needed to be provided. He said it would have an impact on surrounding areas.
- He said the plan indicated that there would be about 100 workers on the site, and said it was critically important that Golden Goose would have the responsibility to make sure that none of the workers would use public parking. He noted that this had been a big issue with other projects. He said the parking would have to be provided on the site or somewhere off site.

Chair Wolfe said most of the construction management plan looked like boilerplate, and was not specific to the site.

Mr. Sievert said the construction management plan had in fact been made specific to the site, starting with construction sequencing. He said it didn't yet address which way to bring construction related traffic in. Councilor Lawson said concern about amount of residential property on Madbury Road. but said he didn't have a better solution.

Concerning hours of operation, Mr. Sievert said they didn't know what they would be yet. He spoke further on this.

Chair Wolfe said again that his concern was that the construction plan didn't have a lot of detail. Mr. Sievert provided details on how the colored plan showed phasing and storage of materials on site, demolition, etc. He said he could add additional details to it on quantities, etc.

Ms. Pribble agreed that more detail was needed on the construction management plan. She said it would be good to provide more details on pedestrian safety because of the proximity of the development to the Middle School. She said a lot of kids walked to school.

Mr. Williams said the vehicles used for demolition and construction materials would be on Madbury Road one way or another. He asked for details on how many trucks there would be per day for how many days, and how much each would weigh. He asked if the Town's road infrastructure would be able to handle this. Mr. Behrendt said the numbers on this could be provided. He said sewer and water , gas mains, and road beds were designed to meet DOT standards, and said he could check with Mr. Lynch on this.

Ms. Tatarczuch said she agreed with what Ms. Pribble had said. She said the sidewalk was on Golden Goose's side of the street, and said construction would be going on for a significant length of time. She said perhaps a portion of the road could be made into a sidewalk so kids could be separated from the construction vehicles, and she also suggested that perhaps there could be a guard there for them.

Chair Wolfe asked if there was a way to protect the sidewalk so that it could provide egress. Mr. Sievert said the sidewalk would remain open for most of the project, noting that at some point, it would need to be closed so improvements could be made to it. He said when that was done, perhaps another location could be provided to allow people to get by.

Ms. Pribble suggested that perhaps construction workers could keep an eye on the passageways during those times when kids were crossing. Mr. Sievert noted that the new sidewalk on Garrison Ave was another possible pathway.

There was further discussion on details needed concerning the construction management plan. Mr. Sievert said the 3D model would help with looking at the overall project,

including how construction would be managed. He also said the DPW would review the construction plan, and DES would as well. He noted that because an alteration of terrain permit was needed, with over 100,000 sf of land disturbance proposed with the project, DES would scrutinize in detail the erosion control and stormwater management details in the plan. He said that as part of this process, there would be a review the drainage analysis, and said the construction sequencing would be looked at as part of this.

Mr. Sievert said a complete set of sewer construction plans would be reviewed by the DPW, and would also be reviewed by DES because the sewer line was being expanded and at least one sewer line was being added. He said a permit would be issued if the requirements were met. He said the Planning Board will see all of this.

He said an engineering consultant would do a water modeling test in regard to the increase in water with the project. He said the DPW was hiring the consultant, and would review the report and pass it on to the Planning Board.

#### Refinements to Landscape Plan

Landscape architect Robbi Woodburn said since the last meeting, she had gone over the plan with the Conservation Commission, had walked the site with them and gotten their input, and had refined the landscape plan based on this. She provided details on this

- Efforts will be made to save the trees on Madbury Road, and these trees are on the plan. These existing trees will be augmented with the planting of some large linden street trees.
- The trees in the parking area will be Bradford pear trees and honey locust trees.
- The Conservation Commission asked that protocol be included in the plan for general tree protection, and protection for specific large trees that would remain on the site. This is now on the plan.
- The approach for rehabilitating the brook, as well as the plant list, are now included on the plan. The decision on what plants will go where will be decided as plant material is removed from the shores.
- It is suggested that pervious pavers be used for driveways, like those used for a driveway at Hood House in a test project done in 2010 by the UNH Stormwater Center. There will be rust and gray brick colors in a pattern.
- No site furniture is shown on the landscape plan yet.
- The lighting plan is in the process of being developed.

Ms. Pribble confirmed that the invasive species would not be pulled from the area around the brook, and that an herbicide would be used to eliminate them. She also asked about long term maintenance of the landscaping, and there was discussion on this with Ms. Woodburn. Ms. Woodburn also explained that while there was a finite list of plants and a finite number of plants that would be planted, when the landscaping was actually done, there could be some differences from the plantings proposed right now. She said she would get a copy of the landscape plan to Mr. Parry, and said it should respond to all of the concerns he had listed.

