

July 26, 2022

Re: Need for independent appraisal to address CUP Criterion #6

Dear Members of the Durham Planning Board,

On July 22, shortly after 9:00 PM, the PB held a brief discussion regarding whose input on property values should be considered during their deliberation of CU Criterion #6: our Town Assessor who admits at the start of his letter that any statements from him would be pure speculation or Joan Friel, a veteran realtor with her ears to the ground as to what home buyers are looking for (and what they wish to avoid).

CU Criterion #6, Impact on property values, has not been adequately addressed:

The proposed use will not cause or contribute to a significant decline in property values of adjacent properties.

During the PB's recent discussion of this criterion, Jim Rice's letter was used by some members as "proof" that there would no diminution of value of the adjacent properties. After revisiting his letter, I find this most peculiar.

Jim Rice admits that his comments are "pure speculation."

Jim is a well-liked and respected figure in town. But that does mean any letter he drafts (this one appearing to be "off the cuff" and written in the form of a casual email) should not be used as evidence of "no loss in value," particularly when he does not even address an issue directly or precisely. Jim Rice's letter states:

"Whether this project would cause a diminution in value to these [abutting] properties would be pure speculation at this point."

Jim does not even offer a guess about the impact on the Urso or Andersen properties, the two properties that would be most affected by the proposed monstrosity of a parking lot where there was once a forested hillside.

Jim Rice's assessor's letter is out-of-date.

Please note that Jim's letter is dated **February 24, 2021. It is 18 months old.** It was written at the height of the housing boom, when interest rates were low and home prices were skyrocketing. Today, interest rates have gone up and promise to continue to increase. As online research confirms, the housing market is already showing signs of softening. Jim's example has little bearing on today or future housing markets.

Jim Rice's 5 Chesley Drive example is irrelevant.

Mentioning the sale of a property 19-months ago that is not an abutting property, not even on the same side of the street as the proposed parking lot, has little bearing on the question at hand TODAY, i.e. the impact on property values of adjacent properties. The sale price of 5 Chelsey Drive 19 months ago is irrelevant and proves nothing.

Jim Rice seeks the advice of a real estate agent.

While some members of the Board claim veteran realtor Joan Friel's letter is not to be taken as valid evidence of diminution of value, Jim Rice himself consults with a local realtor to determine her sense of the market (again a year and a half ago). Veteran Appraiser Peter Stanhope, Chief Appraiser of the Stanhope Group, and respected expert witness in NH courts, acknowledges the valuable input available from veteran realtors like Joan Friel whose "professional opinion deserves full consideration."

The Applicant has presented no evidence, merely offered a favorable opinion.

In the Toomerfs' request for a CU Permit, they write:

"6. Impact on property values: The proposed development will not cause or contribute to a significant decline in property values of adjacent properties.

- The property value of the subject property was not diminished by the fact that there are several other parking lots of various sizes in and adjacent to this parcel."

They do not mention the very close proximity of the proposed parking lot to the Urso property, which today is surrounded by significant forest on 3 sides and a tall hedge on the fourth side. Indeed, part of its charm and value is its proximity to downtown while enjoying a green buffer on all 4 sides. Nor do the Applicant's mention the several hundred feet of wooded buffer that the Andersen property currently enjoys that will be reduced to 50 feet or less. (Fifty feet presumes that no additional trees will be taken down or killed in the process of building a retaining wall and bringing in 14,000 cubic yards of fill to create 20ft. tall mound.)

Neither the Applicant nor Jim Rice have presented conclusive evidence regarding the impact of the proposed project on the property values of adjacent properties.

Please keep in mind the clear requirements of our CU Ordinance:

175-23. Approval Criteria. A. Planning Board Decision Based on Findings. Every decision of the Planning Board pertaining to the granting, denial or amendment of a request for a conditional use permit shall be based upon findings of fact and conditions of approval. The findings of fact and conditions of approval shall be supported in the records of its proceedings. The criteria enumerated in Subsection C are required to be met in any matter upon which the Planning Board is required to pass under these regulations. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific fact shall be deemed not to be in compliance with these regulations.

B. Burden on applicant. The applicant shall bear the burden of persuasion, through the introduction of sufficient evidence, through testimony, or otherwise, that the development, if completed as proposed, will comply with this Article and will satisfy the specific requirements for the use contained in the ordinance.

Accordingly, I wonder what “findings” the PB will rely on should they decide to approve this proposal. Surely not the inadequate testimony of Jim Rice, nor the opinion of the Applicant.

Though it is late in the game, should the Board be inclined to approve this proposal, I urge the Planning Board to hire an independent appraiser at the expense of the applicant in order to be able to make a meaningful and honest determination for CU Criterion #6: Impact on property values. Beside all the other negative external impacts (which the PB has not yet discussed—noise, glare, hours of operation, etc.), surely as our summers continue to heat up, a large heat-island in the middle of a residential neighborhood does not make a welcoming neighbor. In addition to the many negative external impacts, as temperatures rise due to climate change, the adjacent properties will become less and less attractive to potential buyers.

Using Jim Rice’s 18-month-old letter, which clearly admits an opinion would be “pure speculation,” or the Applicants one sentence opinion does not meet the burden of proof for the Findings of Fact. Indeed, they are both legally indefensible.

Sincerely,

Beth Olshansky