

These minutes were approved at the August 12, 2015 meeting.

DURHAM PLANNING BOARD
Wednesday, June 24, 2015
Town Council Chambers, Durham Town Hall
7:00 p.m.
MINUTES

MEMBERS PRESENT: Peter Wolfe
Lorne Parnell
Bill McGowan
Steve Roberts
Councilor Julian Smith, Council Representative to the Planning Board
Wayne Lewis, alternate
Barbara Dill, alternate
Councilor Kitty Marple, alternate Council Representative to the Planning Board

MEMBERS ABSENT Andrew Corrow, Chair; Richard Kelley; Linda Tatarczuch, alternate

I. Call to Order

Mr. Wolfe called the meeting to order at 7:02 pm. He noted that Mr. Corrow was away, and said he would Chair the meeting temporarily.

II. Seating of Alternates

Chair Wolfe seated Mr. Lewis in place of Mr. Kelley, and Ms. Dill in place of Mr. Corrow.

He said the Board needed to elect a Vice Chair. After discussion, and in the absence of Mr. McGowan, Mr. Parnell agreed to serve as Vice Chair for one year only.

Councilor Smith MOVED to nominate Lorne Parnell as Vice Chair of the Planning Board. Peter Wolfe SECONDED the motion.

Mr. McGowan arrived at the meeting at 7:05 pm.

Lorne Parnell MOVED to nominate Bill McGowan as Vice Chair of the Planning Board. Councilor Smith SECONDED the motion.

Councilor Smith asked Mr. McGowan if he would be able to be present at the start of most meetings, and Mr. McGowan said yes.

The motion PASSED unanimously 7-0.

Mr. McGowan took over as Chair for the meeting.

III. Roll Call

The roll call was taken. Mr. Behrendt said Mr. Corrow, Mr. Kelley, and Ms. Tatarczuch would not be at the meeting. Among Board members present was newly appointed Planning Board member Steve Roberts.

IV. Approval of Agenda

Councilor Smith said he wasn't ready to discuss the project concerning his property, so would like to pull it off the Agenda.

Councilor Smith MOVED to adopt the Agenda, with the deletion of Agenda Item XVII. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

V. Town Planner's Report

In answer to a question by Mr. Behrendt, Councilor Smith recommended not setting a date yet for the Planning Board to hear about his project.

Mr. Behrendt announced that Steve Roberts would be filling the unexpired term of David Williams through the spring of 2016. He noted that Mr. Roberts had previously served on the Planning Board for a number of years.

Mr. Behrendt explained to members of the public where various materials the Planning Board was looking at could be found, especially on the Town website in conjunction with scheduled meetings.

He also reviewed the Planning Board's policy for emails. He said emails sent in after the packet went out on the Friday before a meeting were only reviewed by Board members as time permitted, so it was best to submit something in writing by that Friday. He said it was realized this could be challenging because this was when the agenda was finalized, but he noted that there was a preliminary agenda as well.

He said the owners of two properties on Mathes Terrace planned to consolidate and rework two parking areas, and he noted that this would be exempt from site plan review because they were single family dwellings.

Mr. Behrendt said that concerning the Lodges agenda item, it was thought that it would make sense to hold the public hearing and then close the hearing and postpone discussion and a decision until the July 8th meeting. He noted that there was a busy agenda this evening, and also said it was prudent to wait until Mr. Corrow was back. Mr. Parnell suggested that the Board should wait to see how to proceed until after it got to this agenda item.

VI. Reports from Board Members who serve on Other Committees

Mr. Parnell said the Economic Development Committee met recently and said most of what was discussed would be discussed this evening. He also said he attended his first meeting of the Traffic Safety Committee.

Ms. Dill said she attended the recent Conservation Commission meeting, and said some of the things discussed there would be discussed this evening.

VII. Public Comments

Diane McCann, Oyster River Road, said she was confused about the purposes of easements, and if they were incorporated into planning for managing traffic in Town. She noted easements in the Oyster River Road area, and said she wondered if they were being used or not.

Mr. Behrendt said in general, unless the Town was party to an easement, it was a contract between private parties. He noted some of the purposes of easements. Ms. McCann said in other words, it would be up to the neighborhood as to what was done with the easements. Mr. Wolfe said easements were legal documents, and he recommended that Ms. McCann look at the grantors/grantees, as well as the terms of the easements.

Bill Hall asked if Planning Board members could receive emails during a meeting. There was discussion about whether there was a policy for this. It was noted that this hadn't happened at a Planning Board meeting. Mr. Parnell said if an email came in during a meeting, it wouldn't be distributed.

VIII. Review of Minutes (Old):

February 25, 2015

Page 9, line 1 should say "Bencks"

Page 14, line 14 should say "Bill McGowan"

Councilor Smith MOVED to adopt the February 25, 2015 Minutes as amended. Peter Wolfe SECONDED the motion, and it PASSED 3-0-4 with Lorne Parnell and Wayne abstaining because they were not at the meeting, and Steve Roberts and Barbara Dill abstaining because they were not on the Planning Board at that time.

IX. Public Hearing - Edgewood Road and Emerson Road Subdivision. 4-lot subdivision and boundary line adjustment and conditional use for a wetland crossing, a road widening, and construction of a shared driveway in the Wetland Conservation Overlay District. Jack Farrell, applicant. County Line Holdings, LLC and Mark Morong 1991 Trust, owners. David Vincent, surveyor. Map 1, Lot 15-0. Residence A Zoning District. Recommended action: Discussion and continuation.

Mr. Behrendt said there were some clarifications and additional information needed for the plans, including the locations of utilities, wetland setbacks, proper cross sections for the Class VI road and the shared driveway. He said he and Mr. Farrell thought it made sense to keep the review at the staff level until everything had been submitted.

He recommended tabling the application with a number of conditions, and said Mr. Farrell had agreed with them. He said the plan would be to get sign offs from staff and bring this back to the Planning Board. He recommended that no specific date on this be set, and that if it didn't come back to the Planning Board by November, the application would be null and void.