Mr. Behrendt asked if the intent was that the roadway would have pavers. Ms. Woodburn said this was being discussed, and said it was a cost issue because it was a large area of pavement. Mr. Behrendt asked if it was necessary for the brick for the red area on the plan that was mainly a pedestrian area to be that thick. Ms. Woodburn said this area would also be used by service vehicles, and said the difference in thickness if a thinner brick was used wouldn't be much.

Mr. Behrendt said it was important that the roadway not be impervious, although noting that the perpendicular parking and the mouth of the corridor did need to be impervious. He said it was essential that the corridor/roadway would be a fabulous area that was very pedestrian friendly, and said a key strategy as part of this was to not have asphalt pavement and to use pavers. He said they provided a strong aesthetic benefit and also provided some traffic calming. Ms. Woodburn noted that if the decision was made to go with pavers for the parking areas, they could paint the pavers to designate parking spaces.

Mr. Behrendt said the sidewalk along the northerly section really needed to be sidewalk all the way through. There was detailed discussion on this, with Ms. Woodburn speaking about a possible bike lane as part of the design for the area. Mr. Behrendt said he thought it would be inappropriate to have a bike lane there, noting that this was a very dense area, and that most people would be walking. He said it was essential that there be sidewalks on both sides of the corridor, and said not having them could undermine the effectiveness of the area.

Mr. Rubin noted that the Energy Committee and the Conservation Commission had submitted letters concerning the project, but the Planning Board hadn't had a chance to look at them yet.

Councilor Robin Mower said the Energy Committee had sent a letter this morning that was a recap of its November 19<sup>th</sup> meeting. She said the Committee was very supportive of the ideas Golden Goose proposed, including the amount of bike storage as well as the leasing model where tenants wouldn't be charged directly for heat and electric, and these costs would be folded into the rents. She said the Committee believed that this would incentivize well-constructed buildings.

Councilor Smith said he was at the Energy Committee meeting where discussion on this took place, and said the Committee was quite satisfied with the project. Councilor Mower said the Energy Committee believed the leasing arrangement could serve as a model for upcoming projects because the paradigm really did need to shift. She said this project would also serve as a model in terms of the amount of bike storage that was proposed. She said it might be worth including this in the conditions of approval.

Mr. Rubin said that regarding bike management, Golden Goose had a vested interest in making sure that bikes were properly stored on the site. He said they didn't know exactly how many bikes to plan for, and would like to start with a reasonable assumption on this. He said if they needed to add more bike storage, they would do this.

Councilor Lawson said he realized that the applicant totally got it concerning the importance of providing bike storage. Mr. Rubin said they were taking a common sense approach, and would add as much bike storage as was necessary.

Mr. Rubin said a takeaway from this meeting was to do another pass at the Construction management plan and add more specifics to it.

Chair Wolfe asked members of the public to come forward to speak on the application.

**Bill Hall** said he expected that the roadbed would hold up under the construction trucks coming in to Town, but said he expected that the manhole near Pettee Brook Lane would fail. He spoke further about things to watch out for during construction.

**Melvin Bobick, Mill Road**, said he'd been a resident of Durham for 54 years, and said he shared Chair Wolfe's concern about the need to be able to visualize this project. He said he also agreed that outside experts should review the project if necessary.

**Beth Olshansky, Packers Falls Road**, said she was very visual but still thought that a 3D model was needed, and said it should be one that was constructed and not one that was done on a computer. She said she really appreciated the trees included in the landscape plan for Madbury Road, and said they would help hide the mass of the buildings. She asked for details on the diameter of the trees being planted there, and there was discussion. She also asked why driving up Madbury Road, there wasn't going to be a tree at the corner. Ms. Woodburn said there was an overhang of the building there so there was no room for a tree.

Ms. Olshansky asked about the view from the Pettee Brook parking lot, and Ms. Woodburn provided details on this. Ms. Olshansky said she wanted to make sure that when one looked toward the site from the parking lot, the mass of the buildings on the site would be broken up. Ms. Woodburn said she thought it would be for the most part. Ms. Olshansky encouraged the applicants to keep as many mature trees there as possible to break up the mass and recreate the character of the landscape.

**Andrea Bodo**, Newmarket Road, said she agreed that it was important to have a mockup of buildings, noting that people were always surprised when new buildings went up.

