

January 27 2021

To: Planning Board Members

From: Joshua Meyrowitz

Re: PB Members Calls for Independent FIA

Dear Planning Board Members,

I very much appreciate that Rick Taintor's [Planner's Review on Fiscal Impact Analysis 1-27-21](#) cites my January 21 2021 [one-page summary of critiques of the Fougere FIA](#) as providing "a **concise list of the issues and concerns that residents have raised.**" However, as I have written to Mr. Taintor, I fear that his document on the FIA issue mischaracterizes the **key concern expressed by both residents and Board members** (and even summarized at one point by Mr. Taintor himself on May 13 2020!).

That prime concern, as Lorne Parnell, Richard Kelley, and Jim Lawson have raised at prior meetings is NOT about families with school-age children moving *into the Plaza*, but about **the over-building of student housing in Town overall**, including with the soon-coming demographically driven "enrollment cliff" (from lower birth rates since 2007), with the result that **other student housing projects in town would be forced to rent to non-students, including families with school-age kids, resulting in landlord requests for lower tax assessments because they cannot charge the higher rents that student rentals generate.**

That is why Mr. Lawson said on May 13 2020: "My point to the Planning Board is that this Fiscal Impact Study looks at the best-case scenario, and the problem is that between the best case and the worst case there are too many variables and too many things that we can debate. So I would encourage the Planning Board to go and take a look at what is the worst-case scenario. And if the worst-case scenario, which is a scenario where really two things happen: One is increased vacancy rates and decreased valuation of other properties, which can be easily calculated and we increase the number of students in the Oyster River School District, what is the result?... And how do I go back to citizens of Town and say 'Wait a minute. I was expecting that type of benefit.' And shouldn't we be taking a more realistic approach...?"

Therefore, I hope that in addition to your reviewing my one-page summary on the FIA, you will review the **excerpts below from your own deliberations**, dating back to May 9 2018, when Mr. Parnell indicated that the Planning Board, not the applicant should define the scope of the FIA and that it ought to include impact on the value of other student-housing properties.

I provided 95% of the following pages to Mr. Taintor prior to his sending you his FIA overview (cleaning up some typos in the version here). Note that since it can take up to an hour-per-minute of dialogue to produce a precise transcript, given the typical form of extemporaneous group conversation, some of the May 13 2020 deliberations are not yet in precise transcript form. If you want me to continue with exact transcribing, let me know. In the meantime, words within quotation marks are precise quotes. I have added emphases to highlight key comments.

Durham Planning Board Meeting Excerpts

Regarding Fiscal Impact Analysis (FIA) for Mill Plaza CUP Site Plan

Transcribed/Compiled by Joshua Meyrowitz / 7 Chesley Drive, Durham, NH / Jan 24, 2021

May 9, 2018 ([video](#)) ([minutes](#), pp. 9-10) ([agenda](#) Item XII: “Introduction to Rick Taintor”]

[Not a Public Hearing; no application has yet been submitted; CDA’s Attorney Pollack present.]

[Mr. Taintor mentions, at 1:57:38, Fiscal Impact Study to be submitted between May 23 & June 13]

VIDEO (from 2:00:08-2:03:36)

Lorne Parnell: “I’m a little surprised this Fiscal Impact Study is going to be given to us on May 23 [2018], when we haven’t yet seen the project itself; there hasn’t been an application yet. How did this study, uh-. **In the past, these studies have been initiated by the Planning Board. The Planning Board had given the terms of reference of what we expected from these studies and then the applicant hired a consultant and produced the study. I think in this particular case, for example, there are some other fiscal impacts, which certainly I would like to see some information on.** Um, but, I, I, to decide at this point what information we want from a fiscal impact study before we’ve even seen the project, I think, is a bit, putting the cart before the horse. I’m just wondering how this happened. How we got into this situation, where we’re getting the fiscal impact study bef-, at the same time we see the project?”

Rick Taintor: “Well, I guess, you certainly could ask for it to be postponed, I guess, if that’s what you wanted to do. The applicant has proposed that they would submit, not on the 23rd, but by-“

Parnell: “Proposed to *whom*?”

Taintor: “Proposed, I guess, to me. I mean it’s the same thing with the, they would, they are also taking about doing the stormwater management plan at the same time, so, a lot-. A Fiscal Impact Study is not, they’re pretty standard, they’re not-.”

Parnell: “I realize that they are for most projects, but **this is not a standard project. We have issues concerning market, impact on markets, impact on values of properties. These sort of things that will have a part of the fiscal impact study, and whether they’re going to be covering those things or not, I don’t know.**”

Taintor: “Well, certainly, you could always ask for a supplemental study.”

