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May 27, 2020

VIA EMAIL ONLY

Durham Planning Board

c/o Rick Taintor, Contract Planner <rtaintor@ci.durham.nh.us>

Town of Durham

8 Newmarket Road

Durham, NH 03824

**RE: Colonial Durham Associates' 2019-2020 Conditional-Use Site Plan for Mill Plaza
Letter from Attorney Ari B. Pollack dated May 26, 2020**

Dear Chairman Rasmussen and Members of the Planning Board:

This is a brief response to Attorney Pollack's letter to you dated May 26, 2020 concerning the above-referenced project, in which he addresses my May 22 letter to you.

The language of Section 175-23 (C)(8) of your Zoning Ordinance is clear. Attorney Pollock emphasizes the words "of the project" but that proves nothing. The question is whether "fiscal impact" refers only to Town government, or refers to the Town as a whole. However, Section 175-23 (C)(8) makes it clear that the relevant fiscal impact of any project is "on the town," as detailed in my letter dated May 22, 2020.

Accordingly, Mr. Fougere's FIA improperly focuses only on the fiscal impact on Town government, not the fiscal impact "on the town," as required by Section 175-23 (C)(8).

Also, Mr. Fougere's reference to Madbury Commons as a comparable mixed-use residential project was indeed misplaced, as I accurately noted. Attorney Pollock incorrectly describes Madbury Commons as "a comparable mixed-use project in the same Central Business District that required the same Section 175-23 (C) Conditional Use approval for its proposed commercial/residential mixed-use development." However, since the initial Madbury Commons application was accepted as complete on September 25, 2013, 49 days *prior to* the first public hearing on the conditional use Zoning amendment (on November 13, 2013), the mixed-use residential component of Madbury Commons was permitted as a matter of right. (Conditional Use criteria were applicable to Madbury Commons only in regard to encroachment into the Shoreland Protection Overlay District and the Wetland Protection Overlay District. It was only those specific and limited encroachments that needed to meet the Conditional Use criteria. The overall project itself was **not** subject to the Conditional Use criteria that Colonial Durham must meet.)

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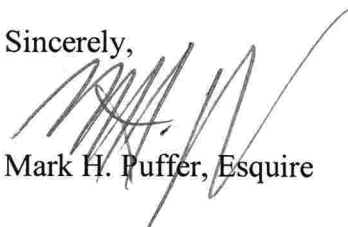
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In the end, you, not the applicant, are going to have to determine the meaning and intent of your Zoning Ordinance, and whether the Conditional Use criteria of Section 175-23 (C) have been met. You will need to determine that all of the Conditional Use criteria have been met by a project that adds 258 student-housing beds adjacent to a well-established residential neighborhood and which, at least to this point, still requires 157 parking spaces on a separate adjacent parcel in the Church Hill zoning district. Also, you will need to determine the impact of a potential student-housing glut in Durham that will likely change the makeup of tenants and the assessments of those properties. As was mentioned in your discussion on May 13, should a mere 40 more school-age children move with their families to Durham from other towns and into reconfigured former student housing, the best-case net tax gain of \$692,403¹ presented in Mr. Fougere's FIA would be more than wiped out, by tens of thousands of dollars. (At the average of \$18,000 per student ORCSD cost in 2018, 40 added students would cost the Town an additional \$720,000.) These are among the many issues that the Planning Board must explore to have a better sense of the overall fiscal impact of Colonial Durham's application.

Again, on behalf of my clients, I urge you to commission an independent Fiscal Impact Analysis, per your authority under the Conditional Use ordinance.

Thanks for your consideration.

Sincerely,



Mark H. Puffer, Esquire

MHP:sas

cc: Karen Edwards, Administrative Assistant <kedwards@ci.durham.nh.us>
Ari Pollack, Esquire <pollack@gcglaw.com>
Scott Hogan, Esquire <HoganLaw@comcast.net>
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¹ Note that both Mr. Fougere's FIA and Mr. Pollack's recent letter confound "net" and "gross" and present a misleading inflated "net gain" that actually includes the amount of property tax that is already being paid on the existing site.