

Town of Scarborough

Planning Board

January 28, 2008

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (January 10, 2008)
4. The Planning Board will hold a public hearing to receive input regarding an amendment to the Contract Zone to add 53 acres to the Larrabee Farms Wetland Mitigation Project off Beech Ridge Road
5. Darling Bedworks, David Darling requests site plan amendment for site at 582 U. S. Route One
6. Marie Brazil requests determination by the Planning Board that the setback requirement is met to the greatest practical extent for renovations to her home at 12 Virdap Street in the Shoreland Zone
7. Eastern Village, Ballantyne Development LLC requests final subdivision approval for traditional neighborhood development off Commerce Drive and Old Eastern Road
8. McDonald's requests site plan approval for 4,000 square foot restaurant on Lot 9 at Scarborough Gallery
9. Scarborough Donuts LLC, continued site plan review and final action for 5,000 square foot building, to include Dunkin' Donuts, at 560 U. S. Route One
10. Administrative Amendment Report
11. Town Planner's Report
12. Planning Board Comments
13. Adjournment

NO NEW ITEMS SHALL BE TAKEN UP AFTER 10:30 P. M.

Town of Scarborough

Planning Board

January 28, 2008

MINUTES

Members Present

Staff

Mr. Callahan  
Mr. Chamberlain  
Mr. Fellows  
Mr. Maynard  
Mr. Paul  
Mr. Shire

Mr. Bacon, Town Planner  
Mr. Chace, Assistant Town Planner  
Mrs. Logan, Recording Secretary  
Mr. Vaniotis, Town Attorney

1. Call to Order

Mr. Paul called the meeting to order at 7:00 P. M.

2. Roll Call

The Recording Secretary called the roll; Ms. Littlefield was absent. Mr. Paul authorized Mr. Shire to vote.

3. Approval of Minutes (January 10, 2008)

Mr. Callahan moved to approve the minutes of January 10, 2008; Mr. Fellows seconded.

Voted 5-0

4. The Planning Board will hold a public hearing to receive input regarding an amendment to the Contract Zone to add 53 acres to the Larrabee Farms Wetland Mitigation Project off Beech Ridge Road

Mr. Bacon stated that there were no staff comments at this stage; he stated that the Town Engineer would make comments before the Town Council's second reading and the Board would then review the site plan and the Town Attorney would review the revised contract. He stated that there was a memo from Tom Gorrill, of Gorrill-Palmer, dated January 24, 2008, with re-calculated impact fees.

Mr. Rich Jordan, of Boyle Associates, gave a Power Point presentation and a brief history of the site. He stated that there were two mitigation projects now completed on the site, the Cabela's project and the DOT Gorham Bypass project. Mr. Jordan showed their site at Beech Ridge Road and Route 114 and stated that most of the site was near the Nonesuch River and in the preservation area. He stated that the Grondin property was 268 acres with an added 53 acres from Scarborough Fish and Game; he stated that this had been farmland, mineral extraction, forestry and then an informal dump prior to being acquired by the Grondins.

Mr. Jordan explained that the original plan was for extraction and residential development but the site was now used for a wetland creation mitigation site; he explained that wetland mitigation replaced impacted wetlands on other sites. He stated that they started the Contract Zone process in 2001/2002 and received approval in 2006.

He stated that Contract Zone 8, on the new 53 acres, would allow wetlands mitigation, associated work and passive recreation. He displayed the overall site plan showing wetlands, uplands and mitigation areas. He stated that this new area was for the Haigis Parkway project for which they had submitted an application to the DEP. Mr. Jordan explained that the DOT mitigation project consisted of wetland creation, uplands and vernal pools and that they had provided a culvert for drainage of Sweetbrier Lane. He stated that the Cabela's mitigation site was a total of 31 acres.

Mr. Jordan stated that they had nine amendments and wanted to deal with them all at once; he stated that there were three changes to the contract and six changes to the site plan. He stated that they wanted to add 53 acres that were currently owned by Inland Fish and Game, and wanted to allow aggregate material processing and importation of mineral materials such as stone, which would allow trucks to enter the site and leave the site full. Mr. Jordan stated that they would amend the language in the contract to allow Grondin to complete the project in 10 years rather than the original 20 years; he stated that they would amend the traffic impact with more peak time truck flow on Payne Road and place an informational sign at the entrance. He stated that they wanted permission to have a Quonset hut for storage of dry materials. Mr. Jordan stated that they wanted to combine two areas on the wetlands plan to one area. He stated that the traffic requirements from the original plan would remain.

Mr. Paul opened the public hearing and asked people to keep their comments to five minutes; he stated that if someone wanted to speak a second time, he or she should limit those comments to three minutes.

