

**DRAFT**

**DURHAM PLANNING BOARD MINUTES**  
**Wednesday, November 28, 2012**  
**Town Council Chambers, Durham Town Hall**  
**7:00 P.M.**

**MEMBERS PRESENT:** Chair Peter Wolfe; Vice Chair Richard Mr. Kelley; Richard Ozenich; Bill McGowan; Lorne Parnell; Andy Corrow; alternate Wayne Lewis; alternate David Williams; Town Council representative Bill Cote; alternate Town Council representative Julian Smith

**MEMBERS ABSENT:**

**I. Call to Order**

Chair Wolfe called the meeting to order at 7:05 pm.

**II. Roll Call**

Planning Board members introduced themselves.

**III. Seating of Alternates**

**IV. Approval of Agenda**

Mr. Kelley arrived at the meeting at 7:06 pm.

***Bill McGowan MOVED to approve the Agenda. Councilor Cote SECONDED the motion, and it PASSED unanimously 7-0.***

**V. Planner's Report**

Mr. Behrendt said that pursuant to the proposed Zoning amendment concerning chickens, the Agricultural Commission had set up visits to two hen houses for Saturday. He provided details on this.

He also said he'd had some meetings with Orion about their properties, and said they had come up with a preliminary revised plan that seemed to respect the streetscape on Church Hill. He said Orion would meet with the HDC next, to have an informational discussion on the plan.

## **VI. Public Comments**

**Jim Jelmberg, Park Court**, said 360 residents had signed the petition to create design standards for the commercial zone, and to limit buildings to no taller than 3 stories on Main Street. He said another more recent petition submitted would limit buildings to no more than 3 stories from the Town and Campus property on Main Street down to Madbury Road. He said this limit would keep Durham's small town atmosphere, and said he supported that.

**VIII. Mast Road for Site Plan Review and Conditional Use Permit** submitted by Joseph Persechino, P.E., Tighe & Bond, Portsmouth, NH, on behalf of **Peak Campus Development, LLC**, Atlanta, GA (applicant), Chet Tecce Jr., Durham, New Hampshire, John & Patricia McGinty, Durham, New Hampshire and the University of New Hampshire, Durham, New Hampshire (property owners) for a **142-unit/460 bed apartment-style housing development**. The properties involved are shown on Tax Map 13, Lots 6-1, 10-0, 3-0UNH and 4-0UNH, are located on **Mast Road** and are in the Office Research/Light Industry Zoning District.

It was noted that the checklist the Planning Board had used in the past as part of its deliberations on Conditional Use applications had worked well. After some discussion, the Board agreed to go through the Conditional Use checklist first.

The Planning Board went through the items on the checklist.

1. Site Suitability –Yes. The Board determined that the site was suitable for the proposed use. Among other things, Mr. Kelley noted the proximity to the UNH bus route, and that the applicant had been able to stay out of wetlands and buffers with the development. He said there were adequate public services available for the site.

2. External Impacts - Yes. The Board determined that the external impacts of the proposed use on abutting properties and the neighborhood would be no greater than the impacts of adjacent existing uses or other uses permitted in the zone. Mr. Kelley said traffic was being mitigated, and said he felt that it would not be excessive. Mr. Williams said more traffic would be generated as a result of the development, but said there seemed to be a plan in place to address it. He said his concern had been that Mast Road was a state highway, and that this created the impression that it was a highway, and not a municipal road. He said with 450 students living there, there would need to be some adjustment by some people using that road.

Board members said it was hard to predict noise impacts, but agreed that Peak security could address it if necessary. The Board said there would not be external impacts from dust, fumes and glare. Concerning inappropriate hours of operation having an impact, Chair Wolfe noted that there would be a management plan in place. Councilor Smith said that concerning "inappropriate" hours of operation, the question was inappropriate for whom.

3. Character of Site development – Yes. The Board determined that the proposed layout and design of the site was not incompatible with the established character of the area, and that any possible impacts would be mitigated. The Board answered yes to all aspects of this criterion: relationship of building to the street; the amount, location and screening of off street parking; treatment of yards, setbacks; buffering of adjacent properties; and provision for pedestrian and vehicular access to and within the site.

4. Character of buildings and structures – Yes. The Board determined that the design of any buildings or structures and modifications of existing buildings or structures on the site would not be incompatible with the established character of the neighborhood. Councilor Smith said there really was no established character of the neighborhood in terms of the houses there. But he said there was an impact to the whole Town from this development.

5. Preservation of natural, cultural, historic, and scenic resources – Yes. The Board determined that these resources would be preserved. Councilor Smith said the wildlife habitat would be changed as a result of the development. Mr. Behrendt noted that some species had been identified in the open field on the property to the south of the applicant's property, and also said trees would be planted to provide a visual buffer of the field. In addition, he said the stone walls on the site and the mature tree line would be preserved. Councilor Smith suggested that there should be a condition of guaranteed protection of those mature trees, including fencing to keep construction equipment away from their roots.

It was noted that there were no cemeteries or historic buildings/sites on the property. Regarding possible scenic views, Councilor Smith said right now there was a scenic view of an apple orchard, which would not be preserved. He said this was a negative, but said he didn't think Planning Board members were worried about that.

Mr. Williams said they were not fruitful trees, and said their prospects were minimal.

Councilor Cote said he thought the applicant had addressed the issue of preserving the scenic vistas, and other Board members agreed.

6. Impact on property values – No. The Board determined that the proposed use would not cause or contribute to a significant decline in property values of adjacent properties.

7. Availability of Public Services & Facilities – Yes. The Board determined that there were adequate and lawful facilities or arrangements for sewage disposal, solid waste disposal, water supply, etc.

Councilor Smith said in the last few years, with the two Crape buildings, Capstone, the new Kostis project and the Grange, more than a thousand new beds had been created. He said a lot of water would flow through the Town's water system to supply those people with water.

He provided a brief summary of water supply issues facing the Town, noting specifically the current struggle in terms of bringing the Spruce Hole aquifer online as well as the restrictions the Town was under regarding water that could be withdrawn from the Lamprey River. He said his colleagues on the Council were happy to see the Spruce Hole aquifer come on line, because the students at Peak, etc. were going to be paying into the water system, which paid for the necessary changes at the wastewater treatment plant.

He spoke further, and said the Council wanted to see more student housing for various reasons, but said the Planning Board should be aware of the pressure being put on the water system. He said this might give them a bit more reason to look very carefully at some of the proposed conditions of approval and perhaps modify them or make them more stringent.

Chair Wolfe said concerns about water usage might be able to be mitigated with the conditions of approval.

Councilor Smith suggested a possible water management plan for the Peak development, so the tenants were aware, especially at the start of the school year, that there might be water restrictions imposed by the Town.

Councilor Cote said plumbing codes and energy codes would specify low flow showers and toilets, so there would be some built in water conservation. He noted as well that there was ongoing discussion about water supply issues at the Town Council, but said the Town Engineer had said that there was sufficient water capacity for the Peak project. He said the review process would have stopped if that was not the case.

Councilor Robin Mower called a point of order, and said the Town didn't have an energy code per se.

Chair Wolfe said it was part of the building code.

Concerning the issue of whether the proposed development would cause excessive demand on Town services, Mr. Parnell said that according to the DPW, there was adequate capacity. Mr. Kelley acknowledged what Councilor Smith had said, and there was further discussion.

Councilor Smith said other developments would probably follow after the Capstone and Peak projects, and said most members of the Council were enthusiastic about this kind of development, which put more tax dollars into the coffers for an increasingly expensive town. He said student housing put no children in the local schools, and also said as land was taken out of current use for a development, there was more money in that fund.

Councilor Cote said that issue was not a matter of debate for this meeting

8. Fiscal impacts - No The Board determined that the proposed use would not have a negative fiscal impact on the Town. Mr. Kelley noted that the evidence provided by the applicant said there would be no negative fiscal impacts. Chair Wolfe said Councilor Jim Lawson had reviewed the fiscal impact study, and said the revenues from the project might actually be more than was initially proposed. The Board agreed that all of the criteria in the Conditional Use Checklist had been met.

Mr. Behrendt said if the Board approved the site plan application, that included approval of the conditional use application.

The Planning Board next reviewed the proposed Conditions of Approval.