**Councilor Robin Mower** made several comments concerning the application.

- She agreed that a model was needed. She noted that with the 99 Madbury Project some years back, an abutter provided a 3D model that knocked the socks off people when they saw it. She said it was important that the model provide an idea of the pedestrian experience of the building height and the streetscape.
- She said she hoped the Planning Board would adopt the Conservation Commission's suggestions, and go further, when they drew up the conditions of approval.
- She asked that construction hours be limited, as Orion had agreed to. Councilor Lawson asked if she was concerned about noise from interior work, and Councilor Mower said it was just the exterior noise that was a concern.

- She said she would like the construction plan to make note of Faculty Road, and said she appreciated the suggestion that the Construction management plan require use of Route 108. She said she didn't think that going up Mill Road to Faculty Road with this project was appropriate.

**Councilor Diana Carroll, Canney Road** said it was very good that a 3D model was being asked for and said this was a proactive approach. She asked for details about the portion of a walkway on the site that was a tunnel. She said this tunnel design reminded her of two tunnels in Durham that were very different. She said one was at the Peter Paul Business School, which was called a bridge, and was beautifully done. She said the other tunnel was from A lot to the field at UNH, and said she was nervous about the tunnel on the Golden Goose site looking like that one. She encouraged the applicants to look at the Peter Paul building tunnel to see how welcoming it was.

Councilor Smith asked if any businesses would open onto this tunnel, and Mr. Bilotta said the plan was to make the interior area glass halfway through the tunnel so there would be additional storefront. He said the tunnel would be well lighted so wouldn't be intimidating to people going through it in the evening.

Councilor Lawson recommended that the Public Hearing should be continued. Chair Wolfe agreed, and said the hearing shouldn't be closed until much later in the process.

Mr. Behrendt noted that the applicant had requested an additional Planning Board meeting. There was discussion about the need for extra meetings given the nature of the project. Mr. Rubin said it would be most productive if the extra meeting took place on January 15<sup>th</sup>. Chair Wolfe noted that he wouldn't be able to attend that meeting, and there was further discussion.

***Councilor Lawson MOVED to hold an extra Planning Board meeting on January 15<sup>th</sup>, 2014. Lorne Parnell SECONDED the motion. The motion PASSED 5-0-2 with Chair Wolfe and Bill McGowan abstaining.***

Mr. Behrendt noted the possibility of the Interoperability Lab coming to the site, and Mr. Rubin said it wasn't appropriate to discuss this until he had something to say about it.

Break from 10:00 to 10:10 p.m.

***Lorne Parnell MOVED to continue the meeting indefinitely. David Williams SECONDED the motion, and it PASSED unanimously 7-0.***

- XI. Public Hearing (continued) - 25-35 Main Street.** Formal site plan application to redevelop three lots into a **mixed-use student housing project**. The proposal involves rehabilitating the houses at 25 and 35 Main Street, demolishing the houses at 27 and 29 Main Street, demolishing/relocating the barn in the rear, erecting two new houses fronting on Main Street, erecting two large new buildings, one in the rear and one

fronting on Main Street. **Orion Student Housing**, Bill Fideli and Philip Wills, applicant; Bob Clarke, Allen and Major, engineer; Lisa DeStefano and Adam Wagner, DeStefano Architects, architect; Tim Phoenix, attorney. Tax Map 5, Lots 1-6, 1-7, and 1-8, Central Business District.

Attorney Phoenix said the applicant was trying to narrow things down to what still needed to be accomplished as part of the review process. He noted that much of the concern expressed by the Town and Town staff about the project had been about how much commercial space there would be. He said it had been proposed that all four buildings on Main Street would be nonresidential, but said since the last Planning Board meeting, with Councilor Lawson's involvement there had been the suggestion that the project would be better received if the nonresidential use locations changed somewhat.

He said what was proposed now was that the big new building facing Main Street would be commercial in front, the two new buildings on Main Street would be commercial, and the two old buildings there would be rehabbed for residential use and would not be made into commercial buildings. He said Orion had agreed to do this.

Attorney Phoenix said it was believed that there were three significant issues that still needed to be addressed:

- ZBA approval will be needed, primarily for the percentage of commercial space being requested. There are also variances being requested concerning placement of a dumpster and building height, which the applicant believes they don't really need.
- Traffic engineer Steve Pernaw will look at the traffic analysis that was done. The plan is to remove 50 parking spaces from the site, which would reduce traffic and would reflect that the development would be pedestrian friendly. He said the applicant would pay a fee for not having the required number of parking spaces.
- The applicant will need to go back to the HDC for some final tweaks to the project.