Mr. Randy Thibault, of 6 Marr Farm Road, asked how many acres of standing timber would be cut; Mr. Jordan replied that there would be only one acre of timber cut near the road. Mr. Ken Grondin stated that the area was toward the southwest and over the hill from Marr Farm Road; he stated that he would be happy to show the area to the neighbors. Mr. Thibault stated that he could hear the gunshots from the Fish and Game site and was concerned that the sound barrier of the trees would be removed. He stated that their concern was their backyard impact and quality of life. He asked whether it would be in writing that only one acre would be cut. Mr. Grondin replied that every acre of creation had a certain area of preservation and in that area only one acre of trees would be cut. Mr. Jordan showed the protection areas around the completed projects and stated that the conservation easements spelled out what could and could not be done. Mr. Thibault asked whether there would be blasting or quarry work; Mr. Grondin stated that there would be no blasting with the 53 acre area. He stated that the plans had stayed the same since the beginning. Mr. Thibault stated that they hear a lot of backing up of trucks.

Ms. Shari Edgecomb, of 17 Barley Lane, stated that her concern was that the other side of Cloverleaf Estates would be impacted by this new section; she stated that her concern was the humming of trucks that echoed throughout and the tailgates clanging as well as the blasting. She stated that her dishes rattle and the blasting scared her children; she stated that she had an issue with the frequent trucks on Holmes Road and this would bring more trucks. Mr. Grondin stated that they made their own gravel onsite for the large projects; he stated that in three years the blasting would end. He stated that they alleviated blasting issues by not blasting on cloudy days when sound stayed close to the ground. He stated that they would call people two hours in advance if they wanted to be on a list. Ms. Edgecomb stated that hers was a quality of life issue.

Mr. David Bergeron, of 19 Barley Lane, stated that he agreed with Ms. Edgecomb that blasting was the major issue and asked whether the amount of blasting would change if the length of the project were 10 years instead of 20. Mr. Grondin stated that the cubic yards of material removed would speed up the activity and shorten the lifespan; he stated that there would be no ledge re-

removal from the new parcel. He stated that they would not expand the blasting but the process would be sped up by removing more. Mr. Bergeron asked about the Payne Road Impact Fee and whether there would be an impact fee for Holmes Road or Beech Ridge Road. Mr. Grondin stated that they were required to turn right only onto Beech Ridge Road but if they had local deliveries in the Dunstan area they were allowed to use Holmes Road but their trucking associated with the new project had nothing to do with this Contract Zone. He stated that they would access the 53 acres for a preservation project with vernal pools and very little trucking would be associated with it. Mr. Paul stated that part of the Contract Zone commitment when the site was complete was that the road would be resurfaced. He noted that impact fees were dedicated to certain roads and Holmes and Beech Ridge Roads were not included. Mr. Bergeron stated that he hoped they would not lose any sound protection barrier. Mr. Jordan reiterated that there would be no cutting or blasting in the Haigis Parkway mitigation area, which was now an existing habitat.

To a question from Ms. Tracy Palm, of 3 Marr Farm Way, Mr. Grondin replied that a reassessment could be done on their home to determine whether the blasting had done any harm. To a question from Ms. Palm, Mr. Jordan replied that the Town owned the land across the street. Mr. Bacon explained that as part of the Contract Zone, 20 acres of land was given to the town for a possible school or recreation use; he stated that the Town Manager could be contacted for more information on that parcel.

Mr. Kevin McKee, of 15 Independence Way, noted that the pavement quality was poor at the intersection of Route 114 and Beech Ridge Road; Mr. Grondin stated that they had completed widening the intersection but did have to grind and pave 28 feet of Beech Ridge Road to the intersection from their entrance. To a question from Mathew Thees, of 21 Barley Lane, Mr. Jordan replied that the land near his lot was in forest preservation where no work would be done. Mr. Jordan stated that he would like to invite the Planning Board, the Town Council and the neighbors to a site walk in the spring.

Mr. Bergeron asked the future use of the property; Mr. Jordan replied that the Army Corps of Engineers and the DEP approvals guaranteed that this property would remain in preservation in perpetuity. Mr. Jordan stated that ten years after the project was finished, it would be monitored and the land would be transferred to the town or the Scarborough Land Trust. To a question from Mr. Bergeron, Mr. Grondin replied that they had already been building roads within the site and the noise would be less than previously because they would be working 20 to 30 feet lower.

Ms. Palm asked whether Marr Farm Road would be used for access; Mr. Grondin replied that, because of the large project which was now complete, they would not have to use Marr Farm Road; he stated that the Fish and Game access would be used for the lower area. Mr. Thibault asked whose job it was to determine how much land was being cleared; Mr. Bacon replied that the DEP, the Army Corps and the Code Enforcement Officer would inspect the site in terms of wetland creation and clearing. Mr. Grondin stressed that creating a 320 acre preserve was bound to cause a few ripples in the construction stage and the abutters now used the site for passive activities; he stated that he was before the Board tonight for their annual review which was a requirement of the Contract Zone. Mr. Grondin stated that they were adding 53 acres with very low impact.

Mr. Paul closed the public hearing.