Mr. Persechino noted pre subsequent condition 8) Natural gas on page 8, and said the proposed gas lines on the site were now shown on the plans. He said this was designed with the assumption that the utility company could bring the gas to the site. He also said water and sewer lines, and sprinkler systems were shown on the plan. He said there were no modifications to what had already been on the plans.

Concerning item g) on page 3 under Notes on plans, there was discussion on why low phosphorus/slow release nitrogen fertilizer was recommended but not required. It was noted that it was required for the Capstone application because of the proximity of that development to the Oyster River.

Mr. Kelley asked if Peak had any issue with using slow release nitrogen fertilizer, and Mr. Githens said that wouldn't be a major hurdle to accommodate. Mr. Kelley noted that nitrogen loading of Great Bay was an issue Durham was dealing with, so whatever the applicant could do concerning this was important. Mr. Githens said he could appreciate this.

Councilor Cote provided the specific wording for this condition.

Concerning item e) Natural features, on page 3, Mr. Kelley noted the issue of how to establish the tree clearing lines, in order to avoid clearing more trees than was needed. He said it was easy enough for those lines to be laid out and established in the field by a surveyor. He suggested that there should perhaps be a note on this on the site plan.

Mr. Persechino agreed that establishing the clearing lines and noting them in the plan was acceptable.

Chair Wolfe said there should also be something on the site plan about trying to protect mature trees.

Mr. Persechino said the clearing limits would be reviewed by the Town tree warden, and said Mr. Lynch could note additional requirements as he saw the trees in the field.

Mr. Kelley developed language for condition e) Natural features: The clearing limit shall be established in the field and reviewed/approved by the Town Engineer and Tree Warden prior to clearing. The mature trees in the buffer along 155A will be preserved in perpetuity, except for invasive species.

There was discussion on the idea of the tree warden deciding tree by tree, as well as discussion on whether the installation of the utilities would impact any trees. Councilor Smith said he would develop some wording about protecting the trees to be preserved.

Mr. Behrendt suggested that under b) Limits of Construction on page 2, wording could be put in about using orange fencing around the trees to be preserved, so construction materials wouldn't be stockpiled around them.

Concerning condition 14) Landscaping Guarantee on page 5, there was discussion on what the appropriate amount was for this in order to cover the cost of trees that didn't survive. Chair Wolfe said there should be consistency between this application and the Capstone application, or else a very good reason for changing this should be stated and indicated in the Minutes.

There was discussion, and it was agreed that the 100% amount should not be changed, given the recommendation from the tree warden to require this as well as the issue of setting a precedent that Chair Wolfe had noted.

Mr. Kelley said it would be a good idea to review the 100% amount in the regulations down the road, and he spoke further on this. It was agreed that the landscaping guarantee would be in place for two years from the date the certificate of occupancy was granted or the landscaping was installed, whichever occurred later.

In regard to precedent condition of approval 6) Lot combination, Mr. Behrendt explained that Peak needed to give the Town a deed that said the lots were combined. It was agreed that the condition would say this had to be in conformance with pertinent RSAs and Town policy.

Concerning precedent condition 15) Lighting, it was noted that the lighting plan was on sheet 23. Chair Wolfe said that with the Capstone application, there was a condition of approval that said the lighting plan would be reviewed by a third party consultant. He asked why that hadn't been done with this application.

Mr. Behrendt explained that he had a lot of experience looking at lighting plans. He said it was a reasonable plan, with shielded and well dispersed lighting. He noted that Peak had beefed up the lighting at the entrance, where pedestrians were crossing over to get to the transit stop.

Chair Wolfe said in other words, the Planning Board was differing from the approach taken with the lighting plan review for the Capstone application because the Town Planner had experience with lighting plans, so the outside party wasn't needed.

Mr. Williams asked if the applicant had provided a dark sky compliant lighting plan, and Mr. Behrendt said yes.

Chair Wolfe summarize that the Planning Board was relying on Mr. Behrendt's expertise in this area, and Mr. Williams said he was ok with this.

Mr. Persechino explained that the NHDES sewer connection permit application (precedent condition 9) on page 5 first went to the Town for review, then was signed off on by the Town Engineer and then went to NHDES.

There was discussion concerning subsequent condition 3) Multi-use Path on page 6-7. Mr. Behrendt explained that Mr. Githens had some concerns that the path was on UNH property, so an easement would be needed. He also said a conditional use permit for the path would need to be obtained because of wetland impacts. He said these things would need to be prepared later, and also said a dredge and fill permit would be needed.

He said Peak was confident that they could get these approvals, but wanted to be sure that the language in the conditions concerning them made sense. He noted a minor change made that afternoon to the Multi-use Path condition, on page 7 –which added a reference to easements from UNH. He also said that in the event that the approvals were not received, the applicant should be required to pave the shoulders on Mast Road, in order to provide reasonable pedestrian access from the development to campus.

Mr. Behrendt said it was the sense of the Town that there had to be bike and pedestrian access from Peak to the University. He said the path proposed was great and said he was confident that it would be built. But he said if it wasn't built, Peak had to do something else to provide the access. He also said that if for some reason NHDOT didn't approve the paved shoulders, these would not be required.

Mr. Kelley asked for a laundry list of updates made to the plans since the last meeting, and Mr. Persechino provided the following update to the Planning Board:

- NHDOT driveway permit – there has been preliminary review to discuss improvements to the right turn into the property from Mast Road. NHDOT has requested a widened shoulder for the right turn into the property. Mr. Pernaw suggested that if the Planning Board approved this, Peak would provide a design for their review.
- Peak is waiting for final approval of the applications by the Planning Board before submitting the Alteration of Terrain Permit application to NHDES
- Water and sewer connection – this will go to the Town Council, after a DPW committee meeting.
- The multi-use path is 8 ft wide. The alternative of requiring paved shoulders on Mast Road, if needed, is listed under 3 e) as a subsequent condition.

Mr. Williams asked if providing a 4 ft paved shoulder on either side would allow for bikes in a reasonable way.

Mr. Kelley said 5 ft on each side would be better, but noted that the paved shoulder condition was a fall back situation. The memo from the Town's consultant, which laid out the pluses and minuses of different widths for bike lanes, was noted.

Mr. Persechino said the greater the shoulder width increase, the greater the presumed speed that cars would drive on it.

Mr. Kelley said he believe that 4 ft was the minimum width recommended for bikes.

Mr. Persechino said doing something wider than that on Mast Road would be very difficult, and he provided details on this.

Mr. Kelley said in his experience, a 4 ft paved shoulder was a minimum width for an exclusive bike lane, and said cyclists would prefer to have more.

Mr. Williams said this project would be a novelty for that part of Town, and said his sense was that the Planning Board was trying to figure out what to do with all these young people, and to be sensitive to traffic safety issues. He said he realized that there were constraints, but said part of this might be that it would be an educational experience for the students out there with their bikes, on foot, mopeds, and cars. He said he was concerned about this. Asked by Chair Wolfe if he had a recommendation, Mr. Williams said it was to swallow hard, and hope for the best.

Mr. Kelley said he was comfortable with the 4 ft shoulder, and Planning Board members agreed that the condition should say it should have a minimum width of 4 ft.

Chair Wolfe asked Planning Board members if providing the paved shoulder alternative, if needed, was acceptable to them and there was discussion.

Mr. Kelley asked what the status was of the multi-use path.

Mr. Githens said the locating of the path on the plan was done with help from UNH, and he provided details on this. He said the goal was to get beyond the stone wall in order to preserve it and the mature tree canopy and also be off of the Mast Road right of way. He said UNH was very much in favor of the location.

He said what was left to do was to draft the easements. He said he didn't expect that the path location would change, and said the proposed width would conform with the width of other paths Peak had constructed. He noted that the path would be lighted. He said the paved shoulder approach was a fallback, doomsday scenario, and said it was the only alternative that was practical. But he said it was not expected.



Mr. Kelley said the Planning Board couldn't guarantee what would happen, and there was further discussion.

Mr. Behrendt asked the Board to finalize some language that made sense concerning subsequent condition 6) Transit on page 7.

Chair Wolfe asked why the same language used in the condition for the Capstone application wasn't being used.

Mr. Behrendt said with this application, part of the transit was on UNH land. He said the Planning Board might want to have the final say on this, since Peak and the University had different interests than the Town. He said under certain circumstances, the Town might have a different sense of what good service was, and among other things said the Planning Board wanted to make sure that the transit would be provided in perpetuity.