Parnell: “Well, we’ll see what happens, when we get it, but.”

Taintor: “All these things, if you are not satisfied with a study that’s been submitted, you don’t feel it covers all the bases, you always have the right to either ask for a supplemental study or ask for a peer review, uh,

have another consultant come in and review the project and do the same thing. **The fact that, of the applicant submitting a study doesn't take away any of your ability to ask for further studies.**"

Parnell: "I have sort of similar questions about the Traffic Impact Study. Are we supposed to be receiving a Traffic Impact Study?"

Taintor: "You will be receiving a Traffic Impact Study, but not in the initial round of studies. You won't have it by the 13th. That's taking a little bit longer. And the applicants' engineers have met with, uh, the Public Works and other departments and have tried to scope out what are the types of things that need to be looked at in that study. The, and in addition to that, as I noted in the memo, you would have the ability to require the applicant to pay for a run of the traffic model, and we'd *assume* that you are going to do that for a project of this scale. So the applicant has met with the consultants, the engineering firm that help develop that model and will coordinate with them.

Parnell: "Okay, I think there are other studies we will require, but I don't think that this is the appropriate time to discuss it"

Taintor: "And you probably won't know until you see the project in detail."

Parnell: "Exactly."

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April 15, 2020 ([video](#)) ([minutes](#)) ([agenda](#) Item 12: "Public Hearing – Mill Plaza Redevelopment")]

Official email from Michael Behrendt, Friday, April 10, 2020 4:48 PM with agenda for April 15, 2020 meeting attached: "Our policy has been to not read emails aloud at the meetings due to time constraints.... However, for the foreseeable future, in part to encourage email rather than physical attendance [because of Covid-19], I will **read all emails which pertain to Planning Board business aloud at the meeting.**" [Bold added]

VIDEO (2:09:42-2:12:30)

Joshua Meyrowitz: "Thank you so much. [Brief comment on landscaping "grandfathering" being illegitimate if it never met original site-plan requirements.].... I'll just make a quick comment about the opening discussion about the reading of emails. I appreciated all the reasoning that everybody presented. **But, since Michael Behrendt had sent out an official Town notice stating this change of policy last week, and it was echoed in other official Durham communications. And since I see on the web site a bunch of people jumped in to give very short emails, with this in mind. And [smiling] even Robin Mower sent a condensed version of her April 10th email in response, I think that you are obligated to at least do that brief reading from the shorter emails, for at least *tonight*, and then have the discussion about what would make the most sense going forward...."**

Chair Paul Rasmussen: “You’re correct; that last point was on me. I forgot.... Yes, and I’ll care of that [reading of the resident emails] immediately.”

[However, Rick Taintor was asked to read just *one* of the many citizen emails submitted, because the FIA discussion was expected to take place later during the same April 15 meeting. But then, with the landscaping discussion consuming a lot time, the FIA discussion was moved to April 29. On April 29, a technical failure led to the cancelation of the meeting, and the FIA discussion was moved to May 13, 2020. At the start, Rick Taintor made an effort to remind the Board about the letter-reading promise (see below), but he was not invited by the Chair to read them, and the infamous “Public” Hearing on the FIA then proceeded with the applicant allowed to sway a narrow vote on a Motion for an independent FIA – and no member of the public – not by letter, not by oral comment, was allowed to participate.]

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May 13, 2020 ([video](#)) ([minutes](#)) ([agenda](#) Item 11: “Public Hearing – Mill Plaza Redevelopment”)

VIDEO (1:51:20 on)

Chair Paul Rasmussen: “So, uh, topic of our discussion today is the Fiscal Impact Study, and **Mr. Taintor, you had some notes and correspondence to start us with...**”

Rick Taintor: “A few introductory comments, if I may. Just to bring you up to date on where we are with this. As you know from your packets, in the last couple of months, **we received about, I think, 17 letters and emails since early April. I read one of them at the April 15th meeting, but there are about 16 left to go....**” [Not all on FIA, but he is not invited to read *any* of them, despite April 15, 2020, assurance by the Chair.]

[There was then a brief discussion of status of Traffic Impact Study, Stormwater Peer Review, Landscaping revisions, and then at 1:54:10, below.]