Mr. Fellows stated that he appreciated the applicant's willingness to work with the neighbors. He asked the size of the sign; Mr. Grondin replied that it was a 3 by 5 foot sign and he would include a rendering in the contract. Mr. Callahan stated that allowing onsite processing made sense for better efficiency in transporting material. Mr. Chamberlain asked how much wetland mitigation

would be involved with the 53 acre section; Mr. Jordan replied that three vernal pools did more than just preservation because more credit was given for an area that was enhanced in some way. Mr. Chamberlain asked where there was access to the open areas; Mr. Jordan replied that South Coast Community Church had parking and trails that connected to this site and there was parking at the end of Larrabee Farm Road. Mr. Chamberlain stated that it made a lot of sense when development disturbed wetlands, it could acquire property for mitigation in one contiguous piece. To a question from Mr. Chamberlain, Mr. Jordan replied that there were two completed projects and the future Haigis Parkway project and there were two areas, one of three acres and the other 20 acres remaining for mitigation. Mr. Grondin stated that they were almost half completed with the site because of the two large clients.

Mr. Paul asked about construction times; Mr. Jordan replied that they were allowed to work from 7:00 A. M. to 5:30 P. M., Monday through Saturday. Mr. Grondin stated that they were abiding by those hours, but they could access the site for sand at night in the event of an emergency. Mr. Paul noted that there would be another public hearing with the Town Council.

5. Darling Bedworks, David Darling requests site plan amendment for site at 582 U.S. Route One

Mr. Bacon stated that this amendment was for outside display and a follow-up to the approval for filling the land. He stated that there were signed drainage and maintenance easements from the previous approval, but Mr. Wendel needed a performance guarantee. Mr. Bacon stated that there was a staff report indicating that the Board should consider what constituted accessory outside display and the amount of landscaping and screening the site should have along Route One.

Mr. Darling stated that he wanted to expand the parking area slightly and make it safer; he stated that he would add landscaping and trees as shown on the site plan. Mr. Darling stated that he would also like to expand the outdoor display area. He stated that when he purchased the property in May 2002 there was outdoor display being done by the previous owner. Mr. Darling stated that he wanted to expand his outdoor display from the current 3,000 square feet to 10,000 square feet for the display of play sets. He stated that they did not sell play sets from the display area and they were ordered from a catalog.

Mr. Darling stated that the performance guarantee needed only to be finalized by Mr. Wendel, who would accept a letter of credit. Mr. Darling displayed the site plan and stated that he wanted to change the angled parking to 90° and add five spaces for overflow and employee parking. He showed the foundation plantings and the trees along Route One. Regarding outdoor display, Mr. Darling stated that Section 9.D. of the Performance Standards indicated that, "In any district a retail sales or service business, which operates principally within a building, may display merchandise or render services outside the building, provided such display or service is incidental and secondary to the business conducted within the building." Mr. Darling stated that the business operated within the building and the display is incidental.

To a question from Mr. Callahan, Mr. Darling stated that he had the letter of credit but it was not yet signed. Mr. Chamberlain stated that the issue was whether or not outdoor display was incidental; he stated that he had a problem with this because increasing the display area threefold did not seem incidental. He stated that he would like to see a lot more than three trees in front of the display.

Mr. Paul read definitions of the word "incidental," including the words "subordinate, inessential, casual and chance, secondary, second in range, value or occurrence, bring to a later stage of development, coming after the primary."

Mr. Darling stated that he wanted to challenge whether outdoor display was allowable; he noted that the Ordinance stated that if the approval was prior to 1994 the outdoor display was allowed as long as another site plan was not required. Mr. Paul noted that a site plan had to be submitted to expand the parking. Mr. Darling stated that he did not change the site. Mr. Darling reiterated that the sale of play sets took place inside the building, not outside.

To a question from Mr. Paul, Mr. Darling replied that catalogs were handed out inside the building and ordering was done at the computer inside the building. Mr. Fellows stated that he shared the concern that size did not necessarily equal importance. He stated that it was hard to reconcile the applicant asserting that it was not of primary importance when he was proposing to expand it significantly. Mr. Fellows stated that it missed the point when the applicant said the business occurred inside and that did not negate what took place outside. Mr. Fellows asked whether the photos presented represented the landscaping; Mr. Darling replied that he planted immature plants that were shown in the photos. Mr. Fellows stated that the Board should see a true landscaping plan showing how the site would look.

Mr. Darling stated that the overall site was two acres with a 3,600 square foot building and a 10,000 square foot mulched display area and he did not feel he was asking for anything extra in relation to other businesses that have outdoor display. Mr. Fellows stated that it would be helpful to see an improved area instead of the existing topography. To a question from Mr. Shire, Mr. Darling replied that the photos showed the landscaping at the sign. Mr. Shire stated that the Board should see the actual proposal of plantings and signage.

Mr. Maynard asked why the applicant wanted to make the display area larger; Mr. Darling replied that there were about 50 different models of play sets and he would like to show more than a few of them. Mr. Maynard stated that this looked like a flat spot with stuff on it and asked whether it could be made to look nicer with landscaping. He stated that it was not offensive but it was also not attractive and this was a prime piece of property. Mr. Darling stated that he had struggled with the ditch and did not want to do anything substantial before the ditch was put in. He stated that Route One was to be widened and he did not want to have to tear any landscaping out.