Attorney Phoenix said Orion had both economic and construction windows it was trying to meet, and said those windows were starting to close. He said the company was anxious to do whatever it had to do to get approval of the application as soon as possible.

Chair Wolfe asked if Orion had specifics they would like to address now. He noted that Mr. Behrendt had identified several items. Mr. Behrendt said there no major items, and said they were things that could perhaps be addressed outside of the Planning Board meeting, including providing additional information. There was discussion, and it was noted that permeable pavers was one of the issues still to be addressed.

Chair Wolfe asked where commercial tenants would park, and Attorney Phoenix said there would be 4 spaces on the site. He said people would have to park and walk to the site. Councilor Smith asked what kind of commercial uses Orion thought would be satisfied with having 4 parking spaces.

**Trey Wills of Orion** said as was the case with most places downtown, people would have to use public parking. He said they couldn't say for sure yet what uses would go in

there. Councilor Smith said he appreciated this philosophy, but said most of the businesses downtown were within easy walking distance of public parking. He said this site was a little different.

Councilor Smith also said that realistically, one of the buildings proposed would be a 4 story building. Trey Wills said it was a 3 story building with a walkout. Architect Adam Wagner said the Zoning Ordinance said it was a 3 story building with a basement, and said by definition the basement wasn't a story. He said Mr. Johnson had agreed with this.

Mr. Behrendt said the wall of the basement floor didn't rise at least 50% above grade, so it was not considered to be a story. Chair Wolfe noted that this issue was on the list of Zoning changes for the Planning Board to deal with at some point.

Chair Wolfe suggested that a list of conditions of approval for the application should be started. He also asked what issues the Board hadn't discussed yet. Mr. Behrendt said the issue of whether 4 parking spaces were enough was worth talking about.

Mr. Parnell noted that information from the DPW on Utilities hadn't been received yet. Mr. Behrendt said he would get written memos from the Town departments concerning the application.

Mr. Parnell said he thought the Board should be in the position of finalizing its review of the application at the next meeting where Orion was on the agenda, and said if the information from Town departments was still going to be outstanding at that point, the Board's review of the application would be prolonged.

Mr. Behrendt said he thought he could have a set of proposed conditions of approval for the Board at the January 8<sup>th</sup> meeting. There was further discussion about needing to get memos back from Town departments, and Mr. Behrendt said he would give them a final date on which to provide the memos.

Chair Wolfe said there was nothing really earthshaking that needed to be done at this point. Mr. Behrendt said there were still a lot of small items still to be addressed. He said some of these items were things that Orion needed to finalize, and some were things he needed to get from Town departments. He said he wasn't hearing any real concerns from the Planning Board, and said if the Technical Review Committee could finalize its comments, he could have a draft set of conditions of approval ready for January 8<sup>th</sup>. He said the Board could perhaps take final action on the application that evening, or if they needed more time, they could do this on January 22<sup>nd</sup>.

Chair Wolfe asked members of the public if they wished to come forward to speak about the application.

**Judith Spang, 55 Wiswall Road**, said she said she felt Durham had started on a slippery slope regarding approval of projects that were grandfathered relative to their technical review/design review status.

**Councilor Robin Mower, Faculty Road**, said there had been no discussion about the lighting of the project, including the possibility of having dark sky lighting. Mr. Wagner said a photometric plan had now been included with the plans, which including cutoff lighting that matched the fixtures downtown. He said the light spillover went down to zero foot-candles from all property lines. He provided additional details on the lighting plan.

Councilor Mower made note of a recommendation from Conservation Commission John Parry regarding protection of trees during construction. She said she hoped the conditions of approval would be very specific about this.

She said she was pleased to see restricted construction hours in the construction management plan, and asked if it perhaps was necessary to lay out the hours in the conditions of approval, or if adopting the construction management plan was adequate.

***Councilor Smith MOVED to close the Public Hearing. Bill McGowan SECONDED the motion.***

Mr. Williams questioned whether it was essential to close the public hearing tonight, or if it instead could be left open so people would have one more opportunity to speak about the application. There was discussion. It was noted that the public hearing could be reopened if needed

***The motion PASSED 6-1, with Dave Williams voting against it.***

Orion granted an extension to the Planning Board to continue to review the application.

**XII. Public Hearing (continued) - 15 Madbury Road and 8 Mathes Terrace.** Design review for site plan for redevelopment of two lots for a three-story **mixed-use student housing development**. BAA Realty Acquisitions, LLC and EZT Holdings, LLC, c/o attorney Christopher Mulligan, applicant; **Kostis Enterprises LLC and Theodore Finnegan**, owners; Michael Sievert, MJS Engineering, engineer; Robin Wunderlich, building designer. Tax Map 2, Lots 12-5 and 12-6. Central Business Zoning District.