Taintor: “So, in terms of the fiscal impact, which is the primary matter for tonight’s meeting, the report was submitted on April 2 [2020]. I prepared the memo for the April 29th meeting, which unfortunately, we never got to [canceled for technical reasons]. But just a couple of things I wanted to point out. **First of all, there were some very detailed comments from some of the residents, and some very good comments, discussing in many ways the issue of the scope and methodology. In my memo, I pointed out the Fiscal Impact Report [as submitted] only looks at, is limited to, the direct impacts in terms of increase in taxable values and additional service costs. So it doesn’t look at the types of spinoff concerns that some people have brought up.... And then you could commission your own fiscal impact study under the guidelines. It could be a peer review, as you did before for the stormwater, you could commission your own fiscal-impact study.**”

[But the PB did not inquire about the content of the Taintor-cited “very detailed comments from some of the residents, and some very good comments, discussing in many ways the issue of the scope and methodology,” and did not invite the reading of them, per April 15 promise, and did not allow any members of the public to participate throughout the hearing. And, a so-called “Public” Hearing on the FIA then proceeded even more inappropriately with the *applicant* allowed to speak and to sway a narrow vote on a Motion for an independent FIA. No public words or voices were a part of the hearing.]

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2:20:28 / 9:21:32

Mark Fougere: “That’s all I have, Mr. Chairman. If you have any other questions or any of the Board members have questions, I’d be happy to answer them. Again, I think we meet the intent of the Conditional-Use permit. Um, I don’t think, no matter how you slice these numbers or what costs you can think of, it’s a positive fiscal impact on the community. And in a mixed-use project like that that’s a standard conclusion no matter who you ask.”

→*The rest below are not yet precise quotes at this point.*

Paul Rasmussen: Okay, I’ll entertain questions. Mr. Kelley.

Richard Kelley: A question regarding Fig 4, the area vacancy rate. I’m curious as what is sweet spot; at what % does it become a detriment to a community and what are results of having a large area vacancy rate?

Fougere: Well, I’m not an appraiser, so I don’t know that I can answer that question.

Kelley: I’ll re-phrase as a sensitivity analysis: What happens to your numbers if vacancy rates exceed 5 or 10%? What would we expect to see in your results?

Fougere: You mean if the vacancy rates go up, would the value of the project go down?

Kelley: Yes, or would revenue go down for any reason. **if area vacancy rates go up. Would your results change if area vacancy rates go up?**

Fougere: If income would decline significantly to a point over time, it may lead to request for lower assessment when you do a reevaluation. This property is downtown. Three rules of real estate. Location, Location, Location. This site has strong downtown location that students are going to want. [But Mr. Kelley’s question is about whether *other* properties have increased vacancies]...

Jim Lawson: A few questions and couple of comments. My first question is/ um: this study suggests that the need for students is such that this project – with its prime location, location, location – **housing doesn’t create vacancy in other places, which I think Mr. Kelley was alluding to.** Is that an assumption that your

study makes?

Fougere: Well, I'm not really looking at the impact on the marketplace; and that's not what a Fiscal Impact Report does. You know, it's a dynamic marketplace, and it does not stop at the borders [borders of Plaza or borders of Durham?] I did pick up and read, because someone brought them up as shining examples of work, the AER[?] study by Russ Tivo[?] and the Madbury Commons, and, you know, as Mr Tivo mentioned in his report, and I'll concur with what he wrote: If vacancy rates in student housing became an issue, the owner would reconfigure the units and rent them to others. And that may happen...

Lawson: That's my point... In Durham, the data that I have says that an apartment which is used by students is assessed three times greater than a similar apt just over the border in Dover that's not in the student market. **So would you agree that if there are vacancies, the market that comes in to fill those vacancies is not a market that we can assess at the level that we do for student housing?**

Fougere: I'm not prepared to make that statement, no.

Lawson: In Durham we assess the average apartment, though we think in terms of beds, at about \$200,000. In Dove, for nice multi-units, they're assessed at about \$40-60,000 per bed, I mean per apartment. It's much greater. So, if we create vacancies, **wouldn't you think it's likely, if we did create vacancies, wouldn't you think that it's likely that, over time, although the assessment of Mill Plaza would be good, that we might see decreases in assessments in other places because the apartments have been re-purposed?**

Fougere: I don't know if you can make that statement.

Lawson: I can make that statement. I'm asking if you if...

Fougere: I, I, I can't answer that.

Lawson: If I re-purpose those apartments so families move in, and those families have children, doesn't that affect Oyster River school apportionment?

Fougere: It may.