Mr. Paul noted that the applicant indicated the building would be “essentially unchanged;” Mr. Darling stated that it would not be changed at all. Mr. Darling stated that he had thought about a cupola and wanted to paint the building but would come back to the Board for that. Mr. Paul stated that if the building were to be changed, the Board would like to deal with it all at once and not piecemeal. Mr. Darling stated that he had no plans to change the building at this time. Mr. Paul stated that he did not agree with the notion that a display area three times the size of the building where the business was conducted could be secondary or was incidental. He stated that he was struggling with the fact that the area was to be increased three times; he stated that the Board had talked about shielding the display area or placing it behind the building so it would be less notice-able from Route One. Mr. Paul stated that the size was a problem for him and asked that if the applicant returned to the Board with the landscaping plan, he should provide more detail on the display area with regard to traffic and pedestrian safety. Mr. Darling stated that Pinkham & Greer provided a traffic statement and customers would cross the driveway which was seldom used. Mr. Paul stated that the Board should see that on the site plan. Mr. Paul stated that he did not think the Ordinance gave the right to expand the display threefold.

Mr. Callahan noted that the Board had dealt with outdoor display with a couple of large projects and the Ordinance allowed outdoor displays as long as their locations were shown on the site plan. Mr. Paul noted that they were not three times the size of the buildings but were secondary.

Mr. Bacon stated that, on site plans approved since 1994, outdoor display was allowed only in locations designated by the Planning Board. He stated that the Board was concerned that this needed to be incidental and size was an issue here because the other displays were much smaller than the buildings with which they were associated. Mr. Callahan noted that it did help to see a product before it was purchased and this was the nature of the business. Mr. Darling stated that it helped when the children could play on the play sets.

To a question from Mr. Chamberlain, Mr. Bacon replied that outdoor display was allowed on Route One if it met all the standards, but the Board discouraged it. Mr. Darling stated that to get an accurate representation of the products, he needed the larger display area to be effective and it gave customers the chance to visualize the play sets in their yards. He stated that people would buy only what they saw. Mr. Paul stated that the concern was the visual corridor on Route One and the display should not be visible.

Mr. Paul called a recess at 9:00 P. M.; the meeting resumed at 9:10 P. M.

6. Marie Brazil requests determination by the Planning Board that the setback requirement is met to the greatest practical extent for renovations to her home at 12 Virdap Street in the Shoreland Zone

Mr. Bacon stated that it was a provision of the Shoreland Zoning Ordinance that when expanding or raising a foundation in the Shoreland Zone the Planning Board needed to make sure the renovations met the setback requirements to the greatest practical extent. He stated that there were no staff issues.

Ms. Rebecca Dillon, of Gawron Architects, stated that Ms. Brazil wanted to elevate her structure three feet and put in a new foundation. She displayed the existing setbacks where the structure met three of them with a small portion over the fourth setback line. Ms. Dillon stated that the house could not go closer to the east because of the wetlands; she stated that they would remove some of the building but would still have a nonconforming section on the rear of the garage.

Mr. Fellows stated that he appreciated the fact that the structure would be slightly less nonconforming and had no issues. Mr. Maynard and Mr. Chamberlain had no issues. To a question from Mr. Callahan, Ms. Dillon replied that the house would be put on pillars which would allow water to flow through. Mr. Paul stated that he thought they were doing as much as possible to not impose on the Shoreland Zone; he stated that the applicant should coordinate with the Code Officer.

Mr. Paul moved to approve the request for a determination that the setbacks were met to the greatest practical extent; Mr. Shire seconded.

Voted 5-0

7. Eastern Village, Ballantyne Development LLC requests final subdivision approval for traditional neighborhood development off Commerce Drive and Old Eastern Road

This item was tabled at the request of the applicant.

8. McDonald's requests site plan approval for 4,000 square foot restaurant on Lot 9 at Scarborough Gallery

Mr. Bacon stated that there were comments in response to the peer review comments regarding the ponding of water near the property line; he stated that a formal grading plan was needed. He stated that there were comments from the staff regarding the Fire Department's concern about the turning radius at the entrance; he stated that there was a new site plan for the Fire Department but he did not yet have a copy.

Mr. John Kucich, of Bohler Engineering, stated that they now showed 60° parking spaces at the front but the spaces on the Spring Street side would remain at 75° because people would not want to turn the wrong way to exit because it would be longer around the building. Mr. Kucich stated that they added landscaping between the building and the sidewalk at the Spring Street side. He stated that they had made a sidewalk connection to Gallery Boulevard and the crosswalks would have Duro Therm striping. Mr. Kucich showed the identification sign. He stated that they had lost two parking spaces by changing the configuration and would now have 41 spaces.

