To: Durham Planning Board / From: Joshua Meyrowitz, 7 Chesley Dr / June 21, 2022

Conditional-Use Projects Are…Subject to Specified *Conditions!*

Including preserving Natural Resources & Positive Fiscal Impact (beyond "assessment value")

"Based on my experience studying urban forests in the northeastern U.S., a patch like this [Church Hill Woods] in the center of an urban area is priceless…."
– Forest Ecologist, Richard Hallett 3-17-22

It may be true that a landowner can clear cut all the trees on their property in Durham, NH, with no special permission for a "by-right" use. But the Planning Board's acceptance of a proposal that is subject to Conditional Use Zoning is just that: subject to conditions specified in our Zoning. And those conditions, per Durham's Zoning Article, include *preservation of natural resources* and a *positive fiscal impact on the town*. The preservation of natural resources "shall include, but not be limited to…significant wildlife habitat, stonewalls, mature tree lines, cemeteries, graveyards…scenic views, and viewsheds."[1]

The preservation of natural resources and positive fiscal impact are NOT among the clauses in the Conditional-Use Article that are to be compared to the impacts of *adjacent existing and permitted uses in the zone*. Thus, the fact that a landowner might be able to clear-cut a property for a permitted use has no bearing on whether a *conditional-use project* should be allowed to devastate an urban forest. The fact that one is allowed to inflict violence on someone in an act of self-defense does not negate the fact that the same act of violence without the context of permitted self-defense is forbidden and could land one in prison. The same actions have different implications in different contexts. (See another analogy regarding the differential, context-based treatment of the same behaviors in Joshua Meyrowitz 6-8-22.) *The context for a commercial parking lot on Church Hill is "conditional" use.* Certain impacts allowed in other situations are forbidden with a conditional-use application. Moreover, as the Zoning Article emphasizes at the start: "Further Conditions [beyond those listed] may be placed on the Conditional Use Permit by the Planning Board to ensure that the Conditional Use will have a positive economic, fiscal, public safety, environmental, aesthetic, and social impact on the town." **You are fully empowered by Conditional Use criteria to stop a damaging, zoning-violating plan and encourage a positive one.**

Devastated Natural Resources: The mature tree lines, scenic views, and viewsheds that would be lost if Church Hill Woods were to be deforested and buried under close to 14,000 cubic yards of trucked-in fill (about 16,000 CY with pavement and stormwater chambers, per Cover Letter 3-17-22) is obvious from simple observation of Church Hill Woods, from the various PB site walks, and from many of the pictures in my PowerPoint presentations and subsequent digital submissions to the Planning Board.

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[1] Per Letter from Attorney Nathan R. Fennessy 5-11-22: "I understand that the Board was given advice from the Town Attorney in February 2021 suggesting that the natural resources criterion in the Conditional Use article referred only to such specially designated areas, such as those under Conservation Easements. That interpretation, however, is not consistent with the text of the zoning ordinance. Identified and designated are NOT defined, and, in any case, not all the nouns in that passage are modified by 'identified' and 'designated.' In short, I would argue that the Planning Board and public can and must draw on common meanings of the terms in Conditional Use criterion #5, particularly as regard to such features as stonewalls, cemeteries, and for the Church Hill Woods site, mature tree lines, wildlife habitat, scenic views, and viewsheds."

Fiscally Irresponsible: Please also note that Michael Behrendt's Planner's Review 6-22-22 relies on the type of fiscal-impact data that have been discredited by at least two major submissions to the Board.

As Gail Kelley 5-11-22 has written in **"Durham Site Plan Regulations Are Clear: Environmental protection supersedes tax revenue considerations":**

> Nowhere in Durham's Site Plan Regulations is there any mention of increasing property tax revenue as one of the purposes or intents of the regulations.
>
> Nor is there any provision in the Site Plan Regulations for increased property tax revenue as a rationale for overriding any of the standards or requirements in those regulations….
>
> To determine the *fiscal impact* of the proposed parking lot on the town, the *environmental impact* of the project has to be assessed.

Gail Kelley highlights this question from Dr. Hallett: "Where is the cost/benefit analysis showing that the benefits outweigh the current and future environmental costs of this project?"

"Apparently," writes Kelley, "Mr. Behrendt considers the comments [here] of Durham Tax Assessor Jim Rice in a Feb. 24, 2021, email sufficed as a fiscal impact analysis…. So much for an independent fiscal impact analysis in accordance with best practices – which an email exchange between town officials is not. The DZO and SPR make no mention of the town tax assessor as the entity who determines whether the planning board should commission a fiscal impact study."