Councilor Smith considered whether there might be some members of the public present who had come to speak at this public hearing. Mr. McGowan said he thought it should be opened.

Councilor Smith MOVED to open the Public Hearing. Lorne Parnell SECONDED the motion

Mr. Roberts said he would recuse himself because he hadn't been at meetings where this application was discussed.

The motion PASSED unanimously 6-0.

There were no members of the public who came forward to speak.

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

Councilor Smith MOVED to Table the Application, with the conditions from the Town Planner's recommendations dated June 24, 2015. Peter Wolfe SECONDED the motion and it PASSED unanimously 6-0.

- X. Public Hearing - Mill Plaza Redevelopment. Design Review** (preliminary application) for significant redevelopment of Mill Plaza Shopping Center site including commercial space (existing and new), an addition to the existing Durham Marketplace building, new buildings, 442 beds in new residential buildings, greenspaces and plazas, and change in the layout and number of parking spaces. Colonial Durham Associates, LP, c/o John Pinto, owner. Sean McCauley, representative. Joseph Persechino, Tighe & Bond, Design Engineer. Adam Wagner, DeStefano Architects, Architect. Tax Map 5, Lot 1-1. Central Business Zoning District.

There was detailed discussion with Attorney Dietel, representing Colonial Durham Associates, about the wording in Mr. Behrendt's recommendations on the timing of the applicant coming back to the Planning Board. Mr. Behrendt said he would provide clarified language on this.

Councilor Smith MOVED to open the Public Hearing. Lorne Parnell SECONDED the motion, and it PASSED 5-0-2, with Steve Roberts and Peter Wolfe abstaining.

Bill Hall said the published drawing he had of Mill Plaza showed a 50 ft sewer right of way. He said the plans for the property showed a building on it, and said he was amazed at why the Board would consider receiving this application when it violated the right of way.

Beth Olshansky, Packers Falls Road asked that the Board clarify the status of this proposal, and why it was on the agenda when it was tied up in court.

Mr. Behrendt noted that the 600 sf per occupant issue was being appealed in court, and said depending on the outcome, the applicant had expressed a desire to continue the preliminary design review application. He said doing this would protect him from any additional Zoning changes. He said once the design review process was closed, the applicant would have 12 months to submit a formal application and still be protected. He said the Planning Board was advised by legal counsel that the appropriate way to handle the situation was to allow the applicant to maintain their rights to design review to 30 days after expiration of appeals.

Robin Mower, Faculty Road, asked if the case in Superior Court was scheduled for July 16th. Attorney Dietel said it might be pushed out, as the applicant had requested, and he provided details on this. Ms. Mower said her understanding was that the reason issues such as what Mr. Hall had raised had not been addressed by the Planning Board was because of the outstanding legal questions. She asked if access issues, etc. might be considered by the TRG prior to the application coming to the Planning Board. There was discussion on this with Mr. Behrendt.

Councilor Smith MOVED to close the public hearing. Lorne Parnell SECONDED the motion and it PASSED 6-0-1, with Steve Roberts abstaining,

Lorne Parnell MOVED to Table the Design Review application based on the conditions in the Town Planner's note dated June 24 2015, as amended to clarify it.

Mr. Behrendt said the note would state that as long as the applicant submitted in writing a request by the 30 day expiration, it would be placed on the agenda of the next Planning Board meeting.

Councilor Smith SECONDED the motion and it PASSED 6-0-1 with Steve Roberts abstaining.

- XI. Public Hearing - River's Edge Apartments – Merging of apartments.** 277 Main Street. Application regarding an approved site plan for a 48-unit multi-dwelling project with 114 occupants/beds. An amendment to the approval for all two-bedroom units and a conditional use –required to expand a nonconforming use - to consolidate two pairs of two-bedroom dwelling units into two four-bedroom dwelling units. Ralph Pavone c/o Rivers Edge LLC, property owner. Tax Map 9, Lot 8-2. Office Research/Light Industry Zoning District. Recommended action: Approval with conditions.

As he had done at the previous meeting, Mr. Pavone explained his proposal to consolidate two pairs of 2-bedroom units into two 4-bedroom units. Chair McGowan noted that the total occupancy as a result of this would not change.

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

Diane McCann, Oyster River Road, asked what the advantage was of making this change.

Mr. Pavone said for some reason, the students liked living in 4 person apartments.

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

Mr. Behrendt read through the draft conditions of approval, and recommended that the application be approved.

Councilor Smith MOVED to approve the Application.

There was no Second to the Motion.

Mr. Wolfe said the Planning Board needed to deal with the Conditional Use portion first, since the use was not permitted now in the ORLI District.

Chair McGowan read through the Conditional Use criteria with the Planning Board, and the Board agreed that all of the criteria were met.

Councilor Smith MOVED to approve the Conditional Use Application submitted by Ralph Pavone c/o Rivers Edge LLC required in order to expand a nonconforming use. Peter Wolfe SECONDED the motion, and it PASSED unanimously 7-0.

Councilor Smith MOVED to approve the Notice of Decision for an Amendment to the approved Site Plan submitted by Ralph Pavone c/o Rivers Edge LLC for all two-bedroom units, by consolidating two pairs of two-bedroom dwelling units into two four-bedroom dwelling units. The property involved is located at 277 Main Street, Tax Map 9, Lot 8-2, in the Office Research/Light Industry Zoning District. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

- XII. Public Hearing - 15 Madbury Road – Conversion of Solarium.** A conditional use to expand a nonconforming use –slightly enlarging and closing in a glassed-in solarium. Residence, single family is not permitted in the Central Business District. GP Madbury 15, LLC, c/o Ken Rubin and Fred Kell, property owner; Mike Sievert, MJS Engineering, Design Engineer. Central Business District. Tax Map 2, Lot 12-5.

