

PLANNING BOARD MINUTES
February 27, 2008

ROLL CALL:

Ruth-Ellen Post, Chairman – Present	Ross McLeod, Vice Chairman – Present
Nancy Prendergast, Secretary – Present	Walter Kolodziej, Regular Member – Excused
Phil LoChiatto, Regular Member – Excused	Pam Skinner, Regular Member – Excused
Neelima Gogumalla, Alternate – Excused	Rick Okerman, Alternate – Present
Alan Carpenter, Selectmen Member – Excused	Margaret Crisler, Selectmen Alternate – Present

STAFF:

Al Turner, Director of Planning and Development – Excused
Shaun Logue, Town Planner – Present

OTHERS PRESENT:

Bruce Mayberry, Planning Consultant

- Ms. Post opened the meeting at 7:00 pm;
- Mr. Okerman replaced Ms. Skinner;
- The Board stood and recited the Pledge of Allegiance.

MINUTES:

Ms. Prendergast motioned to approve the February 20 minutes. Mr. McLeod seconded. Passed 6-0-1.
Mr. Kolodziej abstained.

CORRESPONDENCE:

- Letter from David Sullivan, Town Administrator, regarding the option agreement for the post office site. This will be discussed under Old/New Business;
- Notice of potential regional impact from the Town of Derry;
- Memo regarding the 15th annual spring planning and zoning conference;
- Brochure regarding wood biomass heating project;
- Housing and conservation planning programs grant information.

OLD/NEW BUSINESS:

Board discussion of the Post Office Option Agreement. Do the BOS want to go forward on behalf of the Town? This is a Planning Board issue and a condition of approval. Board consensus to meet in non-public with Town counsel to discuss. Staff will contact Attorney Campbell. Board discussion regarding whether to pursue with the current board or following the elections. Scheduling is contingent on Attorney Campbell's availability. *Ms. Gogumalla joined the Board.*

LIASION REPORT:

Ms. Post distributed to the Board a handout that was provided to the BOS from the Economic Development Committee. The Board will schedule to meet with the Economic Development Committee.

PUBLIC MATTERS:

Impact Fees for Public Safety Facilities – Public Hearing

Mr. Logue provided a brief introduction, Bruce Mayberry is our consultant, he put together the methodology for the Public Safety impact fee schedule, he is not here to advocate, we are here to hear the methodology and review the fee schedule, and the executive summary is included. Also included are

minutes from prior meetings and a copy of the Town warrant. Board discussion of the Town warrant. Mr. McLeod motioned to open for public hearing. Mr. Okerman seconded. Passed 6-1. Mr. Kolodziej opposed.

Mr. Bruce Mayberry: Working on recreation fee, not ready for Board. Here to present Impact fee schedule for Public Safety Facilities. Warrant is consolidated fee ordinance that combines two current sections. Impact fees are assessed from needs occasioned by new development, they are proportionate and reasonably related to new development, different from exactions, the appropriate share must be reasonably allocated between existing and future needs, not to take new development to a higher standard that we are willing to pay ourselves. Nature of impact fees, the impact fees are related to the demand on a certain facility. New development does not subsidize existing and existing does not subsidize new development. Taxes are proportional to value and not necessarily to demand. Master Plan discusses buildout, public safety facilities are not built too often, look to long term growth, considered future population for expanded police and fire station facilities, assumed current ratio of floor area to officers will remain the same, costs also based on call data, proportionate share for police department is 77% to residential and 23% to nonresidential, and for fire department is 82% for residential demand and 18% for nonresidential. Residential demands are per capita and dwelling unit, nonresidential demands are averaged out over square footage. Fire department had detailed call data, associate calls to commercial, government, senior housing, and residential uses. Could have a single fee for police and fire, or keep separate. Recommend keeping police and fire separate in case one project does not go forward. Minor grammatical changes will be corrected in final edition. The methodology is a detailed written and mathematical report where all the assumptions are laid out. Impact fees allow for a predictable process. Board discussion regarding going through the methodology. Mr. Mayberry discussed Police Department Impact Fee Model as described in Table 11 on page 19 of the report and the Fire Department Impact Fee Model as described in Table 17 on page 28 of the report.

Ms. Post invited Mr. Mayberry to speak to his credentials and expertise.

Ms. Post opened for public comment. Board discussion regarding focusing on methodology as presented and the basic concept is on the warrant and everyone will have a chance to vote on that.