Mr. Kucich stated that they had stopped the contour lines because the Wal-Mart site was not finished and the contours were not connected to those plans. He stated that they had changed the plan slightly to accommodate the Fire Department's request for a 50 foot outside radius which required the building to be two feet closer to Spring Street, made the walkway three feet, rather than five feet wide, and the drive-through lane would be 11 feet rather than 12 feet, which would cause no impact on the landscaping. Mr. Kucich stated that the walkway along the drive-through lane would be eliminated but there would still be full pedestrian access to the side door from Gallery Boulevard.

Mr. Kucich stated that they had added brick along the drive-through windows and a trellis. He stated that they had added a raised parapet on the front and around the sides of the building to add prominence to the front of the building; he stated that all the colonial features would remain. He showed the elevation and stated that they were proud of the building and thought it would fit in quite well with the theme of the development; he stated that this was a one-of-a-kind McDonald's building.

Mr. Callahan confirmed that the original sidewalk along the outside of the drive-through lane would disappear; he asked how one would access the building. Mr. Kucich replied that it would be a straight shot into the side door from across Gallery Boulevard. Mr. Chamberlain stated that he felt the building had been enhanced; he stated that the current height limit on light poles was 16 feet but the applicant showed 20 foot poles. Mr. Kucich stated that the sidewalk poles were 16 feet high but they did not want more than four light poles in the parking lot so they made them taller. Mr. Chace stated that the Ordinance indicated that the maximum height shall not exceed 25 feet and shall be reduced to 16 feet where sidewalks are present. To a question from Mr. Chamberlain, Mr. Kucich replied that the drive-through would be open 24 hours but the restaurant itself would not be open all night.

Mr. Chamberlain and Mr. Fellows stated that they appreciated the changes made to address the Board's concerns. Mr. Fellows stated that the revised architecture was an improvement. He asked about the sight line from Spring Street; Mr. Kucich replied that at the corner of Spring Street there was no room for a berm and they proposed a thick row of shrubs in that area. Mr. Shire thanked the applicant for making a serious effort with the building. Mr. Maynard stated that he was not convinced that the design was what the Board was looking for; he stated that his problem was what to tell the next developer who presented a square building.

Mr. Paul also thanked the applicant for listening to the Board. To a question from Mr. Paul, Attorney Robert Danielson replied that Wal-Mart had not responded to their correspondence re-

garding the sidewalk and they had no control over that site. Mr. Paul asked the rationale for the 75° parking spaces at Spring Street; Mr. Kucich replied that that angle was McDonald's standard and they were bound with a lease agreement for a certain number of parking spaces and would lose more spaces if they put in 60° spaces.

Mr. Paul stated that he would like to move this project along but would like to make the site slightly better with the following suggestions. 1. That the updated grading plan be submitted. 2. That the Fire Department and staff approve the site plan. 3. He stated that he was concerned about pedestrian traffic through the site, especially from Wal-Mart; he stated that the area reduced from five to three feet could become a four foot wide sidewalk by reducing the 28 foot drive aisle. Mr. Kucich stated that they wanted to have a passby lane for the one way driveway, hence the 28 foot wide aisle. Mr. Bacon stated that the other sidewalk could be reduced from six feet to five feet. Mr. Kucich stated that the issue there was the well lighting which could not be done on a slope. He stated that they could create 19 foot long parking spaces if the town allowed a parking overhang and the building could be pulled closer to Spring Street. 4. Mr. Paul stated that he would like to see more trees on Spring Street. Mr. Kucich stated that they could provide four more trees but wanted to maintain visibility to the building.

Mr. Paul stated that he understood the concern about a pitched roof and if this building were on Route One he would be 100% behind the pitch roof. He stated that this building had been brought a long way toward conformance with the design standards and he felt the Board was trying to uphold the standards to the highest extent possible to make projects work; he stated that some diversity was good. To a question from Mr. Callahan, Mr. Bacon replied that all comments from SYTDesign had been addressed except for the grading plan.

Mr. Paul moved to approve the site plan with the following conditions:

1. That the updated grading plan and how it would match the rest of the development be approved by staff;
2. That the Fire Department and staff approve the site plan with respect to the turning radius;
3. That there be a four foot walkway between the drive-through area and the parking area on the Wal-Mart side of the building, with its associated crosswalk;
4. That there be four additional trees planted along Spring Street;
5. That a waiver for 19 foot long parking stalls be allowed on the Spring Street side;
6. That the traffic impact fee as indicated in Mr. Bray's memo of January 5, 2008 be paid;

Mr. Chamberlain seconded the motion.

Voted 5-0

9. Scarborough Donuts LLC, continued site plan review and final action for 5,000 square foot building, to include Dunkin' Donuts, at 560 U. S. Route One

At 9:55 P. M., Mr. Paul moved to go into executive session, pursuant to 1 MRSA Section 405(6)(E), for consultation with the Town Attorney concerning the legal rights and duties of the Board with respect to the site plan application of Scarborough Donuts, LLC and with regard to the pending litigation of David Parker vs. Town of Scarborough. Mr. Chamberlain seconded.

Voted 5-0

The meeting was reconvened at 10:20 P. M.

