

From: [Firoze Katrak](#)
To: [pnrasn@yahoo.com](#); [Rick Taintor](#); [external forward for stobias](#)
Cc: [Karen Edwards](#); [Jen Berry](#); [laura@mitchellmunigroup.com](#); [Todd Selig](#)
Subject: Mr. Taintor misleads ...
Date: Thursday, March 12, 2020 7:19:45 AM

Dear Planning Board Chair, and PB Members,

It was disappointing and very concerning to see last night's (March 11) PB meeting because Mr Taintor continued to mislead the Board in regard to the SA. He continued to harp on his false opinion (encouraging the Board to almost ignore the SA), and he presented a myopic view of Todd's email to me by disregarding Todd's main overarching message (as highlighted in my earlier email below).

I hope the PB now understands that it should not ignore the SA; and that it will use its provisions as one tool during its review of the MP application.

It might be worthwhile to ask if Mr Taintor should be removed/replaced from the ongoing MP review process because he is biased against the residents of the town. I will leave that for the "Town" to decide. I have hope that the PB will protect the Town's residents, in spite of Mr Taintor's unwarranted and biased aggression.

Thank you
regards
firoze

ps to Karen Edwards: Please forward to all PB Members and please put this in public record. Thank you.

-----Original Message-----

From: Firoze Katrak <fekatrak@aol.com>
To: tselig@ci.durham.nh.us; pnrasn@yahoo.com; council <council@ci.durham.nh.us>; rtaintor@ci.durham.nh.us
Cc: mbehrendt@ci.durham.nh.us; jberry@ci.durham.nh.us; kedwards@ci.durham.nh.us
Sent: Wed, Mar 11, 2020 2:56 pm
Subject: Re: planning board role relative to colonial durham application | 12/14/15 settlement agreement

Hi Todd,

While we may not see eye to eye on many points, I appreciate and thank you for finally conceding (in your 2nd last para) that the PB must not ignore the SA and that the SA must be a part of the PB's tool kit. In particular your sentence "*There are numerous elements that the applicant and the Planning Board (in the course of its review) should endeavor to ensure are in place such that the application is in conformance with the settlement agreement.*"

We are now clearly in agreement on this important point that the PB must consider various clauses of the SA in its deliberations.

I too will now end this dialogue. Thank you being the gentleman I always you knew are :)

Thank you
regards
firoze

ps to Karen & Jen: please distribute to the PB in a timely manner ... and Thank you to both of you.

-----Original Message-----

From: Todd Selig <tselig@ci.durham.nh.us>
To: Firoze Katrak <fekatrak@aol.com>; pnrasn@yahoo.com <pnrasn@yahoo.com>; Durham Town Council <council@ci.durham.nh.us>; Rick Taintor <rtaintor@ci.durham.nh.us>

Cc: Michael Behrendt <mbehrendt@ci.durham.nh.us>; Jen Berry <jberry@ci.durham.nh.us>; Karen Edwards <kedwards@ci.durham.nh.us>
Sent: Wed, Mar 11, 2020 1:36 pm
Subject: Re: planning board role relative to colonial durham application | 12/14/15 settlement agreement

Dear Firoze,

I have reviewed the sealed Town Council non-public minutes from that period and will note that it would be problematic for any person who was present for those discussions to disclose the contents. At the same time, while your recollection may be a perspective you brought to the table at some point in time, I cannot say that the information I have reviewed is necessarily reflective of your precise recollection. (See clarification below.) This all happened over 4 years ago. While we (myself included) all like to believe our memories are perfect, they are not! And regardless of what the intent of individual members may have been, what is actually binding is the settlement agreement.

It is important to remember what the lawsuit which led to the settlement agreement was all about: it was focused on the density requirement. And therefore it was largely that issue on which everyone was focused during the settlement discussions.