Mr. Wolfe noted that he was Mr. Sievert's neighbor. No concerns were raised by the Board about Mr. Wolfe or Mr. Roberts being seated members for this application. Councilor Marple recused herself from participating in the discussion.

Councilor Smith reviewed the details of what the applicants previously had told the Planning Board concerning the solarium and the proposal to replace it. Mr. Bilotta said it was felt that removing the solarium would make the building look better, and more normal in its historical context. He said they were before the Planning Board for the technical reason that the solarium had not been heated, so adding heat and electric meant it was considered habitable space.

Mr. Sievert said a change to the plan since the last meeting was the removal of the interior door between the main portion of the house and what was now the solarium. He said the opening there had also been widened, and said the area would be open to the living room. He said the revised plan had been submitted, and noted that there would be the same 138 sf that existed today.

Councilor Smith MOVED to open the Public Hearing. Lorne Parnell SECONDED and PASSED unanimously 7-0.

No members of the public came forward to speak.

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

Chair McGowan read through the Conditional Use checklist. Concerning the noise criterion, Councilor Smith asked for assurance that there would be no greater external impacts than was currently the case. Mr. Bilotta said there would be no greater external impacts than was currently the case.

Councilor Smith MOVED to approve the Conditional Use Permit application submitted by GP Madbury 15, LLC to expand a nonconforming use –slightly enlarging and closing in a glassed-in solarium. The property is located at 15 Madbury Road, Tax Map 2, Lot 12-5 in the Central Business District. Wayne Lewis SECONDED the motion and it PASSED unanimously 7-0.

Peter Wolfe MOVED to approve the Notice of Decision prepared by Mr. Behrendt. Councilor Smith SECONDED the motion and it PASSED unanimously 7-0.

- XIII. Public Hearing - The Lodges – Addition of Beds and Landscaping.** 259 Mast Road. Application for amendments and conditional use to add 26 beds and landscaping and make other changes to the approved site plan for a 142 unit/460 bed housing development. A conditional use is needed to expand residence, multi-unit, a nonconforming use. Peak Campus Development, LLC, c/o Jonathon Barge and Jeff Githens, developer. Tax Map 13, Lot 6-1. Office Research Light Industry Zoning District.

Mr. Githens spoke before the Board and provided details on what was proposed. He said they were requesting to be allowed to have 26 additional beds, which would increase the number of occupants allowed in the original site plan from 460 to 486. He said with this proposal Peak had also created a new landscaping plan to enhance the existing landscaping around the site, especially on the western border of the property in the area of the retaining wall as well as on the southern part of the site adjacent to the Mast Road right of way. He said the landscaping plan was the result of a collaborative effort, where there was a lot of input from constituents, as well as their endorsement.

He noted questions about whether there was sufficient demand for the additional beds that were proposed. He said the Lodges was at 100% occupancy for the fall, and had

demands on a regular basis for occupancy that they couldn't accommodate. He said this was new data, and indicated there was unmet demand in the market. He said what Peak proposed would provide supply in a way that wouldn't impact the Town. He said all that would be required was a change in furniture, and said there would still be adequate parking. He noted that what was proposed was a future alternative, given the current leases.

Chair McGowan asked if Peak could go above 460 occupants in terms of the Zoning Ordinance. Mr. Behrendt said yes, but said this would require an amendment to the original Site Plan and Conditional Use Permit. He also said the Board would need to approve allowing the amount of parking to be less than one space per resident.

Chair McGowan said the density proposed now was still less than what Peak could do, which meant that they might come back to ask for another expansion. He noted the issue of all of the other new student housing developments in Town. Mr. Behrendt said Peak could ask to expand, but said it would generally be a high burden of proof, also noting that the use was no longer allowed in the ORLI district. He said this was somewhat of an unusual situation.

Mr. Githens said density was tied to the square footage allowed per unit, and said based on the usable area, Peak originally could have asked for a larger number of units. He said they weren't asking to expand the density, but were asking to be able to increase the number of occupants defined on the site plan.

Councilor Smith MOVED to open the Public Hearing. Wayne Lewis SECONDED the motion, and it PASSED 6-0-1 with Steve Roberts abstaining.

Ute Luxem, Ross Road, asked how many sf per bed would be available per student. Mr. Githens said the Zoning Ordinance required 200 sf of habitable floor area per resident, and said Peak would provide 251 sf per occupant. Ms. Luxem noted that currently the Zoning Ordinance requiring 600 sf per resident in the downtown area for multiunit housing. She said it was unreasonable to give Peak permission for the increase in beds, when one looked at what was being required of other applicants with new projects. She said she understood that people wanted the landscaping to be done, but urged the Board to look at the greater picture. She said allowing these additional beds would provide significant cash flow for the developer. She said if the landscaping issue was at the heart of all of this, perhaps the Town should take some of the income this property was generating and do the landscaping itself.

Beth Olshansky, Packers Falls Road, said she was there to urge the Planning Board to support the proposal for several reasons. She noted the large outcry from residents, including a letter from 351 residents, concerning the negative impacts of the development on the scenic gateway along Mast Road. She said there was great interest in remediating what had been a troubling oversight by everyone.

She said she'd been on the committee that worked with Peak to help design the landscaping plan, and she noted that John Parry was a consultant regarding the trees to be planted, and supported the plan. She also noted that Peak had offered to move the volleyball court so trees could be planted that would grow to a size that would provide a buffer. She spoke further about some of the landscaping details. She thanked Peak for their work on the plan.

Ms. Olshansky said that regarding the 26 additional beds proposed, the request met the Conditional Use criteria, including the preservation of resources. She also said there was no new construction so there would be no external impacts. She said it would be a win for the community and for Peak, and noted that there would be an increase in the assessed value of the development with the additional beds.