Councilor Cote noted that Capstone had changed its transit service without notifying the Planning Board.

Mr. Kelley said he thought a condition of the Capstone application was that if the company wasn't able to come to agreement with the University, Capstone was to provide the service.

Mr. Githens said there would be a new shuttle stop to supplement the West Edge operation, which would operate on UNH terms. He said Peak therefore didn't have the luxury of saying when it would provide service. He said the UNH transit system was robust, and said they maintained a level of service at all locations. He said Peak's agreement with the University was that it would supplement their infrastructure.

He said there would be two buses, and said if a third bus was needed, Peak would pay for it. He said two buses could be adequate, but said this wouldn't be known until after the development was operating. He said the level of service was for UNH to define, and said that was why he had proposed the language in condition 6) Transit on page 7. He said there was a draft agreement with UNH on this.

Mr. Kelley asked what happened if the agreement fell through, and if Peak was prepared to provide transit service if UNH transit service fell through.

Mr. Githens said Peak would do so if necessary, in order to be competitive with other properties in the market. He said if that happened, it would be likely to be transit service that was different than what UNH provided. He said it would be likely to make stops in the interior of the Peak property, and wouldn't use the UNH bus stop.

There was further discussion on this issue. Mr. Kelley said he wanted to put language in that made Peak responsible to provide transit service if the University didn't provide the service.

Chair Wolf suggested language that said UNH would decide on the number of buses, but Mr. Kelley said if UNH said there would be no buses, he wanted Peak to provide them. He suggested the language: "The applicant shall provide adequate transit service" and said how this was achieved would be up to Peak.

There was further detailed discussion on the wording that was needed for this condition, to cover the possibility that for whatever reason, there was no UNH bus service. Other Board members agreed this was important.

Mr. Githens agreed that when UNH provided the bus service, it made sense that it would decide on the adequacy. But he said if Peak was providing the bus service, Peak should be the decision maker on what was adequate.

There was discussion on the idea of Town staff reviewing the bus service for adequacy if that happened. Mr. Kelley said he was fine with that, and explained in some details why this was needed. He suggested that the Traffic and Safety Committee could do it.

Councilor Cote disagreed, and said he thought that meddling at that level was beyond the purview of the Town. He said if there wasn't enough bus service, the applicant would hear from the tenants about this.

Mr. Corrow said if Peak wanted to be in the student housing market, they would provide the bus service.

Mr. Githens said he knew from experience that market forces would force Peak to stay competitive. He said he would prefer that the applicant would have discretion as to what was adequate regarding bus service.

Planning Board members agreed with this, and agreed that Mr. Behrendt would make changes to the wording of the condition of approval that reflected this. There was further discussion on this wording.

There was further discussion on the proposed conditions of approval. Concerning subsequent condition 4) Right Turn lane on page 7, it was noted that wording should indicate that the right turning lane was from Mast Road turning onto Main Street.

Regarding subsequent condition 1) Site work on page 6, Councilor Smith recommended that at the end it should say "In addition, mature trees along Mast Road shall be physically protected from damage during site work."

Mr. Persechino also suggested wording there "as determined by the Tree warden", and the Board agreed with this.

Concerning subsequent condition 7) Energy Code on page 8, Councilor Smith said the Town didn't have one, and said it should say "The applicant shall comply with ch 38,

“building construction” of the Durham Town Code, sections 38-1 and 38-5 relating to energy efficiency standards.”

Regarding subsequent condition 14) Property and security plan on page 8, it was noted that the Planning Board had always had the final say on what was in this plan, but this condition said the Police Chief would approve the plan. Mr. Behrendt said Chief Kurz had reviewed the plan, and was fine with it.

Mr. Williams asked if it was appropriate for the Chief to approve this plan, and Chair Wolfe said the Chief hadn’t done this with other student housing projects the Planning Board had approved in recent years. Mr. Williams asked why it was important for the Planning Board to do it, and Chair Wolfe said the Board had an obligation to address nuisance issues, protect students, etc. in regard to applications.

Mr. Kelley read the language from the Capstone application concerning the property and security plan, and the Planning Board agreed that it made sense to include this same wording for the Peak conditions of approval.

Mr. Githens said Capstone had used the security at first but suspended it after a period of time, and Mr. Kelley noted that this was why the wording from the Capstone condition of approval said the plan could be reviewed, modified, and updated by the owner with the approval of the departments.

It was agreed that the wording from the Capstone conditions of approval on property and security plan would be used for condition #14, and that condition 13) Contracted security could therefore be removed. Concerning condition 12) Staffing -“There shall be somebody on site overseeing the operation...”. Councilor Smith asked what that meant. There was discussion.

Mr. Williams suggested removing the second and third sentences from condition 11) Radio coverage, and other Board members agreed.

It was agreed that condition 17) Solar conduit should say “Peak shall provide solar conduit and electrical panel spacing in the buildings to prepare the project to accept photovoltaic solar panels if/when it becomes cost effective in the future....”

***Councilor Cote MOVED to pause the deliberations on the Peak applications, and move on to the next Agenda item. Lorne Parnell SECONDED the motion, and it PASSED 6-1, with Richard Kelley voting against it.***

**VIII. Public Hearing on a Citizen petition for amendment to Zoning Ordinance regarding limitations to building height and number of stories along a section of Main Street in Central Business District**

Chair Wolfe apologized for the delay in having this public hearing, noting the Planning Board's busy schedule in recent months.

***Richard Kelley MOVED to open the Public Hearing on a Citizen petition for an amendment to the Zoning Ordinance regarding limitations to building height and number of stories along a section of Main Street in the Central Business District. Councilor Cote SECONDED the motion, and it PASSED unanimously 7-0.***

Chair Wolfe asked that someone explain why the petition was proposed, and the thought process behind it.

**Dudley Dudley, Woodman Road**, said a year ago, when the building at the intersection of Madbury Road and Pettee Brook Road took shape and people realized how big it would be, there was concern that Durham's small town ambiance would be lost, and that the tiny downtown would be made into a high rise dormitory. She said when construction of the other building on Pettee Brook began, people got more concerned and started to question how this could have happened. She said she realized there had been every opportunity to be informed on these projects, but said people hadn't been paying attention. But she said they were now paying attention.

She noted that a petition was created in the spring that called for size and height limits for new and repurposed structures on Main St, Madbury Road and Pettee Brook Lane, and said 360 people signed it over a two week period. She noted that after it was presented, people still wanted to sign it.

She said a few months ago, a friend talked to her about the idea of restricting the size of buildings anywhere in Town and getting something on the ballot concerning this. Ms. Dudley said she spoke with Administrator Selig about this, and learned there was a quicker way to determine the wishes of the townspeople, which was a citizen petition. She said the petition before the Board was what was then developed, and she read through it. She said the required signatures were gathered quickly over two days, and noted that many people who signed said the petition didn't go far enough.

Ms. Dudley asked those present at the meeting to raise their hands if they wished that the petition covered all of downtown Durham and not just Main Street. The large majority of members of the public raised their hands. She then said the current petition was a compromise, and said she hoped the Planning Board would support it. She said this petition and the previous petition, as well as the presence of those at the meeting and many letters provided by residents spoke in opposition to buildings taller than 35 ft in downtown Durham. She said she hoped the Board heard them.

**Beth Olshansky, Packers Falls Road**, said as the larger buildings had appeared downtown, she too had become concerned about the height issue. She said she had started driving around other towns in New Hampshire to look at architecture and building height. She noted that in 2012, the architectural design regulations process had begun at the Planning Board level, and concerns were expressed by the public about building height at that time.

But she said at a certain point it was determined that the hard facts of building height belonged in the Zoning Ordinance. She said those architectural design standards had now been approved by the Planning Board, but the issue of building height had still not been addressed.

Ms. Olshansky said in driving around the State, she had seen that most of the old New England style towns had 2-3 story buildings, whereas the cities had more stories. She provided details on this, noting that Concord, which had some 4 and 5 story buildings, had a very wide Main Street, with 4 lanes of traffic and two lanes of diagonal parking. She said what was allowed currently downtown in Durham was buildings up to 50 ft for 4 stories, for a flat building, but said for a peaked building, the height could go up to 58 ft. She noted that Libbys was 35 ft.