Indeed, as forest ecologist Richard Hallett 3-17-22 writes, property taxes are not the proper variable:

> The ordinance also states that the Planning Board may commission, at the applicant's expense, an ***independent*** analysis of the fiscal impact of the project on the town, something that must go far beyond changes in assessed values for property taxes. The independent analysis should:
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> • Include the cost of the loss of the ecosystem services provided by the forest that will be removed today and over the expected lifespan of the parking lot.
>
> • Consider the increased frequency and severity of storms in the future, especially with respect to the loss of a functioning forest upslope of College Brook which subsequently drains into Great Bay.
>
> • Consider the environmental impacts to the identified wetlands and the water quality of College Brook now and into the future.
>
> • Consider the cost the town would need to incur to mitigate the stormwater that is currently handled by this forest patch, now and in the future.

* * *

All that said, the negative external impacts of a large commercial parking lot (whether each negative impact is explicitly listed in the Zoning or not) *are* to be compared to those of other existing and permitted uses in the zone. And, in the case of serious additional chloride damage to the Chesley Marsh and College Brook, the proposed parking edifice that would replace Church Hill Woods compares very unfavorably to other uses, as documented in this sequence of citizen letters:

"Chloride is a difficult beast…" (negative external impacts on the watershed), Joshua Meyrowitz 6-1-22 (text, one page);

"The impact of chloride from the proposed project would be greater than what would result from a by-right development on the site," Eric Lund 6-2-22 (text, one page);

"Salt pollution (particularly chloride) will negatively impact aquatic life including crustaceans, amphibians, fish, plants, and other organisms," Emily Malcolm-White 6-1-22 (text, one page); and

"Parking Lot Expanse: 'Negative External Impacts' on College Brook," Robin Mower 6-3-22 (text, 2 pp + 2-page article: "Winter road salt, fertilizers turning North American waterways increasingly saltier).

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I close with excerpts from an article that I read portions of at a PB hearing many months ago:

US cities are losing 36 million trees a year. Here's why it matters and how you can stop it

By Amy Chillag, CNN / Updated 12:44 PM EDT, Wed September 18, 2019

> If you're looking for a reason to care about tree loss, this summer's record-breaking heat waves might be it. Trees can lower summer daytime temperatures by as much as 10 degrees Fahrenheit, according to a recent study.
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> But tree cover in US cities is shrinking. A study published last year by the US Forest Service found that we lost 36 million trees annually from urban and rural communities over a five-year period. That's a 1% drop from 2009 to 2014.
>
> If we continue on this path, "cities will become warmer, more polluted and generally more unhealthy for inhabitants," said David Nowak, a senior US Forest Service scientist and co-author of the study…. But the one reason for tree loss that humans can control is sensible development.
>
> "We see the tree cover being swapped out for impervious cover, which means when we look at the photographs, what was there is now replaced with a parking lot or a building," Nowak said…. "Every time we put a road down, we put a building and we cut a tree or add a tree, it not only affects that site, it affects the region."

The study placed a value on tree loss based on trees' role in air pollution removal and energy conservation. The lost value amounted to $96 million a year.

Nowak lists **10 benefits trees provide** to society:

Heat reduction: Trees provide shade for homes, office buildings, parks and roadways, cooling surface temperatures. They also take in and evaporate water, cooling the air around them. "Just walk in the shade of a tree on a hot day. You can't get that from grass," Nowak said. To get the full temperature benefit, tree canopy cover should exceed 40% of the area to be cooled, according to a recent study in the Proceedings of the National Academy of Sciences. "A single city block would need to be nearly half-covered by a leafy green network of branches and leaves," the authors wrote.

Air pollution reduction: Trees absorb carbon and remove pollutants from the atmosphere.

Energy emissions reduction: Trees reduce energy costs by $4 billion a year, according to Nowak's study. "The shading of those trees on buildings reduce your air conditioning costs. Take those trees away; now your buildings are heating up, you're running your air conditioning more, and you're burning more fuel from the power plants, so the pollution and emissions go up."

Water quality improvement: Trees act as water filters, taking in dirty surface water and absorbing nitrogen and phosphorus into the soil.

Flooding reduction: Trees reduce flooding by absorbing water and reducing runoff into streams.

Noise reduction: Trees can deflect sound, one reason you'll see them lining highways, along fences and between roads and neighborhoods. They can also add sound through birds chirping and wind blowing through leaves, noises that have shown psychological benefits.

Protection from UV radiation: Trees absorb 96% of ultraviolet radiation, Nowak says.

Improved aesthetics: Ask any real estate agent, architect or city planner: Trees and leaf cover improve the looks and value of any property [*Ecosystem Services*, Vol 12, April 2015, pp. 209-217]

Improved human health: Many studies have found connections between exposure to nature and better mental and physical health. Some hospitals have added tree views and plantings for patients as a result of these studies. Doctors are even prescribing walks in nature for children and families due to evidence that nature exposure lowers blood pressure and stress hormones. And studies have associated living near green areas with lower death rates.

Wildlife habitat: Birds rely on trees for shelter, food and nesting. Worldwide, forests provide for a huge diversity of animal life….