Nancy Webb, Woodridge Road, read written comments from **Ellen Karelitz, Madbury Road**. Ms. Karelitz said she was very much in favor of a landscaping plan to improve the "curb appeal" of The Lodges. She said she especially would like to see trees planted to hide the side of the development from view as one approached Durham from Lee. She asked if there was a way to attractively hide the heating/air conditioning units currently tethered to the fronts of the "cottages".

Ms. Webb asked when the planting would occur, and Mr. Githens said it would be done in the fall of this year or perhaps sooner.

Ms. Beth Olshansky said much of the view of the heating and air conditioning units would be shielded with the current plan.

Robin Mower, Faculty Road said while planting in the fall was a good idea, the availability of specimens would be greatly diminished at this time of year. She noted that she'd been part of the discussion on plantings at Madbury Commons.

Diane McCann, Oyster River Road, said she was in favor of making some lemonade concerning the Peak project. She also said she would like some assurance that there wouldn't be any other beds in the future.

Mr. Githens said the original requested increase was greater than 26 beds. He said there was still existing capacity to increase beyond this, but said practically speaking Peak would run up against parking constraints and operational headaches. He also said it was very unlikely that the Planning Board would approve the increase in the future.

Ms. McCann asked how the increase in the density of the students would affect the breakage of furniture, etc. Mr. Githens said Peak hadn't seen a greater degradation of 3 bedroom units as compared to 2 bedroom units. He said an increase in density at some point would have an impact, but said this was a minor addition proposed.

Diana Carroll, Canney Road, said she would like to urge the Planning Board to vote in favor of what was proposed, which was a negotiated compromise. She spoke in some detail on this, and said the Lodges would be substantially more hidden from view as a

result of the landscaping plan, which would be good for residents, visitors and future residents of Durham. She thanked Peak for seeing this process through. She said every project was unique, and said this one was a special case. She said she thought that other developers seeking extra beds for their developments would really have to prove it.

Ute Luxem asked if there were Minutes of the committee that met concerning the landscaping plan, and also asked who was on the committee.

Robin Mower noted discussion between herself and two other Councilors with Administrator Selig, and conversations with Mr. Githens and Mr. Barge. She said there were no minutes and it wasn't a public meeting. Mr. Githens said Ms. Olshansky, Mr. Parry, Administrator Selig, DPW Director Mike Lynch and Tighe and Bond's landscape architect were on a landscape committee.

Ms. Luxem said she appreciated the work that was put in, but said she was concerned about ad hoc committees working behind the scenes, and a piece of work then coming out yet there wasn't a point at which concerns or push back could be submitted. She also said she was concerned that 26 beds was a lot of beds for the landscaping Peak was being asked to provide.

Councilor Carroll this issue had come to the Planning Board at least twice before tonight, so this wasn't the first time it had been talked about. She said there were Minutes on that. She spoke further on this and said it was also discussed before the Conservation Commission and perhaps the Town Council.

Nancy Sandberg, Langley Road, said she cherished Durham gateways, and therefore supported the landscaping plan for the Lodges, which would soften the negative impact of a large complex. She said maintenance of the landscaping in perpetuity was very important. She also said she thought the conditional use criteria were met regarding the increase in the number of beds. She said this was a unique situation.

Susie Loder, 38 Oyster River Road, noted that she was a former resident of Mast Road, and said it was difficult to come back and see what was there now. She said the efforts of those who came up with a landscaping plan that was acceptable was something people should be grateful for. She noted that she drove through the development last winter and saw a lot of accommodation for bikes, and said she hoped to see more of this in the future.

Councilor Smith MOVED to close the Public Hearing. Lorne Parnell SECONDED the motion and it PASSED 6-0-1 with Steve Roberts abstaining.

Chair McGowan asked if the Board wanted to make a decision on the application this evening. Mr. Wolfe said he thought this would depend on the amount of discussion by the Planning Board. He suggested doing a straw poll on where Board members stood on the application.

Chair McGowan said a lot of work went into what was proposed, and he also said this matter had been before the Planning Board for a while. Councilor Smith said he was ready to make a decision tonight. He noted the email from Mr. Githens that questioned the idea of a landscaping guarantee in perpetuity. Chair McGowan read this wording out loud.

Mr. Githens said the term perpetuity was the concern. He suggested that a more appropriate condition was that all landscaping materials included in the plan must be reasonably maintained as long as the property operated in its current use, or until subsequent amendments by the Planning Board to modify this requirement. He said this would accomplish the same thing, and spoke further on this.

Mr. Wolfe said in perpetuity was legally an impossibility, and said what Mr. Githens proposed was reasonable. He said it would only be when the use changed that the required maintenance would go away. There was detailed discussion about what the wording should be. Mr. Wolfe said simply deleting the wording "in perpetuity" accomplish what everyone wanted. Others agreed. Mr. Githens said that seemed reasonable.

Mr. Githens noted condition #3 under Site changes He said the parking configuration was not being changed with this latest plan. He said there would be no relocation of the area drain. There was discussion. Mr. Behrendt said it was in the plan. Mr. Githens looked at the plan.

Mr. Wolfe noted that there wasn't a full 7 member Board for this application. He said the applicant needed 5 votes because of the Conditional Use application, so the Board should have 7 voting members in order to be fair to the applicant. Mr. Roberts said he would be willing to be a voting member if Board members were comfortable with this. There was further discussion.

He asked Planning Board members if they were ok with what was proposed. Councilor Smith said he was willing to strike the wording "in perpetuity". But he asked about the wording on "a change in the form of the site". Mr. Behrendt provided details on this. Six Board members said they were in favor of approving the application.

Chair McGowan read through the Conditional Use criteria, and Board members agreed that all of them were met.

Peter Wolfe MOVED to approve the Conditional Use Permit application submitted by Peak Campus Development, LLC to add 26 beds and landscaping and make other changes to the approved site plan for a 142 unit/460 bed housing development. A conditional use is needed to expand residence, multi-unit, a nonconforming use. The property is located at 259 Mast Road, Tax Map 13, Lot 6-1, in the Office Research Light Industry Zoning District. Wayne Lewis SECONDED the motion and it PASSED unanimously 7-0.