She said the initial petition was the desire of many citizens. She said as she listened to EDC meetings and understood their reasons for wanting taller buildings, she began to think about whether there could be a compromise. She said to her, what was most important was the look and feel of the face of the downtown. She said the intent with this petition was to give Main Street particular attention as a special part of the entire downtown area.

Ms. Olshansky said at the August 28<sup>th</sup> EDC meeting, there was an elaborate discussion on building height, and she noted that at that meeting, Tom Elliott asked why they weren't talking about architectural design standards that distinguished between buildings that fronted on Main Street and buildings everywhere else. She said EDC member Doug Clark also said that was a good idea.

She said Mr. Elliott then said that as a compromise to get community acceptance, he would be very comfortable with the Zoning Ordinance saying that buildings fronting Main Street in general needed to be no more than three stores, and four stories with a special exception, and then everything else could be taller. She said this was perhaps a place where they could all come together.

Ms. Olshansky noted what the Zoning Ordinance currently allowed downtown on the north side of Main Street, which was a solid face of 50-60 ft tall four story buildings. She said this would totally overwhelm the human scale and small town character they felt was so important.

She said the petition signed by 157 people on Election Day was intended to limit building height from and including Town and Campus to the end of the Central Business district. She said this included some properties on the south side of Main Street past the Grange.

She noted that Mr. Behrendt had had some second thoughts about including those properties, and she said there had been discussion at the EDC meeting the previous evening about allowing buildings on these properties to have four stories, through Conditional Use.

Ms. Olshansky said that regarding those buildings on the south side of Main Street, just east of the Grange, currently they were only allowed to be three stories tall. She spoke against what Mr. Behrendt had proposed, stating that the citizen petition was never intended to be more permissive than what was allowed now.

She said that regarding the proposal to allow a fourth story by Conditional use, the purpose of the proposed amendment was clearly to limit the number of stories to three stories or 35 ft. She noted that the building could be taller than 35 ft if it had a peaked roof, and there was discussion.

Ms. Olshansky said zoning should not be driven by a particular project, and should reflect the wishes of the community. She asked the Planning Board to accept the zoning amendment as written.

Mr. Behrendt provided background information on the rezoning process in this instance, where there was a citizen petition, and explained the roles of the Planning Board and the Town Council in this process. He said if the Planning Board wanted to make any changes to the zoning proposal, it would have to develop a separate zoning amendment, and would need to hold separate public hearings. He said there would then be two parallel petitions.

He noted that the Planning Board had 60 days to act on the petition, and also said since the public notice had been posted, the building height amendment was in effect so that any development proposal would need to abide by it. He said if the Town Council ultimately rejected it, the previous provisions concerning building height would apply.

Mr. Behrendt said if this proposed zoning change was adopted, the Planning Board would take a look at in the context of the commercial core zoning changes that the Board would be working on again in the coming months, and might want to make some changes to it. He said the public would be involved in that process as well. He said he thought what was proposed here was constrained, well thought out and reasonable. He also said his recommendation to remove the Orion property lots was something for the Planning Board to consider.

He said the EDC had deliberated but didn't make a recommendation. He also said a good point the EDC had made was that when there were three floors, there would be retail on the first floor and two floors of student housing, but a fourth floor would have value in

terms of diversity as well as economically if it could be rented out for office or retail. He said the EDC had also suggested possibly allowing a fourth floor through Conditional Use, particularly in regard to Roger Hayden's building.

Mr. Behrendt noted that this current proposal would also go to the HDC for review.

**Kay Morgan, Valentine Hill Road**, spoke in favor of the amendment. She said she had lived in Durham for about 35 years, and said a distinguishing factor had always been that one could tell where the University ended and the Town began. She said if they allowed taller buildings up to 58-60 ft, the downtown would have a very different look.

She said it almost felt like the University had taken over the Town with its big buildings and the new big buildings on Pettee Brook Lane. She said they all struggled to have a sense of community in Durham, and said the architecture was a part of their culture. She said she would be vigorously opposed to revising the zoning amendment to not include the properties beyond the Grange, stating that they knew what Orion wanted to do with those properties, which was to develop them into a huge student housing complex. She said a lot of people would leave Durham when that happened.

**Councilor Robin Mower** first read a letter from resident **Dennis Meadows**, which she said was well written and brought up points that some members of the public would like to hear:

The letter said the situation now reminded him of when he moved to New Hampshire in 1972, to the small town of Plainfield. He said the town had no zoning, and it was about to be exploited by a group of developers who saw the prospect of buying land relatively cheaply and then developing structures that could be sold at high profit because they expropriated the amenities of the town.

He said he was a professor at Dartmouth College then, and had his students conduct a 100% household poll, that asked, "What are the features of Plainfield that make it a special place for you?" He said over and over people mentioned the views and the impressions they got as they drove or walked around the town.

He said those views were commons, and were not owned by anyone, so they were difficult to protect and easy to destroy. He said just a few structures built in a sensitive place could block the view for all forever. He said when it became clear that people really cared about those views, the town acted decisively to protect them by enacting zoning regulations.

Mr. Meadows said there was now a similar situation in Durham, and said without decisive action now to enact height limits, developers would convert the main street of Durham into a canyon. He said the incentive was that higher buildings generated more profit, but he said aside from the few who would profit, many of whom did not even live in Durham, no one in this Town wanted their village to be converted into another multi-story office and dormitory ghetto. He said the difference between 35 and 50 feet was enormous when applied to buildings on both sides of a town street.

He said it was not fair, and it should not be permitted, that paying just for the price of a single building lot downtown gave a developer the right to impose the taxes of ugliness and congestion on all the residents of the town in perpetuity!

Mr. Meadows said a great deal of damage had already been done to the beauty of the view and the ease of traffic in downtown Durham, but said that made what remained even more precious. He said the Planning Board had a reputation in the town for being competent and fair, and he urged the Board to put that reputation behind the proposal for reduced height limits that would go to the Planning Board tomorrow.

Councilor Mower then read from the Conditional Use permit provisions in the Zoning Ordinance, and said they would apply to uses and would not apply to dimensional standards such as building height. She also said there was nothing in the Table of Dimensional Standards that addressed the criteria by which the provision in the table that allowed the Planning Board to grant approval for a height of 50 ft rather than 35 ft could be decided on.

She said she therefore didn't think the Conditional Use approach was appropriate in regarding to building height, and also said she thought the Table of Dimensional Standards needed to be revised by reflecting some kind of criteria, if the Planning Board was going to use discretion about approving a higher height limit.

**Henry Smith, Packers Falls Road**, quoted from the 2000 Master Plan, and said a question was whether 4 and 5 story buildings would be included in the kind of picturesque small town community that was described in the Master Plan. He said planner Bill Dennis had said it was a matter of perception as to how tall a building was, and that there were examples of places in New England with buildings this tall that were pleasant. He said no towns were provided as examples of this or anything else Mr. Dennis had spoken about. Mr. Smith strongly urged the Planning Board to adopt the proposed amendment.

**Councilor Diana Carroll, Canney Road**, said she was speaking as a long-time resident of Durham. She said it would be helpful if the names of the people who had written emails in favor of the zoning amendment could be acknowledged.

Councilor Cote read the list of names:

Pamela Faltin  
Doris Irwin  
Hans and Phyllis Heilbronner  
Joshua Meyrowitz  
Ann Knight  
Janet Chamberlin  
Katy Ellis  
Charles Forcey  
John Lowey  
Laura and Peter Flynn



Pamela Shaw  
Heidi Eli  
Julia Rodriguez  
Joan Drapeau  
Diane Freeman  
Lorna Ellis  
Rita Freuder  
Ellen Karelitz

Chair Wolfe asked those people in the audience who were in support of the Zoning change to raise their hands. 0 people raised their hands.

Councilor Carroll noted that several other people in favor of the Zoning change had been present earlier but had left the meeting.

**Diane McCann, Oyster River Road**, noted comments on space for the turning room for bikes in the Peak Project. She said she was concerned about increase density downtown, even it was commercial, and how this would impact being able to walk around downtown.

**Annemarie Harris, Oyster River Road** said she supported the amendment. She said she had noted in the past that there had been a considerable amount of discussion and concern about increasing the density of student housing downtown. She noted that she had followed many of the EDC meetings on DCAT, and believed they were a committee that recommended certain things, and were not an appointed body that made legal decisions on the behalf of residents.