Michael Sievert of MJS Engineering said there was no change to the design since the last Planning Board meeting. He reviewed the design again in some detail, and said the layout met the Zoning requirements. Among other things, he noted that:

- Pedestrian and service areas
- There are zero setbacks here, and the impervious surface ratio allowed in the CBD is 100, but the project won't be built to the property lines, and will meet the new front yard setbacks
- Onsite parking is provided, around 5-8 spaces

- Adds pedestrian access – with a sidewalk down the northerly side of Mathes Terrace, fits there without going out to the roadway. Avoids pedestrian flow on the road itself. He noted there were 15 pedestrians counted there during the site walk
- 3 stories, and meets the height requirement, under 35 ft to the midpoint
- Decreases the density by 15% compared to a previous design
- Provides truck access in the back, provides dumpster area, which will become a pervious area. He said none of these structures need a variance
- Provides new municipal sewer to the building, and opportunity for others on Mathes Terrace to tie into it
- No basement living units; if there is a basement, it will be used for utilities
- Mechanical systems will be placed on the roof

Chair Wolfe said an ongoing concern about the project was that it would be located on a private right of way. He said he didn't know the legality of increasing usage on the right of way in proportion to other uses on it without some kind of agreement, and said this issue would need to be resolved.

Mr. Sievert said the applicant was working on this. He noted that there had already been increased use at other properties on the right of way, and said one of the uses saw 8000-9000 patients/year, which was a much bigger use than what was proposed with the applicant's building.

Chair Wolfe said he would need to see a legal memo on this. He said there were obstacles because Mathes Terrace was a private way. He asked who would regulate snow removal and do maintenance, and also noted that there was a sewer line under the roadway.

Mr. Sievert said the deed said maintenance was shared equally, and said since the applicant owned two of the lots on Mathes Terrace, he presumed that the applicant would do 2/5 of the maintenance. He said a full survey of the right of way down to the brook had been done, and said he would meet with the Town on this. There was discussion.

Chair Wolfe asked what the next step was for the applicant, and Mr. Sievert said an application could be submitted on December 18<sup>th</sup> in order to get on the agenda for January 8<sup>th</sup>.

Councilor Lawson noted that Chair Wolfe had said he would like to see a legal opinion, but suggested that what the Planning Board really needed to see was an agreement between the property owners. Chair Wolfe said that would be good, but said he wouldn't want the Board to proceed without the Town's attorney commenting on whether the usage of the right of way could be increased. He said there was a lot of case law on this kind of issue, and said what was proposed was probably an expansion. He also said this wasn't a normal right of way. He spoke further on this.

Mr. Sievert said the applicant's attorney said the project could go forward.

Mr. Williams said there were a substantial number of people who currently came and went to the businesses on Mathes Terrace. He said if there was doubt about whether there could be an agreement between all five property owners on using the right of way, this would cast a lot of doubt on proceeding with the application. He said he would hope that a negotiated solution could be found.

Ms. Tatarczuch said she had visited the site, and couldn't get her mind around how with a year of construction and the number of children that accessed Mathes Terrace to go to the businesses there, their safety could be assured. She said she would like to hear about a plan that would make the area safe and also not impact the successful businesses there.

Chair Wolfe asked if a chain link fence could be put up along the back of the property to make sure there was no harm to people using the right of way. Mr. Sievert said yes. There was discussion about how staging could possibly take place as the development proceeded. Councilor Smith said the chain link fence approach needed to be noted in the record.

Ms. Pribble said she was still stuck on the right of way issue.

**Councilor Diana Carroll, 54 Canney Road,** said she had thought a vote would be taken by the Board regarding the design for the project. She said this was not the project for that area, also stating that while the design was nice, it wouldn't look like this when it was built, and wouldn't work. She said she understood that the Planning Board needed to follow the correct process, but said it was hard not to be real concerning this design. She noted the 16 recommendations/guidelines Mr. Behrendt had put together, and said it indicated there were numerous challenges. She said these were not just challenges, and were problems.

She said sometimes they had to realize a project just wasn't going to work, and said she wished they were there now with this project. She said she didn't believe the project would be good for the Town. She said some of the 16 challenges Mr. Behrendt had listed were huge, and were enough to stop the project on their own. She said taking a lot of time to overcome then was a miss-use of energy and time. She said the scale didn't work, and said there was no place to put the snow in the winter. She also said those at the site walk saw the cars coming in and out, and she said the traffic there would increase incredibly if this project was built.