Peter Wolfe MOVED to approve the Notice of Approval, which applies to all the modifications listed in paragraphs #1 and 2, including the change to the language on the maintenance of plantings.

It was confirmed with Mr. Githens that completion of the plantings would occur by November 1st, 2015.

Wayne Lewis SECONDED the motion.

Mr. Parnell said he would support this, but said the project was approved with all of the services associated with that based on 460 beds. He said he didn't think the Planning Board should make a habit of changing the number of occupants allowed after the fact. He also said he had always expected that this was going to be a very large project, which would be very visible. He said he would vote to approve this because it was the right thing to do, but said he would have preferred that they stay with the 460 beds originally approved.

Councilor Smith said he agreed with Mr. Parnell's comments, and said he too would vote in favor of the motion. Mr. Wolfe said his sense was that all of the Planning Board members would have preferred 460 beds. But he also said all of them had missed some things in the original application. There was further discussion.

The motion PASSED unanimously 7-0.

Mr. Githens said Durham was a great community and said he'd enjoyed working with everyone. He said this was a good outcome.

Break from 9:12 to 9:21

XIV. Public Hearing – Draft Economic Development Chapter of the Master Plan. The draft chapter has been endorsed by the Master Plan Advisory Committee. Recommended action: Incorporating any appropriate changes including those offered by the Economic Development Committee

SRPC Planner Matt Sullivan and Cynthia Copeland came before the Board. Mr. Sullivan said the EDC originally drafted the chapter, and said SRPC stepped in to make adjustments and improvements over the last 6 months. He reviewed the Vision statement, as well as an Introduction statement included in the chapter. He reviewed in detail other sections of the chapter.

Councilor Smith MOVED to open the Public Hearing. Peter Wolfe SECONDED the motion and it PASSED unanimously 7-0.

Ute Luxem, Ross Road, Chair of the EDC, said unfortunately the EDC didn't have the chance to read its own chapter before it went to the MPAC and then to the Planning Board. She said at the EDC's last meeting, they worked through the chapter and suggested some changes that had been distributed. She asked if Planning Board members had the chance to review them, and had questions.

Chair McGowan recommended that the Board work with the EDC's edited copy of the chapter.

Mr. Wolfe noted wording on page 18 of the EDC copy, concerning recent actions forcing the developer to give up half of the property, and he asked where this came from. Ms. Luxem said this came from the experience Eric Chinburg had when he had to give up the front portion of his property. Mr. Wolfe said since Mr. Chinburg had done that, he had been able to sell the property. Ms. Luxem said the Town wasn't getting the \$10 million in assessed value that it had been looking at, and also said this approach had been badly received in the overall development community. Mr. Wolfe said he thought this wording in the chapter was an opinion.

Councilor Smith said he was sympathetic to some changes the EDC had introduced, and unsympathetic to some others. He said Mr. Wolfe had brought up a good point. He said he was struck by the EDCs striking of the words "We anticipate that" in the Vision statement, and said he preferred to keep that wording. He said there were good things in both drafts, and things that were troubling in both drafts.

Ms. Luxem said she was available if Planning Board members had questions on the EDC's comments. Chair McGowan suggested hearing from other members of the public, and said Ms. Luxem could come back if Board members had questions after that.

Robin Mower, Faculty Road, said she wanted to acknowledge the work done on the chapter, and said the frustrations felt by the authors weren't unique. She said she and others who'd worked on the Master Plan understood that what they'd submitted was both imperfect and subject to change. She noted the dramatic evolution over the years of the Economic Development Committee itself, largely thanks to several key members, not least of whom was the Chair, Ute Luxem.

She said she agreed with several points made about the chapter by James Bubar, including the comment that the chapter could benefit from recommendations and goals for land use. She said she strongly agreed with the suggestion that the chapter should include a recommendation to develop a Gateway Overlay District Ordinance in recognition that the gateways reflected the values of the community and its quality of life, and were an economic guidepost.

She said the comparison of Durham with other towns in Strafford County was inappropriate and said the Town should be compared with Exeter and Portsmouth. She said the consultants' job was to represent the community's vision. She spoke in detail on Durham's qualities.

Ms. Mower recommended moving the Purpose statement for the chapter up front. She also said unsubstantiated opinions and assumptions not backed up by data as well as conclusions before the fact should be deleted. She noted as an example that it wasn't yet known how the downtown would look or work out, including whether downtown

residents would act as semi-captive consumers. She said the dots on this needed to be connected better.

She said the section titled “Development Opportunity Areas” was an appropriate place where a case for the balance, referred to early in the document could be made, but said it wasn’t really made. She spoke further on this. She also said it was important to acknowledge how much had changed since the 2000 Master Plan, and also to identify recommendations from it that had not been achieved. She said to date, Durham had very little, if any, Class A office space, which was critical to attracting new development. She noted references in the Master Plan chapters to the 2011 Visioning Forum and Survey, and considered how residents would respond today to the questions in them. She said she agreed with plans to hold an additional forum to focus on the Land Use Chapter, and suggested that a Master Planning survey containing questions related to future land use should be re-issued in order to guide the writing of that chapter.

Ms. Mower also spoke in some detail on writing problems with the chapter.

Nancy Sandberg, Langley Road, said she’d been encouraged to read the guiding principle that economic development needed to be balanced with the preservation of Durham’s historic New England rural character and natural resources. She said this principle needed to be developed further, and said it needed to be recognized that Durham’s treasure trove of natural and historic resources were what attracted people to come there, and had tremendous potential as economic drivers.

She noted wording in the chapter on faster than anticipated student housing development downtown, and said this resulted from the Town taking a calculated risk to get retail space on the ground floor by allowing students in the upper stories and by incentivizing the height allowances. She said while the section on the Economic Development Environment extolled the virtues of the new construction downtown, many found it unattractive and so unwelcoming that they were taking their business elsewhere.