Public comment:

Mr. Charlie McMahan, Floral Street, what is the goal for tonight, the article on the Town Warrant has already been recommended by the Board, not commenting on that tonight, has been state rep for 6 years, enabling legislation already in place, moral turpitude in Town making the abuse even larger than it is, we do not have everything discussed tonight, new ordinance has more opportunities, everything should be all inclusive, oppose impact taxes, tax disenfranchised, if we need an expansion we should do it together, punishing people that don't live here yet, not effecting people in this Town yet, do not add any more impact taxes in Town, school impact tax caused a trigger that now is causing tremendous challenges to our population, the same is going to happen to police and fire, if we are to have a plan then all should be part of the plan, not those that are disenfranchised. Ms. Post stated that the discussion should be limited to the methodology and Impact fee schedule documents presented tonight.

Mr. McMahan continued that this is an abuse of public trust and as a population we are already covering these costs as taxpayers in Town. Mr. McMahan has no issue with Mr. Mayberry's methodology, and impact taxes are just wrong for our Town. Board discussion regarding that we are limited in kind of revenue that we can generate, has the legislature tried to remove this and taken any action to grant us ways to raise revenue to offset financial stress of new population, new homes increase needs for services on Town, this is what the State allows us.

Mr. Chris Nickerson, 5 Copps Hill Road, involved in projects around Town, general considerations, have asked Attorney Rolph Goodwin to be here tonight, look at exactly what is written and the methodology, applaud Chief McPherson and Chief Lewis, look upon the way the improvements will be made, look at community facilities section CF2.1 of the master plan, review 2001 memo from Chief McPherson regarding response times, many changes have happened since 2001, look at capital improvements that are needed and what other changes are coming to Town and balance them, the report does not fully address this, the voters haven't had a chance to say whether they do or do not want these improvements, prudent to hold a meeting or document that states the improvements and why and provide comment, police garage defeated at last years warrant article, why did it fail? Why is the need there, how does it interact? Take a study and hard look for these improvements before moving forward, consider detrimental effects on achieving other aspects of the master plan. When looking at ED2 of the master plan, Economic Development is a goal of the Town, feel that impact fees do not encourage this kind of use, this Board is typically proactive about encouraging certain uses, impact fees are a negative to the uses that the Board is trying to encourage, Housing goals H2 in the master plan, affordable housing based on a tight margin, impact fees does not speak to affordable housing nor does it make exceptions to it, give more consideration to the document, allow residents the chance to go through and contrast to the master plan.

Board discussion regarding Mayberry methodology, anecdotal evidence that impact fees hinder economic development, any time an additional cost that someone would have to incur for economic development would be a negative.

Mr. McLeod argued that Brookings Institution Center of Urban and Metropolitan Policy found a significant positive association between impact fees collected per building permit in one year and job growth over the next two years, and no discernable adverse economic impact from impact fees could be found. Board discussion: Impact fees add predictability to process, take out vagueries of exactions and offsite improvements, and then takes the windfall that's coming to the developer for using what's already been built in the Town and putting the cost where they actually belong, and fees encourage economic development. Other members would like a chance to review the study, read into it, understand reason why the study was done, people go to develop economically where there is a low rate of taxation. Mr. McLeod submitted the study to the Board.

Attorney Rolf Goodwin, on behalf of Chris Nickerson, not talk about policy, thematic point whether the Town wants to use the tool provided by the State, not much discussion about limits in that tool, important to recognize that the only power that the Planning Board has is to the limits in the statute. 3 areas to look at: 1) statute says you can't go beyond the need incurred by development as it happens going forward, difficult but need to quantify where the break point is for the facilities that the police are asking for, there is a point where those needs are not necessarily given rise by future development but has already happened. 2) the statute talks about what impact fees may be used for, clear in the statute, not aware that it has been litigated, statute talks of funding of facilities, a chunk of the number for police and half for fire is not for facilities, is for equipment, vehicles. 3) in article 17 on the Town Warrant there is a proposal to use impact fees funds for interest on capital bonds, do not see that as authorized under statute. Funds encumbered by the Fown, and statute talks about funds authorized for current spending. Board discussion: the statute requires CIP, expenditures are accounted for, legitimate accounting practice to capitalize equipment and vehicles.

