— *19 M*ain *S*treet: *"*Highest *and* Best *U*se*"* vs *"*Planning*"*—

July 21, 2022

Planning Board
8 Newmarket Road
Durham, NH 03824

Dear Members of the Board,

Is the role of the Planning Board to assist a developer in realizing his most profitable use of a property—or is it to evaluate a proposal in light of compliance with our land use regulations and how it fits with our long-term planning goals? (This is not a rhetorical question.)

One resident stated during Design Review that the "highest and best use" for this property would be the proposed parking lot. We also heard that claim during the Board's July 13th deliberation on this application's Conditional Use criteria, i.e., that a large long-term parking lot is the "highest and best use" of a centrally-located property, in our tiny commercial downtown, that extends all the way from Main Street to Chesley Drive (as if that were the best the Town could hope for–and a good deal).

So rather than let that claim float around unsupported and unchallenged, let's ask:
- Was the Board told how "highest and best use," an appraiser's term, is defined— and how it is determined?
- Has the Board read an appraisal report for this property?
- Has the Board consulted an independent appraisal expert on this matter?

The remainder of this letter addresses the following:

- Traditional definition of the real estate term "highest and best use"
- Applicability of the term to this project: Who benefits?

Traditional definition of the real estate term "highest and best use"

How is the term "highest and best use" traditionally—and most simplistically— defined in the real estate arena?

> Why is the highest and best use so important in the appraisal process? **It is because the highest and best use determines the most profitable use of the site**...The Fifth Edition of *The Dictionary of Real Estate Appraisal* by the Appraisal Institute defines "highest and best use" as: The reasonably probable

and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible and that results in the highest value.

...Most textbooks don't mention "appropriately supported" as part of the highest and best use definition. The Uniform Standards of Professional Appraisal Practice (USPAP) does not have a definition for highest and best use. However, if an appraisal report is prepared, it requires the appraiser to summarize the support and rationale for that opinion...

...What are the surrounding properties? Are they similar to your subject property? This is most important when appraising a proposed structure, whether it is a residential or commercial property.

...The four tests of highest and best use are: (1) legally permissible (2) physically possible (3) financially feasible and (4) most profitable....
        ["Highest and Best Use Analysis,"](#) by Philip G. Spool, ASA, in *Working RE,* Organization of Real Estate Professionals, Summer 2014]

"Highest and best use," in traditional industry-standard terms, maximizes the financial profit of the property owner. It has nothing to do with the goals of municipal planning.[1]

But, again: Is it yet somehow a concern of the Planning Board? (See the Purpose statements of our zoning ordinance and site plan regulations.)

Let's put the financial benefit in perspective: Who benefits?

[UNH's listing of off-campus rental parking](#) today shows that applicant Peter Murphy's 10 parking spaces at 19 Main Street are priced at $1200 per academic year, or $250 per summer. At the listed rate, his anticipated annual revenue for 150 parking spaces would be $180,000 per academic year.

On the other hand, Durham taxpayers might expect their annual financial benefit from the proposed parking lot expansion to be less than $5.00 (five dollars) per household assessed at $350,000, according to my correspondence with Durham's Business Manager Gail Jablonski (see below), which as I recall was based on 180 total parking spaces at that time.

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(1) This may also explain why the only resident to suggest, during Preliminary Design Review, that the parking lot was the highest and best use for the property was also later discovered by other residents to be one who lent the Toomerfs funds to buy the property.

From: Gail Jablonski <gjablonski@ci.durham.nh.us>
Subject: RE: query | tax revenues | Main Street #19 - impact on property values and fiscal impact
Date: February 25, 2021 at 10:51:40 AM EST
To: RobinM <melodyofharpists@gmail.com>, Jim Rice <jrice@ci.durham.nh.us>
Cc: Michael Behrendt <mbehrendt@ci.durham.nh.us>

Hi Robin –

Yes the TOTAL incremental revenue would be in the $38,000 to $47,000 range (Total valuation/1,000 x tax rate).

Jim has calculated the mean and median assessed values as follows:

Mean = $358,300

Median = $342,100

So using $350,000 it is a savings of less than $5.00 per household.

Gail

Again, if I remember correctly, this estimate was based on an earlier proposal that would entail a larger number of parking spaces than is now proposed. **Yet even at the higher end of Gail's range—$47,000, and based on 180 parking spaces—annual incremental taxes would represent only about 0.26%—one-quarter of one percent—of the Town's General Fund budget of $17.6 million for the year 2022.** I'd call that a drop in the bucket. At 150 parking spaces, or 83% of Gail's base, that drop in the bucket shrinks even more.

Concluding observation: Does "highest and best use" matter to us?

No, it is not the job of the Planning Board to deny an application because the property owner chooses to develop in a way that does not line the Town's pockets with gold.

However, **it is the Planning Board's job** to weigh all the factors and ensure that the proposal before you complies with our land use regulations.

The highest and best use from the Town's perspective would be a plan that best fits with a vision of the future that will benefit the community as codified in our Master Plan, best matches our Zoning Ordinance, and best complies with our Site Plan Regulations. If this proposal does not do that, then you must deny the application.

Regards,

Robin