Lawson: Yes, so this is my point for the Planning Board. I'll try to be succinct. First of all, I have no problems with the marginal cost analysis. And some elements of it are more accurate than what we've looked at in the past. **I did want to disagree that the Oyster River School funding formula should be dismissed. How our apportionment works on the evaluation side is relative to what's going on in the Towns of Lee and Madbury, but there's no doubt that this increases our evaluation by about \$31M dollars. My point to the PB is that this Fiscal Impact Study looks at the *best-case* scenario, and the problem is that between the best case and the worst case there are too many variables and too many**

things that we can debate. So I would encourage the PB to go and take a look at what is the worst-case scenario. And if the worst-case scenario, which is a scenario where really two things happen: One is increased vacancy rates and decreased valuation of other properties, which can be easily calculated and we increase the number of students in the Oyster River School District, what is the result?...

James Bubar: I'm somewhat concerned with the discussion about imputing computing negative marketplace issues into the analysis. If that's the case, we should worry about the student housing in Newmarket, the student housing in Dover. What are the regional impacts? We have Mr. Clark patiently waiting to come up after this. Geez, should we be worrying about if he opens his restaurant what is that going to do to the restaurant market in Durham? You know, you're in a competitive business; there are winners and there are losers. And if don't upgrade your properties to be competitive, then you are going to lose. The other thing I have to agree wholeheartedly that the school funding mechanism isn't complicated. Simple formula. 50% recovered based on property value and other number of students. If 35.5M to property valuation in Durham, we are going get a bigger school bill. Other concern that Jim is driving at negative impact net increase tax just under \$700,000, only going to support 40 students. And you can quickly turn this thing negative.

Lawson: I want to clarify James, I'm not trying to turn negative. I don't care who wins or loses. **I am concerned about just pushing this to the side and not knowing what the impact is to the community. I feel really confident to say that at the end of the day we are not going to have the fiscal impact that this report states. And how do I go back to citizens of Town and say 'Wait a minute. I was expecting that type of benefit.' And shouldn't we be taking a more realistic approach, particularly if a thorough report particularly when it says 'It's still viable.'? Let's make more realistic without these assumptions that really just present the best-case scenario....**

Lorne Parnell: I have a comment continuing with Jim Lawson was saying and also what James said. **I'm not concerned about the competitive. If it does come in, it will obviously have an impact. But I do have a concern on assessed value of other properties in Town. They're based on the income coming in, and if their assessed value goes down, then fiscal benefit goes down.** I doubt it's a hugely significant number, but we should have more information on what that number should be, and **thought this was going to be part of the fiscal impact study that was going to be done, but it isn't. We should contract a separate study that would look at these issues, we also need impact on property values, and I don't think the Planning Board members are capable of answering that question.** And I think those items could be combined into a separate study that would provide this information. Allow us, as Jim says, to assess the best case and the worst case....

Lawson: I think that Lorne's idea is a good idea. I would encourage it. They would be allowed to sit down and share a large base of housing in Durham. So that they don't have to spend a lot of time searching out that information.

Parnell: I would agree with that. And maybe would should get this going.

Rasmussen: Make a motion.

Parnell: Motion: **The Planning Board requests that consultant be hired to investigate real-estate impact on student housing in Town as well as residential housing in the area. And that the cost paid for by applicant and Contract Planner would suggest possible consultants.**

Rasmussen: Second that. Question for Mr. Taintor. Does this sound reasonable;; do you have any concerns?

Rick Taintor: I don't have any concerns. You know, **Durham is a special real-estate market. Housing that gets rented to students higher assessment, then conversion in future could increase vacancy rates, more variables than in other communities. Would be important to have whoever does that and sit down with Planning Dept and get info that's available....**

Kelley: I'll speak in favor of the motion. But I have a concern that the scenario is greater than this application. Looking at impacts of housing not just of this project and could be other developments that turn the same way. And I think the Town should put some skin in the game and split the cost 50-50.

Sean McCauley: I can't help myself, I have a question.

Rasmussen: Go ahead Sean,

McCauley: The ordinance has a standard, a positive or negative impact. And then you start to ask about other property values. And I explained to Mr. Taintor, impact of this property on the budget. **And when it came to impact of this property on other housing that we have a different consultant that is preparing that report for a later date. And we viewed them as two separate issues. I can understand your desire for more information. But before we go hiring more consultants it may be prudent to have our appraisal consultant to look at the value of houses.**

Lawson: But isn't that appraisal consultant more about impact on houses in proximity?

McCauley: It deals with the neighboring properties. Is it equitable to have our project singled out to see how our property might, *might*, interact competition? One never made a point, would we do that to a restaurant [See comment on restaurant by right, not CU, in [Letter from Attorney Mark H. Puffer 5-22-20](#)]. And, arguably, having been in this business for 40 years when new property comes in other properties start to tidy up so that they can compete in a more favorable manner.

