

***James F. Allmendinger
170 Dennett Street #1
Portsmouth, NH 03801
603.568.2274
jfalaborlaw@gmail.com***

June 16, 2021

Sent via Email

Durham Planning Board
8 Newmarket Road
Durham, NH 03824

Re: Colonial Durham Association, Mill Plaza and RSA 261:75-b

Dear Members of the Planning Board,

I am writing as a former Durham resident who has followed the issues related to the Plaza Site Management Plan with much interest, since I lived in the faculty neighborhood until relocating to Portsmouth at the end of June 2020.

I am also writing as a retired attorney who still takes frequent walks at Doe Farm, the Oyster River Forest, the College Woods, and other wonderful spots in town. After which, I often stop by the Hannaford and the Rite Aid to shop.

RSA 261:75-b and disputes over the development of the Mill Plaza prompt this letter. As I assume you know, RSA 261:75-b ***Use of Number Plate Scanning Devices Regulated***, states as follows: “The use of automated number plate scanning devices, also known as automated license plate readers (LPRs) is restricted to local, county, and state law enforcement officers.” The statute also sets forth a number of other limitations on the use of LPRs.

The text of the statute is of some length and is copied at the foot of this letter. Notwithstanding an anticipatory repeal of the statute, that statute remains in effect until January 1, 2027. [RSA 261:75-b repealed by 2016, 78:3, II, effective January 1, 2027.]

That statute renders illegal, in my opinion, one provision of the Revised Proposed Management Plan 2-22-21 (the Plan). That Plan is, as I understand it, the plan that is before this

Board. At page eight of that Plan is the following statement: “A parking lot monitoring system will track license plates as vehicles enter the parking area.”

Now I do not plan on doing anything illegal before taking walks in Durham’s town woods and forests, and I do not plan on doing anything illegal while shopping at Mill Plaza. But I still object to what I consider an invasion of privacy that seems to be an integral part of the current Plan.

I am at a loss to understand both the need for such monitoring, and the apparent illegality of that part of the Plan. The potential legal liability that could arise—to the Town, Mill Plaza tenants, persons shopping at Mill Plaza—should be enough to deter what looks to me like an apparent violation of rights. Please note my objection.

Of course, if you have questions, let me know. Thank you for your consideration of my concerns.

Sincerely yours,

/s/Jas. F. Allmendinger

Email Distribution List:

Rick Taintor, Contract Planner: rtaintor@ci.durham.nh.us

Administrative Assistant Karen Edwards: kedwards@ci.durham.nh.us

Todd Selig: tselig@ci.durham.nh.us

Text of RSA 261:75-b:

261:75-b Use of Number Plate Scanning Devices Regulated. –

The use of automated number plate scanning devices, also known as automated license plate readers (LPRs) is restricted to local, county, and state law enforcement officers who shall only use the devices subject to the following conditions and limitations:

I. An LPR shall be installed for the sole purpose of recording and checking license plates and shall not be capable of photographing or recording or producing images of the occupants of a motor vehicle.

II. Authority to obtain and issue LPR devices and to administer a documented training process for acquiring proficiency in their operation and compliance with federal and state regulations and other appropriate legal mandates shall be vested in the head of the state police or the chief of police, director, county sheriff, or other head of a law enforcement agency or his or her designee. Only devices authorized by the head of the law enforcement agency shall be approved for its use by its officers and the devices shall be maintained in accordance with the manufacturer's recommendations. Such policy or policies shall conform to the requirements of this chapter.

III. Prior to using an LPR, the law enforcement agency intending to use the device shall register it with the department of safety on forms approved by the commissioner for that purpose. The head of the law enforcement agency shall certify that the device meets all the requirements of this section and that the agency has a policy or policies in effect governing its use and a documented training process for the officers that will use it.

IV. The law enforcement agency shall ensure that data entered into the LPR through a hard link or wireless upload on a daily basis for the purpose of making deletions and additions to keep current the lists against which the device is scanning. Officers shall make

manual changes to the list during their shifts when they become aware that new bulletins are issued or bulletins are canceled. Partial plate numbers or characters reported as a result of serious crimes may be entered into the LPR in an attempt to identify suspected vehicles used in connection with the crime.

V. LPR operation and access to LPR collected data shall be for official law enforcement purposes only. LPR devices shall only be used to scan, detect, and identify license plate numbers for the purpose of identifying:

- (a) Stolen vehicles.
- (b) Vehicles associated with wanted, missing, or endangered persons.
- (c) Vehicles registered to a person against whom there is an outstanding warrant.
- (d) Vehicles registered to persons whose drivers' licenses, driving privileges, or vehicle registrations are under suspension or revocation.
- (e) Vehicles registered to persons suspected of criminal or terrorist acts, transportation of stolen items or contraband, or motor vehicle violations.
- (f) Vehicles in violation of commercial trucking requirements.
- (g) Vehicles involved in case-specific criminal investigative surveillance.
- (h) Vehicles involved in homicides, shootings, and other major crimes or incidents.
- (i) Vehicles in the vicinity of a recent crime that may be connected to the crime.

VI. A positive match by an LPR device alone shall not constitute reasonable suspicion as grounds for a law enforcement officer to stop the vehicle. The officer shall develop independent reasonable suspicion for the stop or immediately confirm visually that the license plate on the vehicle matches the image of the license plate displayed on the LPR and confirm by other means that the license plate number is on one of the lists specified in paragraph V.

VII. Prior to stopping a vehicle based on an LPR alarm, the officer shall attempt to visually verify that the number plate on the list matches the digital image displayed on the LPR. If it matches the alarm it shall be accepted and the officer shall initiate a query of the National Crime Information Center (NCIC) database.

VIII. Records of number plates read by each LPR shall not be recorded or transmitted anywhere and shall be purged from the system within 3 minutes of their capture in such a manner that they are destroyed and are not recoverable, unless an alarm resulted in an arrest, a citation, or protective custody, or identified a vehicle that was the subject of a missing person or wanted broadcast, in which case the data on the particular number plate may be retained until final court disposition of the case. Captured license plate data obtained for the purposes described in paragraph V shall not be used or shared for any other purpose.

IX. Access to LPR records shall only be allowed on a case-by-case basis, for legitimate law enforcement investigative, prosecution, or audit verification purposes. All inquiries of LPR records shall be recorded for purposes of an audit trail and maintained by the law enforcement agency in the same manner as criminal history logs.

X. To ensure compliance with the provisions of this section or to investigate complaints of misuse of LPR devices, the attorney general or a designee of the department of justice including county attorneys and law enforcement officers acting at the request of the attorney general may examine and audit any LPR device, a server used to store LPR data, and records pertaining to the use of LPR devices maintained by any state, county, or local law enforcement agency and the department of justice may seek an injunction banning the use of LPR devices by an agency found to have used an LPR device or devices in repeated violation of this section and requiring the confiscation of LPR devices if the attorney general deems it necessary to prevent ongoing violations or deter future violations of this subdivision.

XI. A law enforcement agency using an LPR device shall report to the commissioner annually, beginning one year from the date equipment is deployed, the following information compiled for the previous year:

- (a) The number of devices in use.
- (b) The number of matches made by the LPR devices.
- (c) The number of matches that identified vehicles and individuals sought by law enforcement and that resulted in stops of vehicles or individuals.
- (d) The number of matches that resulted in searches of vehicles and individuals, releases, arrests, or other outcomes.
- (e) Other information requested by the commissioner.