She said there was a huge concern about the rapid expansion of student housing in Town, and said it would be very beneficial right now to pause while these developments on the west side of Town were realized. She said there were proposals for the former Cutter properties east of the Grange to be developed into something huge, which there was substantial disagreement with. She said she would be very encouraging that those properties remain strictly three stories, and she spoke further on this.

She said the Planning Board should be listening to people who had no vested interest in the properties involved with this citizen petition. She said there were only two opposing letters to the petition, and said they were people who had vested interests.

**Lynn Holmes, 10 Meserve Road**, said she had asked a family friend who worked at UNH if UNH was expanding, and was told no. She asked that the Planning Board consider this, and not make the downtown into another dormitory

Chair Wolfe asked those who were opposed to the Zoning change to come forward to speak.

**Roger Hayden, Dover, owner of 44 and 46 Main Street,** noted a presentation he had made to the Planning Board a few months ago to potentially redevelop his properties. He said he started in 2003 to develop a design, when the standard of building was one floor of commercial and two floors of student housing. He said over the past few years, it had become obvious that the Town had encouraged this. He said he had spent about \$25,000 developing designs to redevelop his properties based on this.

He said he was definitely vested and invested in Durham. He noted that his businesses had been in Town for 25 years, and said if he did something, it wouldn't be frivolous or strictly capitalistic, but would need to make a profit. He noted that people had complained that there weren't enough shops downtown, and said he had recently developed a design for a 4 story building, but said the top two floors, which would be student housing, were recessed, and the first two floors were commercial. He said there would be offices on the second floor and 5-6 shops on the first floor such as the Candy Bar that was now located in one of his buildings.

Mr. Hayden said the citizen petition would potentially stifle creativity. He noted the two alleyways around his buildings, and described them as decrepit. He said he would be willing to sacrifice valuable retail space through the middle of the building so that there could be a pedestrian gateway from Main Street down to Pettee Brook Lane.

He said the petition would mean that if he sold his property to a developer, there would probably be a three story building boxy building constructed there, with two floors of student housing. He charged the Planning Board to determine what Durham really wanted in its downtown business core. He said if there was quaintness, residents would have to sacrifice something else.

Mr. Hayden asked if they wanted vibrant businesses with walking traffic and a variety of stores for shopping, which might mean sacrificing a bit in terms of allowing more height. He said it was about time residents decided what they wanted, and said he had a great plan that would solve some of the problems the Town was facing.

**Mike Sievert, 28 Riverview Road,** said he wasn't in favor of the petition because the developments in Town in recent years had been an economic success for everyone. He said the taxable value of the 5 projects done exceeded \$10 million, and was what the Town Council had been looking for. He said the opportunities created by these developments included student housing, workforce housing, retail and office uses, and allowed new companies to come in.

He said the timing for Mr. Hayden's project was unfortunate, given this petition. He said the project was proposed in a special place downtown. He also said it was unique in that all of the commercial space currently there was filled, which gave Mr. Hayden the opportunity to provide a better picture to the bank, and to be a lot more flexible with his design, including taking away some retail space to allow public uses, and minimizing the density of student housing upstairs while still getting a building that was aesthetically

pleasing. He noted that the pictures Mr. Hayden had provided of the project did not reflect the new architectural regulations, but would reflect these in the future.

Mr. Sievert said the petition took value away from these properties. He said perhaps there could be a compromise to allow some flexibility, especially for people who already had project in process, and those with a vested interest in the Town, who were not just people coming to Town.

**Nick Isaak, local architect**, said the professionals could only go with the existing zoning, and the financial wherewithal and goals of developers. He said when he was on the Planning Board several years back and they were charged with doing the Zoning rewrite based on the 2000 Master Plan and Randall Ahrendt's writings, Mr. Ahrendt's suggestion to the Town was to increase density downtown, and to try to preserve agricultural land.

He said that seemed ironic tonight, given the Peak's essentially suburban development proposed in the middle of prime agricultural land, which flew in the face of the Master Plan. He said downtown, where the density really should occur in a traditional sense of town planning, they were trying to put a stop to it.

Mr. Isaak said there needed to be a vision for what they wanted downtown, and not just text in the Zoning Ordinance. He said people needed to be able to see what the downtown could look like with 3 or 4 stories, or 3 stories with a stepped back 4<sup>th</sup> floor. He said he agreed with B Dennis that it was about perception, and said he didn't think they could make a decision based purely on an arbitrary 3 stories, 35 ft requirement.

**Art Guadano, 24 Pinecrest Lane**, said he had been a resident for 24 years, and said he was against the petition. He said he was on the steering committee for the Master Plan in 2000, and was a co-chair for the downtown central business core. He said there were a series of meetings and hearings to get a sense of the Town as a whole, and said a goal that came out of this process was to put the development downtown, where the density was wanted.

He said it took a number of years for the Planning Board to incorporate into the Zoning Ordinance what had been requested in the Master Plan, so that there could be development downtown, and so the Town's gateways and rural areas could be protected. He said this had actually been working, and he spoke in some detail on this. He said they were all vested in the character of the downtown.

But he said now some people were upset with change. He asked how many of the 6500 residents knew about this petition.

Mr. Guadano noted that a fourth floor would not mean there would be more students in the building, and said it would mean that there would be a second commercial floor. He said there were also tax benefits, and said mixed use developments like this were very

positive, because having them meant that there would be different people in Town at different times of day.

He said the character of the downtown was also an issue. He said Durham was not a particularly attractive downtown, and he noted towns like Exeter, Newmarket, and Portsmouth, which had some larger buildings. He noted the larger UNH buildings near the downtown, and said it was important for Durham not to be dwarfed by UNH, and to hold its own in the face of this.

Mr. Guadano said the proposal would hurt downtown economic growth, would have a negative impact on taxes, and was contrary to the goals of the Master Plan. He said if residents and the Planning Board wanted to change these goals, they should update the Master Plan, and say what they wanted, whether it was economic development and density or a rural, small downtown that couldn't hold its own.

He charged the Planning Board with updating the Master Plan and determining what the other 6200 people in Durham wanted. He said he suspected that they could probably get 100-200 residents to say they wanted economic development and lower taxes, and would support the current height limit. Mr. Guadano said he supported that current height limit.

The Planning Board agreed that they would keep the public hearing open. They also agreed that a notice of the proposed Zoning change would be sent to the property owners who would be impacted by it.

Break from 10:10 pm to

***Richard Kelley MOVED that the Planning Board adjourn no later than 11:00 pm. Lorne Parnell SECONDED the motion, and it PASSED unanimously 5-2, with Richard Ozenich and Bill McGowan voting against it.***

Councilor Smith was a voting member in place of Councilor Cote, who had left the room briefly. Councilor Cote returned to the room shortly after the vote.

### **Continued deliberations on the Peak Conditional Use Permit application and Site Plan application**

There was discussion on the Waste Management condition of approval. Mr. Githens said there would be three dumpster and recycling stations, and said if single stream recycling wasn't done, the reception by the students wouldn't be very good. He said typically Peak provided the containers in the building for the single stream recycling, and residents had to bring the recyclables to the dumpster. Mr. Behrendt noted the language that had been included: "The applicant will provide the opportunity for single stream recycling"

There was discussion on condition 22) Inspection of stormwater and other infrastructure. Mr. Persechino suggested wording "...monitoring on a periodic basis during construction"

Mr. Kelley said if there was a storm, the applicant would ensure that erosion and sedimentation controls to make sure they were up to date. Mr. Persechino provided details on this, and it was agreed that the Alternation of Terrain permit specified what needed to be done.

Chair Wolfe said he wanted the Planning Board to be consistent about requiring pervious pavement. There was discussion that the Planning Board hadn't required it for the Bryant project, and Mr. Kelley noted that Mr. Bryant had offered to do this upfront.

Chair Wolfe noted that the Board had required that Capstone have someone on site to inspect the installation of the pervious pavement there, because it was important that it be put in right. He said Jamie Houle had been there for this, and said he would like to have someone at the Peak site for this as well.

Mr. Kelley said this was a big job, and said Mr. Johnson wouldn't be able to handle it. He said the Board should say additional help would be needed, and that Peak would pay for this.