Councilor Carroll noted that Durham had been talking about economic development for several years, and she said there were two existing, very successful businesses on Mathes Terrace. She asked why one would want to jeopardize these businesses, and said this could happen in ways that couldn't be foreseen. She also noted that it wasn't known who the developer was, and said she found this very disconcerting. She urged the Planning Board not to move forward with the project.

**Judith Spang, 55 Wiswall Road,** said the message that should be left with the Planning Board was what Councilor Carroll had said. Ms. Spang noted her recent email about the

Town's interpretation of grandfathering for projects brought in just before a change in the Zoning Ordinance. She said developers were allowed to have informal discussions with the Planning Board with a conceptual design and also a design review, before putting in an application. She said the Legislature had decided that at the design review stage, the developer had put in a significant amount of money so should be grandfathered against changes in the Zoning Ordinance. She said it was pretty clear in the State Statute that this was what was envisioned.

She said her understanding was that this project was brought in with a back of the envelope design, including no decision on whether there would be one lot or two lots. She said at most it had been a conceptual design, and said she therefore didn't feel that the project was eligible for grandfathering from the Zoning Ordinance changes that were subsequently adopted.

Ms. Spang said her understanding was that Mr. Behrendt was trying to be fair to applicants, and was trying to adhere to a precedent that had been set in accepting less and less as part of the design review process. She said she didn't feel that if this went to court, the court would say that what was brought in was anything but a conceptual design. She noted that some other projects had been brought in the same way.

She said it was time for the Town put its foot down and not be engaged in this charade. She said there were a lot of changes happening in Durham, which she said she believed would continue, and said they couldn't allow developers and landowners to believe that as soon as there was a Zoning change, they could sketch out a design and say they would be grandfathered from it. She said the Board should consult with its attorney about this, and she spoke further.

**Megan Lenk, 12 Mathes Terrace**, said she managed the orthodontic practice she and her husband owned on Mathes Terrace, so was directly involved in the day to day operations there. She noted letters they had provided about their concerns. She said 33% of their patients come from Durham, Lee and Madbury, and 67% came from towns beyond this. She said 85% of patients were school aged, and 15% were adults. She said in addition to providing a high quality of service, their business relied on the ability to provide a convenient and pleasant experience and great customer service.

Ms. Lenk said the threat to their business came from things outside the business that might make a visit to Durham or their office unpleasant or inconvenient. She said she and her husband relied on the Town to maintain a reasonable downtown business environment, concerning trash, noise and unacceptable behavior, and to protect the access to their property. She said even temporary or partial obstruction of their private drive would be inconvenient or unsafe, and would harm the business.

She noted that many families relied on their children being able to walk to the dentist after school, and said the practice was intentionally located on Mathes Terrace for that reason. She said if the perceived safety of Mathes Terrace was threatened, this would be a huge loss to their business and to local families.

Ms. Lenk said patients traveling to the office needed to be able to turn onto Mathes Terrace and have an unobstructed drive into the private parking spaces there. She said she was glad there had been a site visit so people could see how professional offices and small scale student housing were working well together, on this charming piece of downtown Durham. She said the proposed project would make Mathes Terrace home to 50-60 additional people, and 1-2 commercial businesses. She said no matter how this was configured, it would have a dramatic impact on this small private drive.

She said the project as proposed threatened the businesses on Mathes Terrace, because its size and density weren't a good fit, the intensity was incompatible with existing uses, and the proposed density would increase problems with maintaining the professional business environment and open access on Mathes Terrace.

Ms. Lenk said there were 45-55 patient visits a day and said there was parking to accommodate them. She said there were usually 3-5 parking spots occupied by patients at any given time. She noted that the average length of treatment was 24-27 months.

Councilor Lawson asked what the percentage was of kids walking to the business from the Middle School and High School. Ms. Lenk said a good portion of Oyster River families walked there after school and parents later picked them up. She also said a lot of people, including Oyster River students and college students walked on Mathes Terrace and crossed the bridge, heading further downtown.

Mr. Williams noted the Golden Goose project proposed nearby, which was substantial, and asked Ms. Lenk if she had a sense of what the construction there would do in terms of impacting the practice. Ms. Lenk said she didn't know about this, but did know that the 9-11 Madbury Road project was a constant challenge because workers were constantly coming onto Mathes Terrace. She said there were months when patients either couldn't get into the parking spaces or couldn't get out of them, and said she hoped that this wouldn't happen with the Golden Goose project.