The settlement agreement is between the Town and the applicant; the Planning Board was not a party to that lawsuit or that settlement agreement. Therefore, the Planning Board is not bound by anything in the agreement, nor does it have jurisdiction to enforce anything in the agreement. Enforcement of the agreement is strictly in the hands of the Council and the Town Administrator. Mill Plaza, on the other hand, is bound by the agreement. It was required to submit a revised application in substantial compliance with the items identified in paragraph 1. (See settlement agreement on line at https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/colonial_durham_settlement-stay_proceedings_agreement.pdf. If it had failed to do that, it is the Council/Town Administrator that could have brought an action in court claiming violation of the settlement agreement; it would not be a basis for the Planning Board to deny approval.

The fact that the Planning Board review is independent from the agreement is found elsewhere in the agreement as well. Paragraph 3 provides that "The Revised Application shall be pursued by Colonial Durham and considered by the Planning Board, in good faith and in the usual course, consistent with and subject to the terms of this Agreement (the Planning Board Review)".

Paragraph 5(b) even contemplates the Planning Board violating the agreement. It provides that if the Planning Board ***review yields an approval with conditions that have the effect of imposing a stricter density requirement than provided in the agreement***, or if the effect of that review somehow circumvents or frustrates that agreement, then Colonial Durham can pursue its original appeal.

I'd also encourage everyone to read the actual requirement regarding parking in Paragraph 1 e, which is the topic of at least some of the present debate. The settlement agreement provides that proposed "on-site parking shall be increased from 345 spaces ***to a number acceptable to the Planning Board based on the zoning ordinance and site plan review regulations***." So, if the on-site parking that is provided by Mill Plaza complies with the zoning and site plan regs, it meets the letter of the settlement agreement, even if additional parking is being provided off site.

In some respects, the settlement agreement essentially established a floor requirement for a number of narrow topics that were perceived by the Council/Town Administrator to be acceptable to the Town as part of those settlement deliberations. Now getting back to the heart of your concern, what the Council/Town Administrator overtly envisioned was that *other than the narrow points in the settlement*, we wanted the applicant to have to go through the normal Planning Board process.

Does this mean that the settlement agreement is not an extremely important tool for the Planning Board to review and carefully consider? Absolutely not. There are numerous elements that the applicant and the Planning Board (in the course of its review) should endeavor to ensure are in place such that the application is in conformance with the settlement agreement. Determination of compliance with the settlement agreement ultimately lies with the Council/Town Administrator, however, as described above. Does this mean that there are aspects of the settlement agreement that directly call out the Planning Board's review? It absolutely does. Some of the provisions in Paragraph 1 do just that.

I don't plan to continue this dialogue further as it is simply unproductive and generally a distraction to the important work we all envisioned the Planning Board would undertake.

All my very best,

Todd

Todd I. Selig, Administrator
Town of Durham, NH
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He/him/his pronouns

Everyone can tackle climate change. How can you reduce your carbon footprint?

From: Firoze Katrak <fekatrak@aol.com>
Date: Tuesday, March 10, 2020 at 7:29 PM
To: Todd Selig <tselig@ci.durham.nh.us>, Paul Rasmussen <pnrasm@yahoo.com>, Durham Town Council <council@ci.durham.nh.us>, Rick Taintor <rtaintor@ci.durham.nh.us>
Cc: Michael Behrendt <mbehrendt@ci.durham.nh.us>, Jennie Berry <jberry@ci.durham.nh.us>, Karen Edwards <kedwards@ci.durham.nh.us>
Subject: Re: planning board role relative to colonial durham application | 12/14/15 settlement agreement

Hi Todd, Planning Board Members, Town Council,

Todd your email to the Planning Board Chair is deceptive, and you continue to dodge the heart of the issue I have raised. You have explained your opinion as you see the situation today. My question is not what you believe today. My point is that you need to acknowledge what the then TC was told at the time it passed the SA. We were told the PB would use the SA in its normal review process.

You continue to ignore that matter. Why? Is it because you now want to encourage the PB to ignore the SA? If so, that would be an unethical bait and switch tactic on your part. I hope that is not the case.

The reason why this is important is that the SA has many elements beyond density and positioning (North side) issues. As you know the SA also includes issues for wet lands buffer, WCOD, privacy barrier for adjoining neighbors, onsite security, etc. Unless the PB considers all such relevant factors from the SA, it will not be doing what the then TC assumed PB would be doing in its review process.