Lawson: I would just like to point out that **the challenge here is not that other properties might tidy up, it's an issue of an oversupply. You have a FIA that glosses over that, it really presents an answer that's**

on the extreme best case. I truly believe that if we go through this process, it's going to show positive things for fiscal impact plus positive things for diversifying our housing. If we don't undertake it, then it's going to be a big open question for the Town and Mill Plaza, I really have concerns about the fiscal impact you presented even in the context of the best case. **My idea, let's answer all these questions,** not assume it's going to be a bad answer, but less get the answers. And let's have a document where we have skin the game. This has to be a document that gets us beyond the process....

Sally Tobias: Appraisal would just be looking at abutters and Jim is mentioning the *other* student housing in Town.

Kelley: And I don't think it's enough to look at just the immediate abutters. This is enough of a development with 240 and 250 bedrooms that it has a larger impact, even beyond our borders as well on neighboring communities.

McCauley: I think it's a standard that no other developer of a project has been held to

Tobias: It's the nature of the tenants that would be living there. If not a college town, different. But we because we know it's students, captive market, **numbers of students going down**, what is impact?

Bubar: Definitely going down in 2025.

Lawson: I would say to Mr. McCauley that other developers *have* been held to this standard, but the difference is that other developers and the time frame that they were developing in, it really wasn't a question because of the lack of supply and the demand. And **it's only been recently that we've moved to supply and demand potentially impacting assessments.**

Fougere: I wasn't trying to gloss over anything. Purpose to look. Madbury Commons didn't look at off-site impacts on the marketplace [BUT Madbury Commons was NOT CU for mixed-use, just for wetland setbacks]; typically fiscal impact reports don't do that. Some do, but I would say the standard is that they don't. I followed normal procedures.

Lawson: Madbury Commons brought 500 beds into community. So now... [Per details in [Letter from Attorney Mark H. Puffer 5-22-20](#), CU for mixed use imposed *after* Madbury Commons application accepted as complete].

Kelley: Not attacking you, but something more the community and Board need. Discussion of motion between applicant and Board?

Rasmussen: Richard Kelley amending motion?

Kelley: Yes, Durham split 50-50 of expense with applicant [for a broader study of fiscal impact].

Rasmussen: Second

[The motion PASSED 7-0 by a roll call vote]

Bubar: concerned that don't know scope of original motion

Parnell: effect on student housing in Durham, and how impact assessed value

Taintor: One of the things Lorne said earlier, not if did not remain student housing.

Parnell: That's expanding a bit on my original thoughts. If rental units in Town couldn't rent to students, that might impact the housing situation, and also might impact the fiscal assessment of those other properties if their income streams changed.

Rasmussen: I'm deciding vote? I think premature, want to see the rest of the CDA real-estate analysis. "NO," but we may want to revisit this.

[Per minutes: The original motion, as amended FAILED 3-4 by a roll call vote:

Rasmussen No // Dill Yes // Parnell Yes // McGowan No // Bubar No // Kelley No // Tobias Yes

Kelley: What motion lacked it was a bit specific and we needed to be a little more broad and with traffic we have scoping session. Didn't feel confident that it would at this point addresses all we need.

Rasmussen: Do we want to close FIA or come back to it.

Parnell: We haven't allowed any public comments, no choice but to come back to it!

Bubar: Yes.

Rasmussen: Agreed, we will do that. We'll continue on with this Wed May 27.

Taintor: 27th is the stormwater review.

Rasmussen: So we can also have public hearing time for that, plenty of time that night

Resident Bob Russell Point of Order! Please! You never asked for any public input on a so-called public hearing.

PR: We just talked about that.

Tobias: We're continuing it.

Russell: But there has to be some discussion on what you just did tonight, before you go on to another presentation.

Parnell: No, you can just explain what we said.

Rasmussen: We are going to continue that to our next meeting. So we will be continuing our discussion of fiscal impact and allow the public to speak. We do not have to do it tonight.

[The Board **did not return to full review of the FIA topic in the next 8 months.** The Board's April 15 commitment to read aloud or summarize the public's FIA letters has never been fulfilled. Deep discussion of the public's concerns over the FIA, or even review of Board members' previously expressed concerns regarding it, documented above, has not yet occurred as of mid-day January 27 2021. Indeed, on Dec 16 2020, the Board seemed poised to vote down a motion for an independent FIA, once more without any public input. That led to a Joshua Meyrowitz comment at 11:01pm on Dec 16, a delay in the discussion and vote, and to Rick Taintor's FIA memo.]

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