Ms. Sandberg said Durham had been reactive to the onslaught of development proposals, and needed to be sure that the architectural standards and height allowances reflected the community’s wishes for an attractive, green, walkable community. She spoke in some detail on the Orion project, including how it was handled by Town staff, and said Durham had lost the heart of its historic district. She also considered the costs of increased police and fire budgets necessary that would be necessary as a result of the developments downtown.

She said she hoped, as was mentioned in the chapter, that the EDC would help facilitate better communications between the owner of Mill Plaza and the Town. She said there was great potential to make the Mill Plaza the “go to” place in Durham for all residents.

She also said there must be greater appreciation of the history of Durham’s gateways, and a commitment to preserve them while also carefully developing unique entrepreneurial and agricultural complexes surrounded by green buffers. She recommended proceeding

cautiously until the Town understood the real impacts of economic development in ORLI, MUDOR, and especially along the historic gateways and along the Oyster River. She said she recognized the benefits of partnering with entities at UNH, but noted that Durham and UNH had very different needs. She said the development proposals for the ATO lot so far greatly benefitted UNH, and said a project there would greatly increase the footprint of UNH in the Town.

Mr. Behrendt noted that the only comments the Planning Board would accept after the public hearing closed was verbatim comments read at the meeting.

Diane McCann read a letter from Ellen Karelitz, Madbury Road. Ms. Karelitz said the data being used from 2011 didn't reflect the current situation and the feelings of the community now that there was the benefit of hindsight. She said the timing of the Economic Development chapter was unfortunate, and said it wasn't possible to build a plan for the future without doing up-to-date data gathering to determine residents' attitudes about the development already underway.

Ms. Karelitz also said while the chapter supported the idea of preserving Durham's rural character, there wasn't one economic initiative presented that used those "rural assets". She said land was still being viewed as a place to put things rather than a possible source of revenue in and of itself. She noted that interest had grown in the past few years in developing agriculture and hosting a Food Hub within the Durham community. But she said the Economic Development chapter still targeted agricultural land along the gateways as being prime space for commercial development. She said she appreciated the work done on the chapter, but said she felt major elements of it were regressive rather than progressive.

Carol Tuveson, Watson Road said she was frustrated with the chapter and hoped some of her concerns about it might be addressed. She said the planet was undergoing frightening changes because of climate change, and said as a long-time resident of Durham, she saw signs of it. She said planning 50 years out would make a difference, and said some other communities were doing this as part of their economic development plans. She said she hoped Durham would become a dynamic part of this trend, and said doing this required vision, courage, and changing the paradigms being used. She said what was being offered – build, build, build, was more of the same.

She said many looked at a field lying fallow and saw opportunity to make money by developing it, but said she saw a free water filtration system that helped protect the watershed; plants pulling carbon from the air and sequestering it in the soil; and bio-systems that supported and maintained a wide variety of wildlife. She said there were many other ways to use that land than building on it that would both protect it and provide income.

Ms. Tuveson noted that her property taxes were over 1/3 of her income so she had a valid concern about taxes. She said she knew that taxes wouldn't go down, but noted that undeveloped land was proven to have almost no impact on taxes. She also said she viewed taxes as part of being a responsible member of a community. But she said using

taxes as an excuse for developing more land was disingenuous.

She said she wasn't opposed to thoughtful, considered development that celebrated Durham's history and location. But she said for the EDC to use an "ancient" 2011 survey to justify this rush to build more was unethical. She considered whether the EDC had failed to re-do the survey because they weren't confident the outcome would support their goals.

Ms. Tuveson said this was a challenging time in Durham's history, when many residents had seen their income stagnate or diminish, prices were rising, and they didn't know what climate change would bring. She said thinking that they could buy their way into the future revealed a lack of understanding and imagination. She said they were no longer in a "Field of Dreams" where the motto, "If you build it they will come" worked. She noted the empty retail space in Town. She said Durham residents needed to become innovators in the larger global community, and to heed the Pope's warning that capitalism and consumerism were slowly killing the planet. She said Durham had infinite intellectual resources, and motivated people, and said it should grow into the future by using more creatively what already existed. She said a carefully crafted Economic Development chapter could help with this.

Beth Olshansky, Packers Falls Road, said she appreciated the time and effort put into writing and revising the chapter. She said she was pleased to read in the June 16th draft a call for "a balanced approach between economic development and preservation of the town's historic New England rural character and natural resources." She provided other specific comments on the chapter. She recommended striking the wording on page 18: "Recent actions of forcing the developer into giving up half of the property did not make the task any easier." She said it served no purpose and didn't belong in the Master Plan. She also said she liked the idea on page 25 under Development Opportunity Areas of partnering with UNH to redevelop the West Edge area of Town, which was currently unattractive and could be utilized better.

She asked why a sentence on the Durham Business Park was removed when it seemed like an important update, and suggested leaving it in. She urged the Planning Board to drop Rt. 155A as a desirable site for future development, given the huge negative impact Peak had had and the tremendous community concern about this; the lack of access to water and sewer; and the fact that it was difficult to hide development situated in a field. She also asked why there was no specific attention given to the ATO site or the Mill Plaza site within the Downtown section. She said they represented two key areas that most people agreed could use redevelopment, and which did not create sprawl.

Ms. Olshansky said while the chapter professed to want to locate commercial development in a way that preserved "our historic New England rural character," many of the areas targeted for economic development were along the gateways. She noted the wording on page 31 concerning this. She recommended wording to include: "Recognizing that the community desires a balanced approach to economic development that involves preserving our historic New England rural character and acknowledging

that our gateways define, in good measure, the character of our community, the EDC recommends the inclusion of regulatory language in future land use recommendations that will serve to protect the historic New England rural character of our gateways. Options include, but are not limited to, regulatory land use tools such as Conditional Use (which allows the PB to request substantial vegetative buffers), architectural regulations for development projects along our gateways, and/or a Gateway Protection Overlay to prevent further erosion of our rural character.”