Mr. Paul stated that the two new Board members could participate, but should refrain from voting on this item because they did not have all the background information.

Mr. Bacon explained that this was a pending item on the December 10, 2007 agenda but was tabled because the subdivision which would have enabled a site plan was denied at that meeting. He stated that, given pending litigation on this item, staff recommended that it be put back on the agenda. He stated that there was a letter from Attorney Dan Desmond, of Lambert Coffin, requesting a reconsideration of the Board's vote on the subdivision plan.

Attorney Paul Bolger, of Lambert Coffin, stated that he would be representing both the subdivision applicant and Cafua and Scarborough Donuts LLC. He stated that Mr. Bacon had requested additional information regarding the contract between the parties. He stated that he was before the Board on procedural matters; he stated that there could not be a site plan approval with no subdivision or the site plan could be conditioned on subdivision approval. He stated that the site plan approval could be tabled until the matter was remanded back to the Board from the court. Mr. Bolger stated that he agreed the site plan should be tabled until the court made a decision, in which case there would be no sense in going forward this evening; he noted that they were not prepared for an architectural review. He stated that they did not want to withdraw the application but wanted action on it pending the appeal.

Mr. Bolger stated that, under the Board's rules, "When a vote is passed, it shall be in order for any members who voted in the majority, or in the negative on a tie vote to move a reconsideration thereof at the same or the next regular or special meeting, but not afterwards; and when a motion of reconsideration is decided, that vote shall not be reconsidered." Mr. Bolger stated that there were complications with the previous decision because no written decision was available until January 9, 2008 so, in fairness, it would be appropriate to make a request for reconsideration.

Mr. Paul stated that at this point there was no item on the agenda for reconsideration and it was the Board's desire to stick with the agenda. Mr. Bolger stated that, in accordance with the rules, a party could move to request a new decision; he stated that there would be a conundrum whether this matter was reconsidered or the proceedings were stayed with respect to the site plan review. He stated that they would need to return with architectural drawings. He stated that if the Board was not prepared to reconsider the vote, he would like to table this matter until the court made its decision.

Mr. Paul stated that a member of the Board who voted against the subdivision plan had to make a motion to reconsider and he was that person since the other two who voted against the item were no longer Board members. He stated that he spoke strongly against approval in terms of safety issues and those concerns had not been alleviated so he did not anticipate reconsideration. Mr. Bolger stated that since the Board had changed, he would ask that it be carefully considered to have the new Board reconsider rather than litigate a decision that could be made by the Board.

Mr. Vaniotis stated that because there is an appeal pending, the Board could not take action to reconsider without an order or remand. He noted that there was a process for getting on the Planning Board agenda and this request did not come in and was not on the agenda. Mr. Vaniotis stated that the time had passed for reconsidering and the Board would have to vote to waive that rule. He stated that he thought it was fair to let the applicant know the chairman was not willing to make the motion and the issue for the Board was what to do with the site plan application. Mr. Vaniotis stated that he would have concerns tabling this item indefinitely pending the outcome of the appeal which could be a year or more.

Mr. Bolger stated that he had discussed this with Mr. Vaniotis and suggested that all of this could be avoided by consideration by the new Planning Board; he stated that he had concerns about the manner in which the decision was made with a lot of hand wringing without specific findings of fact. Mr. Bolger stated that he would rather save the time and have the Board make a reconsideration this evening or at an appropriate time. He stated that boards were permitted to make their own rules of procedure and the only guiding principle was fair play. Mr. Bolger stated that the findings of fact and decision were not available when he had to file the appeal and he could have asked for reconsideration at that point if he had the findings of fact.

Mr. Paul stated that he understood the concern, but it was clear the denial was specifically related to this site with the implication of traffic and trip ends as the driving issues. He stated that the record showed the Board talked with the applicant regarding the concerns and indicated that low volume traffic generators would be very desirable and would most likely lead to approval. He stated that the Board's concern about subdivision approval clearly had to do with the traffic being driven by Dunkin' Donuts.

Mr. Bolger reiterated that they were prepared to review the site plan but did not have the architectural renderings. Mr. Bacon stated that the application submitted prior to the December meeting was complete regarding traffic and the Board's issues were site access and safety which was a big component of the site plan, and the Board and the staff found the application to be sufficient on December 10, 2007; he stated that he did not think the design had changed since then.

Mr. Bolger stated that the MDOT had issued a permit for the right turn in and out access and for the three-quarter access. He stated that they had submitted William Bray's traffic study which was found to be complete by the town's peer reviewer, Tom Gorrill. He stated that the applicant's traffic engineer was at the December 10, 2007 meeting but no questions were asked of him.

Mr. Vaniotis stated that the Board needed to make the determination of whether or not to go ahead with review; he stated that he thought Mr. Bolger was requesting tabling until the architectural plans were submitted. Mr. Vaniotis stated that, assuming the Board had the same concerns about traffic, they should go ahead tonight and make a decision about traffic as with the subdivision, or wait until next month. Mr. Paul asked what the next steps would be for the Board or the applicant if the Board proceeded with a discussion of traffic and it was the consensus of the Board to have the same traffic concerns.

