

December 3, 2021

To: Durham Planning Board & Todd Selig

From: Kay Morgan, 16 Valentine Hill Rd.

Re: Disrespecting Public Input regarding Mill Plaza Development

It has been quite a while since I have written to the Planning Board or spoken at a meeting. I've been pondering why that is the case, since I remain extremely concerned about the two projects under consideration for the downtown area. After much thought, I have traced my lack of participation back to the August 25th Planning Board meeting. The process and content of that meeting left me disgusted, disillusioned, and discouraged.

The main part of the meeting began with a presentation by the applicant's attorney, Ari Pollack. He, not surprisingly, laid out a rosy picture of the various ways they have tried to comply with Planning Board requests for changes to the Plaza plans.

In his presentation he highlighted two areas in which they had complied with or exceeded the 2015 Settlement: the reduction of student beds and 24/7 management and security on site. He repeatedly mentioned the good work they have done to be more (but not actually) compliant with another key settlement stipulation: the requirement to conform to the 75-foot wetland buffer along College Brook. (All I could think of was the difference between being pregnant and almost being pregnant.)

He then asked: "Is it enough? That's what Conditional Use is for." He concluded with the implied threat he has made more than once: "This is a once-in-a-generation opportunity to redevelop the plaza." It's take it or leave it.

The Chair opened the public hearing, and Tom Timpone, a resident on Mill Pond Road, stated that he "hasn't met one person who is for this project." When he finished his comment, the Chair explained to him that in this case, "public opinion isn't important." This is where the meeting started to go downhill for me.

Because the Board perceives that the major objection by residents has to do with the fact that there will be 258 students thrust into the center of downtown, a bizarre (and legally unfounded) discussion of the Fair Housing Act and the NH Civil Rights Act ensued, with member Tobias commenting that people (I am one) who had put yard signs out opposing student housing in the Plaza were "biased and bigoted." Wow! I don't think I've ever been called a "bigot," before.

Eventually, the meeting moved back to Public Comments. As is often the case, many people wanted to speak, and there was a 5-minute limit placed on comments. At 8:58, Bob Russell spoke, and following a suggestion made by the Planning Board at a previous meeting that public comments could be shorter and more easily processed by the Board if people simply referred to previous letters or comments that had been made and with which they agreed, he referenced three prior communications that the Board seemed not to have read, or had read and ignored.

(As an aside, since there is virtually never any discussion by the Planning Board that would reveal that they have read the letters that citizens and experts have sent in, it is hard to tell whether or not they have read them. See my additional comments on this issue further below.)

The three items mentioned were a letter from Attorney Mark Puffer, 8/24/21; a Report from

Waterston Engineering, by Robert Roseen, 5/19/21; and an email chain between Contract Planner Rick Taintor and Eric Feigenbaum, Chair of the Oyster River Local Advisory Committee, including a checklist required for use by any project in a protected river watershed, which applies to the Mill Plaza property. These communications are all relevant and important for the legal information contained in them and pertain directly to the Planning Board's decision-making on acceptance or rejection of this proposal. Mr. Russell was given the 5-minute warning and concluded.

CDA's Attorney Ari Pollack (who is NOT a member of the public) rudely interrupted the proceedings to criticize Mr. Russell's comment saying: "I understand that the Board wishes to be indulgent of all who want to participate, but spending five minutes interpreting the communications provided to the Board by other people has no relevance in due process. And those people could certainly come and present their own materials or leave it to the Board to interpret their written materials. I don't know *what* the value of that comment was."

No attempt was made to rule Mr. Pollack out of order or to instruct him that this was not his time to speak. No one offered any response to the substance of what Bob Russell said. I was shocked and disgusted. Procedurally, this was a new low point, even for the Durham Planning Board, which seems not to care much for parliamentary procedure or for respect for fellow Durham residents.

Saving me from total disgust, Alternate Council Representative Hotchkiss stated: "I appreciated hearing it." (Followed by 3 seconds of silence, with no other Board member speaking against Pollack's predatory attack or in support of Prof. Russell's right to say what he did.)

If you are a member of the Planning Board, you probably stopped reading this long ago. So be it. The subsequent "Workshop" October 20, 2021, revealed just how much contempt, and I don't think that is too strong a word, the Chair of the Planning Board has for public input. He said to his colleagues: "Our Town Administrator and the Town Planner and all have received letters claiming that we are ignoring all the public statements. And it's because we, you know, it's not that we're ignoring them, it's simply that we don't find, we haven't found a reason to talk about them. You know, just because they talk about something, for whatever reason, we don't feel that it has risen to the point where it's worthy of discussion."

Any reasonable person could read the letters posted on the Town web site and look at the PowerPoint presentations citizens have made and judge for him/herself as to the factual status of many of the thoughtful letters. (It is quite high!) There are also many letters that express the passionate opinions of Durham residents. Those count as well. My reading of them reveals that the bulk of the letters pertain directly to the Conditional Use Criteria on which the proposal rises or falls. Is this not relevant to the Planning Board? Indeed, as other neighbors have also noted, the Conditional Use zoning article clearly states: "The Planning Board shall make findings of fact, based on the evidence presented by the applicant, Town staff, and the public..." If the Board finds misinformation in *any* of these required sources of information, they ought to make an effort to correct it in their meetings.

The Planning Board is supposed to present a written finding of facts which will support their decisions on the all-important Conditional Use requirements. They would be well-advised to take a look at the letters they have thus far dismissed as "not rising to the point where [they] are worthy of discussion."