She also recommended that on page 36 under Continue to explore new and existing potential commercial and industrial development areas, item b) 3 should say: “In order to meet the stated goal of preserving the town’s historic New England rural character, all development areas along our gateways should include specific regulatory language that insures preservation of our gateways.”

Ms. Olshansky questioned using the 2011 MP Survey, referred to on page 6, to drive planning and future land use over the next decade, since huge changes in Durham had occurred since that time. She said there were several glaring examples of results that weren’t anticipated based on the development plans. She said given that Economic Development chapter was designed to guide the Future Land Use chapter, before final endorsement of the ED chapter, a community wide survey should be done. She provided details on what the survey should include, and suggested holding off on the ED chapter until this data was obtained.

Ms. McCann asked what the process was now and what would happen concerning the comments provided. Mr. Behrendt provided details on this, and as part of this said at some point the Planning Board would endorse the chapter with any appropriate changes. Ms. Tuveson asked who determined what was appropriate, and Mr. Behrendt said it was the Planning Board that determined this. Ms. Tuveson said given that this chapter could have huge impacts on the kind of development that occurred, she was concerned about this chapter being rushed.

Chair McGowan recommended continue the Public Hearing to another meeting. He said he was in no position to deliberate tonight, and said would like to continue the public hearing.

Councilor Marple noted what legal counsel had recently said regarding the legality of the Master Plan. Mr. Behrendt provided details on this, stating that it had very little or no legal standing, but was a very important policy document in the community. Mr. Roberts said he took serious issue with this perspective, and suggested that the Board should consult the May meeting of the NH Office of Energy and Planning on this. He spoke further on this, and said he was concerned about the Board attorney’s negative assessment of the master plan process.

Councilor Smith said it was obvious that there was more to be said. He said there had been some very good comments and said there were some good corrections from Robin

Mower. He encouraged Ms. Mower to send the Board the electronic version of her comments on the chapter.

Ms. Mower said the recommendations heard this evening on the Town's gateways were very much worth considering, and she noted that at one time she and Ms. Olshansky had tried to develop a gateway ordinance. She referred to the section on Development Opportunity Areas on page 25, and said on May 8, 2008 there was discussion between the Conservation Commission and the EDC on priority areas for conservation, including Beech Hill. She read from the Minutes of this meeting, where Duane Hyde spoke about the fact that it was an area of statewide and regional significance for conservation. She said this discussion was an example of the type of discussion she hoped there would be regarding specific areas of interest for both development and protection. She also said she looked forward to seeing the Future Land Use chapter as well as the Economic Development chapter focus on these development area, and acknowledge their inherent constraints.

Councilor Smith MOVED to continue the Public Hearing to July 8, 2015. Lorne Parnell SECONDED the motion and it PASSED unanimously 7-0.

Mr. Roberts noted the comments made about the validity of the existing Master Plan data, given the large increase in student housing. There was discussion about how it could possibly be collected again. Councilor Smith said by the end of the academic year, they would have a good idea of the impacts.

- XV. Madbury Commons – Design of Second Bridge. 17 and 21 Madbury Road.** Review of proposed design for second/smaller bridge for multi-use development for 525 residents, with office/retail and several public spaces. Golden Goose Properties, c/o Ken Rubin, Eamonn Healey, and Barrett Bilotta, applicant; Mike Sievert, MJS Engineering, Design Engineer. Tax Map 2, Lot 12-3. Central Business District.

Mr. Rubin said the secondary bridge was presented and approved as part of the original Site Plan for the project. He said as part of the Notice of Decision, he was instructed to get the details of the bridge approved. He said the engineering design had now been done, and said the design itself remained essentially the same.

Mr. Sievert provided details on the materials, including pressure treated deck and wooden rail with 9 gauge wire 2 inch by 2 inch coated wire mesh, which was similar to what Robbi Woodburn had included in her original design. He said there were more wooden posts than in the previous design, based on the codes.

Ms. Dill asked if the plan wasn't to have the mesh on the stair railings. Mr. Sievert said that was correct, because the other railings on the site weren't mesh. After discussion, it was agreed that the wire mesh would be used for the railings.

Mr. Parnell noted that this bridge would be constructed of wood, and the other bridge would be concrete. He asked if a different amount of traffic was expected on this bridge

and Mr. Sievert said yes. But he said the bridge was designed to handle well over what was expected in terms of traffic.

Mr. Lewis asked if the bridge would take 50 drunken students jumping on it, and there was discussion. Mr. Rubin said the bridge it was replacing hadn't been maintained over decades, but also said the floorboards of that bridge were still reusable. He also said there would be property management on the site. Chair McGowan confirmed that the new bridge would be located in the same place as the old bridge.

There was discussion about whether the wood should be sealed. Mr. Sievert said they weren't planning to do this at first, but said it would be maintained. He said it was a good idea to wait a few years before sealing the wood. There was further discussion, and it was agreed to leave this up to Golden Goose. Mr. Rubin said they were responsible for maintaining the bridge and would do what made sense over time.

Mr. Behrendt noted additional drawings provided by Mr. Sievert. He also said item 2 f in the Notice of Approval, concerning the applicant coordinating about spacing could be eliminated, and said item 2 g concerning the railing would be deleted. He went through the entire Notice of Approval, as amended.