There was discussion that pervious pavement was an evolving technology, with evolving standards, and that the person overseeing the work had to be able to know that the work was being done right. Mr. Kelley said he had a problem with Mr. Houle doing this, noting that he sat on the Conservation Commission.

There was further discussion, and Mr. Persechino said he had had numerous conversations with Town Engineer Dave Cedarholm on this, and said he was completely comfortable that DPW's capacity to do the oversight was adequate, and if they didn't have staffing available to do this, they would hire a qualified person to provide the oversight. Chair Wolfe said he was fine with that.

Regarding 26) Parking Permits, Councilor Smith said he didn't think tenants who didn't park cars at Peak should be forced to subsidize those who did. He suggested therefore reversing the logic in #26, to say that if Peak encouraged tenants not to bring cars to Durham, they should be allowed to rent the spaces to non-tenants.

Mr. Kelley said he wasn't sure this was an approved use in that district. There was discussion, and Board members said they didn't agree with Councilor Smith's idea.

Councilor Smith suggested that all tenants should have to pay for parking permits over and above rent, and tenants who didn't have parking permit shouldn't pay for them.

Chair Wolfe said that was a great idea, but said he didn't think there would be support for it now. Mr. Behrendt suggested that the Board could push for this early on with the next project.

Mr. Githens said he understand the logic of this, but said the Durham market wasn't a "charge for parking" market. He said it would be difficult to enforce this, and to be competitive.

Councilor Smith said if the parking was there, it was more likely that there would be tenants who would want it. He said this was an issue the Planning Board would have to deal with later.

Councilor Smith suggested language to 34) Execution "...including as pertains to architectural rendering, unless changes are approved by the Town. Mr. Behrendt noted a separate condition dealing with that under 2 b) Architecture.

Mr. Kelley suggested that "As Built Drawings" should be used throughout the document. Mr. Lewis asked who "the Town" was, in the condition on Violations, and there was discussion.

In regard to 37) Waivers, Mr. Parnell asked if there was a time limit on this.

Chair Wolfe read the Capstone wording, and agreed that it should replace the currently proposed language in the Peak documents. There was discussion on the wording.

Councilor Cote said he had gotten some information from Mr. Johnson on the energy efficiency of plumbing fixtures, and he provided details on what the plumbing code, which was several years old, currently said. He said according to Mr. Johnson, there might be some technologies out there that resulted in less flow than what was in the code.

Mr. Githens said these specs that had been provided were good, and were what Peak typically followed. He said being more efficient than this concerning low flow could be foolish.

There was discussion that Mr. Behrendt had provided an abbreviated version of the Findings of Fact, as compared to what had been done in the past.

#### PRECEDENT CONDITONS OF APPROVAL

1) Plan modifications. Make the following modifications to the plan drawings (Items do not need to be physically constructed as a precedent condition):

- a) Easements. Show all easements on the plans, including:
  - i) access through UNH property from Mast Road to the Project entrance.
  - ii) access corridors for all Town owned stormwater, water, and wastewater infrastructure with maintenance easements as stipulated by the Town Engineer.
- b) Limits of construction. Clarify how limits of construction will be marked on site, whether with orange construction fence or other method.
- c) Handicap units. Identify handicap units.

- d) Multiuse Path. The applicant shall submit detailed plans for the multi-use path as generally depicted on the November 1, 2012 plan set, consistent with the intent of discussions held with the Planning Board, as reasonably determined by the Town Planner. (See General Condition regarding the Multiuse Path.)
  - e) Crosswalks. Show two crosswalks crossing Mast Road, one in front of the development linking to the Bryant driveway entrance, as appropriate, and one linking the new path on the northerly side of Mast Road to the existing end of the path on the southerly side of Mast Road. Installation of these crosswalks is subject to approval of NHDOT and will not be required if not approved by NHDOT.
  - f) Pedestrian signal(s). Show pedestrian activated signal at the new Bryant driveway crosswalk. Installation of these signals is subject to approval of NHDOT and will not be required if not approved by NHDOT.
  - g) Right turn lane. The applicant shall prepare detailed plans for a right turn lane leading from Mast Road onto Main Street. If NHDOT stipulates a right turn lane here then the lane shall be as designed by NHDOT. If NHDOT does not require a right-turn lane then the lane shall be as approved by the Town Engineer and/or NHDOT, as appropriate. A right turn lane shall not be required if NHDOT does not permit this improvement.
  - h) Intersection signs. Show one or two standard intersection signs on Mast Road warning of the driveway at Peak if such sign(s) meet(s) the MUTCD warrants.
  - i) Hydrants. Finalize locations on the plans of the fire hydrants as stipulated by the Fire Department. Per the Town Engineer, fire hydrants and associated isolation valves shall be installed at the entrance to the development, and at the end of a branch provided for a future extension located near the existing west driveway entrance to the residential property called Tax Map 13 Lot 10-0.
  - j) Irrigation. Show information for irrigation or hose bibs.
  - k) Porous pavement. Show porous pavement signs at appropriate locations, which shall read as follows, or equivalent: "Porous asphalt pavement for stormwater management. Semi-annual vacuuming is required. The following are prohibited: winter sanding, seal coating, tractor trailers/heavy load vehicles, and handling of hazardous waste."
  - l) Sewer line. Show a capped stub of sewer main extending from proposed sewer manhole PSMH9 appropriate for a future sewer force main extension and terminating near the existing west driveway entrance to the residential property known as Tax Map 13 Lot 10-0. The configuration of PSMH9 shall be appropriately designed and constructed to accommodate this future extension.
- 2) Notes on plans. Add the following notes on the plans
- a) Inspections. "All inspection/observation services for all water, wastewater and stormwater management infrastructure installations associated with the development shall be performed by authorized representatives of the Town of Durham as deemed necessary by the Durham Department of Public Works and the Developer shall reimburse the Town for all associated inspection/observation costs."
  - b) Architecture. "The architectural drawings for the exteriors of the buildings are approved as part of this site plan/conditional use approval. Peak shall submit proposed changes to the architectural designs to the Planning Department. The Planning Department may approve any changes that it determines are clearly consistent with the intent of the approved plans (such as minor changes in color, trim details, window details, and entrance designs). Significant changes will be presented to the Planning Board for review and approval."
  - c) Road maintenance. "The use of sodium chloride based materials for winter road maintenance shall be the minimum necessary for roadway safety. Since the development

calls for the use of porous asphalt, sand should not be used in those areas. However, sand may be used in other areas not using porous asphalt to cut down on the amount of sodium chloride based materials used.”

- d) Underground utilities. “All utility piping and wiring shall be located underground.”
  - e) Natural features. “Preservation of Natural Features and Amenities. Grading and clearing should be minimized so as to avoid creating undue erosion or interruption of natural drainage ways. Particular attention should be given to natural features suitable as buffer strips. The applicant shall use construction methods which cause the least disturbance to the environment possible. Clearing limits shall be established in the field and approved by the Tree Warden prior to commencement of clearing.”
  - f) Debris. “No cut trees, stumps, debris, junk, rubbish, or other waste materials shall be buried in the land, or left or deposited on site at the time of the certificate of occupancy or after that.”
  - g) Fertilizer. “Low phosphorus/slow release nitrogen fertilizers for landscape stock shall be used.”
  - h) Fire access. “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 868-5531 with any questions about access requirements”.
  - i) Off-site improvements. “All off-site improvements included in this approval shall be completed prior to issuance of a certificate of occupancy unless an appropriate surety is placed.”
  - j) Improvements. “All improvements shown on the approved site plan must be properly completed prior to issuance of a certificate of occupancy, unless appropriate surety (sufficient to cover the cost of outstanding items, in accordance with surety standards for the Town of Durham) is placed with the Planning Department.”
  - k) Building Code. “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. Various requirements regarding the building design may be specified at that time.”
  - l) Stormwater infrastructure. “All stormwater management infrastructure shall be designed and installed in accordance with Design Standards of the Durham Site Plan Review and Subdivision Regulations, and shall be owned, operated and maintained accordingly by the property owner to protect the quality of existing onsite and offsite water resources and wetland habitat.
  - m) Buffer. “The portion of the existing vegetative buffer along Route 155A/Mast Road - which is depicted as remaining after construction per the site plan - shall be preserved to the extent possible with the exception of dead, diseased, or invasive vegetation.”
- 3) Other permits. All required state and federal permits, plus the dredge and fill permit and conditional use approval for the multiuse path (See condition for Multiuse Path, below, for exception), shall be obtained with copies of permits or confirmation of approvals delivered to the Planning Department.
- 4) Deeds and easements. Submit all draft deeds and easements to the Town for review and approval.
- 5) Addressing. Develop a numbering system for the buildings to be approved by the Fire and Police Departments (The system will likely not rely upon names for the streets).