**Jason Lenk, 12 Mathes Terrace**, provided details on how difficult it would be to build from the back and not spill over into the road and inconvenience people. Ms. Tatarczuch said if a patient vehicle was stuck there, a question was whether there would be help from the police, since Mathes Terrace was a private way. There was discussion

Mr. Lenk provided details on the problems with construction workers' cars parking in the business's parking spaces as a result of the construction projects downtown in recent years, and said he had asked the police to respond to this at times. He said this had been a big problem, and explained that it was a trespassing issue because the cars were parked on his property and not in the right of way.

He said if the applicant thought the project was a winner, a formal application should be brought forward. He appealed to the Planning Board to recognize that there was a community value to the work his practice did, and that protecting the business

environment was a big part of helping to sustain the services it provided to the Town. He asked the Town to stand behind businesses like his, and to not allow them to be overrun by students.

He said it was the college life style that wasn't compatible with a professional business environment. He said this was a great opportunity for Mathes Terrace to do something tasteful, inspired and pleasing. But he said the applicant was set on doing something that was large, and said the footprint overwhelmed the quaintness and the potential that existed there. He said if the project went forward, it would ruin the feel there, and said it would be hard to work next to the party for too long.

Mr. Lenk said a question was where there was in Durham that had parking, visibility and charm that wasn't under threat from the unwanted student behavior. He said he and his wife had hoped they had found this, and were hoping to be able to preserve this. He said he would feel better about this project if he felt there was a good faith partner, but said he didn't feel there was one at this point. He noted an incident with surveyors recently during the holiday.

He said their prosperity as abutters was at odds with both the building as well as 60 residents, which he said would smother the business climate and damage their business over the long term. He said smaller was better, and said they would love to see something that would fit. He noted that Dr. Rutter was of a similar mind on this. He said the neighbors on Mathes Terrace had been making it work for everyone, for 113 years.

Mr. Lenk said they had 3-6 patients in the building at a time, so scheduling was really important. He said they had to run the business on time. He spoke about the idea of having a safety officer, which would cost \$50/hour, and said this person could keep the peace and also ensure safety. He said a safety officer would need to be an integral part of any agreement that was reached with the applicant. He said what was missing from the drawing of the design was the congestion on Mathes Terrace, and he noted that snowplowing was already a challenge there. He said there would have to be snow removal if the project was built.

**Emily Smith, 17 Orchard Drive**, thanked the Planning Board and Mr. Sievert for the site walk. She said she had never been to Mathes Terrace before, and was stunned about the expectation of what could be done with that space. She noted that the Conservation Commission had spoken about being pleased with developers who showed creativity and flexibility, but she said Mr. Sievert had brought back no changes from what had been provided before. She said she was curious that they didn't know who the developer was, and asked if that was legal.

She said the discussion with Golden Goose about construction management was useful. She spoke about this, and said she didn't hear anything about this concerning this project, and didn't hear about bike racks or lighting.

Ms. Smith noted the option available for developers to reimburse the Town so they didn't have to provide parking spaces, and said she was really concerned about what this would mean down the road.

She said the cumulative scale of development in Town was getting quite scary. She said she was glad to see the scale model of Madbury Commons. She noted that at the site walk today, the distance between the back of the Madbury Commons buildings and the back of the Mathes Terrace project was about 12 feet. She said within that space, there was a rise of 4 ft. She also said there were two lovely trees there, one of which would go. She said this project would add only misery to the Town.

Mr. Lenk asked Mr. Sievert about the number of students proposed, and the plan for stormwater runoff. Mr. Sievert said there would be 60-62 students, and said stormwater falling onto the building would be collected into gutters that would drain to an underground system, which would tie into the Town's drainage system. He also said they would try to leave a green area on the site, and would use pervious pavers for the whole paved area in the back. He noted that the stormwater management system hadn't been designed yet. He said the sewer would come up Madbury Road and extend down Mathes Terrace.

**Beth Olshansky, Packers Falls Road**, noted that Councilor Carroll saw the positive in everything, but said the tone in her voice this evening should alert them to the fact that there were some very serious problems with this project.

She said she had thought the Planning Board would give recommendations to Mr. Sievert about whether or not to bring this project forward.

Ms. Olshansky noted the purpose statement in the Zoning Ordinance, and highlighted particular words and phrases in it:

The provisions of this chapter are intended to regulate the use of land for the purpose of **protecting the public health, safety, convenience and general welfare of the residents of the Town of Durham**. This chapter is adopted in accordance with and in order to implement the Master Plan and other policies **designed to promote the orderly growth** of the Town of Durham. Among other purposes, this chapter is specifically adopted to preserve air and water quality; to conserve open space and agricultural resources; to protect natural and scenic resources from degradation; to provide for recreational needs; to protect life and property from flooding and other natural hazards; **to preserve historic sites and structures; and to ensure that development is commensurate with the character and physical limitations of the land**. Further, this chapter is designed to ensure that the timing, location and nature of new development takes into account the immediate and long-range financial impacts of proposed uses and enhances the achievement of the town's economic development goals.