Mr. Vaniotis stated that if the Board felt the application did not meet traffic standards, a motion could be made or the Board could express its view but not make a decision until all information was submitted. He stated that the practical issue was whether the Board dealt with traffic or the applicant did more work and came back to the Board. Mr. Paul stated that it would be prudent to have the discussion on traffic to get it out in the open to see where everyone stood. He stated that he would not want the applicant to spend the money on architectural renderings if there were problems because of traffic. Mr. Bacon noted that the submission on November 26, 2007 included architectural renderings and a landscape plan. Mr. Paul suggested hearing the item.

Mr. Jim Fisher, of Northeast Civil Solutions, stated that he would focus on the Board's questions. He stated that traffic was the only significant issue still outstanding. He stated that they were requesting full access in the beginning but the Board was not amenable, especially with southbound traffic turning left into the site. He stated that they had met with the DOT repeatedly and were allowed the three-quarter and right turn in and out accesses. He stated that they returned to the Board with that design and it was determined that turning left would be a problem even though the DOT thought it would work. He stated that they went back to the drawing board and pre-

sented a right in and right out only access for which they had the DOT permit. Mr. Fisher stated that they added a deceleration lane to pull the traffic off the highway to pull enter the site; he stated that they also showed an acceleration lane for the right turn out. He stated that the deceleration lanes were well received by the DOT. He stated that the studies and reports and permits had never changed with regard to the volume of traffic in the two and a half years they had been working on the project so he would ask the Board to realize that they had done everything they could to get the traffic into the site and had gone twice as far as required to make it safe.

Mr. Chamberlain stated that it may be subjective, but the Board saw what happened in the traffic corridors where it may work on paper but people cut across traffic all the time to turn left and there was no turning lane in this area for safety. He stated that he was talking from practical observation. He stated that the deceleration lanes were a huge attribute but people would make U-turns or cross to turn left. He stated that he saw a lot of unnecessary turning lanes and people doing a lot of things they should not be doing; he stated that he was challenged by human nature.

Mr. Fisher stated that he understood subjective opinions, but his quandary was where to go from here. He stated that there was a statute indicating what had to be done and they had met and gone beyond those statutes, but the Board was still not comfortable. He asked what more they could do if they had met the letter of the law. He stated that it made it impossible to meet the criteria. Mr. Fisher stated that Dunkin' Donuts commissioned their own state-wide traffic study which showed a preponderance of traffic as passby traffic, so the stores were not traffic generators. He stated that the majority of the traffic was already on the road and they were not creating traffic.

Mr. Paul stated that it was more than that; he stated that he believed the traffic study presented to the Board, which had peer review, was a quantitative study which looked at statistics, but if one looked at the Site Plan Ordinance he would find it to be qualitative; he read Section IV. B. "Vehicle access to and from the site shall be safe and convenient, shall minimize conflict with the existing flow of traffic, and shall be from roads that have adequate capacity to accommodate the additional traffic generated by the development." He stated that that was a qualitative statement and the concerns of the Board were qualitative, though he was not disputing the quantitative findings of the engineers. He stated that the Board's concern was the fact that people do what they were not supposed to do and in this area that put a lot of people at risk. Mr. Paul stated that other locations in town may not create that same concern. He stated that the study was quantitative based on a 35 MPH speed limit and it would be safer if people actually did that speed; he stated that he continually saw vehicles going into right-out-only exits. He stated that the concern was that speed was a problem in this area and people would take U-turns and cut across lanes as well as back into Route One trying to go in the opposite direction and there was a variety of safety issues that go well beyond the quantitative study that the MDOT was approving. He stated that some common sense needed to be imposed in terms of what was safe and convenient.

Mr. Fisher stated that he agreed, but as an engineering company they needed to meet the standards and if there were no standards they did not know what to do. He noted that Mr. Bacon indicated the site would be more acceptable if there were low volume users, but there is no definition of low volume traffic. Mr. Paul stated that statutes could not be written to meet every situation so that had to be addressed; he stated that the Board needed to do its best to make the qualitative decision for which they were being asked and to uphold the ordinance. He stated that the Board had to make the best decision on each individual site.

Mr. Vaniotis stated that the ordinance was not an engineering ordinance so the standard is not an engineering standard but what Mr. Paul read above from Section IV. B.; he stated that the last phrase was answered by the engineers but the issue for the Board was a judgment call from their

own knowledge and common sense for safety. Mr. Vaniotis stated that the courts had indicated that Planning Boards may apply their knowledge of the site and other case law. He stated that the Board was not bound to accept the decision of the experts on traffic safety.

Mr. Fellows stated that if the Board were compelled to go with what the experts said, there would be no need for a Planning Board and one of the reasons for the Board was that we can use our own perspective on such issues. He stated that the Board was not dismissive of the experts and valued their input which was factored into the decision making process, but the Board was not compelled to do what they said. Mr. Fellows stated that he understood the frustration but it was inherent in the process that there was turnover on the Board as well as subjective and qualitative analysis, but no one had done so in an arbitrary or capricious way. He stated that his opinion had not changed since the vote.