- 6) Lot combination. The two lots shall be combined (merged) in conformance with RSA 679:39a and Town policy.
- 7) NHDOT Driveway permit. Obtain driveway permit from NHDOT. Any significant changes to the plans as approved by the Planning Board shall be submitted to the Planning Board for review. No notices or public hearing shall be required.
- 8) NHDES Alteration of terrain. Obtain approval from NHDES. Any significant changes to the plans as approved by the Planning Board shall be submitted to the Planning Board for review. No notices or public hearing shall be required.
- 9) NHDES Sewer Connection Permit. Submit permit to the Planning Department.
- 10) ADA parking. Confirm that number of handicap spaces is sufficient for ADA requirements.
- 11) Fees for Traffic Study Peer Review. Pay traffic study peer review fees if any are outstanding and above the \$2,500 paid to date.
- 12) Construction guarantee. The applicant shall post an acceptable financial surety to be approved by the Planning Board. The financial surety shall be in an amount sufficient to ensure the completion of all roads, water service, sewage disposal, drainage, erosion control, and other infrastructure/improvements. The financial surety shall be effective until work is completed by the applicant. The financial surety shall be approved by the Town Business Manager as to the form and type. The construction guarantee may be released in phases as the portions of the secured improvements or installations are finalized. A cash deposit or letter of credit is an acceptable method of providing the guarantee.
- 13) Maintenance Guarantee. A financial surety shall be submitted to guarantee that all site work is installed in a correct and workmanlike manner. The guarantee shall be in an amount of two percent of the estimated site improvement costs and shall remain in force for two years after site improvements are completed. If repairs are subsequently needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements. A cash deposit or letter of credit is an acceptable method of providing the guarantee.
- 14) Landscaping guarantee. A guarantee must be posted in an amount equivalent to 100% of the installed cost for all of the landscaping to ensure satisfactory completion of the landscaping plan. The guarantee shall be for a period of two years commencing from the time the certificate of occupancy is issued or installation of the landscaping materials, whichever occurs later. If replacements of any materials are subsequently needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements. This guarantee and/or those stipulated above may be combined at the discretion of the Business Manager. A cash deposit or letter of credit is an acceptable method of providing the guarantee.
- 15) Lighting. Clarify which LCSC light will be used. Provide information on wall packs. They must be shielded/dark sky compliant.
- 16) Water and sewer permits. Water and sewer permits must be approved by the Town Council.

- 17) Utility connection. A utility connect permit application with necessary plans and specifications shall be submitted to DPW for their review and approval and subsequent consideration by the Durham Town Council. The Durham Town Council will consider this application only after the necessary approvals are granted by the New Hampshire Department of Environmental Services.
- 18) Architectural plans. Submit one final 11x17 set of approved architectural elevations in color.
- 19) Final plans. Submit final set of approved plans – one full set of full-size mylars, one full set of full-size paper copies, one full set of 11x17 paper copies, and one electronic version.
- 20) Signature. Signature by the applicant below acknowledging all terms and conditions of this approval herein.

### **SUBSEQUENT AND GENERAL TERMS AND CONDITIONS OF APPROVAL**

- 1) Site work. No significant site work or ground disturbance may occur/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. These erosion and sedimentation control measures and any required orange fencing must be in place prior to the pre-construction meeting in order that they may be inspected at the meeting. Contact the Planning Department to arrange for the preconstruction meeting. In addition, mature trees along Mast Road shall be physically protected from damage during site work, as determined by the Tree Warden.
- 2) Preconstruction meeting. A preconstruction meeting shall be held prior to any significant ground disturbance. The number and schedule of trucks during earthwork and construction will be discussed as part of the preconstruction meeting. It shall be determined by applicant at or by the preconstruction meeting whether or not existing apple trees on site will be transplanted as depicted on the landscape plan, based upon the condition of those trees and the viability of transplanting them. If new trees are to be used, then an equivalent number of a comparable trees, the species to be approved by the Public Works Director, shall be planted. A revised landscaping plan shall be promptly submitted showing either a detail for transplanting the apple trees or identifying new trees that will be planted.
- 3) Multiuse Path. The following terms apply to the multiuse path:
  - a) The path, to be situated off site, as depicted in the plans, is required as an element of this project.
  - b) A conditional use approval from the Town of Durham and a dredge and fill approval from NHDES are necessary, for the path as presently configured. Additionally, easements, including a temporary construction easement, may be required from UNH.
  - c) In the event that either or both of these approvals are not granted, or in the event that UNH does not grant any easements necessary, such that the path cannot be constructed as proposed, or with minor modifications acceptable to both the Town and the applicant (such acceptance not to be unreasonably withheld), then construction of the multiuse path shall not be required.
  - d) In this case (condition c, immediately above), the applicant shall be required as a backup project to pave the shoulders on Mast Road. The purpose of this backup project is to

- provide reasonable pedestrian and bicycle access from the Peak project to the UNH campus (Acceptable access is already in place along Main Street).
- e) For this backup Mast Road project, the gravel shoulders shall be paved to a minimum width of four feet, on both sides of Mast Road, from the intersection of Mast Road with Main Street to the location of the driveway into the Peak project.
  - f) For this backup Mast Road project the applicant shall prepare drawings and a complete set of plans acceptable to both the Town Engineer and NHDOT (including any elements that may be integral to paving the shoulders, such as installation of appropriate base materials, regrading, restriping, etc.)
  - g) The plans may be certified, building permit(s) may be issued, and site work may commence even if the approvals for the path are denied or delayed, provided the applicant pursued the approvals expeditiously (as reasonably determined by the Town Planner).
  - h) The final certificate(s) of occupancy shall not be issued unless the path (or paved shoulders) is/are properly installed or an acceptable surety is in place.
  - i) In the event that the applicant cannot obtain all necessary approvals to pave the shoulders despite all reasonable efforts then there shall be no further requirements regarding this item.
- 4) Right Turn Lane. The applicant shall construct the right turn lane (from Mast Road to Main Street) if all approvals are granted. If the right turn lane approvals are not granted, this condition is void and does not invalidate the site plan or conditional use permit.
- 5) Bus shelter. There will be auxiliary seating in the clubhouse with a view to the shelter and a door and sidewalk leading directly to the shelter. There will be a digital real time display inside the clubhouse of buses . This assumes that UNH provides this real-time application to the applicant. Otherwise, the real time display is not a requirement.
- 6) Transit. The applicant shall ensure that adequate transit is provided for the occupants of the development travelling to and from the University Campus. If UNH is the provider of such transit, then applicant shall submit a letter to the Planning Board from UNH Transportation Services indicating that the proposed transportation schedule is adequate for occupants of the development. If the applicant provides such transit, then the applicant will determine a proposed transportation schedule and adequacy for occupants of the development.
- 7) Energy Code. Building construction shall be in compliance with the energy efficient standards of Chapter 38 of the Town of Durham Code of Ordinances.
- 8) Natural gas. If natural gas will be used, provide a letter of approval from Unitil. (Should be a subsequent condition)
- 9) Easements. Prior to issuance of a certificate of occupancy, evidence of recording of all easements at the Registry shall be provided (Easements should also be shown on the plans, above).
- 10) Wastewater. All public wastewater system infrastructure extensions shall be designed and installed at the expense of the developer in accordance with Town Sewer Ordinance Chapter 106 and applicable State regulations. Once installed and approved by the Town representatives this infrastructure shall be owned and operated by the Town of Durham including all sewer mains, sewer manholes, and associated appurtenances. Sewer service lines and waste lines internal to each structure shall be owned and maintained by the property owner.