She said this was not a situation where orderly growth was proposed. She said there were thriving businesses serving the community, and a huge project that was obviously going

to threaten these businesses. She said they needed to look at what they were doing as a community. She said the reason the Zoning Ordinance was changed in the beginning was to allow denser student housing and thus redevelopment, in order to bring in more commercial businesses that would serve the residents' needs.

Ms. Olshansky said there were two businesses on Mathes Terrace that did serve the community, and they seemed to want to bend over backwards to bring in student housing, which would really damage those businesses.

She also said the fact that they didn't know who the developer was troubled her. She said Durham was a small community that prided itself on having an open government and transparency. She noted other developers in recent years that had been willing to build a relationship with the Town. She said this developer seemed to have something to hide, and said she didn't know how one could assume otherwise.

Ms. Olshansky noted that Ms. Spang had mentioned the premature entry of the project into the design review stage in order to get grandfathering. She said on June 26 the project came before the PB without any specific design or engineering details that were required by the RSA and the Durham site plan regulations. She said they didn't even know whether there would be one lot or two lots at that point.

She said the result of the supposed grandfathering was that they now felt they had the right to create these tiny units, which the Town had already decided it didn't want. She said Golden Goose and Orion, who were also grandfathered had chosen to build bigger units because this was what the market was asking for. She said she didn't know how more units, which didn't meet the Town's standards, could be condoned.

She said in the fall, when Administrator Selig came before the Planning Board to discuss the Budget process, he noted that there wasn't a lot of land available downtown. She said they therefore needed to make sure that every project was a quality project, and said she hoped the Planning Board would consider this.

Ms. Olshansky said there were many legal and practical issues concerning the private way that seemed hard to resolve, and said the whole project didn't make sense in terms of orderly growth. She also said it didn't meet the architectural design standards because it wasn't in harmony with the Mathes Terrace neighborhood. She noted that the drawing showed how the building(s) would connect with Golden Goose, but didn't show how it would connect with the quaint buildings on Mathes Terrace.

She said the developer would cut down almost all of the trees on the site and would pave over everything but a tiny bit of lawn in the front. She said the community deserved better, and said there were a number of reasons why the Planning Board should discourage the developer from coming forward with an application for this project.

Chair Wolfe said a lot of the comments received would need to be addressed when and if a formal application was received. He said the purpose of the public hearing as part of this design review was for people to be able to comment on the design for the project.

Ms. Olshansky said design wise, the project was too big.

***Lorne Parnell MOVED to close the Public Hearing. Councilor Lawson SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Parnell noted the comments the Planning Board had heard, and also said he'd found the site walk to be very enlightening, noting that they had seen a lot of traffic and congestion in the area, with young kids going to the dentist, students living there who were parking their cars, etc.

He said there was no way as things stood now that he could approve the project. He said the idea of putting 60 students in that area would create an impossible situation, and said construction and operation would be difficult. He said he realized that this was not a formal application in front of the Board, but said if the same project came forward as an application, he would vote against it. He said he had no suggestions on what could be done to improve the project. He said if this was the common view on the Planning Board, he didn't think the applicant should be spending a great deal of money on it.

Councilor Smith thanked Mr. Parnell for his words.

Councilor Lawson said the scale of the project was problematic, and said he was terribly concerned about safety issues, especially during construction. He also said he saw a lot of problems with shoe-horning something like this into this area and neighborhood.

Chair Wolfe noted that there were a lot of heads around the table that were nodding in agreement, and he asked Mr. Sievert to make his client aware of this.

Mr. Sievert was asked why, when there was some opposition to this project, and two dozen significant problems with the project, his client was determined to go forward.

Mr. Sievert said he would report back to his client on what the Board had said.

### **XIII. Other Business**

### **XIV. Review of Minutes:**

September 25, 2013  
October 2, 2013  
October 9, 2013

The review of these Minutes was postponed.

**XV. Adjournment**

*Linda Tatarczach MOVED to adjourn the meeting. Andy Corrow SECONDED the motion, and it PASSED unanimously 7-0.*

Adjournment at 12:05 pm

Victoria Parmele, Minutes taker

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Andrew Corrow, Secretary