- 1) Drawings. This approval is based upon the following drawings:
 - a) "Madbury Commons Small Bridge sk-Elevation" submitted by Woodburn and Company, dated January 29, 2014. (The second sheet showing details has been superseded by b), below.)
 - b) "Proposed Bridge #2 Plan" prepared by MJS Engineering, June 23, 2015 revision.
 - c) "Proposed Site Plan for Madbury Commons" prepared by MJS Engineering, June 10, 2015 revision
 - d) "Utilities, Grading, Drainage, and Erosion Control Plan for Madbury Commons" prepared by MJS Engineering, June 10, 2015 revision
 - e) Photograph of wire mesh illustrating the mesh only, provided by Ken Rubin.
 - f) "Proposed Bridge #2 Elevation" by MJS Engineering, June 23, 2015
- 2) Plan Clarifications. The following clarifications apply to the design:
 - a) The mesh is made of black wire.
 - b) The wood, coated mesh, and other materials will not be painted.
 - c) The railing posts protrude slightly below the bottom of the steel carrying beam, as depicted in the detail drawing (This is slightly different from the detail as shown in the color rendering).
 - d) If there are any minor discrepancies between the Woodburn elevation and the MJS details, the MJS details shall generally be determining provided the clear intent of the Woodburn elevation is realized.
 - e) All wood is pressure-treated standard Southern Yellow Pine.
 - h) The utility pole shown next to the bridge will be removed.
 - i) The posts on the bridge will be spaced 4 feet on center.
 - j) The bridge will link with the existing path on the southwesterly side of Pettee Brook (behind 10 Pettee Brook) in the same manner as the existing/previous bridge.
- 3) Final drawings. Prior to the start of construction, the applicant shall submit the appropriate drawings to the Durham Building Inspector for issuance of a building permit. The applicant will need to submit structural drawings for the bridge. A soils/structural engineer will have to

- certify the structural capacity of the footing/foundation/soils bearing capacity prior to permit issuance. If the Building Official so determines, add appropriate signage to direct handicap persons to the main, accessible bridge.
- 4) Adjustments to plans. Minor adjustments to the approved bridge design that are clearly consistent with this approval may be approved by the Town Planner after receiving input from the Design Committee. Significant changes would need to be approved by the Planning Board.

Peter Wolfe MOVED to approve the Notice of Approval as presented by the Town Planner, Michael Behrendt. Councilor Smith SECONDED the motion, and it PASSED unanimously 6-0.

XVI. Madbury Commons – Various Amendments. 17 and 21 Madbury Road. Various amendments and/or modifications to the approved site plan for multi-use development for 525 residents, with office/retail and several public spaces. Golden Goose Properties, c/o Ken Rubin, Eamonn Healey, and Barrett Bilotta, applicant; Mike Sievert, MJS Engineering, Design Engineer. Tax Map 2, Lot 12-3. Central Business District.

Mr. Sievert provided plans that showed the various amendments/modifications.

He said there were 12 items in red added to the site plan, and said it was believed 10 or perhaps more were administrative approval items. He went through a spreadsheet which listed the 12 items.

There was discussion on item #1. Mr. Sievert said this was one of the items that might be considered an amendment to the site plan.

1. Add IOL Back-up Generator at North End. Mr. Rubin said the IOL had requested this backup power, and he provided details on this. He said the generator would be in the location where the transformers were previously approved, and said this was the only option for the IOL. He said the generator would run with natural gas, and was approved by the Conservation Commission. Chair McGowan confirmed with Mr. Bilotta that there would be fencing around the generator, and that the generator would be tested on a periodic basis.

Mr. Sievert went through the other items:

2. Show new sewer service location for Kappa Delta Sorority – Mr. Sievert said the change was made in the field and the DPW approved it. He said it had been added to the plan.
3. Call out flat roof drain outlet at Loading dock area Mr. Sievert said the location was finalized, in the loading dock area, and this was updated on the plan.
4. Shift access road for loading dock to account for relocation of gas meters.
5. Shift sidewalk to loading dock steps and add pea stone under gas meter location
6. Show underground utility manhole in landscape area northeast corner of building A.
7. Add steps to walkway at front entrance to Building A to accommodate for exposed beam in entrance. Steps are the same as others in the plan

8. Show new overhead wire and pole location at southeast corner of property by building B.
9. Show re-grading of steps at SE corner of building B.
10. Incorporate changes to window wells and grading at window wells. Mr. Rubin said this was made possible by the fact that they now owned the property next door, and said there would now be a better interface between the two properties.
11. Pump station approved by DPW, to take some of drainage out of window wells, which are lower than the grade at the brook.
12. Add ¾ inch x 3ft wide stone drip edge to West side of North Finger of building A. Mr. Sievert said this would result in less erosion/drainage issues, noting that before this change it was supposed to be grass. He said it was within the 75 ft buffer and was approved by the Conservation Commission.

There was brief discussion on the items. Mr. Parnell asked about the need for the pumping station for the window wells. Mr. Sievert said there would be two sump pumps with an alarm system, which would be wired to the backup generator. Mr. Parnell said perhaps the public would have some comments on this. Mr. Sievert said he's discussed this with the DPW, and provided further details on it.

Board members agreed that no public hearing was needed for these items. Mr. Behrendt said they would therefore all come back to the Board at the July 8th meeting. Mr. Rubin asked why they couldn't be addressed this evening, since there would be no public hearing. There was brief discussion about the power line issue. After further discussion, the Board agreed to treat all of the items as administrative decisions that Mr. Behrendt could make after reviewing them with staff, so no motion of approval was needed.

Mr. Rubin said it would be helpful if the Administrative Decision on the generator was done quickly, or if the Board could approve it this evening. Mr. Behrendt said he could send it out to the DPW tomorrow, and could get an answer on it in a few days.

- XVII. 246 Packers Falls Road – 3-lot subdivision.** Informal pre-application discussion with Councilor Smith, property owner. Proposed subdivision of 9.84-acre lot into one 1-1/2 to 2 acre lot containing the existing house and two conservation lots. Tax Map 14, Lot 13-1. Rural District.

Postponed

XVIII. Other Business

XIX. Review of Minutes (New):

March 11, 2015 - postponed

March 25, 2015 - postponed

XXI. Adjournment

Peter Wolfe MOVED to adjourn the meeting. Chair McGowan SECONDED the motion, and it PASSED unanimously 7-0.

Adjournment at 11:18 pm

Victoria Parmele, Minutes taker

Andrew Corrow, Secretary