- 11) Radio coverage. The requirements of the Durham Public Safety Amplification ordinance shall be satisfied.
- 12) Staffing. At least one full-time staff member and at least one courtesy officer shall reside on-site. There shall be somebody on site overseeing the operation, 24 hours a day, 7 days a week.
- 14) Property and security management plan. The Property and Security Management Plan shall be submitted to include, but not limited to, the following: Rules and regulations of Peak Campus Development; 24 hour/7 day a week primary contact person to resolve security or other issues in a timely and appropriate manner; a secondary contact person in case the primary contact person is not available; all contact information updated with the Police Department, Fire Department, and Code Enforcement Department on an as-needed basis; and night time security for the site from Thursday night through Saturday night from 9 PM - 2AM. If problems persist on the property, as determined by the Police Chief, full time security will be needed 7 days a week from 8 PM - 6 AM until the problems are rectified to the satisfaction of the Police Chief. The plan shall be approved by the Town Planner with the advice and consultation of the Police, Fire, and Code Enforcement Departments and can be reviewed, modified, and updated by the owner with the approval of the above departments.
- 15) Moped parking. Peak, at its option, may re-designate and restripe parking spaces for mopeds in the future provided they do not go below the required 460 car spaces.
- 16) Solar panels. Peak will incorporate thermal solar panels on the clubhouse to generate a significant percentage of hot water in the clubhouse.
- 17) Solar conduit and electrical panel spacing. Peak shall provide conduit and electrical panel spacing in the buildings [now as part of building construction] to prepare the project to accept photovoltaic solar panels if/when it becomes cost effective to do so. This applies to the type 200, 200A, and 300 buildings.
- 18) Waste management. The property owner's waste management hauler's name, account number, and phone number shall be provided to the Durham Health Officer (DHO) so the DHO can call and order an emergency pick up if necessary. The DHO is authorized to request this service at Peak's expense should it be deemed necessary. The DHO is only authorized to contact the waste management hauler after first contacting the property owner and allowing the property owner to order a pick up. The applicant shall provide the opportunity for the residents to use single stream recycling.
- 19) Waste material. The leases shall reference the Durham Town Code Section 118:11 for Offensive Material (Waste Material) and the applicant shall allow the Code Enforcement Officer the ability to enforce this provision within the development.
- 20) Amenity inspections. The clubhouse, pool/spa, and other common amenities shall be inspected at least once a semester, or as determined, by the Durham Health Officer.
- 21) Inspection of units. Tenant leases shall include notice that Durham Town Officials may randomly inspect any residential units annually. Five percent of the units, or as determined by the Town, shall be inspected annually. Inspections shall be randomly selected by the Durham Health Officer (DHO) and may be scheduled with minimum notice as stated in the

- lease.22) Inspection of stormwater and other infrastructure. The Durham Public Works Department, or another party selected by the Department, shall inspect the installation of the stormwater drainage systems, the erosion and sedimentation control measures, the porous pavement during its installation, and other appropriate infrastructure. The erosion and sedimentation control measures shall be monitored by applicant on a periodic basis during construction and any deficiencies shall be corrected as soon as possible. The applicant shall pay the costs of any supplemental staff hired by the Town to assist the Public Works Department in its inspection of this project.
- 23) Utility inspections. The Town of Durham engineer, or designee, shall perform on-site inspections during the installation of the water and sewer utilities. The applicant shall pay the costs of any supplemental staff hired by the Town to assist the Public Works Department in its inspection of this project.
- 24) Building inspections. The Town of Durham Building Official, or designee, shall perform on-site inspections during building construction. The applicant shall pay the costs of any supplemental staff hired by the Town to assist the Building Department in its inspection of this project.
- 25) Fire inspections. The Town of Durham Fire Code Official, or designee, shall perform on-site inspections during fire code and life-safety matters. The applicant shall pay the costs of any supplemental staff hired by the Town to assist the Fire Department in its inspection of this project.
- 26) Parking permits. The applicant shall not sell or otherwise provide parking permits to non-tenants other than employees or courtesy officers.
- 27) Sprinklers. All buildings within the development shall have sprinkler systems as approved by the Durham Fire Department.
- 28) Minor changes. Minor changes to the approved plans may be approved by the Code Enforcement Officer, Town Engineer, or Town Planner, as appropriate. Staff shall inform the Planning Board of all such approved changes.
- 29) Logging. RSA Chapter 79 - Forest Conservation and Taxation specifies requirements for the removal of timber or wood from a property. The applicant shall contact the Town of Durham Assessing Office at 868-8064 if Chapter 79 applies to any intended cut. It is the property owner's responsibility to ensure compliance with Chapter 79. RSA 79.1 II. (b) (5) states "The following persons shall not be required to file an intent to cut or be subject to the tax imposed by this chapter...[a] person who cuts or causes to be cut, within the tax year, up to 10,000 board feet of logs and 20 cords of wood or the equivalent in whole tree chips, from the person's own land within a municipality, for land conversion purposes other than timber growing and forest uses, provided that those persons intending to convert the use of the land have secured all required permits including, but not limited to, building permits, subdivision or zoning permits, excavation permits, or site plan approvals, as necessary for the use to which the land will be converted, and are able to furnish proof of such permits."
- 30) Erosion control. All erosion and sedimentation control structures must remain in place and be maintained until vegetation is established or ground surface is suitably stabilized.

- 31) Water infrastructure. All public water system infrastructure extensions as depicted on the plans shall be designed and installed at the expense of the developer in accordance with Town Water Ordinance Chapter 158, AWWA guidelines and applicable State regulations. Once installed and approved by the Town representatives this infrastructure shall be owned by the Town of Durham and operated by the UNH/Durham Water System including all water mains, valves, fire hydrants, water meter assemblies (1 per each building), and master meter (prior to water main branch at entrance), and associated appurtenances. Water service lines and plumbing internal to each structure shall be owned and maintained by the property owner.
- 32) As-built drawings. As-built drawings of all infrastructure, utilities, drainage structures, roads, parking areas, buildings and other pertinent elements shall be provided prior to certificate of occupancy (unless a surety to cover the cost of the as-built drawings is given).
- 33) Execution. The project must be built and executed exactly as specified in the approved application package unless changes are approved by the Town as provided in this document (See Minor Changes provision herein).
- 34) 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.
- 35) 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 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.
- 36) Waivers. A waiver was granted from the school impact fees (Ordinance 75-9 B) as specified immediately below.
- 37) School impact fee. The appropriate fee(s) shall be paid for any grade school students who live at Peak for whom the Town must provide educational services.
- 39) Findings of fact. a) The applicant submitted an application, supporting documents, and plans for the project; b) The Planning Board held a number of continuous public hearings on the application; c) The applicant revised and updated the plans and other documentation numerous times pursuant to comments from the Planning Board, public, and Technical Review Group, and other Town boards and committees; 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; e) the Planning Board found that the eight criteria for conditional uses outlined in the Zoning Ordinance section 175-23 C. are adequately addressed in the applicant's application for a conditional use (dated August 22, 2012); and f) The Planning Board duly approved the application as stated herein, including the conditional uses. Substantial records are maintained of the process and documentation submitted in the Planning Department. A record of documentation and a timeline of the project will be prepared as needed.

***Richard Kelley MOVED to approve, as amended this evening the Site Plan Review and Conditional Use Permit submitted by Joseph Persechino, P.E., Tighe & Bond, Portsmouth, NH, on behalf of Peak Campus Development, LLC, Atlanta, GA (applicant), Chet Tecce Jr., Durham, New Hampshire, John & Patricia McGinty, Durham, New Hampshire and the University of New Hampshire, Durham, New Hampshire (property owners) for a 142-unit/460 bed apartment-style housing development. The properties involved are shown on Tax Map 13, Lots 6-1, 10-0, 3-0UNH and 4-0UNH, are located on Mast Road and are in the Office Research/Light Industry Zoning District. Richard Ozenich SECONDED the motion, and it PASSED unanimously 7-0.***

Mr. Kelley commended the applicant and staff for bringing in an application that was hard to find holes in. He said it made a difference that Peak did a lot of the work upfront, and was cooperative.

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

Mr. Githens said he appreciated the Planning Board's work, and said Peak would be a part of the community over the next 18 months and probably beyond. He said Durham was a great community.

**IX. Other Business**

**X. Review of Minutes: September 12, 2012 September 19, 2012 - postponed**

**XI. Adjournment**

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

Adjournment at 10:52 pm

Victoria Parmele, Minutes taker