Mr. Roger Hohenberger, 5 Thomas Street, used Mr. Mayberry's handbook to write School Impact fees, excellent job apportioning the new development costs to what actually they are as opposed to pulling out

operation fees and capitalization costs that are required just to support existing population. No flaws, always areas to question, history has shown impact fees do not hinder development, if you do not impose the requirement for the new infrastructure to those bringing forth the requirement then you are punishing the people that are existing in town because the total tax burden of the new stations will be placed upon those people, the new people will be paying taxes but a much less share of the need that they themselves imposed on the Town. About 3-4 Million in school helped offset additions in Center and Middle School in anticipation of future. As a result, additional costs that we had to pay, we are building for the future. Unjust to have existing taxpayers pay these costs. What are the surrounding Towns impact fees for public safety? Board discussion: total # of proposed collected impact fees versus spread out in a tax basis spread out in the CIP.

Mr. Mayberry: can work out through projections, not making a case for whether impact fees are better than taxes.

Board discussion regarding approach assumes a future need, funds the need, presupposes additional taxes incurred on top of that, need to build it then fund it even more,

Mr. Mayberry response: impact fee never created to force Town to build something, should reflect what you're going to do anyways, without some upfront spending by the Town, you cannot create the facilities that you would recover impact fees for, assume facility needs will be fulfilled, impact fees will help out with what is planned anyway, impact fees are not a vehicle to create unnecessary facilities, build it in anticipation of growth and then recoup. Londonderry impact fee for fire is low in comparison, different community, baseline services required, vast array of standards for different communities. Worked in Plaistow, Salem, can check files for relative facility cost, and scale is different in large communities versus smaller communities.

Board discussion: hard to compare, communities are different, and numbers used are conservative.

Mr. Mayberry responses to Attorney Goodwin: 1- break point – two tables describe break point between what you allocate to new and existing development. Fire station uses population to determine, police uses square footage. Break point is how you apportion costs. 2- Statutory uses – definition of facilities not included in the statute, some definitions do include equipment, dropping out apparatus and equipment would reduce the fee amount. 3- Funds for interest on capital bonds – new article proposed is a consolidation of existing authority and updated to legislative changes, use of impact fee revenue to pay down bonds, the statute talks of the ability for a community to recoup costs (Mr. Mayberry read from the statute), link impact fee to capital improvements, anticipating bonded debt, and authority already exists.

Board discussion of definition of facility and whether equipment and apparatus are included, impact fee are assessed for the needs of future development, how can existing equipment be used for impact fees, serve existing and future development, continue to upgrade and replace, replacement frequency increases and at higher costs, as a facility it is a proportionality estimate, increased population means increased calls, track hours on fire engines, more frequent use lessens life of the vehicle, police and fire are preventative and preparedness. Board discussion regarding Mr. Mayberry's methodology and whether it has been challenged and litigated in other communities. Mr. Mayberry has not had methodology overturned due to litigation or fee amounts changed due to apportionality being a problem. Mr. McLeod referenced litigation regarding the towns of Danville and Sandown in which Mr. Mayberry developed the methodology for impact fees and the methodology was upheld.

Board discussion regarding petition state for economic assistance to come to Town, state is paying money to come into the Town, Tax Incremental Financing districts, and other economic incentives, impact fees are investing in good quality capital facilities and assure the facilities are there for future development, and have impact fee to continue to be attractive community.

Mr. McLeod motioned to adopt the Impact Fees for Public Safety Facilities dated Feb 6, 2008 for use in calculating impact fee assessments. Seconded by Mrs. Crisler. Board discussion: like to see and understand difference, based on buildout, between total collection of impact fee versus how that would be reflected in broad based tax increase, people vote and see what capital facility they're voting to build, agree with Mr. McMahon, impact fees are politics at their worst, voting on methodology and not whether in favor of impact fees, and voters of Windham will vote on impact fees.

Public comment from Bruce Breton, and confirm voting on numbers prescribed in the handout. Board discussion on residential and commercial impact fees, whether impact fees hamper commercial developers from coming to Town, impact fees defined cost that everyone knows what it will be, creates a fund to provide money for capital infrastructure improvements, newcomers know that the offsetting funds already exist to pay for improvements, and Northeastern University Center for Urban, Regional Policy (CURP) found that impact fees are not a factor, there are lots of other factors, but impact fees are not. Zoning already exists that allows the Board to go forward with an impact fee schedule, if tonight's methodology and fee schedule are adopted, they will be in effect, the proposed warrant article only combines and clarifies existing language. Voted taken on the motion. Passed 5-2. Mr. Kolodziej and Mr. LoChiatto opposed.

Mr. LoChiatto motioned to adjourn. Mr. Kolodziej seconded. Passed 7-0. Meeting adjourned at 9:40 pm.

These minutes are in draft form and have not yet been reviewed and approved.
Respectfully submitted,
Nancy Prendergast