Mr. Maynard stated that the one comment not addressed by the experts was that people would do whatever they needed to do to get into a Dunkin' Donuts; he stated that tourist traffic had to be added in; he stated that the people problem was much larger than the traffic problem and he had a tough time with this.

Mr. Paul stated that he believed there was a consensus that traffic was a stopper and he saw real difficulties and would hate to see the applicant continue to spend money to have a project that may not fly. Mr. Paul stated that he thought it should be put to a vote to see where the Board stood. Mr. Bacon stated that, given the past decision, he worked with Mr. Vaniotis to draft findings and conclusions and the Board should go through them as part of a motion. Mr. Vaniotis stated that a simple motion to approve or deny based on traffic was satisfactory and the Board could then go through the findings and determine whether they addressed the reasoning. He stated that the draft findings had been written for denial based on the decision on the subdivision plan.

Mr. Bolger stated that he heard many comments from the Board but noted that the court indicated an applicant for a permit was entitled to know how he was to obtain approval and he had no idea how to get approval. He stated that low trip users were desirable. He stated that he had heard a lot of complaints about how people drove throughout this community and he thought it was discriminatory and unfair to single out this site. He stated that the ordinance should change but there were the existing ordinance standards and the applicant had bent over backwards to meet them for the past three years.

Mr. Bacon noted that the 2006 Comprehensive Plan called for alternative zoning and drive-through restaurants would not to be appropriate for this stretch of Route One and that zoning has been changed since November 2007 and did not allow high traffic users so the town was taking steps to address the issues along Route One. Mr. Bolger reiterated that this project had been in process for three years. Mr. Vaniotis stated that the standard in the ordinance said "...shall be safe..." and the Planning Board could make a determination whether a proposal was safe or not. He stated that this was not an engineering standard and the court said that the ordinance standard was an adequate standard so the question was whether this access was safe.

Mr. Paul moved to deny the site plan for a 5,000 square foot building to include Dunkin' Donuts, based on the issue of traffic safety at the site; Mr. Chamberlain seconded.

Voted 4-1 - to deny

To a question from Mr. Paul, Mr. Vaniotis stated that the findings of fact were a draft so the Board could make changes; he suggested putting the findings of fact on the next agenda so the

Board would have time to review them and then vote to accept them. Mr. Paul stated that there was a workshop on February 11, 2008 and the Board could address them at that time.

#### 10. Administrative Amendment Report

Mr. Chace stated that Texas Roadhouse requested an amended site plan to locate a Central Maine Power Co. transformer within a landscaped area which would eliminate one tree that would be planted elsewhere on the site. He stated that the Chairman had approved this administratively.

#### 11. Town Planner's Report

Mr. Bacon stated that he had provided the Board with a letter on behalf of Hannaford Bros. who had purchased the Orion Center and wanted a transfer of approval on that site. He stated that their intent was to follow through on the original approval and they had until August 2008 to do so; he stated that the performance guarantee needed to be renewed in May 2008. He stated that the plan had been extended once and that was all the Ordinance allowed so Hannaford would have to return for review and reapproval if construction was not begun by August 2008.

Mr. Bacon noted that there was a workshop tentatively planned for Tuesday, February 26, 2008 with the Town Council to consider a new Contract Zone application for an elderly housing project off Elmwood Avenue. Mr. Bacon stated that another workshop was planned for Monday, February 11, 2008 with the Town Attorney to focus on Planning Board's legal duties and rights.

#### 12. Planning Board Comments

Mr. Paul noted that the Board often received a mailing of information at the last minute that the Board was being asked to review. He suggested that, in an effort to provide a vehicle for staff to help prevent that in the future, the Board adopt a policy that would allow applicants to submit material that was not ready for the original package because an item was tabled at the previous meeting or for answers to questions or peer review. Mr. Bacon stated that he did not want to discourage applicant from revising their plans and did want to encourage responses, but did want to discourage handouts at meetings.

Mr. Paul read the following policy regarding plan submissions subsequent to Planning Board discussion: "The Planning Board hereby establishes the policy that in order to be in a position to approve a development project, all revisions to the site plans and architectural plans requested by the Planning Board are required to be provided to the Town Planner by the Tuesday prior to the Planning Board. The Planning Board may waive this requirement for minor site plan revisions submitted in response to planning staff and peer review comments."

Mr. Vaniotis stated that anything mailed to the Board should be addressed to Mr. Bacon, with copies to the Board members. Mr. Fellows stated that this policy gave the Board a leg to stand on. Mr. Maynard stated that he wanted any mail to come from the staff and not directly from the applicant. The Board agreed.

Mr. Paul moved to adopt the above policy; Mr. Fellows seconded.

Voted 5-0

#### 13. Adjournment

The meeting was adjourned at 11:55 P. M.