There should be plenty of historic records to either prove me wrong, or to confirm what I have said. By avoiding my request, you continue to dodge the heart of the issue and you continue to mislead the PB. I am disappointed, I expect better from you. It is not too late for you to still set the record straight: that the PB should include the SA as one element in its tool kit when it reviews this application.

Thank you
regards
firoze

ps to Karen Edwards & Jen Berry: Please forward to all members of the PB in a timely manner.

-----Original Message-----

From: Todd Selig <tselig@ci.durham.nh.us>
To: Firoze Katrak <FEKatrak@aol.com>
Sent: Tue, Mar 10, 2020 5:16 pm
Subject: FW: planning board role relative to colonial durham application | 12/14/15 settlement agreement

Dear Firoze,

For your general information.

Todd

Todd I. Selig, Administrator
Town of Durham, NH
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Everyone can tackle climate change. How can you reduce your carbon footprint?

From: Rick Taintor <rtaintor@ci.durham.nh.us>
Date: Tuesday, March 10, 2020 at 5:13 PM
To: Planning Board
Cc: Karen Edwards <kedwards@ci.durham.nh.us>, Todd Selig <tselig@ci.durham.nh.us>
Subject: FW: planning board role relative to colonial durham application | 12/14/15 settlement agreement

From: Todd Selig <tselig@ci.durham.nh.us>
Date: Tuesday, March 10, 2020 at 5:11 PM
To: Paul Rasmussen <pnrasm@yahoo.com>, Rick Taintor <rtaintor@ci.durham.nh.us>
Subject: planning board role relative to colonial durham application | 12/14/15 settlement agreement

Dear Rick and Paul,

It has come to my attention that there have recently been questions raised from members of the Planning Board and the public concerning the role of the Planning Board's review relative to the Colonial Durham application for redevelopment of the Mill Plaza in light of the settlement agreement dated December 14, 2015. As such, I am writing to provide clarification and direction so the Planning Board may proceed with its review. This clarification and direction is reflective of guidance I have received from the Town's attorney and in my formal role as a party to the agreement itself as Town Administrator under Section 4.5 of the Town's Charter.

The Planning Board's role is to review the application submitted by Colonial Durham in front of it. If there is a claim that the plan violates the settlement agreement, that is something for the Town Council and the Town Administrator to determine. The Planning Board has no jurisdiction over the settlement agreement. Similarly, the Town Council has no jurisdiction over the Planning Board's review of the application.

Other than the narrow points contained in the settlement agreement, the Council and the Town Administrator intended the applicant to have to go through the normal Planning Board process.

I will note definitively that the northern half of the property referenced in the settlement agreement in section 1 b was intended to reflect the half of the property that generally parallels Main Street, *not* magnetic north.

The language of the settlement agreement itself says that the Town and Town Administrator will forbear (refrain) from enforcing the amendment against Colonial Durham as long as Colonial Durham filed a revised application that substantially conformed to the criteria set forth in the settlement agreement. Since it is the Town and the Town Administrator who are refraining from enforcing, it is only the Town and the Town Administrator that can determine whether the plan conforms to the criteria set forth. The Planning Board simply reviews for conformity with the Town regulations.

Please also note that the application for the redevelopment of the Mill Plaza by Colonial Durham and the application submitted by the Toomerfs at 19-21 Main Street are separate and distinct applications and must be treated as such by the Planning Board.

Planning Board members may find it generally informative to view the Planning Board meeting from January 27, 2016, in which Town Counsel Laura Spector discussed the settlement agreement with the board and answered questions from the public. This recording can be accessed on line at <https://durham.vod.castus.tv/vod/?video=281db2b9-ae74-4466-b813-58a5130995d4&nav=playlists%2Fplaylists%2FPlanning%20Board.m3u8>.

The settlement agreement itself may be found on line at https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/21851/colonial_durham_settlement-stay_proceedings_agreement.pdf.

Please share this communication with the Planning Board for the board's information and also include on the Planning Board section of the Town's web site relative to the Colonial Durham application for the information of the public who may be closely following this review.

Todd

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